

**CALIFORNIA ARCHITECTS BOARD
LANDSCAPE ARCHITECTS TECHNICAL COMMITTEE**

INITIAL STATEMENT OF REASONS

Hearing Date: The California Architects Board (Board) has not scheduled a hearing on the proposed changes. However, a hearing will be scheduled upon request by any interested party if the request is received no later than 15 days prior to the close of the written comment period.

Subject Matter of Proposed Regulations: Disciplinary Guidelines (*Guidelines*)

Section Affected: Section 2680 of Article 1 of Division 26 of Title 16 of the California Code of Regulations (CCR)¹

Introduction and Problem Statement

Under the jurisdiction of the Board, the Landscape Architects Technical Committee (Committee) licenses landscape architects. The Board is responsible for discipline of landscape architects and enforcement of Chapter 3.5 of Division 3 of the Business and Professions Code that regulates the profession (Act) (Business and Professions Code (BPC), §§ 5620, subd. (d), 5629). BPC section 5620.1 mandates that the protection of the public shall be the highest priority of the Committee 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.

BPC section 5630 authorizes the Board, in accordance with the Administrative Procedure Act (APA) (Government Code section 11400 et seq.), to adopt, amend, or repeal rules and regulations that are reasonably necessary to carry out the provisions under the Act. Government Code section 11425.50, subdivision (e), provides that a penalty in an administrative disciplinary action may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule unless it has been adopted as a regulation in accordance with the APA.

The Committee's *Guidelines* were initially adopted in regulation under CCR, title 16, section 2680 on August 11, 1997. CCR section 2680 requires the Board, in reaching a decision on a disciplinary action under the APA, to consider the *Guidelines*. The *Guidelines* are incorporated by reference because of the length of the document. CCR section 2680, and the *Guidelines* [Rev. 2000] were subsequently amended on April 13, 2001.

The current *Guidelines* contain many outdated terms and conditions of probation and, in many instances, do not reflect recent updates to statutory law and other changes that

¹ All CCR references are to title 16 unless otherwise noted.

have occurred in the probationary environment since the last update in 2000. If the *Guidelines* are amended, the corresponding regulation, CCR section 2680, must also be amended to incorporate by reference the revised *Guidelines* as revised August 2021 and approved by the Board on September 10, 2021.

The specific changes to the *Guidelines* and the reasons therefor are provided in detail below.

Specific Purpose, Anticipated Benefits, and Rationale

Amend Section 2680 of Article 1 of Division 26 of Title 16 of the CCR

Purpose: The specific purpose of this regulatory proposal is to update the *Guidelines* to reflect recent updates to statutory law and other changes that have occurred in the probationary environment since the last update in 2000. To do so, CCR section 2680, which incorporates the *Guidelines* by reference, must be revised to change the current revision date of 2000 to the latest revision date of “2021,” to add the words “Model Orders” to the title, as well as to update the authority and reference citations to include relevant new statutes.

Anticipated Benefits: This proposal is anticipated to protect consumers by providing standards for the consistent application and enforcement of the laws and regulations under the Board’s jurisdiction. This proposal is also anticipated to benefit Administrative Law Judges (ALJs), Deputy Attorneys General (DAGs), and others involved in the disciplinary process by providing updated guidelines to reference when imposing disciplinary action against licensees and applicants.

Rationale: CCR Section 2680 was last amended in 2001 and incorporates by reference the Committee’s *Guidelines* [Rev. 2000], which are out of date, inconsistent with recent changes to statutory law and the probationary environment and require clarification. In the last 18 years, there have been statutory and probationary changes that must be reflected in the *Guidelines*. This regulatory proposal would update the *Guidelines*, which are incorporated by reference in CCR section 2680, and must also update CCR section 2680 to change the revision date of the *Guidelines* from 2000 to “2021” and add the words “Model Orders” to the title.

The proposal is also necessary to update the authority and reference citations of CCR section 2680. Amendments to the regulation include adding to the regulation as authority citations BPC sections 481 and 493, which provide an additional source of the Board’s authority to discipline licensees, deleting BPC section 5662, which is not the correct statute providing the Board authority to promulgate *Guidelines*, and adding Government Code section 11400.20, which authorizes the Board to adopt permanent regulations to govern adjudicative proceedings under the APA. The proposal also revises the reference section of the regulation to add BPC sections 125.3, 140, 141, 143.5, 490, 493, and 499, which provide general statutory authority to impose discipline

by the Board, and BPC sections 5616, 5659, 5660, 5662, 5666, and 5678, which are specific discipline statutes applicable to landscape architect licensees. The amendments also strike unnecessary reference citations to Government Code sections 11400.21 and 11425, and a duplicative reference to Section 11425.50(e) of the Government Code. These amendments clarify the Board's authority to promulgate the *Guidelines* and the statutes that the regulation and the *Guidelines*, incorporated by reference, implement, interpret, and make specific.

Amend Disciplinary Guidelines

Add Cover Page

Purpose: The purpose of this proposal is to amend the *Guidelines* to include a cover page that identifies the title of the document and contains the Committee's physical address and contact information.

Anticipated Benefits: The Board and Committee anticipate that the public and landscape architect licensees will be better able to find the *Guidelines* with the new cover page and be better informed as to the Committee's location and contact information.

Rationale: The proposal is necessary to provide clear and transparent identification of the document. The proposal would add a Cover Page to the *Guidelines* to identify for the public and licensees that the document contains the Committee's disciplinary guidelines and model orders. The proposal also would include the Committee's physical and mailing address, telephone number, and website address for ease of reference, so the public, licensees, and other users of the *Guidelines* have immediate access to the Committee's contact information.

Add Table of Contents

Purpose: The purpose of this proposal is to amend the *Guidelines* to include a table of contents to provide the organization of the *Guidelines*.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, and landscape architect licensees and applicants will benefit from the addition of a table of contents that will identify the subjects covered and specify their page location in the *Guidelines*.

Rationale: The proposal is necessary to make the *Guidelines* more user-friendly and provide transparency and clarity as to the disciplinary authority of the Board and the potential disciplinary outcomes for landscape architect license applicants and licensees.

Amend Section I, Introduction

Purpose: The purpose of this proposal is to amend the existing introduction in the *Guidelines* to:

- provide consistency by changing references to the California Architects Board from the abbreviated term "CAB" to the abbreviated term "Board," except in the

- 5th paragraph, where “CAB” is replaced with the abbreviated term “LATC.”
- replace the term "shall" with the term "may" and authorize the Board to periodically revise the *Guidelines* rather than unnecessarily require such revisions, which the statutes do not require.
 - to relocate the statement “are referenced to the statutory and regulatory provisions” and revise slightly to state “reference the statutory and regulatory provisions” for better syntax and greater reader comprehension.
 - to remove the statement “as a standard term and condition” and make other technical, non-substantive changes to the wording of the Introduction to eliminate unnecessary words and for better reader comprehension.
 - include the statement “All disciplinary actions will be published on the Internet to facilitate access under the California Public Records Act” to provide notice to users of the *Guidelines*, including affected licensees, of the requirements of the California Public Records Act (CPRA -- Gov. Code, §§ 6250 et seq.). The CPRA requires the Board to make all non-exempt public records (enforcement actions are not exempt -- see Gov. Code, § 6254) promptly available upon request by any person (see Gov. Code, § 6253).
 - include a statement informing the readers that a copy of the *Guidelines* can be accessed on-line at LATC’s website to facilitate public access to this document.
 - include the statement “There may be a charge assessed for providing paper copies sufficient to cover the direct cost of duplication.”

Anticipated Benefits: The Board and Committee anticipate that the public and landscape architect licensees and applicants will better understand what the term “Board” refers to throughout the *Guidelines*, and by substituting the term LATC in the 5th paragraph, it is made clear that LATC is the agency to contact to obtain a copy of the *Guidelines*. The proposed amendments also clarify that the Board’s is not obligated to revise the *Guidelines*. Licensees, applicants, and the public will benefit from relocating a phrase and removing a redundant and unnecessary phrase, along with making non-substantive changes for clarity. The public, licensees, and applicants will benefit from clear notice that disciplinary actions will be published on the internet to facilitate access under the California Public Records Act. They will also benefit from notice of where they can access the *Guidelines* and that LATC may charge to provide a paper copy of the *Guidelines*.

Rationale: The proposal is necessary as it removes the acronym, “CAB,” for the California Architects Board and replaces it with “Board” where it appears in the Introduction in all but the 5th paragraph because the term “Board” is used consistently throughout the rest of the *Guidelines* to represent the California Architects Board. In the fifth paragraph of the Introduction the acronym “CAB” is replaced with “LATC” because that is the agency to contact to obtain a copy of the *Guidelines*. The proposal is necessary as it replaces the term “shall” with the term “may” to demonstrate the Board has the option to revise the *Guidelines*, but it is not a requirement. The proposal is necessary to relocate the statement “are referenced to the statutory and regulatory provisions” and remove the redundant and unnecessary statement “as a standard term

and condition” for clarity. The proposal is also necessary to remove and add non-substantive terms and punctuation for clarity, to provide notice to the users of the *Guidelines* that disciplinary actions are a matter of public record, to clarify where a digital copy of the *Guidelines* can be found and which agency to contact to obtain a paper copy of the *Guidelines*, and that LATC may charge for providing a paper copy of the *Guidelines*.

The CPRA at Section 6253(b) authorizes the Board to provide copies of public records “to any person upon payment of fees covering direct costs of duplication.” Accordingly, the Committee would charge the requestor for costs incurred by the Committee to provide a hard copy of the *Guidelines* in accordance with the CPRA.

The proposal to add the statement “There may be a charge assessed for providing paper copies sufficient to cover the direct costs of duplication” is necessary to provide clarity and transparency to the fact any person requesting paper copies of the *Guidelines* may incur a cost for such copies. This proposal would provide appropriate notice to the public that there may be a charge assessed to the requestor to cover the cost of providing a paper copy of the *Guidelines* to the requestor. The proposal uses the term “may be a charge” to provide for circumstances when no charge for copies of the *Guidelines* is assessed, such as when the requestor is directed to an online version of the *Guidelines* that can be accessed by the public for no charge or if the Board determines it may waive the fee in accordance with departmental guidelines (see Gov. Code, § 6253.4; “Guidelines for Access to Public Records,” LGL-21-02, dated August 15, 2021).

Add Section II, General Considerations, Subsection A. Citations

Purpose: The purpose of this proposal is to amend the *Guidelines* to explain that the document covers considerations of disciplinary restrictions or penalties following the filing of an Accusation and where information on citations that may be issued by the Board can be found.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, and landscape architect licensees will be better informed about the purpose of the *Guidelines* and where information on the Board’s citations can be found.

Rationale: The Board is authorized to issue citations, which may include orders of abatement and/or administrative fines, as an alternative to formal discipline to address violations of the Act, including unlicensed activity. (BPC, §§ 125.9, 148.) The Committee’s regulations, CCR sections 2630, 2630.1, and 2630.2, specify the due process requirements to issue a citation, criteria to be applied when assessing an administrative fine, classes of violations with administrative fine ranges, and the citation appeal processes. However, the current *Guidelines* do not contain any such information on citations as citations are not considered discipline since they do not restrict the license (see *Owen v. Sands* (2009) 176 Cal. App. 4th 985).

To provide clarity and transparency to the citation and formal discipline process for users of the *Guidelines*, the proposal is necessary to add information clarifying that the *Guidelines* are for disciplinary restrictions or penalties following the filing of an Accusation and indicating where to find information on the Board's citations in the CCR.

Add Section II, General Considerations. Subsection B. Proposed Decisions – General Considerations

Purpose: The purpose of this proposal is to amend the *Guidelines* to:

- add the subsection title “B. Proposed Decisions – General Considerations.”
- to replace the term “definitions” with the term “descriptions” and make other technical revisions to the language to add the word “along.”
- add the statement “underlying facts demonstrating the [violation] committed.”
- remove the gendered reference to “he/she” is and replace with “they” are.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, and landscape architect licensees will benefit from the *Guidelines* being amended to include: a title for the “Proposed Decisions” section, generally clarified language and clarification of the information of evidence of a violation to be provided in the proposed decisions, as well as transparent language describing the information reviewed by the Board when considering stipulated settlements and concerning the Board's cost reimbursement recovery.

Rationale: Although the *Guidelines* already contain a section on Proposed Decisions, the *Guidelines* need to be revised to add the title of this section for clarity and ease of reference. The proposal is necessary to better clarify that code sections do not have definitions but rather provide descriptions of the violation. The proposal also makes two technical corrections for ease of reading and makes changes to the use of the gendered pronouns “he/she” as discussed in greater detail on page ** “Modifications of Pronouns” herein.

Amend Section II, General Considerations, Subsection C. Stipulated Settlements

Purpose: The current *Guidelines* require the ALJ submitting a Proposed Decision to the Board to include a clear description of the violation. However, this information is not helpful to the Board or informative to users when considering options for possible settlement, and written communications between the AG's office and LATC are protected under attorney-client privilege. The proposed new language provides information on the availability of stipulated settlements, the Board's policy on when cases might be considered for settlement or set for a hearing, the Board's recommendation that inquiries regarding settlement should begin promptly after receipt of a notice of defense, as well as the Board's policy to include seeking cost recovery in stipulated settlements.

Anticipated Benefits: The Board and Committee anticipate that the public and landscape architect licensees will benefit from, providing a statement of the Board's policy favoring

resolution of matters including cost recovery by stipulation, and discussing the reasons underlying the Board’s policy favoring stipulated settlements and the process for considering when settlements may be considered or a matter set for hearing.

Rationale: To expedite disciplinary proceedings and promote cost-effective consumer protection, the Board may enter into stipulated settlements of disciplinary actions with respondents if they are willing. Settlements of adjudicative proceedings are authorized by the Administrative Procedure Act at Government Code section 11415.60. These stipulated settlements are prepared and negotiated by DAGs with respondents. If a stipulated settlement is unlikely then the case will proceed to a hearing before an ALJ. Stating in the *Guidelines* that the Board seeks to obtain cost recovery in matters resolved by stipulation does not require the Board to impose cost recovery when doing so isn’t appropriate given the facts of the case, but stating the Board’s policy in favor of cost recovery provides those negotiating on behalf of the Board with a good place from which to start. Placing these policies in the *Guidelines* will help provide notice to users of these guidelines of the Board’s policy preferences, help expedite disciplinary proceedings and facilitate cost-effective consumer protection.

Amend Section II, General Considerations, Subsection D. Cost Reimbursement

Purpose: The proposal adds a new section and title regarding “Cost Reimbursement” and includes all of the following information:

- (1) Notice that the Board seeks reimbursement of its investigative and prosecution costs in all disciplinary cases in which the licensee is found to have committed a violation;
- (2) Define what the Board’s reimbursable costs would include (i.e., charges from the Office of the Attorney General, the Division of Investigation, Board services including but not limited to expert consultant opinions and services); and,
- (3) Include the reasons why the Board seeks reimbursement of investigative and enforcement costs (i.e., because the burden of costs should fall upon those whose proven conduct required investigation and prosecution and not on the profession as a whole).

Anticipated Benefits: The Board and Committee anticipate that the public and landscape architect licensees will benefit from a clear statement of what costs are involved in cost reimbursement, and why the board seeks reimbursement of such costs.

Rationale: For the purposes of clarity and transparency and notice to affected licensees, the proposed new language is necessary to include cost reimbursement information in the *Guidelines*. In all disciplinary cases, the Board seeks reimbursement of the investigative and enforcement costs associated with the case in accordance with BPC section 125.3. BPC section 125.3 permits the Board to recover “reasonable costs of the investigation and enforcement of the case.” Since BPC 125.3’s authority is

discretionary (cost recovery “may” be ordered by an ALJ “upon request” from the Board) and to address questions from stakeholders regarding the Board’s position, the Board has adopted a policy to make it clear that it expects such cost reimbursement to be requested in every case and to explain the Board’s rationale for taking such a policy position. In the Board’s view, those who have been found to have committed a violation should pay cost reimbursement (recovery) where appropriate, which helps prevent an unfair and disproportionate impact upon the regulated community as a whole.

In the Board’s experience, such costs include those listed in the proposal, including charges for enforcement prosecution by the AG’s office, investigation by the department’s Division of Investigation and expert witness fees for expert witnesses that are necessary for the Board to meet its burden of proof in a disciplinary enforcement action. Fair and cost-effective consumer protection is best served by the Board seeking to obtain cost reimbursement in all cases where it is determined to be appropriate.

Amend Section II, General Considerations, Subsection E. Criteria to be Considered

Purpose: The purpose of this proposal is to amend the *Guidelines* to replace the term “Factors” with the term “Criteria” in the heading of this subsection.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, and landscape architect licensees will benefit from updating the *Guidelines* to reflect the new statutory substantial relationship and rehabilitation criteria requirements.

Rationale: In determining whether a landscape architect license should be denied, suspended, or revoked on the basis of a criminal conviction or act, the Board is required to determine whether the crime or act is substantially related to the qualifications, functions, or duties of a landscape architect. (BPC, §§ 480, 490.) To make that determination, the Board is required to develop criteria. (BPC, § 481.) The Board also is required to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a landscape architect license. (BPC, § 482.) The Board’s substantial relation and rehabilitation criteria are set forth in CCR sections 2655 and 2656. To maintain consistency with the terminology used in the BPC and supporting regulations, this proposal is necessary to change “factors” to be considered by the Board to “criteria” to be considered by the Board when determining whether a crime or act is substantially related to the qualifications, functions, or duties of a landscape architect and whether an applicant or licensee has made a showing of rehabilitation.

Amend Section II, General Considerations, Subsection E. Criteria to be Considered

Purpose: The purpose of this proposal is to update the *Guidelines* to reflect recent statutory changes regarding the substantial relationship and rehabilitation criteria the Board must consider when denying, suspending, or revoking a license. Existing text (Nos. 1-11) listed under existing title “Factors to be Considered” would be deleted in its

entirety and replaced with criteria that reflect the Board's current regulations and criteria for determining substantial relationship of a crime, misconduct or other acts as specified, and rehabilitation at Title 16, California Code of Regulations sections 2655 and 2656. These revisions are needed in light of amendments to the Board's statutory authority to consider such grounds for denial or violations as a basis for denial or discipline as explained below.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from updating the *Guidelines* to reflect the new statutory substantial relationship and rehabilitation criteria requirements.

Rationale: The Committee's current *Guidelines* enumerate specific factors for the Board to use in determining whether revocation, suspension, or probation is to be imposed in a disciplinary case which are also found in CCR section 2656. However, in accordance with the statutory amendments implemented by Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), operative on July 1, 2020, BPC sections 481 and 493 require the Board, when considering the denial, suspension, or revocation of a license based on a criminal conviction, to determine whether the crime is substantially related to the qualifications, functions, or duties of a landscape architect by using specified criteria, including the nature and gravity of the offense, the number of years elapsed since the date of the offense, and the nature and duties of a landscape architect. (BPC, § 481, subd. (b), as added by AB 2138, § 7; BPC, § 493, subd. (b), as added by AB 2138, § 13.) In addition, BPC section 482 requires the Board, when considering the denial, suspension, or revocation of a license based on a criminal conviction or discipline for professional misconduct, pursuant to BPC sections 480 or 490, to consider whether the applicant or licensee is rehabilitated based on either: (1) having completed their criminal sentence without violating parole or probation; or (2) the Board's standard criteria for evaluating rehabilitation. (BPC, § 482, as added by AB 2138, § 9.) To address the new criteria required to be evaluated by the Board, the Board amended CCR sections 2655 and 2656 in a separate rulemaking.

To maintain consistency with the new substantially related and rehabilitation criteria requirements imposed by AB 2138 that have been incorporated in CCR sections 2655 and 2656, the proposal is necessary to revise the *Guidelines* to strike the outdated enumerated factors. Further, to avoid having to make changes to the *Guidelines* any time the substantially related and rehabilitation criteria are revised in statute or regulation, the proposal is necessary to advise the Board, ALJs, DAGs, licensees, and the public that the Board must consider specified criteria under CCR section 2655 generally, without quoting the entire section within the *Guidelines*, when determining whether a criminal conviction, discipline for professional misconduct, or an act is substantially related to the qualifications, functions, or duties of a landscape architect for the Board to deny, suspend, or revoke the license. In addition, the proposal is necessary to advise that when considering the denial, revocation, or suspension of a license on the ground that the applicant has been convicted of a crime or disciplined for

professional misconduct, the Board must consider whether the applicant or licensee has made a showing of rehabilitation based on the criteria specified in CCR section 2656.

Although the language adopted by the Board in Section 2656 provided for rehabilitation criteria for criminal convictions, BPC section 482 also requires the Board to consider rehabilitation criteria for professional misconduct when denying a license pursuant to BPC section 480. BPC section 480(a)(2) authorizes the Board to deny a license on the basis that the applicant was subject to formal discipline by a licensing board, located in or outside California, for “professional misconduct,” under specified conditions. Therefore, the text, in this section, should include “professional misconduct” references as a possible area where rehabilitation should be considered, in addition to the other identified grounds for denial or discipline in BPC sections 141, 5653 and Article 5 of the Act, to provide accurate notice to those affected by these provisions of all of the grounds upon which the Board may deny or discipline a license. Further, in the Board’s experience, these same criteria in Section 2656 will help inform the Board regarding rehabilitative efforts for applicants or licensees who commit these other offenses.

In the Board’s experience, Section 2656’s existing criteria would be equally relevant when considering professional misconduct committed by an applicant before another licensing board, or a licensee who commits other violations or acts as specified in BPC sections 141, 5653 or upon any ground in Article 5 of the Act (commencing with BPC section 5666). As a result, these proposed changes are necessary to give proper notice to those affected applicants and licensees of what standards the Board will use in evaluating whether an applicant or licensee is considered to be rehabilitated. Therefore, to conform the *Guidelines* to the above statutory requirements in BPC sections 480 and 482 the Board adds the following to the Rehabilitation Criteria section: in line 2, the phrase, “or disciplined for professional misconduct, or the denial is based on one or more of the grounds specified in Business and Professions Code section 5653, or a suspension or revocation of a licensee on the grounds of a disciplinary action as described in Business and Professions Code section 141, or one or more of the grounds specified in Business and Professions Code Article 5 of Chapter 3.5 of Division 3 of the Code” to the language requiring the Board’s consideration of rehabilitation criteria under CCR section 2656. The Executive Officer made this conforming change pursuant to the authority delegated by the Board to the Executive Officer in its motion to adopt this regulatory proposal (See February 27, 2019 Board Meeting Minutes, p. 8.), and the addition of this language was approved by the Board at the September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Amend Section II, General Considerations, Subsection F. Mitigation and Rehabilitation Evidence

Purpose: The purpose of this proposal is to amend the *Guidelines* to include mitigation evidence and acceptable rehabilitation evidence to be considered when determining penalties in proposed decisions. This proposal would also add examples of the types of evidence which the licensee/applicant (respondent) may submit to the Board to demonstrate their rehabilitative efforts and competency.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from updating the *Guidelines* to assist them in having a better understanding on how the Board seeks to implement the changes in the law made by the passage of AB 2138. It is further anticipated that providing this information will also reduce staff time in answering questions on the topic.

Rationale: Evidence in mitigation is evidence that tends to lessen the degree of culpability (e.g., extenuating circumstances) and therefore may be considered in reducing the possible penalty contemplated by the Board. BPC section 480 permits the Board to request mitigating evidence to be submitted by an applicant for the purpose of demonstrating substantial relation or evidence of rehabilitation under certain circumstances (BPC, § 480, subd. (f)(2)). In addition, the courts have recognized that licensees in disciplinary proceedings should be permitted to present evidence of mitigation before consideration of a penalty imposed by an agency. (“The licensee, of course, should be permitted to introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation.” *Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

The proposed addition of the Mitigation and Rehabilitation Evidence section to the *Guidelines* is intended to identify criteria to assist individuals with examples of types of circumstances or evidence that may be considered by the Board as mitigating (lessening the possible penalty) or the types of evidence that may be submitted to demonstrate rehabilitative efforts and competency. It is also designed to serve as a guide for the Board in assessing mitigation and rehabilitation as it evaluates an individual’s rehabilitation and fitness for the practice of landscape architecture in a manner consistent with public health, safety, and welfare.

The Board often receives inquiries from individuals on the types of documents the Board accepts or receives in assessing mitigating evidence or an individual’s rehabilitation. Accordingly, the Board developed a list of examples of the types of documentation it typically receives from applicants or licensees, which the Board has found helpful in making a determination on a person’s proposed fitness (in light of the mitigating evidence) or rehabilitation. Including a list of mitigating evidence clarifies for ALJs what factors the Board wants considered when determining possible mitigation of the penalties in proposed decisions.

Examples of the types of mitigating circumstances that may be considered by ALJs are as follows:

- The licensee has cooperated with the Board’s investigation, other law enforcement or regulatory agencies, and/or the injured parties.
- The passage of considerable time since an act of professional misconduct occurred with no evidence of recurrence or evidence of any other professional misconduct.

- Convincing proof of rehabilitation
- Demonstration of remorse by the licensee.
- Recognition by licensee of their wrongdoing and demonstration of corrective action to prevent recurrence.
- Violation was corrected without monetary losses to consumers and/or restitution was made in full.

Examples of the types of evidence provided in this section that may be submitted to demonstrate rehabilitative efforts and competency are as follows:

- Recent, dated, written statements and/or performance evaluations from persons in positions of authority who have on-the-job knowledge of the respondent's work as a landscape architect that include the period of time and capacity in which the person worked with the respondent. Such reports must be signed under penalty of perjury and will be subject to verification by Board staff.
- Recent, dated, letters from counselors regarding the respondent's participation in a rehabilitation or recovery program, which should include at least a description and requirements of the program, a therapist or mental health professional's diagnosis of the condition and current state of recovery, and the therapist or mental health professional's basis for determining rehabilitation. Such letters and reports will be subject to verification by Board staff.
- Recent, dated letters describing the respondent's participation in support groups, (e.g., Alcoholics Anonymous, Narcotics Anonymous, professional support groups, etc.). Such letters and reports will be subject to verification by Board staff.
- Recent, dated, letters from probation or parole officers regarding the respondent's participation in and/or compliance with terms and conditions of probation or parole, which should include at least a description of the terms and conditions, and the officer's basis for determining compliance. Such letters and reports will be subject to verification by Board staff.
- Recent, dated, letters from persons familiar with respondent in either a personal or professional capacity regarding their knowledge of: the respondent's character; the respondent's rehabilitation, if any; the conduct of which the respondent is accused; or any other pertinent facts that would enable the Board to better decide the case. Such letters must be signed under penalty of perjury and will be subject to verification by Board staff.

The inclusion of the foregoing lists, while not exhaustive, is reasonably necessary to provide consistent guidance to individuals asking about mitigation or rehabilitation evidence. These types of examples may be submitted at the discretion of the individual and will be reviewed by the Board and considered on a case-by-case basis. In the Board's experience, these items are reasonably related to the question of whether mitigating or extenuating circumstances exist or should be considered and/or whether

the person is rehabilitated (i.e., fit to practice with or without restriction and with safety to the public).

The requirement that the Board obtain “recent” information as specified above, also ensures that the Board is making decisions with the most updated, current information available to make a more fully informed and reasonable decision. The Board also retains its discretion to verify or investigate the information provided, as specified above, and also require any reports or letters (as specified above) to be signed under penalty of perjury by the persons submitting such information to help ensure truthful statements and accurate information are being provided to the Board.

Amend Section III, Definition of Penalties

Purpose: The purpose of this proposal is to amend the *Guidelines* to add the term “Public Reproval” to this section and include the definition of “Public Reproval,” and make technical revisions to the language in this section. The proposed definition would include the commonly understood meaning of the term as explanation, along with how the Board would implement such an action, as follows: “A form of written censure or reprimand placed in a public document that is served on the licensee. It is considered part of the licensee’s disciplinary history and public record with the Board.”

Anticipated Benefits: Public reproval is the lowest form of discipline that the Board is authorized by law to impose and is considered a public record under the CPRA. Stakeholders often do not understand this type of discipline, that the Board has the authority to impose such discipline, how such an action may be issued by the Board, or that it will be made available to the public (the term is often confused with private reproval, which is available to other regulatory bodies in this State). Therefore, the Board and Committee anticipate that the public and landscape architect licensees will be better informed about the Board’s disciplinary authority by including a definition of public reproval in the *Guidelines*, along with other clarifying changes proposed.

Rationale: The Board is authorized to publicly reprove a landscape architect licensee for any act that would constitute grounds to suspend or revoke a license, and public reproval proceedings must be conducted in accordance with the APA. (See BPC, § 495.) To provide transparency and clarity in the disciplinary process, the proposal is necessary to add to the definition of penalties the term “public reproval,” along with a definition of that term, as this may be a term included in the Board’s decision on a disciplinary matter. This is necessary to ensure that the users of the *Guidelines* are fully informed regarding all of the possible disciplinary options available to the Board and to ensure ALJs and affected stakeholders can make a more informed decision regarding options for the imposition of discipline in a given case. The proposal also makes changes to the use of the gendered pronouns “he/she” as discussed in greater detail under the heading, “Modifications of Pronouns.”

Amend Section IV, Disciplinary Guidelines

Purpose: The purpose of this proposal is to amend the *Guidelines* to:

- replace the word “statute” with the word “section”
- add the phrase “or California Code of Regulations”
- to remove the phrases “listed after each condition of probation” and “listed on pages _____” and add the phrase “specific standard or optional [conditions] of probation”

Anticipated Benefits: The Board and Committee anticipate that the public and landscape architect licensees will benefit from these clarifying revisions in the *Guidelines*.

Rationale: The proposal is necessary for ease of reference and easier comprehension to clarify that the correct references for offenses refer to sections in the BPC or CCR, not just to statutes, to add the phrase “or California Code of Regulations” to clarify that the *Guidelines* also lists offenses for CCR sections, and to add the phrase “specific standard or optional [conditions] of probation” to clarify that the numbers provided in brackets in this section refer to the standard or optional condition numbers, which are listed in numerical order beginning on page 19 of the *Guidelines*.

Amend Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code

Purpose: The purpose of this proposal is to amend the *Guidelines* to add subsection “A.” and remove the term “Sections” in the title of the section.

Anticipated Benefits: The Board and Committee anticipate that the public and landscape architect licensees will benefit from the clarifying revisions to the *Guidelines*.

Rationale: The proposal is necessary to add subsection “A.” for organizational purposes and remove the term “Sections” because it is unnecessary language.

Add Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5616 (Requirements for Landscape Architecture Contract)

Purpose: The purpose of this proposal is to add a new heading “Section 5616 Requirements for Landscape Architecture Contract” and establish maximum and minimum penalties for failing to comply with the written contract requirements described in BPC section 5616.

Anticipated Benefits: The Board and Committee anticipate that the Committee will benefit from assigning a heading to assist the reader in searching for specific code sections. It is further anticipated that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from knowing and understanding the Board’s recommended maximum (revocation) and minimum penalties (stayed revocation, 3 years’ probation) for written contract violations.

Rationale: BPC section 5666 provides that practicing in violation of the Act constitutes grounds for disciplinary action. BPC section 5616 requires a landscape architect to use a written contract when contracting to provide professional services to a client under the

Act and specifies minimum content requirements of the contract. As Section 5616 is not currently covered in the *Guidelines*, this section and title is necessary to notify stakeholders regarding the Board's authority to discipline for violations of this section.

The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision, or by a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to add maximum and minimum penalties for violations of BPC section 5616, which requires landscape architects to provide every client with a detailed written contract, as specified. In accordance with other violations of the Act, the maximum penalty is license revocation for failing to provide a client with the required written contract and specified terms. The Board regards the written contract as an essential element of the relationship with the client and as the contract outlines the landscape architect's duties to the client. Many violations stem from this failure to specify these duties and can result in serious financial harm to the client, in which case, revocation may be warranted.

Further, in accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See, LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal also would specify minimum penalties of stayed revocation and three years' probation on standard conditions and an optional condition of restitution to the client, if applicable. These terms are based on the Board's *Disciplinary Guidelines* for architects, minimum penalties for written contract violations by architects under BPC section 5536.22 that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 5.) The Committee reviewed and approved the minimum penalties for written contracts at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 6.) At the request of the Department of Consumer Affairs, Legal Affairs Division (LAD), additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes). Further, three years is an appropriate timeframe to monitor a licensee on probation to ensure the violations do not continue and the individual completes the necessary probation terms. If the licensee fails to comply with the prescribed probationary terms during the three years, the Board will have a sufficient amount of time to take further action in most cases.

The Board also adds the terms "on all standard conditions [#1-11] and if warranted, the following optional condition" is being added as part of this new section as well as to all

sections listed under Section IV. The change is necessary because all disciplined licensees will benefit from having consistent standard conditions of probation to ensure fairness and efficiency in the administration of probation orders for the Board; accordingly, it is necessary that the Disciplinary Guidelines' Conditions of Probation for this section shows that the probation order will include all standard conditions of probation and other conditions "if warranted" by the facts of the case.

The Board proposes to add "restitution [#17] (if applicable)" to provide notice to the users of the *Guidelines* that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. Restitution is a financial remedy that restores consumers to a financial position that existed prior to the violation occurring. In most consumer contract violation cases, restitution is an important remedy, serving the two-fold purposes of remediation by restoring consumers' finances and deterring licensees from engaging in these types of violations in the future. Since most of the harm that occurs to a consumer from this type of violation is financial, the Board believes that restitution is an important option to be considered for use in probationary orders.

Amend Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5640 (Unlicensed Person Sanctions For Engaging in Practice)

Purpose: The purpose of this proposal is to revise the heading to move the word "sanctions" so the title reads "Unlicensed Person -- Sanctions For Engaging in Practice," and amend the *Guidelines* to make clarifying revisions to the language for improved readability, make revisions to the maximum (revocation or denial of license application) and minimum terms (remove 90 days actual suspension and replace with issuance of initial license, stayed revocation" to the recommended 5-year probationary term), and make revisions to other terms to add optional terms for taking an ethics course [term #15] and restitution [#17].

Anticipated Benefits: The Board and Committee anticipate that the Committee will benefit from a clearer explanation of the subject matter in the title. It is further anticipated that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from notice of the Board's current recommended proposed penalties for unlicensed practice.

Rationale: For greater readability and ease of comprehension for this section, the title is being revised to move the word "sanctions" after the word "unlicensed person" and add the word "for" so that it would read "Unlicensed Person Sanctions for Engaging in Practice".

The current *Guidelines* provide for maximum and minimum penalties for violating BPC section 5640 by engaging in the unlicensed practice of landscape architecture. However, the language would be revised to make it more consistent with the Board's current practice for these types of violations.

The proposal is necessary to impose maximum and minimum penalties for violations of BPC section 5640, which would provide for unlicensed practice under BPC section 5640 to have minimum penalties of issuance of the initial license (if applicable), revocation, stayed, and five years' probation on all standard conditions with optional conditions of an Ethics course, cost reimbursement, and restitution to a harmed consumer, if applicable. In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan Fiscal Years 2013/14 – 2014/15, p. 17.)

Unlicensed activity presents a significant risk of harm to the consumer as licensure helps ensure that minimum standards are continuously met through the Board's regulatory oversight and provides some assurances that the work performed is done competently. As a result, revocation or denial of licensure (as applicable) would be an appropriate penalty considering the high risk of harm to the consumer who contracts with an unlicensed individual who has not minimum standards for professional licensure. The Board proposes to reduce the proposed minimum penalty of 90-day suspension as this historically is rarely implemented for this type of violation and in the Board's experience typically 5 years' probation is sufficient time to monitor an applicant and determine whether further enforcement action is necessary to protect the public.

In all disciplinary cases, the Board seeks reimbursement of the investigative and enforcement costs associated with the case in accordance with BPC section 125.3. Therefore, to implement the Board policy discussed above under "General Considerations Subsection D. Cost Reimbursement", changes were made to move "cost reimbursement" from an optional condition to a standard condition; this is discussed in greater detail under the heading "Add Section VI, Conditions of Probation, Subsection A. Standard Conditions, Standard Condition 11. (Cost Reimbursement)."

Addition of optional term ethics course: The Board proposes to add "ethics course [#15]" to provide notice to the users of the *Guidelines* that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. Ethics help promote the basic tenets of the profession by codifying the fundamental beliefs of the profession and the common moral values the profession chooses to protect consumers and clients from harm in the professional relationship. Since failure to follow the law and comply with licensing requirements may be seen as an ethical lapse in a given case, an educational course on the subject of ethics is seen by the Board as one method of remediation to help prevent future violations.

Addition of optional term for restitution: The Board proposes to add "restitution [#17] (if applicable)" to provide notice to the users of the *Guidelines* that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. Restitution is a financial remedy that restores consumers to a financial position that

existed prior to the violation occurring. In most unlicensed activity cases, restitution is an important remedy, serving the two-fold purposes of remediation by restoring consumers' finances and deterring unlicensed individuals from engaging in these types of violations in the future. Since most of the harm that occurs to a consumer from this type of violation is financial, the Board believes that restitution is an important option to be considered for use in probationary orders.

Accordingly, the proposal would: remove the term "Applicant" to standardize subheading language, add the phrase "Revocation or" to be consistent with existing maximum penalties, and rearrange the term "application" to describe the license application to be clear that a respondent would not be denied from submitting an application for licensure but that the license application could be denied. The proposal also would: replace the minimum condition "Ninety (90) days actual suspension" with "Issue initial license (if applicable), stayed revocation," to provide more clarity that an unlicensed person in violation of this section could potentially be eligible for a license with probation terms; rephrase and move the statement "on all standard conditions [#1-11] and" for consistency with the other minimum term provisions and greater comprehension; add the term "if warranted" to further clarify that not all of the following "optional" conditions may be necessary; add the term "optional" to clarify that the listed conditions are optional; and, add "Ethics course" and "Restitution" as optional conditions to be included as probationary terms " for the reasons set forth above.

Amend Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5642 (Unlicensed Person in a Partnership or Corporation)

Purpose: The purpose of this proposal is to revise the heading to state "Unlicensed Person in a Partnership or Corporation," and amend the *Guidelines* to make clarifying revisions for improved readability and consistency with the other maximum and minimum terms.

Anticipated Benefits: The Board and Committee anticipate that the Committee will benefit from revising the heading to provide greater notice to the users of the purpose of this section. It is further anticipated that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from clarifying the proposed penalties to reflect the Board's currently recommended penalties for this type of violation.

Rationale: For greater readability and ease of comprehension for this section, the title is being revised to strike the words "Partnership, Corporation" and add the words "in a Partnership or Corporation."

The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated

settlements.

This proposal is necessary to clarify the maximum and minimum terms for violations of BPC section 5642. In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal would: add "[#12]" for consistency with condition numbering; relocate the word "probation" for clarity and consistency; rephrase and move the statement "on all standard conditions [#1-11] and" for consistency with revisions to the other minimum terms and standard conditions; remove the phrase "and the following conditions" because the listed conditions have been moved and included in the minimum penalty. The term "cost reimbursement" would be struck as it has been moved to the standard terms section of the *Guidelines* to more implement the Board's policy of seeking cost recovery from licensees in every case (see above discussion in section entitled "General Considerations Subsection D. Cost Reimbursement").

Add Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5659 (Failure to Include License Number)

Purpose: The purpose of this proposal is to assign a heading and establish maximum and minimum penalties for failing to sign, date, and seal or stamp all plans, specifications, and other instruments of service as required under BPC section 5659.

Anticipated Benefits: The Board and Committee anticipate that the Committee will benefit from assigning a heading to assist the reader in searching for specific code sections. It is further anticipated that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from being provided notice of the Board's currently recommended maximum and minimum penalties for these violations.

Rationale: As Section 5659 is not currently covered in the *Guidelines*, this section and title is necessary to notify stakeholders regarding the Board's authority to discipline for violations of this section.

The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to add maximum and minimum penalties for violations of BPC section 5659, which requires landscape architects to sign, date, and seal or stamp all plans, specifications, and other instruments of service, as specified. In accordance with other violations of the Act, the maximum penalty is license revocation for these violations. A landscape architect performs professional services for the purpose of

landscape development and enhancement, such as design, preparation of drawings, construction documents and specifications in which the aforementioned documentation of authority to perform such work is required and often critical to the completion of the work for clients. This includes signing, stamping or including the license number and seal on the plans or specifications for state or local agency review, such as to meet state and local permitting requirements. Failure to comply with these requirements can therefore cause serious financial harm to the client as they may not be able to complete a project with plans or specifications that do not include the licensee's signature, seal or stamp or must be dated by the licensee (which governmental officials require to show review and approval by an authorized licensee). Revocation stayed, five years' probation is set as the minimum recommended penalty because, in the Board's experience, this is the minimum amount of time needed to monitor compliance for this type of violation.

Further, in accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal also would specify minimum penalties of stayed revocation and five years' probation on standard conditions and optional conditions of an Ethics course and restitution to the client, if applicable. These terms are based on the Board's *Disciplinary Guidelines* and minimum penalties for signature and stamp violations by architects under BPC section 5536.1 that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 4.) The Committee reviewed and approved these minimum penalties at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 7.) At the request of LAD, additional amendments were made, and the Committee reviewed and reapproved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Addition of optional term ethics course: The Board proposes to add "ethics course [#15]" to provide notice to the users of the *Guidelines* that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. Ethics help promote the basic tenets of the profession by codifying the fundamental beliefs of the profession and the common moral values the profession chooses to protect consumers and clients from harm in the professional relationship. Since failure to follow the law and comply with requirements for signing, stamping, dating or including the license number may be caused by an ethical lapse in a given case (e.g., refusing to sign or stamp plans as leverage to demand higher compensation from the consumer), an educational course on the subject of ethics is seen by the Board as one method of remediation to help prevent future violations.

Addition of optional term for restitution: The Board proposes to add "restitution [#17] (if applicable)" to provide notice to the users of the *Guidelines* that this is an optional term

that may be considered in disciplinary orders of the Board for this type of violation. Restitution is a financial remedy that restores consumers to a financial position that existed prior to the violation occurring. In many cases, restitution is an important remedy, serving the two-fold purposes of remediation by restoring consumers' finances and deterring unlicensed individuals from engaging in these types of violations in the future. Since most of the harm that occurs to a consumer from this type of violation is financial, the Board believes that restitution is an important option to be considered for use in probationary orders.

Add Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5666 (Practice in Violation of Practice Act)

Purpose: The purpose of this proposal is to assign a heading and establish maximum and minimum penalties for practicing landscape architecture in violation of the Act.

Anticipated Benefits: The Board and Committee anticipate that the Committee will benefit from assigning a heading to assist the reader in searching for specific code sections applicable to this type of violation. It is further anticipated that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from having notice of the Board's current maximum and minimum recommended penalties for these violations.

Rationale: As Section 5666 is not currently covered in the *Guidelines*, this section and title is necessary to notify stakeholders regarding the Board's authority to discipline for violations of this section.

The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to add the maximum and minimum penalty for violations of BPC section 5666 and to provide notice to the regulated community of this additional authority to take disciplinary action, which establishes that a licensee practicing in violation of the Act constitutes grounds for disciplinary action. The described maximum and minimum penalty directs the reader to look to the specific statute or regulation violated for determining the recommended penalty. This statement is necessary to notify the users of the *Guidelines* that a licensee may be charged for general violation of the Act as well as for violations of the specific sections of the Act. To help ensure consistency in the application of the proposed penalties in these *Guidelines*, the Board directs the user to follow the specific penalty recommendations applicable to each statute/regulation violated to determine the minimum and maximum penalties for this section. This helps ensure a fair and balanced approach to the enforcement of the Act. The Committee reviewed and approved the maximum and minimum penalty at its

August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes, and the Board reviewed and approved the maximum and minimum penalties at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Amend Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5667 (License Obtained by Fraud, Misrepresentation)

Purpose: The purpose of this proposal is to revise the heading and amend the *Guidelines* to establish minimum penalties for fraud and misrepresentation violations.

Anticipated Benefits: The Board and Committee anticipate that the Committee will benefit from revising the heading for greater comprehension and ease of use. It is further anticipated that ALJs, DAGs, the public, and landscape architect licensees will benefit from being notified of the Board’s current recommended minimum penalties for these violations.

Rationale: For greater clarity and ease of use for the users of these *Guidelines*, the Board is proposing to delete “Fraud, Misrepresentation – Obtaining” from the title and insert “Obtained by Fraud, Misrepresentation” so that the title would read “License Obtained by Fraud, Misrepresentation.”

The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to revise minimum penalties for violations of BPC section 5667, which establishes that a licensee obtaining their license by fraud or misrepresentation constitutes grounds for disciplinary action. Currently, the minimum and maximum recommended penalty for this type of violation is the same: revocation. Fraud is a deliberate act (or failure to act) with the intention of obtaining an unauthorized benefit, in this case, licensure that may not have been granted but for the fraud or misrepresentation. The Board considers this violation serious, as it undermines the very intent and purpose of licensure and regulation of the profession. However, the Board recognizes that there may be extenuating circumstances that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board re-evaluated this minimum penalty and determined that changes to the minimum recommended penalty for this violation are warranted, which would include removal of the recommended minimum revocation penalty and replacing it with stayed revocation, 90 days actual suspension, and five years’ probation on standard conditions and an optional condition of an Ethics course, if warranted. This minimum penalty should be sufficient in the Board’s experience to convey the seriousness of the offense to the regulated community and to monitor respondents for possible recurrence while providing a respondent with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a

penalty lower than revocation. This proposed penalty is also similar to the recommended penalty for violating Section 5670 (Licensee Deceit in Practice or Fraud), so this change would provide for more consistency in enforcement of these provisions.

Addition of optional term ethics course: The Board proposes to add “ethics course [#15]” to provide notice to the users of the *Guidelines* that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. Ethics help promote the basic tenets of the profession by codifying the fundamental beliefs of the profession and the common moral values the profession chooses to protect consumers and clients from harm in the professional relationship. Since fraud and misrepresentation violations involve serious ethical lapses (as it shows a tendency towards deception), an educational course on the subject of ethics is seen by the Board as one method of remediation to help prevent future violations.

In accordance with the Committee’s Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal would specify minimum penalties of stayed revocation, 90 days actual suspension, and five years’ probation on standard conditions and an optional condition of an Ethics course. These terms are based on the Board’s *Disciplinary Guidelines*, and the minimum penalties for fraud or misrepresentation in obtaining an architecture license under BPC section 5579 that were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 6.) The Committee reviewed and approved these minimum penalties at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 7.) At the request of LAD, additional amendments were made, and the Committee reviewed and approved the minimum penalties at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved the minimum penalties at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Amend Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5668 (Person Impersonating Landscape Architect Or Under Assumed Name)

Purpose: The purpose of this proposal is to revise the heading and amend the *Guidelines* to make clarifying revisions for improved readability and consistency with the other maximum and minimum terms.

Anticipated Benefits: The Board and Committee anticipate that the Committee will benefit from a revised heading, which will provide greater comprehension and ease of use for its staff. It is further anticipated that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from having notice of the Board’s currently recommended proposed penalties.

Rationale: To assist the reader in searching for specific topics regarding this type of

violation and for greater comprehension, the Board is adding the words “person” and “or” to the heading for this section as well as striking the word “practice” so that the title now reads “Person Impersonating Landscape Architect Or Under Assumed Name.”

The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to clarify the maximum and minimum terms for violations of BPC section 5668. In accordance with the Committee’s Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal would: remove the term “Licensee” to standardize heading language; add “[#12]” for consistency with condition numbering; rephrase and move the statement “on all standard conditions [#1-11] and” for consistency with revisions; add the term “optional” to clarify that the listed conditions are optional; replace “Continuing education courses” with “Ethics course” to provide more specific course work related to this type of violation for probation as discussed below; remove “Cost reimbursement” as an optional term because, pursuant to the Board’s policy to collect cost recovery in every case where authorized, it has been included in the minimum penalty as a standard condition as discussed in greater detail under the heading “Add Section VI, Conditions of Probation, Subsection A. Standard Conditions, Standard Condition 11. (Cost Reimbursement);” add the phrase “if applicable” to clarify that restitution may not always apply; adjust condition numbers and letters due to conditions being added or removed; and make minor, non-technical revisions for grammatical clarity.

Addition of optional term ethics course: The Board proposes to replace the terms “continuing education courses” with “ethics course [#15]” to provide notice to the users of the *Guidelines* that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. Ethics help promote the basic tenets of the profession by codifying the fundamental beliefs of the profession and the common moral values the profession chooses to protect consumers and clients from harm in the professional relationship. Since failure to follow the law and comply with licensing requirements by impersonating a landscape architect or using an assumed name may be seen as an ethical lapse (showing a tendency towards deception) in a given case, an educational course on the subject of ethics is seen by the Board as one method of remediation to help prevent future violations. Further, to help ensure that ethical issues are specifically addressed in the rehabilitation efforts of the licensee, the Board proposes to replace the “continuing education courses” requirement (which could be general course work on a variety of topics) with the ethics course option.

Amend Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5669 (Licensee Aiding, Abetting Unlicensed Practice)

Purpose: The purpose of this proposal is to revise the heading and amend the *Guidelines* to make clarifying revisions for improved readability and consistency with other maximum and minimum terms.

Anticipated Benefits: The Board and Committee anticipate that the Committee will benefit from revising the heading to add greater clarity and comprehension regarding the subject matter of the section. It is further anticipated that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from notice of the Board's currently recommended proposed penalties.

Rationale: To assist the reader in searching for specific topics regarding this type of violation and for greater comprehension, the Board is adding the word "Licensee" to the heading for this section so that the title now reads "Licensee Aiding, Abetting Unlicensed Practice."

The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to clarify the minimum terms for violations of BPC section 5669. In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal would: add "[#12]" for consistency with condition numbering; rephrase and move the statement "on all standard conditions [#1-11] and" for consistency with revisions to the other minimum terms; add the term "if warranted" to further clarify that not all of the following "optional" conditions may be necessary; add the term "optional" to clarify that the listed conditions are optional; replace "Continuing education courses" with "Ethics course" to provide more specific course work related to this type of violation for probation; remove "Cost reimbursement" as an optional term because, pursuant to the Board's policy to collect cost recovery in every case where authorized, it has been included in the minimum penalty as a standard condition as discussed in greater detail under the heading "Add Section VI, Conditions of Probation, Subsection A. Standard Conditions, Standard Condition 11. (Cost Reimbursement);" add the phrase "if applicable" to clarify that restitution may not always apply; adjust condition numbers and letters due to conditions being added or removed; and make minor, non-technical revisions for grammatical clarity.

Addition of optional term ethics course: The Board proposes to add “ethics course [#15]” in lieu of continuing education courses to provide notice to the users of the *Guidelines* that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. Ethics help promote the basic tenets of the profession by codifying the fundamental beliefs of the profession and the common moral values the profession chooses to protect consumers and clients from harm in the professional relationship. Since failure to follow the law and comply with licensing requirements by aiding and abetting unlicensed practice may be seen as an ethical lapse (showing a tendency towards deception) in a given case, an educational course on the subject of ethics is seen by the Board as one method of remediation to help prevent future violations. Further, to help ensure that ethical issues are specifically addressed in the rehabilitation efforts of the licensee, the Board proposes to replace the “continuing education courses” requirement (which could be general course work on a variety of topics) with the ethics course option.

Amend Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5670 (Licensee Deceit in Practice or Fraud)

Purpose: The purpose of this proposal is to amend the *Guidelines* to revise the heading and make clarifying revisions for improved readability and consistency with other maximum and minimum terms.

Anticipated Benefits: The Board and Committee anticipate that the Committee will benefit from revising the heading to add greater clarity and comprehension regarding the subject matter of the section. It is further anticipated that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from notice of the Board’s currently recommended proposed penalties.

Rationale: To assist the reader in searching for specific topics regarding this type of violation and for greater comprehension, the Board is adding the words “Licensee” and “or Fraud” to the heading for this section so that the title now reads “Licensee Deceit in Practice or Fraud.”

The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to clarify the minimum terms for violations of BPC section 5670. In accordance with the Committee’s Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal would: add “[#12]” for consistency with condition

numbering; rephrase and move the statement “on all standard conditions [#1-11] and” for consistency with revisions to the other minimum terms; add the term “if warranted” to further clarify that not all of the following “optional” conditions may be necessary; add the term “optional” to clarify that the listed conditions are optional; add the optional condition “Ethics course” to provide more options for probation; remove “Cost reimbursement” because, pursuant to the Board’s policy to collect cost recovery in every case where authorized, it has been included in the minimum penalty as a standard condition as discussed in greater detail under the heading “Add Section VI, Conditions of Probation, Subsection A. Standard Conditions, Standard Condition 11. (Cost Reimbursement);” add the phrase “if applicable” to clarify that restitution may not always apply; adjust condition numbers and letters due to conditions being added or removed; and make minor, non-technical revisions for grammatical clarity.

Addition of optional term ethics course: The Board proposes to add “ethics course [#15]” in lieu of continuing education courses to provide notice to the users of the *Guidelines* that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. Ethics help promote the basic tenets of the profession by codifying the fundamental beliefs of the profession and the common moral values the profession chooses to protect consumers and clients from harm in the professional relationship. Since failure to follow the law and comply with licensing requirements by being guilty of fraud and deceit may be seen as an ethical lapse (showing a tendency towards deception in professional practice) in a given case, an educational course on the subject of ethics is seen by the Board as one method of rehabilitation to help prevent future violations.

Amend Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5671 (Negligence in Practice)

Purpose: The purpose of this proposal is to amend the *Guidelines* to split section 5671 (Negligence, Willful Misconduct in Practice) into two separate penalties sections and make clarifying revisions for improved readability and consistency with other maximum and minimum terms.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from having two descriptive sections to cover the two separate legal concepts of negligence and willful misconduct that are grounds for discipline in Section 5671 and thus providing notice of the Board’s currently proposed penalties for these two different types of misconduct.

Rationale: The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to clarify the minimum terms for violations of BPC section 5671 and provide separate terms for negligence and willful misconduct. In accordance with the Committee’s Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) Under BPC section 5671, an architect guilty of negligence or willful misconduct is grounds for disciplinary action. These two grounds for discipline involve two separate and distinct legal concepts of misconduct: negligence -- a failure to meet the minimum standards of the profession; and willful misconduct -- an intentional disregard of the minimum standards of performance or proper conduct for the profession. As such, the proposal would separate willful misconduct in practice from negligence and divide them into two separate penalties to distinguish between the two violations of the section and allow for more accurate review and consideration of the penalty in the Board’s cases based upon the facts and the particular misconduct involved.

The proposal would also: add “[#12]” for consistency with condition numbering; rephrase and move the statement “on all standard conditions [#1-11] and” for consistency with revisions to the other minimum terms; add the term “if warranted” to further clarify that not all of the following “optional” conditions may be necessary; add the term “optional” to clarify that the listed conditions are optional; remove “Cost reimbursement” because, pursuant to the Board’s policy to collect cost recovery in every case where authorized, it has been included in the minimum penalty as a standard condition as discussed in greater detail under the heading “Add Section VI, Conditions of Probation, Subsection A. Standard Conditions,, Standard Condition 11. (Cost Reimbursement); add the phrase “if applicable” to clarify that restitution may not always apply; adjust condition numbers and letters due to conditions being added or removed; and make minor, non-technical revisions for grammatical clarity. These terms are based on the Board’s proposed changes to its *Disciplinary Guidelines*, minimum penalties for negligence under BPC section 5584 that were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Underlying Data, *Disciplinary Guidelines*, p. 8.) The Committee reviewed and approved these minimum penalties at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 8.) At the request of LAD, additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Add Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5671 (Willful Misconduct in Practice)

Purpose: The purpose of this proposal is to amend the *Guidelines* to split section 5671 (Negligence, Willful Misconduct in Practice) into two separate penalties and include recommendations for maximum and minimum penalties.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from clarifying the proposed penalties.

Rationale: The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to clarify the maximum and minimum terms for violations of BPC section 5671 specific to willful misconduct. In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) To ensure more accurate consideration of the proposed penalty, the proposal would create a new section for willful misconduct in practice and provide for a maximum penalty of revocation and minimum penalties of stayed revocation, 90 days' actual suspension, five years' probation on all standard conditions with optional terms for an Ethics course, continuing education courses, and restitution, if applicable.

Currently, the minimum recommended penalty and optional terms (continuing education, restitution (if applicable)) for this type of violation are nearly the same as for the negligence violation and in the Board's experience these proposed existing penalties are sufficient to convey the seriousness of the offense to the regulated community and to monitor respondents for possible recurrence while providing a respondent with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than revocation. Revocation is retained as the maximum penalty commensurate with the type of violation, which shows a deliberate disregard of the standards of the profession. Such deliberate disregard can cause significant harm to a consumer and, may, under the facts of the particular case warrant the maximum penalty afforded by law per BPC section 5660.

The Board also proposes to add an "ethics course" to the optional terms for this type of violation. Since willful misconduct may be seen as an ethical lapse (showing a deliberate disregard for the standards of the profession) in a given case, an educational course on the subject of ethics is seen by the Board as one method of rehabilitation to help prevent future violations.

These proposed terms are based on the Board's proposed changes to its *Disciplinary Guidelines*, minimum penalties for willful misconduct under BPC section 5584 that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 8.) The Committee reviewed and approved these minimum penalties at its July 13, 2017 meeting. (See

Meeting Agenda, Materials, and Minutes, p. 8.) At the request of LAD, additional amendments were made, and the Committee reviewed and reapproved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Amend Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5672 (Licensee Gross Incompetence in Practice)

Purpose: The purpose of this proposal is to amend the *Guidelines* to revise the heading and be consistent with the Board’s proposed maximum and minimum penalties for incompetency or recklessness and make clarifying revisions for improved readability and consistency with other minimum and maximum terms.

Anticipated Benefits: The Board and Committee anticipate that the Committee will benefit from revising the heading to add greater clarity and comprehension regarding the subject matter of the section. It is further anticipated that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from clarifying the proposed penalties and providing notice of the Board’s currently recommended penalties.

Rationale: To assist the reader in searching for specific topics regarding this type of violation and for greater comprehension, the Board is adding the word “Licensee” to the heading for this section so that the title now reads “Licensee Gross Incompetence in Practice.”

The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to clarify and provide notice of the recommended minimum terms for violations of BPC section 5672. In accordance with the Committee’s Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to implement those recommendations, and would: add “[#12]” for consistency with condition numbering; rephrase and move the statement “on all standard conditions [#1-11] and” for consistency with revisions to the other minimum terms; add the term “if warranted” to further clarify that not all of the following “optional” conditions may be necessary; add the term “optional” is added to clarify that the listed conditions are optional; and replace “Written examination” with “California Supplemental Examination” (CSE) as an optional condition to provide a more specific option for probation. The CSE is a written examination of subject areas that are unique to the practice of landscape architecture in California (see Cal. Code Regs., tit. 16, § 2621). This term is a necessary option for a

probationary term for the protection of the public. This type of testing requirement would help ensure that the licensee is still able to meet minimum standards for the practice of landscape architecture in California in a case where the violation (gross negligence) proven is an “extreme” departure from the minimum standard of care in the profession.

The proposal would also remove “Cost reimbursement” because, pursuant to the Board’s policy to collect cost recovery in every case where authorized, it has been included in the minimum penalty as a standard condition as discussed in greater detail under the heading “Add Section VI, Conditions of Probation, Subsection A. Standard Conditions; add the phrase “if applicable” to clarify that restitution may not always apply; adjust condition numbers and letters due to conditions being added or removed; and make minor, non-technical revisions for grammatical clarity.

These terms are based on proposed changes to the Board’s *Disciplinary Guidelines*, minimum penalties for incompetency or recklessness under BPC section 5585 that were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 9.) The Committee reviewed and approved these minimum penalties at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 9.) At the request of LAD, additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Amend Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5673 (Licensee’s False Use of Signature, Stamp)

Purpose: The purpose of this proposal is to amend the *Guidelines* to revise the heading and be consistent with the Board’s proposed maximum and minimum penalties for signing others’ architectural instruments of service and make clarifying revisions for improved readability and consistency with other maximum and minimum terms.

Anticipated Benefits: The Board and Committee anticipate that the Committee will benefit from revising the heading to add greater clarity and comprehension regarding the subject matter of the section. It is further anticipated that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from clarifying the proposed penalties and providing notice of the Board’s currently recommended penalties.

Rationale: To assist the reader in searching for specific topics regarding this type of violation and for greater comprehension, the Board is adding the words “Licensee’s” and “Stamp” to the heading for this section so that the title now reads “Licensee’s False Use of Signature, Stamp.”

The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when

determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to clarify and provide notice of the minimum recommended terms for violations of BPC section 5673. In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to implement the recommendations for proposed amendments to both the Board's *Disciplinary Guidelines* and the Committee's *Guidelines* and would: add "[#12]" for consistency with condition numbering; rephrase and move the statement "on all standard conditions [#1-11] and" for consistency with revisions to the other minimum terms; add the term "if warranted" to further clarify that not all of the following "optional" conditions may be necessary; and add the term "optional" to clarify that the listed conditions are optional.

The proposal would also replace the optional condition "Continuing education courses" with "Ethics course" to provide more specific course work for this type of violation to provide notice to the users of the *Guidelines* that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. Ethics help promote the basic tenets of the profession by codifying the fundamental beliefs of the profession and the common moral values the profession chooses to protect consumers and clients from harm in the professional relationship. Since false use of signature or stamp necessarily involves a deliberate act meant to deceive, such conduct may be treated as an ethical lapse (showing a tendency towards deception in professional practice). In such a case, an educational course on ethics is seen by the Board as one method of remediation to help prevent future violations.

This proposal would also: remove "Cost reimbursement" because, pursuant to the Board's policy to collect cost recovery in every case where authorized, it has been included in the minimum penalty as a standard condition as discussed in greater detail under the heading "Add Section VI, Conditions of Probation, Subsection A. Standard Conditions; add the phrase "if applicable" to clarify that restitution may not always apply; adjust condition numbers and letters due to conditions being added or removed; and, make minor, non-technical revisions for grammatical clarity. These terms are based on proposed amendments to the Board's *Disciplinary Guidelines*, minimum penalties for signing others' architectural instruments of service under BPC section 5582.1 that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 7.) The Committee reviewed and approved these minimum penalties for application to its *Guidelines* at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 9.) At the request of LAD, additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Amend Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5675 (Sanctions for Licensee Felony Conviction)

Purpose: The purpose of this proposal is to amend the *Guidelines* to revise the heading and be consistent with the Board’s proposed maximum and minimum penalties for criminal convictions.

Anticipated Benefits: The Board and Committee anticipate that the Committee will benefit from revising the heading to add greater clarity and comprehension regarding the subject matter of the section. It is further anticipated that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from clarifying the proposed penalties and providing notice of the Board’s currently recommended penalties.

Rationale: To assist the reader in searching for specific topics regarding this type of violation and for greater comprehension, the Board is moving the word “Sanctions” and adding the words “for Licensee” to the heading for this section so that the title now reads “Sanctions for Licensee Felony Conviction.”

The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to clarify and provide notice of the recommended maximum and minimum terms for violations of BPC section 5675. In accordance with the Committee’s Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to implement those recommendations resulting from that collaboration and review, as follows: remove the phrase “or denial of license application” to more accurately reflect the authority of Section 5675, which covers only felonies that occur during the practice of landscape architecture and applies to disciplinary actions against licensees [not applicants] involving such conduct; add “[#12]” for consistency with condition numbering; rephrase and move the statement “on all standard conditions [#1-11] and” for consistency with revisions to the other minimum terms; add the term “if warranted” to further clarify that not all of the following “optional” conditions may be necessary; and, add the term “optional” to clarify that the listed condition is optional.

This proposal would also remove the optional condition “Continuing education courses” since the Committee does not presently require licensees to take continuing education courses and as a result, educators do not presently provide continuing education courses for landscape architects; remove “Cost reimbursement” because, pursuant to the Board’s policy to collect cost recovery in every case where authorized, it has been

included in the minimum penalty as a standard condition as discussed in greater detail under the heading “Add Section VI, Conditions of Probation, Subsection A. Standard Conditions; remove “Restitution” as an optional condition as it is duplicative because it would have already been considered as a part of the licensee’s sentence by the Court where the criminal conviction occurred; adjust condition numbers and letters due to conditions being added or removed; and make minor, non-technical revisions for grammatical clarity.

These terms are based on proposed amendments to the Board’s *Disciplinary Guidelines*, minimum penalties for criminal convictions substantially related to the qualifications, duties, and functions of an architect under BPC section 5577 that were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 6.) The Committee reviewed and approved this language for use in its *Guidelines* at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 10.) At the request of LAD, additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Amend Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5675.5 (Disciplinary Action By Public Agency)

Purpose: The purpose of this proposal is to amend the *Guidelines* to revise the heading and be consistent with the Board’s proposed maximum and minimum penalties for disciplinary action by a public agency.

Anticipated Benefits: The Board and Committee anticipate that the Committee will benefit from revising the heading to add greater clarity and comprehension regarding the subject matter of the section. It is further anticipated that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from clarifying the proposed penalties and providing notice of the Board’s currently recommended penalties.

Rationale: To assist the reader in searching for specific topics regarding this type of violation and for greater comprehension, the Board is moving the words “Public Agency” to the end of the title and adding the word “By” to the heading for this section so that the title now reads “Disciplinary Action By Public Agency.”

The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to clarify and provide notice of the recommended minimum

terms for violations of BPC section 5675.5. In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to implement those recommended changes to the Committee's *Guidelines* and would: add "[#12]" for consistency with condition numbering; rephrase and move the statement "on all standard conditions [#1-11] and" for consistency with revisions to the other minimum terms; add the term "if warranted" to further clarify that not all of the following "optional" conditions may be necessary; and, add the term "optional" to clarify that the listed conditions are optional.

This proposal would also remove "Cost reimbursement" because, pursuant to the Board's policy to collect cost recovery in every case where authorized, it has been included in the minimum penalty as a standard condition as discussed in greater detail under the heading "Add Section VI, Conditions of Probation, Subsection A. Standard Conditions; add the phrase "if applicable" to clarify that restitution may not always apply; adjust condition numbers and letters due to conditions being added or removed; and make minor, non-technical revisions for grammatical clarity. These terms are based on recommended changes to the Board's *Disciplinary Guidelines*, minimum penalties for disciplinary action taken by a public agency under BPC section 5586 that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 9.) The Committee reviewed and approved these minimum penalties for use in the Committee's *Guidelines* at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 10.) At the request of LAD, additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Amend Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5676 (Sanctions for Criminal Conviction)

Purpose: The purpose of this proposal will amend the *Guidelines* to revise the heading and be consistent with the Board's proposed maximum and minimum penalties for criminal convictions.

Anticipated Benefits: The Board and Committee anticipate that the Committee will benefit from revising the heading to add greater clarity and comprehension regarding the subject matter of the section. It is further anticipated that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from clarifying the proposed penalties and providing notice of the Board's currently recommended penalties.

Rationale: To assist the reader in searching for specific topics regarding this type of violation and for greater comprehension, the Board is moving the word "Sanctions" to the front of the title and adding the word "for" to the heading for this section so that the title now reads "Sanctions for Criminal Conviction." Since Section 5676's provisions and

disciplinary grounds apply regardless of how the conviction happened, whether by a plea or verdict of guilty or a plea of nolo contendere, the Board also proposes to strike the words “Plea of Nolo Contendere” to avoid confusion.

The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to clarify the title and provide notice of the recommended minimum terms for violations of BPC section 5676. In accordance with the Committee’s Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to implement that collaborative effort and the recommendations for amendments to the Committee’s *Guidelines* and would: add “[#12]” for consistency with condition numbering; rephrase and move the statement “on all standard conditions [#1-11] and” for consistency with revisions to the other minimum terms; add the term “optional” to clarify that the listed condition is optional; remove the optional condition “Continuing education courses” since the Committee does not presently require licensees to take continuing education courses and as a result, educators do not presently provide continuing education courses for landscape architects.

This proposal would also remove “Cost reimbursement” because, pursuant to the Board’s policy to collect cost recovery in every case where authorized, it has been included in the minimum penalty as a standard condition as discussed in greater detail under the heading “Add Section VI, Conditions of Probation, Subsection A. Standard Conditions; remove “Restitution” as an optional condition as it is duplicative because restitution would have already been considered as a part of the licensee’s sentence by the Court where the criminal conviction occurred; adjust condition numbers and letters due to conditions being added or removed; and make minor, non-technical revisions for grammatical clarity. These terms are based on recommended amendments to the Board’s *Disciplinary Guidelines*, minimum penalties for criminal convictions substantially related to the qualifications, duties, and functions of an architect under BPC section 5577 that were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 6.) The Committee reviewed and approved these minimum penalties for use in its *Guidelines* at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 10.) At the request of LAD, additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Add Section IV, Disciplinary Guidelines, Subsection A. Business and Professions Code, Section 5678 (Licensee Failure to Report Settlement or Arbitration Award)

Purpose: The purpose of this proposal is to amend the *Guidelines* to assign a heading and establish maximum and minimum penalties for failing to report a settlement judgment, or arbitration award entered against the landscape architect, as specified under BPC section 5678.

Anticipated Benefits: The Board and Committee anticipate that the Committee will benefit from assigning a heading to assist the reader in searching for specific code sections and the recommended penalty for this type of violation. It is further anticipated that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from specifying and having notice of the maximum and minimum penalties for these violations.

Rationale: In 2006, Assembly Bill 2256 created a new basis for disciplinary action by the Board in enacting BPC section 5678. The Committee's existing *Guidelines* do not provide notice of this type of violation or the Board's recommended minimum or maximum penalties proposed for this type of violation, consistent with the express terms of BPC section 5678. This proposal would add such a section and title covering these items.

The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to add maximum and minimum penalties for violations of BPC section 5678, which requires a licensee to report to the Board, as specified, if the licensee has knowledge of any civil action judgment, settlement, arbitration award, or administrative action resulting in a \$5,000 or more judgment, settlement, or arbitration award against the licensee in any action alleging fraud, deceit, negligence, incompetence, or recklessness by the licensee in the practice of landscape architecture. In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) BPC section 5678(e) authorizes the Board to consider imposing the following in lieu of revocation:

A licensee who fails to comply with this section may be subject to a civil penalty of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000) as an intermediate sanction imposed by the board in lieu of revoking the licensee's license. A licensee who knowingly and intentionally fails to comply with this section may be subject to a civil penalty of up to twenty

thousand dollars (\$20,000) as an additional intermediate sanction imposed by the board in lieu of revoking the licensee's license.

Consistent with the legislative directive to consider (since this "may" be imposed by the Board), a civil penalty as an "intermediate sanction" and alternative to revocation, the proposal would specify a minimum penalty of a "civil penalty" to be used in lieu of revocation. For ease-of-use and to provide guidance on how to craft language to implement a civil penalty in a disciplinary order, the users are directed to the proposed "Model Orders" section of the *Guidelines*. For those cases where the Board is not considering the "intermediate step" or for those cases where the intermediate step has already been tried (e.g., cases of repeat offenders), the penalty of revocation is being proposed as the maximum penalty authorized by law per BPC section 5660. The Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes, p. 11.), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Amend "General Provisions of Business and Professions Code" title to print the title in Initial Cap and Bold instead of all capital letters. This change is proposed to revise the formatting of this Section title to make it easier to read and locate within the Disciplinary Guidelines.

Amend Section IV, Disciplinary Guidelines, Subsection B. General Provisions of Business and Professions Code, Section 125.6 (Licensee's Discrimination Against Individuals Based Upon Personal Characteristics)

Purpose: The purpose of this proposal is to amend the *Guidelines* to revise the heading and be consistent with the Board's proposed maximum and minimum penalties for discrimination by a licensee.

Anticipated Benefits: The Board and Committee anticipate that the Committee will benefit from revising the heading to add greater clarity and comprehension regarding the subject matter of the section. It is further anticipated that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from clarifying the proposed penalties and providing notice of the Board's currently recommended penalties.

Rationale: To assist the reader in searching for specific topics regarding this type of violation and for greater comprehension, the Board is striking the words "by Licensee" and adding the words "Licensee's" and "Against Individuals Based Upon Personal Characteristics" to the heading for this section so that the title now reads "Licensee's Discrimination Against Individuals Based Upon Personal Characteristics." This change also reflects more accurately the content of BPC section 125.6 and Civil Code section 51 (Unruh Civil Rights Act), which is cross-referenced in BPC section 125.6. The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when

determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to clarify and provide notice of the recommended minimum terms for violations of BPC section 125.6. In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal reflects that collaboration and recommended changes to the Committee's *Guidelines* and for that reason would: replace "90 days" with "60 days" to standardize the penalty with those recommended changes for the Board's *Guidelines*. In the Board's experience, 60 days is sufficient time for the suspension to be monitored and enforced, to impress upon the regulated community the seriousness of the offense, and for self-reflection and preparation during the suspension period for the licensee's compliance with the other terms and conditions of probation.

In addition this proposal would add "[#12]" for consistency with condition numbering; rephrase and move the statement "on all standard conditions [#1-11] and" to the beginning of the sentence for consistency with revisions to the other minimum terms; remove the phrase "on the following condition" due to there no longer being additional conditions associated with a minimum penalty (these optional terms were made standard in this proposal). In addition, this proposal would remove "Cost reimbursement" because, pursuant to the Board's policy to collect cost recovery in every case where authorized, it has been included in the minimum penalty as a standard condition as discussed in greater detail under the heading "Add Section VI, Conditions of Probation, Subsection A. Standard Conditions, (Cost Reimbursement); and make minor, non-technical revisions for grammatical clarity. These terms are based on proposed amendments to the Board's *Disciplinary Guidelines*, minimum penalties for discrimination by a licensed architect under BPC section 125.6 that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 10.) The Committee reviewed and approved these minimum penalties to apply them to its *Guidelines* at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 11.) At the request of LAD, additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Add Section IV, Disciplinary Guidelines, Subsection B. General Provisions of Business and Professions Code, Section 140 (Failure to Record Transactions Involving Wages or Make Those Records Available)

Purpose: The purpose of this proposal is to assign a heading and establish maximum and minimum penalties for failure to record and preserve cash transactions involving wages.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from specifying and being provided notice of the maximum and minimum recommended penalties for these violations.

Rationale: The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to add maximum and minimum penalties for violations of BPC section 140, which authorizes the board to take disciplinary action against any licensee “upon the ground that the licensee has failed to record and preserve for not less than three years, any and all cash transactions involved in the payment of employee wages by a licensee. Failure to make these records available to an authorized representative of the board may be made grounds for disciplinary action.”

Existing guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of BPC section 140. This proposal would establish such standards and provide notice to the regulated community of the Board’s authority to discipline for this type of violation. In accordance with the Committee’s Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, to implement this collaboration, the proposal would specify a maximum penalty of revocation and minimum penalties of stayed revocation and three years’ probation on standard conditions. These terms are based on proposed changes to the Board’s *Disciplinary Guidelines*, maximum and minimum penalties for failure to record and preserve cash transactions involving wages under BPC section 140 that were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 10.) In the Board’s experience, the minimum proposed penalty is sufficient to monitor many probationers for this type of recordkeeping violation, while a maximum proposed penalty of revocation would be appropriate for those cases where the facts of the case demonstrate that a more severe penalty is warranted. The Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Add Section IV, Disciplinary Guidelines, Subsection B. General Provisions of Business and Professions Code, Section 141 (Disciplinary Action Taken Against Licensee by Another State, an Agency of the Federal Government, or Another

Country)

Purpose: The purpose of this proposal is to assign a heading and establish maximum and minimum penalties for disciplinary action taken by another state, federal agency, or another country for any act substantially related to the practice of landscape architecture pursuant to BPC section 141.

Anticipated Benefits: The Board and Committee anticipate that the Committee will benefit from assigning a heading to assist the reader in searching for specific code sections. It is further anticipated that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from the proposal by incorporating and being provided notice of the Board's recommended penalty for disciplinary actions taken by other jurisdictions.

Rationale: Existing guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of BPC section 141. This proposal would establish such standards and provide notice to the regulated community of the Board's authority to discipline for this type of violation.

The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to add maximum and minimum penalties for violations of BPC section 141, which authorizes the Board to discipline a California licensed landscape architect for disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license. In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, to implement this collaborative effort, the proposal would specify a maximum penalty of revocation and minimum penalties of stayed revocation, 90 days' actual suspension, and five years' probation on standard conditions and optional conditions of continuing education courses and restitution, if applicable. These terms are based on proposed changes to the Board's *Disciplinary Guidelines*, maximum and minimum penalties for discipline by another state, federal agency, or another country under BPC section 141 that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 10.) The disciplinary authority in BPC section 141 seeks to prevent a licensee from evading disciplinary action merely by fleeing to another state. In recognition of that important public policy goal, the minimum penalty proposed here would, in the Board's experience, be sufficient in many cases to allow the Board adequate time to monitor the probationer for

compliance and ensure no recurrence of a variety of possible violations, to coordinate with other jurisdictions, and to allow adequate compliance preparation and self-reflection for the licensee.

In addition to the standard terms proposed in every case, the Board also proposes two new optional terms: continuing education courses and restitution. These terms are proposed for those cases where the facts indicate that the failure may have involved a lack of knowledge or competence in a particular area or where the misconduct caused financial harm to the consumer. In the Board's experience, such terms would help aid in the rehabilitation of the licensee or remediate the harm caused by the violation. A maximum penalty of revocation is proposed for those cases where the facts of the case demonstrate that a more severe penalty is warranted.

The Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Add Section IV, Disciplinary Guidelines, Subsection B. General Provisions of Business and Professions Code, Section 143.5 (Settlement Agreement Prohibited Provisions; Regulations; Exemptions)

Purpose: The purpose of this proposal is to assign a heading and establish maximum and minimum penalties for using prohibited settlement agreement terms.

Anticipated Benefits: The Board and Committee anticipate that the Committee will benefit from assigning a heading to assist the reader in searching for specific code sections. It is further anticipated that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from notice of the Board's recommended penalties and specifying maximum and minimum penalties for these violations.

Rationale: Existing guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of BPC section 143.5. This proposal would establish such standards and provide notice to the regulated community of the Board's authority to discipline for this type of violation.

The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to add maximum and minimum penalties for violations of BPC section 143.5, which authorizes the Board to discipline a landscape architect for including or permitting to be included a provision in a civil settlement agreement that

prohibits the other party from contacting, filing a complaint with, or cooperating with the Department of Consumer Affairs, the Board, or the Committee (i.e., “gag clauses”). In accordance with the Committee’s Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, to implement this collaborative effort, the proposal would specify a maximum penalty of revocation and minimum penalties of stayed revocation, three years’ probation on standard conditions and an optional condition of an Ethics course. These terms are based on proposed changes to the Board’s *Disciplinary Guidelines*, maximum and minimum penalties for use of a prohibited provision in a settlement agreement under BPC section 143.5 that were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 11.)

In the Board’s experience, the minimum proposed penalty is sufficient to monitor many probationers for this type of violation, while proposing a maximum penalty of revocation for those cases where the facts of the case demonstrate that a more severe penalty is warranted. Since the use of gag clauses in consumer settlement agreements may evince unethical conduct, such as pressuring aggrieved consumers and injured parties into agreeing to such clauses with the intent to prevent regulatory review and oversight by the Board, the Board proposes the optional term of taking an ethics course as part of probation. An educational course on the subject of ethics is seen by the Board as one method of rehabilitation to help prevent future violations. A maximum penalty of revocation is proposed for those cases where the facts of the case demonstrate that a more severe penalty is warranted.

The Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Amend Section IV, Disciplinary Guidelines, Subsection B. General Provisions of Business and Professions Code, Section 480(a) (Grounds for Denial of the License Application)

Purpose: The purpose of this proposal is to amend the *Guidelines* to revise the heading, remove the penalties applicable to criminal convictions substantially related to the qualifications, functions, or duties of the practice of landscape architecture, establish minimum penalties, and make other technical revisions.

Anticipated Benefits: The Board and Committee anticipate that the Committee will benefit from revising the heading to add greater clarity and comprehension regarding the subject matter of the section. It is further anticipated that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from clarifying the proposed penalties, removing unnecessary information, and providing notice of the Board’s currently recommended penalties.

Rationale: To assist the reader in searching for specific topics regarding this type of violation and for greater comprehension, the Board is adding the words “Grounds for” and “Of the License Application” and striking the words “Applicant’s” and “Licenses” to the heading for this section so that the title now reads “Grounds for Denial of the License Application.”

The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

The proposal is necessary to strike from the *Guidelines* the descriptive paragraph listing four grounds for application denial under BPC section 480, subdivision (a). Operative on July 1, 2020, BPC section 480, subdivisions (a) and (e), authorize the Board to deny a license application only on the basis of a substantially related criminal conviction, professional misconduct that results in formal discipline by a licensing board in or outside of California; or, knowingly making a false statement of fact required to be revealed in the application for licensure. (BPC, § 480, subd. (a), (e), as added by AB 2138, § 4.) AB 2138 repealed Board authority to deny a license on the basis of acts involving dishonesty, fraud, or deceit with the intent to substantially benefit themselves or another or substantially injure another, or any act which if done by a licensee would be grounds for suspension or revocation of a license. (BPC, § 480, subd. (a)(2) and (a)(3)(A), as repealed by AB 2138, § 3.) Notably, the descriptive paragraph provided in the *Guidelines* for BPC section 480, subdivision (a), is the only paragraph describing the statute for which it provides minimum and maximum penalties. To conform to the new provisions of BPC section 480, subdivision (a), implemented by AB 2138 and to conform this section to the other BPC section violations formats listed in the *Guidelines*, the proposal must strike the unnecessary descriptive paragraph of the grounds for denying an application.

In addition, this proposal is necessary to add minimum penalties for violations of BPC section 480, subdivision (a). In accordance with the Committee’s Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, to implement this collaborative effort, the proposal would make minor and technical revisions to the language and also clarify that the maximum penalty would be denial of the license application and specify minimum penalties of issuance of initial application, stayed revocation, and five years’ probation on standard conditions and optional conditions of an Ethics course, continuing education courses, and restitution, if applicable. These terms are based on proposed changes to the Board’s *Disciplinary Guidelines*, minimum penalties under BPC section 480, subdivision (a) that were developed by the Board’s Regulatory and Enforcement

Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 11.)

The Board considers these types of violations serious, as these violations show a history of violating the law, failure to exercise good judgment and, in the case of false statements on the licensing application, a deliberate attempt to undermine the very intent and purpose of licensure and regulation of the profession. However, the Board recognizes that there may be extenuating circumstances that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board re-evaluated this minimum penalty and determined that changes to the minimum recommended penalty for this violation are warranted, which would include removal of the recommended minimum penalty of denial and replacing it with stayed revocation, and five years' probation on standard conditions, and optional conditions of an Ethics course, continuing education courses, and restitution, if warranted. This minimum penalty should be sufficient in the Board's experience to convey the seriousness of the offense to applicants and to monitor respondents for possible recurrence while providing a respondent with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than denial of the application.

The Board also proposes to add an "ethics course", "continuing education courses," and "restitution" to the optional terms for use in these types of cases. Since the misconduct alleged may be seen as an ethical lapse (e.g., showing a deliberate disregard for licensure process) in a given case, an educational course on the subject of ethics is seen by the Board as one method of rehabilitation to help prevent future violations. The optional use of continuing education course or restitution is being proposed for those cases where the facts indicate that the failure may have involved a lack of knowledge or competence in a particular area, or where the misconduct caused financial harm to the consumer. In the Board's experience, such terms would help aid in the rehabilitation of the applicant or remediate the harm caused by the violation. A maximum penalty of denial of license application is retained (with some minor grammatical changes to add "application" to the end of the terms) for those cases where the facts of the case demonstrate that an unrestricted license or a license on probation is not appropriate.

The Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Add Section IV, Disciplinary Guidelines, Subsection B. General Provisions of Business and Professions Code, Section 490 (Grounds for Suspension, Revocation; Conviction of Crime)

Purpose: The purpose of this proposal is to assign a heading and establish maximum and minimum penalties for criminal convictions substantially related to the qualifications, functions, or duties of a landscape architect.

Anticipated Benefits: The Board and Committee anticipate that the Committee will benefit from assigning a heading to assist the reader in searching for specific code sections. It is further anticipated that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from being provided notice of and specifying the Board's recommended maximum and minimum penalties for these violations.

Rationale: Existing guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of BPC section 490. This proposal would establish such standards and provide notice to the regulated community of the Board's authority to discipline for this type of violation.

The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to add maximum and minimum penalties for violations of BPC section 490, which authorizes the Board to suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of a landscape architect. In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal would implement that collaborative effort and specify a maximum penalty of revocation and minimum penalties of stayed revocation, 90 days' actual suspension, and five years' probation on standard conditions and an optional condition of criminal probation reports. These terms are based on proposed changes to the Board's *Disciplinary Guidelines*, maximum and minimum penalties for criminal convictions under BPC section 490 that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 11.)

The Board considers these types of violations serious, as these violations show a history of criminally violating the law and a failure to exercise good judgment. However, the Board recognizes that there may be extenuating circumstances that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes the recommended minimum penalty of 90 days' actual suspension and five years' probation on standard conditions, and optional condition of "Criminal Probation Reports." Since the violation involves a criminal conviction, this optional term can be a vital aspect of monitoring a probationer, especially for those cases where the licensee has not completed their criminal probation. Overall, this minimum penalty should be sufficient in many cases to convey the seriousness of the offense to the regulated community and to

monitor respondent for possible recurrence while providing a respondent with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than revocation. A maximum penalty of revocation is proposed for those cases where the facts of the case demonstrate that a more severe penalty is warranted.

The Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes, and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Amend Section IV, Disciplinary Guidelines, Subsection B. General Provisions of Business and Professions Code, Section 496 (Subversion of Licensing Examinations or Administration of Examinations)

Purpose: The purpose of this proposal is to amend the *Guidelines* to establish minimum penalties for subversion of licensing examinations or administration of examinations and make minor clarifying revisions.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from providing notice of the changes to the *Guidelines* and specifying minimum recommended penalties for these violations.

Rationale: The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to revise the minimum penalties for violations of BPC section 496, which establishes that the Board may deny, suspend, revoke, or otherwise restrict a license on the ground that the applicant or licensee subverted or attempted to subvert a licensing examination or the administration of an examination. In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, to implement that collaborative effort, the proposal would specify minimum penalties of initial license issuance, stayed revocation, and five years' probation on standard conditions and optional conditions of an Ethics course, continuing education courses, and restitution, if applicable. These terms are based on the proposed changes to the Board's *Disciplinary Guidelines*, and the minimum penalties for these violations that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 12.)

The Board considers this type of violation serious, as this violation shows a deliberate attempt to undermine the very intent and purpose of licensure and regulation of the profession. However, the Board recognizes that there may be extenuating circumstances that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board re-evaluated this minimum penalty and determined that changes to the minimum recommended penalty for this violation are warranted, which would include removal of the recommended minimum penalty of revocation or denial of the application, and replacing it with stayed revocation, and five years' probation on standard conditions, and optional conditions of an ethics course, continuing education courses, and restitution, if warranted. This minimum penalty should be sufficient in the Board's experience to convey the seriousness of the offense to licensees and applicants, and to monitor respondents for possible recurrence while providing respondents with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than revocation or denial of the licensing application.

The Board also proposes to add an "ethics course", "continuing education courses," and "restitution" to the optional terms for use in these types of cases. Since the misconduct alleged may be seen as an ethical lapse (e.g., cheating, destroying or attempting to destroy the integrity of the examination process by stealing examination questions and answers), an educational course on the subject of ethics is seen by the Board as one method of rehabilitation to help prevent future violations. The optional use of continuing education course or restitution is being proposed for those cases where the facts indicate that the failure may have involved a lack of knowledge or competence in a particular area, or where the misconduct caused financial harm to the agency or consumers who participated in the examination process. In the Board's experience, such terms would help aid in the rehabilitation of the applicant or remediate the harm caused by the violation. A maximum penalty of revocation or denial of license application is retained (with some minor grammatical changes to add "application" to the end of the terms) for those cases where the facts of the case demonstrate that an unrestricted license or a license on probation is not appropriate.

The Committee reviewed and approved these minimum penalties at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, pp. 12-13.) At the request of LAD, additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Add Section IV, Disciplinary Guidelines, Subsection B. General Provisions of Business and Professions Code, Section 499 (Licensee's False Statement in Support of Application Not Their Own)

Purpose: The purpose of this proposal is to amend the *Guidelines* to assign a heading and establish maximum and minimum penalties for a licensee, in support of another person's application for license, knowingly making a false statement of a material fact or

knowingly omitting to state a material fact to the Board regarding the application.

Anticipated Benefits: The Board and Committee anticipate that the Committee will benefit from assigning a heading to assist the reader in searching for specific code sections. It is further anticipated that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from providing notice of the changes to and by specifying the Board's maximum and minimum penalties for these violations.

Rationale: Existing guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of BPC section 499. This proposal would establish such standards and provide notice to the regulated community of the Board's authority to discipline for this type of violation.

The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to add maximum and minimum penalties for violations of BPC section 499, which authorizes the Board to revoke, suspend, or otherwise restrict a license on the ground that the licensee, in support of another person's application for license, knowingly made a false statement of a material fact or knowingly omitted to state a material fact to the Board regarding the application. In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal would implement that collaborative effort by specifying a maximum penalty of revocation and minimum penalties of stayed revocation, 90 days' actual suspension, and five years' probation on standard conditions and the optional condition of an Ethics course. These terms are based on proposed changes to the Board's *Disciplinary Guidelines*, maximum and minimum penalties for criminal convictions under BPC section 490 that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 12.)

In the Board's experience, this minimum proposed penalty is sufficient to monitor many probationers for this type of violation, while ensuring that there is a time period where the licensee is suspended from practice. Such a proposed penalty protects the public for a significant period of time and allows for licensee self-reflection and compliance preparation. Since the provision of false statements in support of another's application evinces unethical conduct because it shows a history or tendency to mislead or lie, the Board proposes the optional term of taking an ethics course as part of probation. An educational course on the subject of ethics is seen by the Board as one method of rehabilitation to help prevent future violations. A maximum penalty of revocation is

proposed for those cases where the facts of the case demonstrate that a more severe penalty is warranted.

The Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Amend Section IV, Disciplinary Guidelines, Subsection C. California Code of Regulations, Title 16, Division 2, Chapter 26, Article 1. General Provisions

Purpose: The purpose of this proposal is to amend the *Guidelines* to clarify the article location of the landscape architect regulations covered in the *Guidelines*.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from making clarifying revisions to the *Guidelines*.

Rationale: The proposal is necessary to add subsection “C.” for organizational purposes and add the terms “Article 1. General Provisions” to correctly identify the article location of the landscape architect regulations in the CCR.

Amend Section IV, Disciplinary Guidelines, Subsection C. California Code of Regulations, Title 16, Division 2, Chapter 26, Article 1. General Provisions, Section 2670 (Rules of Professional Conduct), (a) Competence

Purpose: The purpose of this proposal is to amend the *Guidelines* to provide consistency between the Board’s proposed maximum and minimum penalties for competence violations.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from clarifying the proposed penalties and providing consistency between the Board’s *Disciplinary Guidelines* and Committee’s *Guidelines*.

Rationale: The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

In accordance with the Committee’s Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to provide consistency between proposed

changes to the Board's *Disciplinary Guidelines* and the Committee's *Guidelines* and would: add "[#12]" for consistency with condition numbering; rephrase and move the statement "on all standard conditions [#1-11] and" for consistency with revisions to the other minimum terms; add the term "if warranted" to further clarify that not all of the following "optional" conditions may be necessary in a given case; add the term "optional" to clarify that the listed conditions are optional; add "California Supplemental Examination" (CSE) as an optional condition to provide more options and specificity in ordering an examination. The CSE is a written examination of subject areas that are unique to the practice of landscape architecture in California (see Cal. Code Regs., tit. 16, § 2621). This term is a necessary option for a probationary term for the protection of the public. This type of testing requirement would help ensure that the licensee is still competent and able to meet minimum standards for the practice of landscape architecture in California in a case where the violation involves concerns about continued competency.

This proposal would also: remove "Cost reimbursement" because, pursuant to the Board's policy to collect cost recovery in every case where authorized, it has been included in the minimum penalty as a standard condition as discussed in greater detail under the heading "Add Section VI, Conditions of Probation, Subsection A. Standard Conditions; add the phrase "(if applicable)" to clarify that restitution may not always apply; and adjust condition numbers and letters due to conditions being added or removed.

These terms are based on proposed changes to the Board's *Disciplinary Guidelines*, minimum penalties for competence violations under CCR section 160 that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 12.) The Committee reviewed and approved these minimum penalties at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 13.) At the request of LAD, additional amendments were made, and the Committee reviewed and reapproved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Add Section IV, Disciplinary Guidelines, Subsection C. California Code of Regulations, Division 2, Title 16, Chapter 26, Article 1. General Provisions, Section 2670 (Rules of Professional Conduct), (b) Willful Misconduct

Purpose: The purpose of this proposal is to amend the *Guidelines* to establish maximum and minimum penalty guidelines for willful misconduct violations.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from specifying maximum and minimum penalties for these violations.

Rationale: Existing guidelines do not establish this title, section or the recommended minimum and maximum penalties proposed for violation of section 2670(b) of title 16, of the California Code of Regulations, which provides for the following:

(1) In designing a project, a landscape architect shall have knowledge of all applicable building laws, codes, and regulations. A landscape architect may obtain the advice of other professionals (e.g., attorneys, engineers, and other qualified persons) as to the intent and meaning of such laws, codes, and regulations and shall not knowingly design a project in violation of such laws, codes, and regulations.

(2) Whenever the Board is conducting an investigation, a landscape architect or a candidate for licensure shall respond to the Board's requests for information and/or evidence within 30 days of the date mailed to or personally delivered on the landscape architect or a candidate for licensure.

This proposal would establish a new title and standards to implement recommended penalties for violations of the above provisions and provide notice to the regulated community of the Board's recommended penalties for these types of violations.

The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

The proposal is necessary to clarify the maximum and minimum terms for CCR section 2670 (Rules of Professional Conduct), which was amended on July 16, 2007, to include an additional provision (subsection (b)) prohibiting a licensee from committing willful misconduct. In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, to implement this collaborative effort, the proposal is necessary to provide consistency between the Board's *Disciplinary Guidelines* and the Committee's *Guidelines* and would establish a maximum penalty of revocation and minimum penalties of stayed revocation, 90 days' actual suspension, five years' probation on standard conditions and optional conditions of an Ethics course, continuing education courses, and restitution, if applicable. These terms are based on proposed changes to the Board's *Disciplinary Guidelines*, minimum penalties for incompetency or recklessness under BPC section 5585, that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 9.)

The Board considers this type of violation serious, as this violation shows a willful

disregard for the standards of the profession and the Board's authority. However, the Board recognizes that there may be extenuating circumstances that may warrant a lesser, but nevertheless serious penalty. Therefore, the Board proposes the recommended minimum penalty of revocation stayed, 90 days' suspension, and five years' probation on standard conditions, and optional conditions of an ethics course, continuing education courses, and restitution, if warranted. This minimum penalty should be sufficient in the Board's experience to convey the seriousness of the offense to licensees, and to monitor respondents for possible recurrence while providing respondents with the opportunity for the Board to consider mitigating and rehabilitative evidence in consideration of a penalty lower than revocation.

The Board also proposes to add an "ethics course", "continuing education courses," and "restitution" to the optional terms for use in these types of cases. Since the misconduct alleged may be seen as an ethical lapse (e.g., willful disregard of professional standards or the Board's authority in requesting or investigating a case), an educational course on the subject of ethics is seen by the Board as one method of rehabilitation to help prevent future violations. The optional use of continuing education course or restitution is being proposed for those cases where the facts indicate that the failure may have involved a lack of knowledge or competence in a particular area, or where the misconduct caused financial harm to consumers. In the Board's experience, such terms would help aid in the rehabilitation of the licensee or remediate the harm caused by the violation. A maximum penalty of revocation is proposed for those cases where the facts of the case demonstrate that an unrestricted license or a license on probation is not appropriate.

The Committee reviewed and approved these minimum penalties at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 9.) At the request of LAD, additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

**Amend Section IV, Disciplinary Guidelines, Subsection C. California Code of Regulations, Division 2, Title 16, Chapter 26, Article 1. General Provisions, Section 2670 (Rules of Professional Conduct),
(c) Full Disclosure**

Purpose: The purpose of this proposal is to amend the *Guidelines* to provide consistency between the Board's proposed maximum and minimum penalties for client disclosure violations and make minor, non-technical revisions.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from clarifying the proposed penalties and providing consistency between the proposed changes to the Board's *Disciplinary Guidelines* and Committee's *Guidelines*.

Rationale: The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to clarify the minimum terms for violations of CCR section 2670(c). In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to implement that collaborative effort and make recommended changes that would revise the Committee's *Guidelines* as follows: re-designate subsection (b) as subsection (c); add "[#12]" for consistency with condition numbering; rephrase and move the statement "on all standard conditions [#1-11] and" for consistency with revisions to the other minimum terms; add the term "if warranted" to further clarify that not all of the following "optional" conditions may be necessary; add the term "optional" to clarify that the listed conditions are optional; replace "Continuing education courses" with "Ethics course" as an optional condition to provide a more specific course work for probation related to this type of violation; and, remove "Cost reimbursement" because, pursuant to the Board's policy to collect cost recovery in every case where authorized, it has been included in the minimum penalty as a standard condition as discussed in greater detail under the heading "Add Section VI, Conditions of Probation, Subsection A. Standard Conditions.

Addition of optional term ethics course: The Board proposes to add "ethics course [#15]" in lieu of continuing education courses to provide notice to the users of the *Guidelines* that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. Ethics help promote the basic tenets of the profession by codifying the fundamental beliefs of the profession and the common moral values the profession chooses to protect consumers and clients from harm in the professional relationship. Since failing to accurately represent to a prospective or existing client or employer his or her qualifications and the scope of his or her responsibility in connection with projects or services is considered an ethical lapse (showing a tendency towards deception), an educational course on the subject of ethics is seen by the Board as one method of remediation to help prevent future violations. Further, to help ensure that ethical issues are specifically addressed in the rehabilitation efforts of the licensee, the Board proposes to replace the "continuing education courses" requirement (which could be general course work on a variety of topics) with the ethics course option.

This proposal would also add the phrase "if applicable" to clarify that restitution may not always apply; and adjust condition numbers and letters due to conditions being added or removed. These terms are based on proposed changes to the Board's *Disciplinary Guidelines*, minimum penalties for full disclosure violations under CCR section 160 that

were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 13.) The Committee reviewed and approved these minimum penalties at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 14.) At the request of LAD, additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Amend Section IV, Disciplinary Guidelines, Subsection C. California Code of Regulations, Division 2, Title 16, Chapter 26, Article 1. General Provisions, Section 2670 (Rules of Professional Conduct), (d) Informed Consent

Purpose: The purpose of this proposal is to amend the *Guidelines* to be Consistent with the Board's proposed maximum and minimum penalties for informed client consent violations and make minor, non-technical revisions.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from receiving notice of the Board's recommended penalties for informed client consent violations and providing consistency between the proposed changes to the Board's *Disciplinary Guidelines* and Committee's *Guidelines*.

Rationale: The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to update the minimum terms for violations of CCR section 2670(d). In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to implement that collaborative effort by providing consistency between the proposed changes to the Board's *Disciplinary Guidelines* and the Committee's *Guidelines* and would: re-designate subsection (c) as subsection (d); add "[#12]" for consistency with condition numbering; rephrase and move the statement "on all standard conditions [#1-11] and" for consistency with revisions to the other minimum terms; add the term "if warranted" to further clarify that not all of the following "optional" conditions may be necessary; add the term "optional" to clarify that the listed conditions are optional.

This proposal would also: remove "Cost reimbursement" because, pursuant to the Board's policy to collect cost recovery in every case where authorized, it has been

included in the minimum penalty as a standard condition as discussed in greater detail under the heading “Add Section VI, Conditions of Probation, Subsection A. Standard Conditions, add the phrase “if applicable” to clarify that restitution may not always apply; and, adjust condition numbers and letters due to conditions being added or removed. These terms are based on proposed changes to the Board’s *Disciplinary Guidelines*, minimum penalties for failure to fully inform the client in writing before materially altering the scope or objective of a project and obtaining the consent of the client in writing under CCR section 160 that were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 14.) The Committee reviewed and approved these minimum penalties at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 14.) At the request of LAD, additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and reapproved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Amend Section IV, Disciplinary Guidelines, Subsection C. California Code of Regulations, Division 2, Title 16, Chapter 26, Article 1. General Provisions, Section 2670 (Rules of Professional Conduct), (e) Conflict of Interest

Purpose: The purpose of this proposal is to amend the *Guidelines* to be consistent with the Board’s proposed maximum and minimum penalties for conflict of interest violations and make minor, non-technical revisions.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from receiving notice of the Board’s recommended penalties for conflict of interest violations and providing consistency between the proposed changes to the Board’s *Disciplinary Guidelines* and Committee’s *Guidelines*.

Rationale: The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to update the minimum terms for violations of CCR section 2670(e). In accordance with the Committee’s Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to implement that collaborative effort between the Board and the Committee in an attempt to ensure consistency between the Board’s *Disciplinary Guidelines* and the Committee’s *Guidelines*, as follows:: re-

designate subsection (d) as subsection (e); add “[#12]” for consistency with condition numbering; rephrase and move the statement “on all standard conditions [#1-11] and” for consistency with revisions to the other minimum terms; add the term “if warranted” to further clarify that not all of the following “optional” conditions may be necessary; add the term “optional” to clarify that the listed conditions are optional; replace “Continuing education courses” with “Ethics course” as an optional condition to provide more specific course work related to this type of violation; and, remove “Cost reimbursement” because, pursuant to the Board’s policy to collect cost recovery in every case where authorized, it has been included in the minimum penalty as a standard condition as discussed in greater detail under the heading “Add Section VI, Conditions of Probation, Subsection A. Standard Conditions.”

Addition of optional term ethics course: The Board proposes to add “ethics course [#15]” in lieu of continuing education courses to provide notice to the users of the *Guidelines* that this is an optional term that may be considered in disciplinary orders of the Board for this type of violation. Ethics help promote the basic tenets of the profession by codifying the fundamental beliefs of the profession and the common moral values the profession chooses to protect consumers and clients from harm in the professional relationship. Having a conflict of interest is considered an ethical lapse (e.g., see section 2670(e)(3): “soliciting or accepting payments, rebates, refunds or commissions whether in the form of money or otherwise from material or equipment suppliers in return for specifying their products to a client of the landscape architect”). Consequently, an educational course on the subject of ethics is seen by the Board as one method of rehabilitation to help prevent future violations. Further, to help ensure that ethical issues are specifically addressed in the rehabilitation efforts of the licensee, the Board proposes to replace the “continuing education courses” requirement (which could be general course work on a variety of topics) with the ethics course option.

This proposal would also add the phrase “if applicable” to clarify that restitution may not always apply; and adjust condition numbers and letters due to conditions being added or removed. These terms are based on proposed changes to the Board’s *Disciplinary Guidelines*, minimum penalties for all conflicts of interest of architects listed under CCR section 160 that were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 13.) The Committee reviewed and approved these minimum penalties at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 15.) At the request of LAD, additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

**Amend Section IV, Disciplinary Guidelines, Subsection C. California Code of Regulations, Division 2, Title 16, Chapter 26, Article 1. General Provisions, Section 2670 (Rules of Professional Conduct),
(f) Copyright Infringement**

Purpose: The purpose of this proposal is to amend the *Guidelines* to be consistent with the Board’s proposed maximum and minimum penalties for copyright infringement violations and make minor, non-technical revisions.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from receiving notice of the Board’s recommended penalties and providing consistency between the proposed change to the Board’s *Disciplinary Guidelines* and proposed changes to the Committee’s *Guidelines*.

Rationale: The *Guidelines* provide maximum and minimum penalties that may be used by an ALJ when drafting a proposed decision or a DAG when drafting a stipulated settlement. The maximum and minimum penalties also inform respondents and their counsel when determining whether to negotiate a settlement or strategize for an administrative hearing and provide guidance to the Board when reviewing proposed decisions and stipulated settlements.

This proposal is necessary to update the minimum terms for violations of CCR section 2670(f). In accordance with the Committee’s Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to implement that collaborative effort by providing consistency between the Board’s *Disciplinary Guidelines* and the Committee’s *Guidelines* and would: re-designate subsection (e) as subsection (f); add “[#12]” for consistency with condition numbering; rephrase and move the statement “on all standard conditions [#1-11] and” for consistency with revisions to the other minimum terms; add the term “if warranted” to further clarify that not all of the following “optional” conditions may be necessary; add the term “optional” to clarify that the listed conditions are optional; add the optional condition “Ethics course” to provide more specific course work for probation relative to this violation; and, remove “Cost reimbursement” because, pursuant to the Board’s policy to collect cost recovery in every case where authorized, it has been included in the minimum penalty as a standard condition as discussed in greater detail under the heading “Add Section VI, Conditions of Probation, Subsection A. Standard Conditions.

This proposal would also add the phrase “if applicable” to clarify that restitution may not always apply; and adjust condition numbers and letters were adjusted due to conditions being added or removed. The Board also proposes to add an “ethics course” to the optional terms for this type of violation. Since copyright infringement may be seen as an ethical lapse in a given case, an educational course on the subject of ethics is seen by the Board as one method of rehabilitation to help prevent future violations.

These terms are based on the proposed changes to the Board’s *Disciplinary Guidelines*, minimum penalties for copyright infringement violations under CCR section 160 that were developed by the Board’s Regulatory and Enforcement Committee at its

November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 14.) The Committee reviewed and approved these minimum penalties at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 15.) At the request of LAD, additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Amend Section IV, Disciplinary Guidelines, Subsection D. Violation of Probation

Purpose: The purpose of this proposal is to amend the *Guidelines* to add “D” to identify the subsection and provide technical changes to change the font from all capitalized letters to initial caps.

Anticipated Benefits: The Board and Committee anticipate that the public, landscape architect licensees, and Board staff will benefit from clarifying this title and the use of consistent formatting in the *Guidelines*.

Rationale: The proposal is necessary to add “D” to label the subsection for organizational purposes.

Technical Change from “offense(s)” to “offenses” in the last paragraph under Minimum Penalty:

For ease of comprehension and readability, the Board proposes to strike the parentheses from around the “s” in the word offenses.

Add Section V, Model Orders

Purpose: The purpose of this proposal is to include Model Orders, which includes orders for licensees, petitions for reinstatement, petitions to revoke probation, and orders for applicants, to be used by ALJs when drafting proposed decisions and DAGs and Board staff when drafting stipulated settlements of disciplinary cases.

Anticipated Benefits: The Board and Committee anticipate that providing specific standard order language applicable to different terms of discipline will make the terms easier for respondents and the public to understand and easier for Board staff to enforce.

Rationale: The proposal is necessary to add model orders to be included in proposed decisions or stipulated settlements, as applicable. Numerous boards under the Department of Consumer Affairs have adopted similar model orders to simplify the decision writing process, provide clarity for applicants, respondents, attorneys, and Board staff, and provide transparency for consumers through specific, standard language applicable to each type of disciplinary action. In the Board’s experience, providing these templates of model language helps avoid possible mistakes in the Board’s orders, and helps guide users of the *Guidelines* to better understand the

Board's orders, requirements and their legal effects. The proposal would provide applicable language for different enforcement actions authorized by law to be taken by the Board: section A is model language for licensees/respondents in a disciplinary matter (per BPC section 5660); section B is model language for petitioners seeking reinstatement of their license (Gov. Code, § 11522); section C applies to petitions brought by the Board's executive officer to revoke the licensee's probation; and section D is model language to be used for applicants in cases where a Statement of Issues has been filed. Finally, the Board also includes model language to help implement its BPC section 5678 civil penalty authority. Described below are the proposed model disciplinary orders and the rationale and anticipated benefits for each order:

Licensee Model Orders

1. Revocation of License. This model order is necessary to instruct the ALJs and DAGs of the clear and concise language to be included in the disciplinary order for the Board's approval. This model order reflects the correct action that would be taken by the Board if the discipline to be imposed on a licensee is revocation. The proposal clarifies the respondent's responsibility to relinquish and forward or deliver their license to practice landscape architecture and wall certificate to the Board. The proposal is necessary to provide a clear and reasonable deadline of ten days for relinquishing the license and wall certificate; such action is necessary to ensure that all indicia of licensure is returned, consistent with the Board's revocation action. The proposal is also necessary to advise respondents when they can reapply or petition the Board for reinstatement of their revoked license; the one year time frame is based on Government Code section 11522 of the Administrative Procedure Act, which provides that a person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision. The proposal would also include in the model language the requirement of respondent to pay the costs of investigation and prosecution within 30 days of the effective date of the decision, which in the Board's experience, is a reasonable amount of time for compliance with the order. This provision is necessary to assist the Board in recovering its costs of enforcement as authorized by BPC section 125.3. If the respondent is unable to pay the costs within 30 days, the model order would provide the option of a condition precedent that the respondent could pay these enforcement costs prior to reinstatement of their license and which must be paid in full prior to reinstatement, which is also authorized by BPC section 125.3.
2. Revocation Stayed and Licensee Placed on Probation. Government Code section 11519(b) provides the Board with the following authority:

"A stay of execution may be included in the decision or if not included therein may be granted by the agency at any time before the decision becomes effective. The stay of execution provided herein may be accompanied by an express

condition that respondent comply with specified terms of probation; provided, however, that the terms of probation shall be just and reasonable in the light of the findings and decision.”

Similar authority to issue a license on probation is found at BPC section 488(a)(2). This model order is necessary to implement the authority in sections 488 and 11519 and to provide ALJs and DAGs clear and concise language to reflect the correct action that would be taken by the Board if the discipline to be imposed on a licensee is revocation, stayed, and probation with terms and conditions.

3. Public Reproval. The *Guidelines* provide minimum terms and conditions that may include issuance of a public reproval. BPC section 495 authorizes the Board to issue a public reproval. This proposal would add model order language when the proposed decision or stipulated settlement would publicly reprove the licensee/respondent. The proposal is necessary to advise the licensee that the reproval constitutes disciplinary action and becomes a part of their license history with the Board consistent with BPC section 27(c)(9) (which requires public disclosure on the Internet of all enforcement actions) and the requirements of the California Public Records Act (Gov. Code §§ 6250 et seq.-- see discussion above in section entitled “**Amend Section I, Introduction**”). This proposal also is necessary to provide to ALJs and DAGs clear and concise language to reflect the correct action that would be taken by the Board if the discipline to be imposed on the licensee is public reproval.

4. Surrender License in Lieu of Revocation. This model language is needed when the licensee, after receiving notice of a possible revocation by the Board by way of an Accusation, proposes to settle the matter by surrendering their license (see settlement authority at Government Code section 11415.60). In addition, BPC section 118(b) authorizes the Board to continue disciplinary actions where a licensee’s surrender is done without the written consent of the Board. This model order is therefore necessary to provide clear instruction and notice to the licensee who agrees to surrender their license in lieu of revocation of the Board’s conditions and requirements for acceptance of a surrender. The proposal advises that the surrender would be effective as of the date of the Decision and requires respondent to relinquish and forward or deliver their license to practice and wall certificate to the Board. The proposal is necessary to provide a deadline of ten days, which in the Board’s experience is a reasonable amount of time for the licensee to comply, for relinquishing the license and wall certificate. The model order is also necessary to make clear to the licensee and the public that the license surrender, and Board acceptance of the surrender, constitutes the imposition of discipline against the licensee and becomes part of the licensee’s history with the Board. This is necessary to comply with BPC section 27(c)(9) (which requires public disclosure of all enforcement actions on the Internet) and the requirements of the California Public Records Act (Gov. Code §§ 6250 et

seq.-- see discussion above in section entitled “**Amend Section I, Introduction**”). The Board anticipates that ALJs, DAGs, and respondents will benefit by having standard language that could be included in a decision or stipulated settlement, and the public will be better informed and thereby benefit from clear language describing the implication of the discipline imposed.

Model Orders for Petition for Reinstatement

5. Grant Petition with No Restrictions on License. Following formal discipline, the APA authorizes licensees to petition the Board for reinstatement of a revoked or suspended license not less than one year from the effective date of the Board’s decision to revoke or suspend the license. (Gov. Code, § 11522.) This model order is necessary to make clear to the licensee/respondent and the public one of the possible outcomes of a licensee’s petition for reinstatement of a revoked or suspended license. In those cases where the Board agrees to grant the petition outright with no restrictions on the reinstated license, this model order would specify that the Board granted the petition for reinstatement of the license, and that it will be fully restored.

6. Grant Petition and Place Licensee on Probation. Following formal discipline, the APA authorizes licensees to petition the Board for reinstatement after a period of not less than one year after the effective date of the Board’s decision to revoke or suspend the license. (Gov. Code, § 11522.) Pursuant to the authority to stay any order under Government Code section 11519 discussed above, the Board may stay any order and place a license on probation with terms and conditions. This template language is necessary to provide ALJs and other interested parties notice of how to draft an order to reflect the Board’s intent to reinstate a license on probation pursuant to Section 11519’s authority. This model order is necessary to make clear to the licensee/respondent and the public the outcome of a licensee’s petition for reinstatement of a revoked or suspended license. This model order would specify that the Board granted the petition for reinstatement of the license, the license shall be reinstated and immediately revoked, stayed, and placed on probation with terms and conditions. This model order would be needed for circumstances where the petitioner has demonstrated they should be able to return to practice, but the Board determines the public would be better protected by monitoring the license through probation before restoring the license to an unrestricted license status.

7. Grant Petition and Place Licensee on Probation After Completion of Conditions Precedent. Following formal discipline, the APA authorizes licensees to petition the Board for reinstatement after a period of not less than one year after the effective date of the Board’s decision to revoke or suspend the license. (Gov. Code, § 11522.) This model order is necessary to make clear to the licensee/respondent and the public one of the possible outcomes of a licensee’s petition for reinstatement of a revoked or suspended license. This model order

would specify that once the Board granted the petition for reinstatement of the license, the license shall be reinstated after petitioner's completion of specified conditions in which examples are provided so ALJs and DAGs have a clearer understanding what can be required as a condition precedent to be satisfied before a license is reinstated. The order would allow an administrative law judge or the Board to require that an applicant meet certain conditions prior to issuance of a license to help ensure public protection and that minimum standards for licensure are met. Examples include paying restitution, cost reimbursement, completion of CE, completion of rehabilitation program, take the California Supplemental Examination, and/or specified sections of the Landscape Architect Registration Examination (LARE). All of these suggested terms are terms that, based upon the facts of the case, the Board believes would be helpful in rehabilitating the licensee and ensuring competency in the profession. This change is needed to ensure consistency in application and clarity regarding the Board's orders and would help make penalty determinations more effective and related to the violations alleged. The Board has had problems with different Administrative Law Judge interpretations of how to draft a proper condition precedent order, with the result being that the orders actually look more like conditions subsequent (condition is met after the license issues) rather than precedent (condition must be met before a license issues). To avoid possible mistakes in the Board's orders, this model language is being proposed as a guide to the users of the *Guidelines* when outright denial of a reinstated license is not warranted.

The model order also includes a different provision that upon completion of the conditions precedent, the license shall be reinstated and immediately revoked, stayed, and placed on probation with terms and conditions (with guidance on where to put the terms and conditions of probation in the order). This provision would be needed for circumstances where the petitioner has demonstrated they should be able to return to practice, but the Board determines the public would be better protected by monitoring the license through probation before restoring the license to an unrestricted status.

8. Deny Petition. Another possible outcome of a petition matter is outright denial of the petition. This model order would provide that the petition for reinstatement filed by the petitioner [blank space to insert name], is hereby denied. This proposed model language is necessary to specify the clear and concise language to be used by an ALJ drafting a proposed decision when the petition for reinstatement of the license is denied by the Board. This change is also needed to ensure consistency in the issuance and application of the Board's orders.

Model Orders for Petition to Revoke Probation

9. Revocation of Probation. When a licensee on probation has been found, following a formal proceeding under the APA, to have violated the terms of their

probation, the Board may order revocation of the licensee's probation. (See, e.g., *Goldsmith v. California State Bd. of Pharmacy* (1961) 191 Cal.App.2d 866, 873 petition to revoke probation is merely a continuation of the original Accusation case and board had continuing jurisdiction over the matter to revoke probation.) This model order is necessary to provide clear and concise language to be used when the Board has determined that the licensee's probation is revoked. This change is also needed to ensure consistency in the issuance and application of the Board's orders. This proposal also adds to the order notice that petitioner is not eligible to apply for reinstatement or reduction of penalty (sometimes petitioners plead both options to the Board) for one year from the effective date of the decision. This statement is necessary to provide notice to the licensee of the eligibility requirements for filing a new petition and the legal bar to petitioning the Board again before one year has elapsed, pursuant to Government Code section 11522.

10. Extension of Probation. When a licensee on probation has been found, following a formal proceeding under the APA, to have violated the terms of their probation, one possible outcome and alternative to revocation is that the Board may order the licensee's probation term to be extended from the time specified in the Board's original disciplinary Decision. This model order is therefore necessary to provide clear and concise language to be used when a licensee's probation is extended. This change is also needed to ensure consistency in the issuance and application of the Board's orders.

Model Orders for Applicants

11. Grant Application with No Restrictions on License. BPC section 488 authorizes the Board to consider a variety of actions following a hearing on a statement of issues for a possible denial of license, including granting the license upon completion of all licensing requirements. These model orders would help implement those various options. Following denial of a license and the applicant's subsequent challenge to that denial, the Board may grant the licensee's application with no restrictions. BPC section 5652 authorizes the Executive Officer to issue a license upon satisfactory examination and payment of the fee fixed by the Act. Further, there may be additional information that may need to be updated or submitted as part of the application (see Cal. Code regs., tit. 16, §§ 2610, 2611). This model order is therefore necessary to implement these requirements, provide adequate notice to the licensee that additional action may be needed prior to issuance of the license, and to provide clear and consistent language to be used in the Board's decision to grant the license application and issue the license upon successful completion of all licensing requirements, including payment of all licensure fees.
12. Grant Application and Place Licensee on Probation. Following denial of a license and the applicant's subsequent challenge to that denial, the Board may grant the

license application but determine the applicant should be monitored by the Board for public protection (see BPC section 488(a)(2)). This model order is necessary to provide clear and consistent language to be used in the Board's decision to grant the license application and issue the license upon successful completion of all licensing requirements, including payment of all licensure fees, with immediate revocation, stayed, and probation with specified terms and conditions. This model order also helps ensure that applicants have notice that specified licensing conditions (as discussed above under "Grant Application with No Restrictions on License") have to be met prior to issuance of the probationary license.

13. Grant Application and Place Licensee on Probation After Completion of Conditions Precedent. Following denial of a license and the applicant's subsequent challenge to that denial, the Board may grant the license application after the applicant satisfies certain conditions, such as completing criminal probation (see BPC section 488(a)(2), (4)). This model order is necessary to provide clear and concise language to be used in the Board's decision to grant the license application and issue the license upon successful completion of specified terms and conditions. Examples are provided so ALJs and DAGs have a clearer understanding what can be required as terms and condition precedent to be satisfied before a license is reinstated. Examples include paying restitution, cost reimbursement, completion of CE, completion of rehabilitation program, take the California Supplemental Examination, and/or specified sections of the LARE. All of these suggested terms are terms that, based upon the facts of the case, the Board believes would be helpful in ensuring the applicant is adequately rehabilitated before being issued an unrestricted license. This change is needed to ensure consistency in application and clarity regarding the Board's orders and would help make applicant orders and determinations more effective and related to the issues that serve as grounds for denial of the application. The Board has had problems with different Administrative Law Judge interpretations of how to draft a proper condition precedent order, with the result being that the orders actually look more like conditions subsequent (condition is met after the license issues) rather than precedent (condition must be met before a license issues). To avoid possible mistakes in the Board's orders, this model language is being proposed as a guide to the users of the *Guidelines* when outright denial of a license is not warranted.

The model order also includes a different provision that upon completion of the conditions precedent, including payment of all fees, the license shall be issued, immediately revoked, stayed, and placed on probation with terms and conditions (with guidance on where to put the terms and conditions of probation in the order). This provision would be used for circumstances where the applicant has demonstrated they should be able to practice, but the Board determines the public would be better protected by monitoring the license through probation before issuing a permanent, unrestricted license. The prompt about list the standard and optional conditions of probation is necessary to remind ALJs and

DAGs of the need to specify those terms and conditions in the order, and where the Board recommends that they be placed in the order for easier comprehension.

14. Deny Application. This model order would provide for the circumstance when an applicant is being denied licensure (see BPC section 488(a)(3)). This model order is necessary to provide clear and concise language to reflect the correct action that would be taken by the Board if the application is denied, and no license is issued. This change is also needed to ensure consistency in the issuance and application of the Board's orders.

15. Civil Penalty. This model order would reiterate the civil penalties that can be used in lieu of revocation that are described in BPC section 5678. This language duplicates the language of BPC section 5678 so that this information concerning the civil penalties that the Board may assess in certain circumstances is included in the *Guidelines* and placed here for clarity. This change is also needed to ensure consistency in the issuance and application of the Board's orders and to help ensure that the orders accurately reflect the requirements in BPC section 5678. A note is added to provide notice to the user that this term should only be used in cases involving the violations in BPC section 5678.

Amend Section VI, Conditions of Probation

Purpose: The purpose of this proposal is to amend the *Guidelines* to remove the word "Standard" from the section title. Additionally, minor, non-technical revisions will be made throughout all conditions of probation along with the adjustment of condition numbers to accommodate for conditions that have been added or removed.

Anticipated Benefits: The Board and Committee anticipate that the public and landscape architect licensees will benefit from having this heading clarified in the *Guidelines*, which should make it easier to locate relevant information.

Rationale: The proposal is necessary to remove the word "Standard" from the section title to create a main heading for all conditions so that standard conditions and optional conditions are under one section. Minor, non-technical revisions will be made throughout all conditions of probation for clarity and condition numbers will be adjusted to accommodate for conditions that have been added or removed for organizational purposes.

Add Section VI, Conditions of Probation, Subsection A. Standard Conditions & reservation of discretion to waive conditions

Purpose: The purpose of this proposal is to amend the Disciplinary *Guidelines* to add a subsection heading and title of the "Standard Conditions," and clarify the Board reserves the discretion to waive conditions of probation.

Anticipated Benefits: The Board and Committee anticipate that the public and landscape

architect licensees will benefit from clarifying the *Guidelines* and specifically clarifying that the Board has the discretion to waive any conditions of probation.

Rationale: The proposal is necessary to add a subsection heading and title of the “Standard Conditions” to indicate the standard conditions of probation and their descriptions, which will clarify the *Guidelines* and improve readability. In accordance with the Committee’s Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to implement that collaborative effort and provide consistency between the proposed changes to the Board’s *Disciplinary Guidelines* and the Committee’s *Guidelines*. This includes adding language explaining that the Board reserves the discretion to waive any conditions of probation on a case-by-case basis. While section 2680’s text already indicates that the Board has sole discretion to determine whether there should be deviations in its recommended penalties, this statement provides further notice to the users of the *Guidelines* and reinforces that the Board is the decisionmaker and may make exceptions to its policy guidelines on a case-by-case basis. This would include the use of any condition of probation, including standard terms of probation. At the request of LAD, additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Amend Section VI, Conditions of Probation, Subsection A. Standard Conditions, Standard Condition 1 (Obey All Laws)

Purpose: The purpose of this proposal is to amend the *Guidelines* to specify that complying with all laws includes complying with conditions of probation.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licenses, and Board staff will benefit from clarifying the terms of probation and providing consistency between the proposed changes to the Board’s *Disciplinary Guidelines* and Committee’s *Guidelines*.

Rationale: In accordance with the Committee’s Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to implement that collaboration between the Board’s *Disciplinary Guidelines* and the Committee’s *Guidelines* and would require a probationer to obey all federal, state, and local laws and regulations and to comply with all conditions of probation. These terms are consistent with and based on the proposed changes to the Board’s *Disciplinary Guidelines*, terms of probation, that were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 17.) The Committee reviewed and approved these terms at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 18.)

In the previous edition of the *Guidelines*, probationers were only required to obey all federal, state, and local laws and regulations governing the practice of landscape architecture. All landscape architect licensees currently have a duty to obey the laws and regulations governing the practice of landscape architecture and keeping the existing language would place probationers on the same level as undisciplined licensees.

Probationers have already violated provisions of the laws and regulations governing the practice of landscape architecture warranting disciplinary action against their landscape architect licenses; therefore, probationers should be held to a higher standard of conduct to effectively protect the health, safety, and welfare of the public. Probation is a period of time for a probationer to prove to the Board that they are rehabilitated from a previous violation of law, and a violation of any law while on probation, whether related to the practice of landscape architecture or not, undermines a probationer's showing of rehabilitation. As a result, this amendment is necessary to provide clear notice to the probationers that the Board will consider it a violation of the "Obey All Law" provision to not comply with all conditions of probation.

Amend Section VI, Conditions of Probation, Subsection A. Standard Conditions, Standard Condition 2 (Submit Quarterly Reports)

Purpose: The purpose of this proposal is to amend the *Guidelines* to remove the current "Quarterly Report of Compliance form (10/98)" and replace it with a list that includes the contents of the form in a narrative format. This proposal would specify that the quarterly written report needs to provide: (1) the respondent's full legal name, telephone number, and address of record, (2) the name of the firm respondent works for, respondent's title, firm address and telephone number, and (3) a statement of all of Respondent's landscape architecture activities during the reporting period. The statement shall include: the client's name, address and telephone number, project title/address, project description, project's start and end date and a description of Respondent's involvement. Section No. 4 would require the Respondent to provide a list of activities related to the practice of landscape architecture by activity and date; and, Section No. 5 would require the Respondent to provide a certification under penalty of perjury that the information provided in the report is true and correct.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from seeing requirements set forth in an itemized list rather than a prescribed form, which would also allow probationers to submit information in a variety of other formats.

Rationale: In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to implement that collaboration with the goal of providing consistency between the proposed changes to the Board's *Disciplinary*

Guidelines and the Committee's *Guidelines* and would remove the incorporation by reference of the current version (10/98) of the Board's Quarterly Probation Report of Compliance form and all information requested in the form is added here. While staff may provide convenience forms to probationers containing this information, providing the information in an itemized list allows for alternative methods of delivering the information to the Board and Committee, including on-line submissions. The information required in a quarterly report is the same information that had been requested in the form previously attached at the end of the *Guidelines*. Knowing this basic information allows the Board to investigate or otherwise supervise the respondent's landscape architect activity while on probation. The Board has also not received any indication that probationers are unclear or confused about the information that needs to be reported.

In the Board's experience, this information is relevant and necessary to adequately investigate and monitor a licensee's compliance with the Board's probationary orders, for the following reasons:

Item No. 1 (full legal name, telephone number and address of record): is needed for identification purposes and to ensure that the Board has the most accurate contact information. Accurate information is important to ensure timely and accurate communications, investigation of compliance with the terms of probation and service of legal process on the probationer, if necessary.

Item No. 2 (name of firm respondent works for, respondent's title, firm address and telephone number): is needed for identification purposes and to ensure that the Board has the most accurate contact information. Accurate information is important to ensure timely and accurate communications, investigation of compliance with the terms of probation and service of legal process on the probationer, if necessary. In addition, this information would be used to ensure that the Board is aware of and can investigate all locations where a respondent engages in the practice of landscape architecture to help ensure compliance with the "Obey All Laws" term of probation (including compliance with the standards contained in the Act).

Item No. 3 (a statement of all respondent's landscape architecture activities during the reporting period, including specified client and project identifying information): is needed to ensure that the Board is aware of and can investigate all locations where a respondent engages in the practice of landscape architecture and information related to consumers who are being provided landscape architecture services. Further, this information would assist the Board in investigation of compliance with probation and to help ensure compliance with the "Obey All Laws" term of probation (including compliance with the standards contained in the Act).

Item No. 4 (a list of any other of respondent's activities related to the practice of landscape architecture by activity and date): is needed to ensure that the Board is aware of and can investigate activity related to the practice. Further, this information would assist the Board in investigation of compliance with probation and to help ensure

compliance with the “Obey All Laws” term of probation (including any “substantially related” act related to the practice per BPC section 141).

Item No. 5 (certification under penalty of perjury that the information provided in the report is true and accurate): is needed to for the following reasons. Certification under penalty of perjury helps to ensure that the documentation contains truthful, factual representations made in good faith. (See e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [judicial explanation for the use of certifications under penalty of perjury: “The whole point of permitting a declaration under penalty of perjury, in lieu of a sworn statement, is to help ensure that declarations contain a truthful factual representation and are made in good faith.”].) Accordingly, the certification under penalty of perjury in the form is necessary to ensure that applicants submit truthful and accurate information to the Board.

In addition, the certification under penalty of perjury helps ensure the reliability of the statements to the Board (since certifying under penalty of perjury can have a deterrent effect on those who may be considering not providing true, accurate or complete information), and provides the Board with the option of seeking sanctions and referring the matter to law enforcement in the event that such information is not true, complete or accurate. [“The oath or declaration must be in such form that criminal sanctions of perjury might apply where material facts so declared to be true, are in fact not true or are not known to be true.” *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [holding modified by *Laborde v. Aronson* (2001) 92 Cal.App.4th 459.]

These proposed amendments are consistent with and based on proposed amendments to the Board’s *Disciplinary Guidelines*, and the terms of probation, that were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 17 and Attachment.) The Committee reviewed and approved what was developed at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 18.) At the request of LAD, additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Amend Section VI, Conditions of Probation, Subsection A. Standard Conditions, Standard Conditions 3 & 4 (Personal Appearances & Cooperate During Probation)

Purpose: The purpose of this proposal is to amend the language in the *Guidelines* to maintain internal consistency, and to provide consistency with the proposed changes to the Board’s *Disciplinary Guidelines* for architects.

Anticipated Benefits: The Board and Committee anticipate that the public and landscape architect licensees will benefit from clarifying the *Guidelines*.

Rationale: The proposal is necessary to remove “the” in front of the term “respondent” in

both Standard Conditions 3 & 4 to correct the grammar, and In Standard Condition 4, to remove gendered language, which will clarify the *Guidelines* and improve readability.

Add Section VI, Conditions of Probation, Subsection A. Standard Conditions, Standard Condition 5 (Maintain Active and Current License)

Purpose: The purpose of this proposal is to add a standard condition of maintaining an active and current license because rehabilitation and compliance with probation is contingent on the Respondent being actively licensed for the Board to effectively monitor and evaluate Respondent in the practice of landscape architecture. This proposal would also provide that failure to pay all renewal fees prior to respondent's license expiration constitutes a violation of probation. Finally, this new provision would require a license, as a condition of probation, to renew a license that is expired within 30 days of the effective date of the decision.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from being provided notice of these new terms, clarifying the Board's recommended standard terms of probation and providing consistency in the form and content of the Board's orders.

Rationale: In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to implement that collaborative effort and to provide consistency between the proposed amendments to the Board's *Disciplinary Guidelines* and the Committee's *Guidelines* and would add a condition for the licensee to maintain an active and current license to protect consumers by ensuring the Board can continue to monitor the Respondent in the practice of landscape architecture and consistently apply and enforce of the laws and regulations under the Board's jurisdiction. In the Board's experience, licensees who are placed on probation may attempt to evade compliance with probation, and thus fail to demonstrate rehabilitation over an extended period of time, by simply allowing their licenses to lapse or expire prior to or during the term of probation. The addition of this term will prevent such evasion attempts and allow the Board to effectively monitor a probationer's compliance and establish rehabilitation by monitoring a probationer in active practice and while they are under these practice restrictions.

Further, requiring a licensee to pay all renewal fees and renew a license (if already expired at the time of the Board's decision) as a condition of probation will help ensure that the Board can actively monitor and review a probationer's progress and compliance with the Board's order. Again, BPC section 118(b) authorizes the Board to continue any disciplinary proceeding and take disciplinary action despite the expiration of the license, as follows:

The suspension, **expiration**, or forfeiture by operation of law **of a license issued by a board in the department**, or its suspension, forfeiture, or cancellation by

order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground. (Emphasis added.)

As a result, this provision is necessary to implement this legal authority, and make clear to the regulated community the Board's authority to take further action against the license if a licensee fails to comply with this term and condition of probation.

The condition is consistent with and based on proposed changes to the Board's *Disciplinary Guidelines*, terms of probation, that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 18.) The Committee reviewed and approved this language at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 19.) At the request of LAD, additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Add Section VI, Conditions of Probation, Subsection A. Standard Conditions, Standard Condition 6 (Notification of Changes to Address and/or Telephone Number)

Purpose: The purpose of this proposal is to amend the *Guidelines* to add a standard condition to notify the Board of contact information changes pertaining to a Probationer. The proposal is also intended to provide consistency in the form and content of the Board's orders.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from receiving advanced notice of this new term and clarifying the terms of probation that should be used in every case.

Rationale: In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to implement that collaborative effort by providing consistency in the proposed changes between the Board's *Disciplinary Guidelines* and the Committee's *Guidelines*. This proposal would add a condition to notify the Board in writing of any changes to address of record and/or telephone number for the Board within 10 calendar days of such change. This will enable the Board to have current and accurate information regarding the Probationer, which will help ensure

timely communications between the Board and the probationers and prompt follow-up and investigation of compliance with the terms and conditions of probation. In the Board's experience, ten days is sufficient time for a licensee to communicate this information to the Board and licensees have a variety of methods of providing that information in such a timeframe (e.g. electronically or by mail).

These terms are consistent with and based on the Board's *Disciplinary Guidelines*, terms of probation, that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 18.) The Committee reviewed and approved these terms at its July 13, 2017 meeting, (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved these terms at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes)

Amend Section VI, Conditions of Probation, Subsection A. Standard Conditions, Standard Condition 7 (Tolling for Out-of-State Practice, Residence or In-State Non-Practice)

Purpose: The purpose of this proposal is to amend the *Guidelines* to re-designate the term from "5" to "7," to clarify that if a probationer ceases to practice in California, their probation will be tolled, but they are not relieved of the obligation to maintain a current and active license and it will be a probation violation for a probationer's license to remain tolled due to this condition for more than five years. This proposal also adds a sentence that specifies that a respondent's probation is tolled when they cease practicing in California. Current provisions that permit respondents to be relieved of certain terms of probation during tolling and then allow probation to resume when respondents resume practice in California would be deleted from this term of probation. Instead, the Board proposes to add a requirement to this term that "periods of non-practice do not relieve Respondent of the responsibility to comply with the terms and conditions of probation."

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from further explanation regarding how tolling works during probation and providing consistency between the Board's proposed changes to its *Disciplinary Guidelines* and Committee's *Guidelines*.

Rationale: Current regulation condition number 5 requires that during probation, a probationer must inform the Board within ten (now being changed to "10" for ease of comprehension) calendar days if respondent should leave California to reside or practice outside of California or for any reason stops practicing landscape architecture in California. The condition number will be updated from "5" to "7" because additional standard conditions are being added to the *Guidelines* and the Board proposes to add an "s" to the end of "stop" for grammatical reasons.

Tolling is a difficult legal concept for many probationers to understand, so the Board is adding an additional sentence to help probationers understand that their probation is

tolled “when they cease practicing in California.” This will provide better guidance on the factual “trigger” for when probation is tolled. The 30-day non-practice period would be retained; however, the word “thirty” is struck and replaced with “30” for easier comprehension. This information will also assist the Board in accurately tolling probation for periods of non-practice within the State of California.

This proposal would strike the sentences that permit all provisions of probation (excluding quarterly reporting requirements, examination requirements, and education requirements) to be held in abeyance until respondent resumes practice and recommence on the effective date of resumption of practice. These provisions are being eliminated because they allow licensees to evade the most serious aspects of probation, including obeying all laws, by simply moving out of state or not practicing. Instead, the Board proposes to add a requirement that clearly states that periods of non-practice do not relieve Respondent of the responsibility to comply with the terms and conditions of probation. This will help eliminate this compliance loophole and ensure consistent treatment of all probationers and active monitoring by the Board for the protection of the public.

This condition restates the requirement that a probationer maintain an active and current landscape architect license with the Board and clarifies that tolling does not relieve the probationer of that obligation. In the Board’s experience, some probationers believe that nonpractice or moving to another state somehow eliminates the need to keep an active license to comply with probation. This sentence would help resolve that possible confusion.

Existing regulation does not explain the consequences of allowing tolling to continue with the possible implication that a licensee could remain tolled indefinitely. This proposal would eliminate that uncertainty and confusion by stating that it is a violation of probation to allow probation to remain tolled for a period exceeding a total of five years. This would allow the Board to effectively monitor the probationer by limiting the amount of time probation may be tolled to no longer than a total of five years. In the Board’s experience, five years is a sufficient and reasonable amount of time for a licensee to determine whether to retire, resume practice in California, petition for termination of probation or request voluntary surrender of the license (all possible methods for resolving status without the Board resorting to disciplinary action to enforce its order). Further, this change would make it clear that the Board considers it a violation of probation to not resume practice within 5 years and would help the regulated community understand how such nonpractice violations would be managed. As a result, this change is necessary to implement how the Board would respond to a licensee who fails to resume practice in California for a total of five years handle (i.e., any action to revoke probation for this violation would be noticed in a petition to revoke probation or accusation and served on the probationer in compliance with the Administrative Procedure Act (Gov. Code, § 11500 et seq.) and would include a right to a hearing).

In accordance with the Committee’s Strategic Plan, Fiscal Year 2013/2014 through

2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to implement this collaborative effort, for the reasons described below. These terms are consistent with and based on the Board's *Disciplinary Guidelines*, terms of probation, that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 18.) The Committee reviewed and approved these terms at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, pp. 19-20.) At the request of LAD, additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting. (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Amend Section VI, Conditions of Probation, Subsection A. Standard Conditions, Standard Condition 8 (Violation of Probation)

Purpose: The purpose of this proposal is to amend the *Guidelines* to re-designate this term from “6” to “8,” remove one of two uses of the phrase “until the matter is final” for grammatical reasons (it’s duplicative) and make other grammatical changes to this section (“which” to “that”) to make the sentence structure easier to read and understand.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from clarifying the terms of probation and providing consistency between the Board's *Disciplinary Guidelines* and Committee's *Guidelines*.

Rationale: This proposal would remove and add words to the sentence that states that if an accusation or petition to revoke probation is filed against a probationer, or the matter is referred to the Attorney General's (AG) office, prior to the conclusion of the probationary period, the Board shall have continuing jurisdiction, and the probationary period shall be extended until the matter is final. The use of the phrase “until the matter is final” two times is redundant, and one use will be removed for clarity. The condition number will be updated from “6” to “8” because additional standard conditions will be added to the *Guidelines*. These terms are consistent with and based on proposed changes to the Board's *Disciplinary Guidelines*, terms of probation, that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, pp. 18-19.) The Committee reviewed and approved these terms at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 20.)

Add Section VI, Conditions of Probation, Subsection A. Standard Conditions, Standard Condition 9 (License Surrender While on Probation)

Purpose: The purpose of this proposal is to amend the *Guidelines* to include a condition for license surrender while on probation to provide the procedure if a probationer decides to cease practice for either retirement, health reasons, etc. The condition

number will be updated from “7” to “9.” The proposal would include requirements for the probationer to submit the request in writing and include name, license number, case number, address of record, and an explanation of the reason(s) why the probationer seeks to surrender their license. The proposal also provides a reservation of rights clause, which would allow the Board the right to continue probation while it considers whether to grant the respondent’s request to surrender their license. The proposal further provides that, upon formal acceptance, respondent has 15 days to deliver their wall certificate and shall no longer practice landscape architecture. This proposal would also notify a respondent they would no longer be subject to the terms and conditions of probation, the surrender of Respondent’s license shall be deemed disciplinary action; and, if Respondent re-applies for a landscape architect’s license, the application shall be treated as a petition for reinstatement of a revoked license.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from having advanced notice of the Board’s requirements for accepting a surrender, clarifying the terms of probation and providing consistency in the form and content of the Board’s orders.

Rationale: In accordance with the Committee’s Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to implement that collaborative effort by providing consistency between the Board’s proposed changes to its *Disciplinary Guidelines* and the Committee’s *Guidelines*.

This proposal would add a condition with requirements for acceptance of a license surrender while on probation. This will allow the probationer to request to terminate probation in the event the licensee is unable to complete probation due to various circumstances, however the probationer cannot surrender their license in order to avoid the requirements of their probation. Currently, there is no requirement specifying what is needed for the Board to process a request for surrender, making it unclear to the public and the regulated community regarding what standards must be met to implement a voluntary surrender. This proposal would set criteria for what the Board would need to process a surrender and clarifies, in accordance with Business and Professions Code section 118, that the Board does not lose jurisdiction to act on the license and that a probationer is not relieved from complying with probation until the Board acts to accept their surrender. The Board maintains the discretion to accept the probationer’s surrendered license under the authority of BPC section 118 (see discussion above “Surrender License in Lieu of Revocation”). This proposal is therefore necessary to set forth those minimum requirements for the Board’s consent to surrender the license. The Board further clarifies those conditions and explains the legal effect of such a surrender on the license by including the following statements: If the Board accepts the surrender of the license, the probationer must surrender their wall certificate and cease practice, they will no longer be subject to the terms and conditions of probation, the surrender will be treated by the Board as a disciplinary action, and if they re-apply for a license, it will

be treated as a petition for reinstatement of a revoked license.

The condition number will be updated from “7” to “9” because additional standard conditions will be added to the *Guidelines*. These terms are consistent with and based on the Board’s proposed changes to its *Disciplinary Guidelines*, terms of probation, that were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, pp. 18-19.) The Committee reviewed and approved these terms at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 20.) At the request of LAD, additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting. (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Amend Section VI, Conditions of Probation, Subsection A. Standard Conditions, Standard Condition 10 (Completion of Probation)

Purpose: The purpose of this proposal is to amend the *Guidelines* to re-designate the condition number from “7” to “10.”

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from providing accurate numbering of its headings.

Rationale: The proposal is necessary to update the condition numbering because additional standard conditions are being added to the *Guidelines*.

Add Section VI, Conditions of Probation, Subsection A. Standard Conditions, Standard Condition 11 (Cost Reimbursement)

Purpose: The purpose of this proposal is to amend the *Guidelines* to move this condition from an optional condition to a standard condition of probation and to make language changes that provide consistency with a similar provision in proposed changes to the Board’s *Disciplinary Guidelines* for architects. No existing order language would be altered, but the language would be moved from the list of optional terms to the list of standard terms of probation.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from providing consistency with the LATC’s policy to prioritize seeking cost reimbursement.

Rationale: In all disciplinary cases, the Board seeks reimbursement of the investigative and enforcement costs associated with the case in accordance with BPC section 125.3. BPC section 125.3 permits the Board to recover “reasonable costs of the investigation and enforcement of the case.” Since BPC 125.3’s authority is discretionary (cost recovery “may” be ordered by an ALJ “upon request” from the Board) and to address questions from stakeholders regarding the Board’s position, the Board has adopted a

policy to make it clear that it expects such cost reimbursement to be requested in every case and to explain the Board's rationale for taking such a policy position. As a result, the proposal is necessary to update the condition so that it is reflected as a standard condition of probation instead of an optional condition to better align the *Guidelines* with LATC's policy to prioritize seeking cost reimbursement so that the wrongdoer, not all licensees, bears the costs of the violation. By making this term a standard term, rather than an optional one, cost recovery would also help the Committee and the Board to maintain existing resources for its statutorily mandated purpose of protecting the public from unprofessional, incompetent and dishonest licensees. The Board is retaining the existing language content (currently listed as item no. 11 in the Optional terms), which in the Board's experience has made it easier for licensees to understand the investigative and prosecution costs owed to the Board and the conditions under which that money must be paid to the Board. The Board retains the option language at the end of the term to provide consistent model language and examples of how to draft payment schedule terms in the event that the licensee expresses a need for additional time to comply or in hardship cases.

In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal implements that collaborative effort to provide consistency between the Board's proposed changes to its *Disciplinary Guidelines* and the Committee's *Guidelines*. The condition number will be "11" because it is added as a standard condition to the *Guidelines*. This language is consistent with and based on the proposed changes to the Board's *Disciplinary Guidelines*, terms of probation, that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 21.) The Committee reviewed and approved this language at its August 4, 2021 meeting. (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Amend Section VI, Conditions of Probation, Subsection B. Optional Conditions

Purpose: The purpose of this proposal is to amend the *Guidelines* to make Section "VII. Optional Conditions of Probation" into a Subsection "B. Optional Conditions" under the new Section "VI. Conditions of Probation."

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from being provided consistently numbered and organized headings in the *Guidelines*.

Rationale: The proposal is necessary to make the section on Optional Conditions of Probation into a subsection of "Conditions of Probation" for organizational purposes, clarity, and improved readability.

Amend Section VI, Conditions of Probation, Subsection B. Optional Conditions, Optional Condition 12 (Suspension)

Purpose: The purpose of this proposal is to amend the *Guidelines* to re-designate the condition number from “8” to “12,” and replace the word “the” with “this.”

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from clarifying which decision the *Guidelines* is referring to in this section and improving comprehension.

Rationale: The proposal is necessary to update the condition numbering because additional conditions will be added to the *Guidelines* and to replace the word “the” with “this” for clarity in that the condition is pertaining to the current Decision.

Add Section VI, Conditions of Probation, Subsection B. Optional Conditions, Optional Condition 13 (California Supplemental Examination)

Purpose: The purpose of this proposal is to amend the *Guidelines* to add two options that require a respondent pass the California Supplemental Examination (CSE) exam. Option 1 requires respondent pass the CSE exam within six months of the effective date of the Decision and adds if a respondent does not pass within six months, they must notify the Board and cease to practice until they have passed the CSE exam, submitted proof to the Board, and been notified by the Board they may practice. Option 1 clarifies that tolling provisions apply during non-practice due to failure to pass the CSE exam, that it will be deemed a violation of probation for respondent’s probation to remain tolled for more than three years for failure to pass the CSE exam. Option 2 requires, before a respondent can resume practice, they must pass the CSE exam within two years of the effective date of the Decision, and the probation period will not begin until respondent passes the CSE exam, submits proof to the Board, and has been notified by the Board they may practice. These two options are proposed to provide consistency with the Board’s *Disciplinary Guidelines* for architects.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from having specified terms that make it clear the expectation to prove competency to take and pass the CSE exam the terms of probation and providing consistency between the Board’s *Disciplinary Guidelines* and Committee’s *Guidelines*.

Rationale: The purpose of a licensing examination is to identify persons who possess the minimum knowledge and experience necessary to perform tasks on the job safely and competently. The CSE is a written examination of subject areas that are unique to the practice of landscape architecture in California (see Cal. Code Regs., tit. 16, § 2621). This term would be necessary for rehabilitation for those cases where serious practice deficiencies or incompetence are involved in practice, specifically as it relates to practice in California. This type of testing requirement would help ensure that the licensee is still able to meet minimum standards for the practice of landscape architecture in California for the protection of the public. Depending on facts of the case

and what would best meet the rehabilitative needs of the Board, the Board proposes two options.

For those probationers for whom the Board believes are a lesser risk to the public and should be allowed to continue to practice while they demonstrate competency through the taking and passing of an examination, option 1 is proposed. This option permits the licensee to continue practicing after issuance of the probationary order (condition subsequent) and only would require them to cease practice if they fail to pass the CSE within six months.

The Board decided it is reasonable to allow a respondent six months to pass the CSE, since, in the Board's experience it is sufficient time to study or prepare for the exam while ensuring the Board can monitor and investigate any potential practice issues in the interim. To ensure compliance and appropriate monitoring of respondent's compliance, Option 1 requires respondent to notify the Board that they have failed to pass the exam. Since failure to pass the exam raises competency and knowledge concerns, the respondent would be further required to cease practice until they pass the exam and have been notified by the Board that they may resume practice.

Option 1 also clarifies it is a violation of probation for a probation term to remain tolled for failure to pass the CSE and provide proof to the Board for more than three years, and the probationer is responsible for all costs of the exam. The Board decided that for the protection of the public, a probationer's failure to pass the CSE within three years must be considered a violation of probation. In the Board's experience, a licensee's failure to pass the exam within this time frame evinces serious practice and knowledge deficiencies that are not likely to be addressed even if a longer practice period were permitted. As a result, failure to pass the examination would be a violation of probation and therefore grounds for revocation of the license.

Option 1 further provides that tolling provisions contained in paragraph 7 (of the standard terms) apply during any period of non-practice due to the probationer's failure to pass the required examination within six months of the effective date of the Decision. This provision is necessary to avoid confusion about whether ceasing practice qualifies as "tolling", and further provides notice to the affected licensee that if so tolled, the term of probation shall be extended by the period of time during which the probationer ceased practice. These terms are necessary to effectively monitor whether the licensee is competent to practice, while allowing the licensee sufficient time to prepare to take the examination.

For those probationers for whom the Board believes are a greater risk to the public and should not continue to practice while they demonstrate competency through the taking and passing of an examination (as specified), Option 2 is proposed. Option 2 (Condition Precedent) will provide an additional option for more egregious violations to require a probationer to cease practice until successfully completing the CSE, at which time they may resume practice and probation will commence. With this option, the probationer

must pass the CSE within two years of the effective date of the Decision, and the probationer is responsible for all costs of the exam. In the Board's experience, a licensee's failure to pass the exam within two years evinces serious practice and knowledge deficiencies that are not likely to be addressed even if a longer practice period were permitted. Since failure to pass the exam raises competency and knowledge concerns, the respondent would be further required to cease practice until they pass the exam and have been notified by the Board that they may resume practice.

Both options would contain a requirement that respondent is responsible for paying all costs of the examination. This proposed text is necessary to ensure that respondents who are subject to this condition have advance notice that they will be responsible for financial compliance with their probationary orders, specifically, the costs of taking and passing the exam.

These terms are consistent with and based on proposed changes to the Board's *Disciplinary Guidelines*, terms of probation, that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Underlying Data, Tab 12, *Disciplinary Guidelines*, pp. 19-20.) The Committee reviewed and approved these terms at its July 13, 2017 meeting. (See Underlying Data, Tab 16, *Disciplinary Guidelines*, p. 21.) At the request of LAD, additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting. (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to implement that collaborative effort by providing consistency between the Board's proposed changes to its *Disciplinary Guidelines* and the Committee's *Guidelines* and would add a condition requiring taking the CSE.

Amend Section VI, Conditions of Probation, Subsection B. Optional Conditions, Optional Condition 14 (Written Examination)

Purpose: The purpose of this proposal is to amend the *Guidelines* to re-designate this optional condition from "9" to "14," and to add two options that require a respondent pass specified sections of the Landscape Architect Registration Examination (LARE) exam. Option 1 requires the LARE exam sections to be passed within one year of the effective date of the Decision and adds in the time limitation of "within one year" to when a respondent must pass the LARE exam sections.

Option 1 (Condition Subsequent) clarifies that tolling provisions apply during non-practice due to failure to pass the LARE exam, and that it will be deemed a violation of probation for respondent's probation to remain tolled for a total of three years for failure

to pass the LARE exam.

Option 2 (Condition Precedent) requires that before a respondent can resume practice, they must pass specified sections of the LARE exam within two years of the effective date of the Decision. Option 2 clarifies that before resuming practice, respondent must pass and provide proof of passing the LARE exam sections to the Board and be notified by the Board that they may resume practice. Additionally, Option 2 clarifies that respondent is responsible for paying all costs of taking the LARE exam. These two options are proposed to be added to provide consistency with proposed changes to the Board's *Disciplinary Guidelines* for architects.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from consistent content and better understanding of the Board's expected compliance timeframes for compliance with this term and condition of probation.

Rationale: The condition number will be updated from "9" to "14" because additional conditions will be added to the *Guidelines*. The Landscape Architect Registration Examination (LARE) is the national licensing examination that measures knowledge, skills, and abilities as they relate to the profession of landscape architecture. This term would be necessary for rehabilitation for those cases where serious practice deficiencies or incompetence are involved in specified areas (the user would need to insert those provisions of the exam that need to be taken and passed based on the facts of the case). This type of testing requirement would help ensure that the licensee is still able to meet minimum standards for the practice of landscape architecture for the protection of the public. Depending on facts of the case and what would best meet the rehabilitative needs of the Board, the Board proposes two options.

Option 1 (Condition Subsequent -- to be met after issuance of the probationary order) will provide that if a probationer fails to pass the required examination within one year (new requirement) or two attempts (existing text), they are required to notify the Board and cease practice until they take and pass the examination, submit proof to the Board, and are notified by the Board that they may resume practice. The addition of the one-year time frame is necessary to ensure that probationers attempt to satisfy this requirement in a timely manner. This amendment is necessary because the time frames for such attempts are currently unspecified, leaving the entire probation term possibly in limbo as to when it would need to be executed.

In the Board's experience one year is sufficient time to study or prepare for passage of specified sections of the LARE exam, while ensuring the Board can monitor and investigate any potential practice issues in the interim. The Board retains the current language "within two attempts" as it has historically provided an accurate gauge of more serious competency issues and the resulting need to cease practice until minimum competency can be established to the Board's satisfaction through successful passage of the specified exam areas.

Option 1 also clarifies it is a violation of probation for a probationer to be unable to pass the LARE exam for more than three years, and the probationer is responsible for all costs of the exam. The Board decided that for the protection of the public, a probationer's failure to pass the CSE within three years must be considered a violation of probation. In the Board's experience, a licensee's failure to pass the exam within this time frame evinces serious practice and knowledge deficiencies that are not likely to be addressed even if a longer practice period were permitted. The addition of this requirement provides notice of this standard.

As noted on the previous page, Standard Condition 7 (Tolling for Out-of-State Practice, Residence or In-State Non-Practice) requires probation to be tolled if a probationer ceases practice and it may be unclear whether this cease practice order counts as a period of nonpractice according to that term. Therefore, this condition is being amended to explain that the term of probation shall be extended by the period of time during which the probationer has ceased practice. The term "paying" will be added to clarify that respondent is responsible for paying all costs. This proposed text is necessary to ensure that respondents who are subject to this condition have advance notice that they will be responsible for financial compliance with their probationary orders, specifically, the costs of taking and passing the exam(s).

For those probationers for whom the Board believes are a greater risk to the public and should not practice while they demonstrate continued competency through the taking and passing of specified portions of the LARE examination, Option 2 is proposed. Option 2 (Condition Precedent – compliance must be obtained prior to practice and start of probation) will provide an additional option for more egregious violations to require the Respondent to cease practice until successfully completing the Landscape Architects Registration Examination (LARE), at which time they may resume practice and probation will commence. With this option, the licensee must take and pass the exam within two years of the effective date of the decision. In the Board's experience, a licensee's failure to pass the exam within two years evinces serious practice and knowledge deficiencies that are not likely to be addressed even if a longer practice period were permitted. Since failure to pass the exam raises competency and knowledge concerns, the respondent would be further required to cease practice until they pass the exam and have been notified by the Board that they may resume practice. The addition of this requirement provides notice of this standard.

This option also clarifies that respondent is responsible for paying all costs. This proposed text is necessary to ensure that respondents who are subject to this condition have advance notice that they will be responsible for financial compliance with their probationary orders, specifically, the costs of taking and passing the exam(s).

In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015,

p. 17.) As such, the proposal is necessary to implement that collaborative effort by providing consistency between the proposed changes to the Board's *Disciplinary Guidelines* and the Committee's *Guidelines* and would clarify that tolling provisions apply during any period of non-practice.

These terms are consistent with and based on the Board's proposed changes to its *Disciplinary Guidelines*, terms of probation, that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 20.) The Committee reviewed and approved these terms at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, pp. 21-22.) At the request of LAD, additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting. (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Add Section VI, Conditions of Probation, Subsection B. Optional Conditions, Optional Condition 15 (Ethics Course)

Purpose: The purpose of this proposal is to amend the *Guidelines* to add a new section number 15, "ethics course" as an optional term and condition of probation. This proposal would require that, within 30 days of the effective date of the Decision, respondent must submit for prior Board approval a course in Ethics to be completed within the first year of probation. This proposal adds that: (1) failure to complete the required course within the first year of probation constitutes a violation of probation, (2) clarifies that respondent is responsible for submitting the specifics of the course for prior Board or designee approval; and, (3) respondent must pay all costs of the course.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from advance notice of these requirements, and from consistent content and forms of orders for this type of condition. Members of the public and probationers will also benefit from having a more informed and rehabilitated licensee as such training will help increase the likelihood that licensees will act ethically in the professional relationship.

Rationale: The Board proposes to add "ethics course [#15]" to provide notice to the users of the *Guidelines* that this is an optional term that may be considered in disciplinary orders of the Board for various types of violations (see cross-references throughout this document) based upon the facts of the case. Ethics help promote the basic tenets of the profession by codifying the fundamental beliefs of the profession and the common moral values the profession chooses to protect consumers and clients from harm in the professional relationship. In the Board's experience, ethics courses help focus probationers on understanding the fundamental causes of violations and help educate the probationer about how to act ethically in the professional relationship for the protection of the public. In the Board's view, this is key to helping to prevent the conduct that led to the violation from recurring and ensure that licensees can meet the minimum

standards for conduct in the profession. The addition of this optional term with its specified conditions is therefore necessary to help the Board implement these policy goals, and to assist probationers with a more effective rehabilitation effort.

Specifically, this proposal would require a respondent to provide the Board or its designee, for prior approval, a course in ethics that will be completed within the first year of probation. In the Board's experience, 30 days is a reasonable amount of time for a probationer to find an ethics course and submit it to the Board for approval. The approval may be done by the Board itself or a designee (e.g., Executive Officer or other delegated staff) for administrative efficiency and to help ensure a minimum of delay in review for the respondents. Prior approval is required by the Board to help ensure that the ethics courses selected are relevant to professional practice and would be evaluated on a case-by-case basis to ensure maximum relevancy to the violations alleged. The course would need to be completed during the first year of probation to ensure that the training is received as soon as possible and to provide the educational foundation for the remaining probationary period, if any.

Some probationers may believe that simply submitting a course for board approval or attending the course may be sufficient to satisfy this requirement. However, depending on the Board-approved course's requirements, the course provider may require self-assessment, testing or other interactive participation by the participants to complete the course. As a result, to make it clear to the respondents and users of the *Guidelines* that Board approval and compliance with this term is contingent on satisfactory course completion, the Board is specifying that failure to satisfactorily complete the required course within the first year of probation constitutes a violation of probation.

Finally, to ensure that respondents have notice of what their responsibilities are for obtaining board approval and paying for the approved course, the Board would specify that the respondent is responsible for submitting the specifics of the course for prior Board or designee approval, and must pay all costs of the course.

In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to implement that collaborative effort by providing consistency between the proposed changes to the Board's *Disciplinary Guidelines* and the Committee's *Guidelines*. These terms are consistent with and based on the Board's proposed changes to its *Disciplinary Guidelines*, terms of probation, that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 20.) The Committee reviewed and approved these terms at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 22.) At the request of LAD, additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See

September 10, 2021 Board Meeting Minutes).

Amend Section VI, Conditions of Probation, Subsection B. Optional Conditions, Optional Condition 16 (Continuing Education Courses)

Purpose: The purpose of this proposal is to amend the *Guidelines* to re-designate this condition from “10” to “16” and to make language changes that provide consistency with a similar provision in the Board’s *Disciplinary Guidelines* for architects.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from clarifying the terms of probation and providing consistency between the Board’s *Disciplinary Guidelines* and Committee’s *Guidelines*.

Rationale: In accordance with the Committee’s Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to implement that collaborative effort to provide consistency between the Board’s proposed changes to its *Disciplinary Guidelines* and the Committee’s *Guidelines*. Some respondents may believe that simply submitting a course for board approval or attending the course may be sufficient to satisfy this requirement. However, depending on the Board-approved course’s requirements, the course provider may require self-assessment, testing or other interactive participation by the participants to complete the course. As a result, to make it clear to the respondents and users of the *Guidelines* that Board approval and compliance with this term is contingent on successful course completion and passage of the course, the Board is specifying that a probationer must successfully complete and pass professional education courses to meet this requirement. The Board is adding the requirement that the course must be approved in advance to provide notice of this requirement to respondents and to help ensure respondents do not inadvertently take a course not ultimately approved by Board. The approval may be done by the Board itself or a designee (e.g., Executive Officer or other delegated staff) for administrative efficiency and to help ensure a minimum of delay in review for the respondents. The proposal also adds a requirement and notice that the probationer is responsible for submitting courses to the Board for approval and paying all costs associated with the fulfillment of this condition. This is necessary to help ensure that respondents have notice of what their responsibilities are for obtaining board approval and paying for the approved course.

In addition, the deadline to successfully complete the continuing education coursework will be updated from 100 days to one year prior to the termination of probation to ensure the Board has sufficient time to monitor compliance, and also to refer the matter to the AG’s office and file a petition to revoke probation prior to the conclusion of the probationary period in the event the probationer fails to comply with this condition of probation.

The condition number will be updated from “10” to “16” because additional conditions are being added to the *Guidelines*. These terms are consistent with and based on the Board’s proposed changes to its *Disciplinary Guidelines*, terms of probation, that were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, pp. 20-21.) The Committee reviewed and approved these terms at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 22.) At the request of LAD, additional amendments were made, and the Committee reviewed and reapproved this language at its August 4, 2021 meeting. (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Repeal Section VI, Conditions of Probation, Subsection B. Optional Conditions, Optional Condition 16 (Cost Reimbursement)

Purpose: The purpose of this proposal is to amend the *Guidelines* to repeal this term as an optional condition as it has been moved to the standard conditions and re-designated as standard condition number “11.”

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from having notice and a better understanding of the Board’s decision regarding collection of cost recovery in its disciplinary cases and will help ensure consistency in the content and form of the Board’s disciplinary decisions.

Rationale: In all disciplinary cases, the Board seeks reimbursement of the investigative and enforcement costs associated with the case in accordance with BPC section 125.3. BPC section 125.3 permits the Board to recover “reasonable costs of the investigation and enforcement of the case.” Since BPC 125.3’s authority is discretionary (cost recovery “may” be ordered by an ALJ “upon request” from the Board) and to address questions from stakeholders regarding the Board’s position, the Board has adopted a policy to make it clear that it expects such cost reimbursement to be requested in every case and to explain the Board’s rationale for taking such a policy position. However, having this term as an “optional” condition of probation in the *Guidelines* is inconsistent with the Board’s policy of seeking costs authorized by BPC section 125.3 in every case. As a result, it is necessary to delete this condition from the optional conditions section of the *Guidelines* and move it to the standard conditions section. Such a change would implement the Board’s stated policy position by requiring cost recovery in every disciplinary case.

Amend Section VI, Conditions of Probation, Subsection B. Optional Conditions, Optional Condition 17 (Restitution)

Purpose: The purpose of this proposal is to amend the *Guidelines* to re-designate this condition from “12” to “17,” add a requirement that all restitution be completed no later than one year before the termination of probation; and, add a note citing to BPC section 143.5, the limitations on restitution in cases that are based on a complaint that also

been the subject of a civil action that has been settled for monetary damages.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from having notice of the Board's requirements for restitution and the limitations regarding restitution payments prescribed by law, as well as providing consistency between proposed changes to the Board's *Disciplinary Guidelines* and Committee's *Guidelines*.

Rationale: In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to provide consistency between proposed changes to the Board's *Disciplinary Guidelines* and the Committee's *Guidelines* and would require the payment of restitution no later than one year prior to the termination of probation. The previous edition of the Committee's *Guidelines* required the completion of restitution prior to the termination of probation. This condition will be updated to help ensure more timely restitution payments to consumers and to help ensure the Board has sufficient time to investigate this violation, refer the matter to the AG's office and file a petition to revoke probation prior to the conclusion of the probationary period in the event the probationer fails to comply with this condition of probation.

The note section pertaining to BPC section 143.5 is being added to indicate the Board's limitations in requiring restitution as an optional condition of probation. BPC 143.5 prohibits the Board from imposing restitution as a condition of probation when the Board's case is based upon on a complaint or report that has also been the subject of a civil action and that has been settled for monetary damages providing for full and final satisfaction of the parties in the civil action. To avoid possible legal errors in its decisions, the Board provides this notice of section 143.5's limitations to the users of the *Guidelines*, including ALJs who prepare decisions and orders for the Board. The condition number will also be updated from "12" to "17" because additional conditions are being added to the *Guidelines*. These terms are consistent with and based on proposed changes to the Board's *Disciplinary Guidelines*, terms of probation, that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 21.) The Committee reviewed and approved these terms at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, pp. 22-23.)

Amend Section VI, Conditions of Probation, Subsection B. Optional Conditions, Optional Condition 18 (Criminal Probation Reports)

Purpose: The purpose of this proposal is to amend the *Guidelines* to re-designate this term from "13" to "18," remove the gendered reference to "he/she," and specify in the introductory phrase that this condition would apply "if respondent is convicted of a crime".

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public,

landscape architect licensees, and Board staff will benefit from clearer direction about when this term may apply and consistent numbering and organization of this section.

Rationale: In accordance with the Committee’s Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to implement this collaborative effort by providing consistency between proposed changes to the Board’s *Disciplinary Guidelines* and the Committee’s *Guidelines* and would clarify that a probationer is required to provide the Board with information regarding their standard conditions of criminal probation, copies of all criminal probation reports, and the name of their probation officer in the event of conviction of any crime. The existing language does not specify the initial action necessary to prompt the submittal of the required reports regarding criminal probation and this has created confusion for respondents and other users of the *Guidelines*. As a result, the Board is adding notice to the users of the *Guidelines* that this term would be triggered, and the reports submitted, if the respondent is “convicted of any crime.”

The proposal is also necessary to make changes to the use of the gendered pronoun “he/she” as discussed in greater detail in the section entitled “Modifications of Pronouns” herein. The condition number will be updated from “13” to “18” because additional conditions will be added to the *Guidelines*. These terms are consistent with and based on proposed changes to the Board’s *Disciplinary Guidelines*, terms of probation, that were developed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 21.) The Committee reviewed and approved these terms at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 23.) At the request of LAD, additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting. (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Repeal Section VI, Conditions of Probation, Subsection B. Optional Conditions, Optional Condition 14 (Relinquish License and Wall Certificate)

Purpose: The purpose of this proposal is to amend the *Guidelines* to repeal this section and remove it from consideration as an optional term of probation.

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from removal of this term as an optional term as its use has caused confusion regarding when this term should be used in the Board’s disciplinary decisions and orders.

Rationale: In accordance with the Committee’s Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015,

p. 17.) As such, the proposal is necessary to implement that collaborative effort by providing consistency between proposed changes to the Board's *Disciplinary Guidelines* and the Committee's *Guidelines* and would remove the condition to relinquish landscape architect license and wall certificate.

The repeal of this provision is necessary because this is a condition that should be used only in cases where the license is revoked, surrendered or practice is otherwise suspended. In those cases, it would be appropriate to require relinquishment of all indicia of licensure since the respondent no longer has legal authority to practice from the Board. However, as currently written, this condition could and has been used in probationary orders that do not include suspension or cessation of practice, which is not appropriate since the licensee still has practice rights (although restricted). This change is, therefore, necessary to avoid further errors and inconsistencies in the Board's decisions and orders. Relinquishment requirements have been moved to other appropriate sections of the *Guidelines* (e.g., voluntary surrender term and model orders relating to revocation).

These terms are consistent with and based on proposed changes to the Board's *Disciplinary Guidelines*, terms of probation, that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 21.) The Committee reviewed and approved these terms at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 23.)

Amend Section VI, Conditions of Probation, Subsection B. Optional Conditions, Optional Condition 19 (Notification to Clients/Cessation of Practice)

Purpose: The purpose of this proposal is to amend the *Guidelines* to re-designate this condition from "15" to "19", repeal provisions that require respondent to comply with procedures provided to the Board regarding management of clients and instead specify how respondents must provide notice of cessation of practice and evidence of such notice to the Board, including providing clients with whom they have a contractual relationship with a copy of the Board's decision and order..

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from having more specific notice requirements for what to tell their clients when cessation of practice is ordered by the Board.

Rationale: The condition number will be updated from "15" to "19" because additional conditions will be added to the *Guidelines*. In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its *Guidelines*. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to implement that collaborative effort by providing consistency between the proposed changes to the Board's *Disciplinary Guidelines* and the Committee's *Guidelines* and

would add clarifying language on the process and requirements of notifying clients of Respondent's cessation or suspension of practice. Existing regulations for this term simply require the respondent who is subject to an order which provides for cessation or suspension of practice to "comply with all procedures provided by the Board regarding notification to, and management of clients." However, this could possibly lead to unclear and inconsistent guidance regarding what kind and how such notice should be conveyed to the clients. This proposal would resolve that potential ambiguity by specifically requiring the respondent to provide all clients with whom they have a contractual relationship (as notice would only need to be provided to those who have a direct relationship with the respondent) with a copy of the Board's decision and order. This would ensure consistent and simple notice of the action to the affected consumers.

The Board also proposes that this notice be provided within 30 days of the effective date of the Decision. In the Board's experience, this helps ensure that the licensee has adequate time to notify all potential clients affected by the cessation or suspension from practice and provide such evidence to the Board. The Board would further specify that such evidence of notice to the Board would need to include the name and address of each person or entity required to be notified. This provision is necessary to ensure that the Board receives accurate information and may audit this information (contact the consumers) to verify compliance with this condition.

These terms are consistent with and based on proposed changes to the Board's *Disciplinary Guidelines*, terms of probation, that were developed by the Board's Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 21.) The Committee reviewed and approved these terms at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, p. 23.) At the request of LAD, additional amendments were made, and the Committee reviewed and approved this language at its August 4, 2021 meeting. (See Meeting Agenda, Materials, and Minutes), and the Board reviewed and approved this language at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Repeal Section II, Rehabilitation Criteria

Purpose: The purpose of this proposal is to amend the *Guidelines* to remove this outdated section quoting the rehabilitation criteria of CCR section 2656 as these criteria have been revised and summarized in another section of the *Guidelines* (see section II. E. "Criteria to be Considered").

Anticipated Benefits: The Board and Committee anticipate that ALJs, DAGs, the public, landscape architect licensees, and Board staff will benefit from having this section repealed to avoid confusion regarding the Board's current rehabilitation criteria for landscape architects.

Rationale: In accordance with the Committee's Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, the Committee collaborated with the Board to review and update its

Guidelines. (See LATC Strategic Plan, Fiscal Year 2013/2014 through 2014/2015, p. 17.) As such, the proposal is necessary to implement that collaborative effort and to provide consistency between proposed changes to the Board’s *Disciplinary Guidelines* and the Committee’s *Guidelines* and would remove this section because it is summarized and captured under Section II. General Considerations, Subsection E. Criteria to be Considered. The repeal of this section is consistent with and based on proposed changes to the Board’s *Disciplinary Guidelines*, in which the Rehabilitation Criteria section was removed by the Board’s Regulatory and Enforcement Committee at its November 8, 2016 meeting. (See Meeting Agenda, Materials, and Minutes, p. 22.) The Committee reviewed and repealed this section at its July 13, 2017 meeting. (See Meeting Agenda, Materials, and Minutes, pp. 23-24.)

Further, in accordance with the statutory amendments implemented by Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), operative on July 1, 2020, BPC section 482 requires the Board, when considering the denial, suspension, or revocation of a license based on a criminal conviction or discipline for professional misconduct, pursuant to BPC sections 480 or 490, to consider whether the applicant or licensee is rehabilitated based on either: (1) having completed their criminal sentence without violating parole or probation; or (2) the Board’s standard criteria for evaluating rehabilitation. (BPC, § 482, as added by AB 2138, § 9.) To address the new criteria required to be evaluated by the Board under section 482, the Board amended CCR sections 2655 and 2656 in a separate rulemaking. To maintain consistency with the new rehabilitation criteria requirements imposed by AB 2138 now incorporated in CCR sections 2655 and 2656, the proposal is necessary to revise the *Guidelines* to strike the outdated enumerated rehabilitation criteria.

Repeal Attachment A (Quarterly Report of Compliance)

Purpose: The purpose of this proposal is to amend the *Guidelines* to remove the attachment “Quarterly Report of Compliance.”

Anticipated Benefits: The Board and Committee anticipate that landscape architect licensees subject to Board discipline and Board staff will benefit from these changes by removing the specific quarterly report form requirement, which will allow for reporting of the quarterly report information in alternative formats and thereby ease administrative reporting burdens for licensees.

Rationale: The proposal is necessary to provide more accessibility and options for reporting this information to the Board. Additionally, the information requested in the form are set out in section VI. CONDITIONS OF PROBATION, subdivision A. Standard Conditions, paragraph 2 – Submit Quarterly Reports, and thus the attachment is no longer necessary. Staff will also have a convenience form available on LATC’s website that mirrors the information required in the “Submit Quarterly Reports” condition (Standard Condition No. 2), but respondents will not be required to use it to make their quarterly reports to the Board. The Committee reviewed and approved these revisions at its August 4, 2021 meeting (See Meeting Agenda, Materials, and Minutes), and the

Board reviewed and approved these revisions at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Amend Disciplinary Guidelines – Modification of Pronouns

Purpose: The purpose of this proposal is to amend the *Guidelines* to be gender neutral by changing gendered terms in general to gender neutral pronouns when referring to respondents.

Anticipated Benefits: The Board and Committee anticipate that the public, landscape architect licensees, and Board staff will benefit from updating the *Guidelines* to reflect current law.

Rationale: The proposal is necessary to update the *Guidelines* to conform to the gender-neutral pronouns in accordance with recent statutory changes made by Senate Bill (SB) 179 (Atkins, Chapter 853, Statutes of 2017), which recognized nonbinary gender preferences of California residents and, among other things, authorized the change of a person’s gender on a birth certificate to be female, male, or nonbinary. That bill supports the conversion of the “he or she” pronouns to instead refer to “they.”

Following the Board’s adoption of the proposed *Guidelines*, the Executive Officer made non-substantive corrections to the text of the *Guidelines* to update the use of the gendered pronouns in general to gender neutral pronouns. The Executive Officer is making this non-substantive change pursuant to the authority delegated by the Board to the Executive Officer in its motion to adopt this regulatory proposal. (See February 27, 2019 Meeting Agenda, Materials, and Minutes, p. 8.) and the Board reviewed and approved these revisions at its September 10, 2021 meeting (See September 10, 2021 Board Meeting Minutes).

Underlying Data

1. California Architects Board (Board) Strategic Plan 2013
2. Landscape Architects Technical Committee (LATC) Strategic Plan Fiscal Years 2013/14 – 2014/15
3. April 25, 2013 Regulatory and Enforcement Committee (REC) Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
4. April 24, 2014 REC Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
5. December 10-11, 2014 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
6. February 10-11, 2015 LATC Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
7. LATC Strategic Plan 2015-2016
8. June 10, 2015 Board Meeting Agenda; Meeting Materials; and Meeting Minutes

9. August 6, 2015 LATC Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
10. September 10, 2015 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
11. December 10, 2015 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
12. November 8, 2016 REC Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
13. December 15-16, 2016 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
14. LATC Strategic Plan 2017-2018
15. April 18, 2017 LATC Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
16. July 13, 2017 LATC Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
17. September 7, 2017 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
18. December 7, 2017 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
19. March 1, 2018 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
20. May 4, 2018 LATC Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
21. June 13, 2018 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
22. February 8, 2019 LATC Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
23. February 27, 2019 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
24. August 4, 2021 LATC Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
25. September 10, 2021 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
26. "Guidelines for Access to Public Records," LGL-21-02, dated August 15, 2021.

Business Impact

This regulation will not have a significant statewide adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

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 proposed regulatory action only impacts landscape architect licensees and applicants who are disciplined by the Board for violations of the laws and regulations within its jurisdiction. The Board does not have the authority to take administrative action against a business.

The Committee currently regulates approximately 3,700 licensed landscape architects and 1,200 applicants who are in the process of meeting examination and licensure requirements. The proposed regulatory action only adversely affects a negligible number of landscape architect licensees and applicants who, through their conduct, subject themselves to disciplinary action for violations of the laws and regulations within the Board's jurisdiction. Any "adverse economic impact" would only occur as the result of a disciplinary order following a formal administrative proceeding and a finding of fact affirming a violation of the laws and/or regulations within the Board's jurisdiction. Any potential "adverse economic impact" may be avoided simply by complying with the laws and regulations governing the practice of landscape architecture in California.

Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the proposal only provides updated guidelines for imposing penalties on a negligible number of licensees and applicants who, through their conduct, are subject to disciplinary action due to violations of the laws and regulations governing the practice of landscape architecture. Therefore, the overall economic impact on jobs is insignificant.
- It will not create new business or eliminate existing businesses within the State of California because the proposal only affects a negligible number of landscape architect licensees and applicants who are disciplined by the Board for violations of the laws and/or regulations governing the practice of landscape architecture. The Board does not have the authority to take administrative action against a business and does not maintain data regarding the number or percentage of landscape architect licensees and applicants who own a business. Businesses operated by, or employing, landscape architect licensees and applicants who are in compliance with the laws and regulations within the Board's jurisdiction will not be affected by this proposal. Therefore, the overall economic impact on businesses is insignificant.
- It will not affect the expansion of businesses currently doing business within the State of California because the proposal only affects a negligible number of landscape architect licensees and applicants who are disciplined for violations of the laws or regulations within the Board's jurisdiction. Businesses operated by,

or employing, landscape architect licensees and applicants who are in compliance with the laws and regulations within the Board's jurisdiction will not incur any fiscal impact, including the ability to expand business in California. Therefore, the overall economic effect on the expansion of business in California is insignificant.

- This regulatory proposal benefits the health, safety, and welfare of California residents because it would provide protection to California residents by enhancing the Board's ability to take appropriate action against landscape architect licensees and applicants who, through their conduct, expose themselves to administrative disciplinary action for violations of the laws and regulations within the Board's jurisdiction.
- This regulatory proposal does not affect worker safety because it does not relate to worker safety.
- This regulatory proposal does not affect the state's environment because it is not related to the environment.

Specific Technologies or Equipment

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

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected.

The Board considered keeping the status quo; however, this alternative was rejected because the revisions made to the Committee's *Guidelines* will conform to recent statutory amendments and provide assistance and clarity to individuals involved in the disciplinary process.