

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

LANDSCAPE ARCHITECTS

2002 SUNRISE REVIEW



STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES
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Bill Owens
Governor

October 15, 2002

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed its evaluation of the sunrise application for regulation of landscape architects and is pleased to submit this written report. The report is submitted pursuant to section 24-34-104.1, Colorado Revised Statutes (C.R.S.), which provides that the Department of Regulatory Agencies shall conduct an analysis and evaluation of proposed regulation to determine whether the public needs, and would benefit from, the regulation.

The report discusses the question of whether there is a need for the regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm, and whether the public can be adequately protected by other means in a more cost-effective manner.

Sincerely,

A handwritten signature in black ink that reads "M. Michael Cooke". The signature is written in a cursive, flowing style.

M. Michael Cooke
Executive Director

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The Sunrise Process

Background

Colorado law, section 24-34-104.1, Colorado Revised Statutes (C.R.S.), requires that individuals or groups proposing legislation to regulate any occupation or profession first submit information to the Department of Regulatory Agencies (DORA) for the purposes of a sunrise review. The intent of the law is to impose regulation on occupations and professions only when it is necessary to protect the public health, safety or welfare. DORA must prepare a report evaluating the justification for regulation based upon the criteria contained in the sunrise statute:

(I) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(II) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence; and

(III) Whether the public can be adequately protected by other means in a more cost-effective manner.

Any professional or occupational group or organization, any individual, or any other interested party may submit an application for the regulation of an unregulated occupation or profession. Applications must be accompanied by supporting signatures and must include a description of the proposed regulation and justification for such regulation. Applications received by July 1 must have a review completed by DORA by October 15 of the year following the year of submission.

Methodology

DORA has completed its evaluation of the proposal for regulation of landscape architects. During the sunrise review process, DORA reviewed relevant literature, interviewed the applicant, and consulted with experts. In order to determine the level and type of potential harm due to the unregulated practice of landscape architecture in Colorado, we contacted representatives of the Office of the Attorney General Consumer Protection Section, the Denver/Boulder Better Business Bureau, and the Boulder District Attorney's Office. In addition, we checked the Federal Trade Commission's website for any complaints against Colorado landscape architects. Our findings are reported in the public harm section of this report.

Proposal for Regulation

The Colorado Council of Landscape Architects (Applicant) has submitted a sunrise application to the Department of Regulatory Agencies (DORA) for review in accordance with the provisions of section 24-34-104.1, Colorado Revised Statutes (C.R.S.). The Applicant seeks licensure for professional landscape architects. Landscape architecture was deregulated in Colorado in 1976. Colorado landscape architects previously submitted a sunrise application in 1994, which did not lead to a recommendation for regulation. The number of Colorado practitioners who are also members of the council is estimated at 530 landscape architects.

The Applicant proposes licensure as the most appropriate form of regulation and envisions title protection as part of the regulatory scheme. A “model act” has also been advanced by the Applicant as part of the application. Licensure is the most effective form of regulation according to the Applicant. The merits of certification or registration as regulatory alternatives are not addressed in the application in response to the question: “Does the applicant propose licensure, certification, registration or another type of regulation and why?” As evidenced by the original model act submitted, the Applicant envisions a regulatory board of landscape architecture appointed by the Governor, which is to promulgate regulations governing the practice of landscape architecture and will meet at least once per year. In addition, the proposal includes the regulation of business entities that provide landscape architecture services. In its amended model act the Applicant also proposes that local jurisdictions be prohibited from limiting the proposed scope of practice.

The Applicant makes the following main points:

- Licensure assures the public that licensed landscape architects are at least minimally capable of providing landscape architectural services. All licensees must meet the education, training and examination standards of the jurisdiction in which they wish to provide services.
- Licensure privileges can be suspended or revoked for cause.

The Applicant also notes that licensed landscape architects would be required by law to act on behalf of their clients and the general public in accordance with the rules of conduct and in a way that protects the public's health, safety, and welfare. For the most part, however, the model act submitted by the Applicant addresses conditions of holding out as a landscape architect and issues of unlawful practice. Matters that directly relate to public protection, such as standards of practice and conduct are contained in the model regulations submitted. These, however, tend to be broad, and in consequence, of little potential value. For example, the Applicant proposes a competence requirement in which the "...landscape architect shall act with reasonable care and competence and shall apply the technical knowledge and skill that is ordinarily applied by landscape architects of good standing, practicing in the same locality."¹ It is hard to identify a difference between this proposal and the standard of what "a reasonably well-qualified professional ordinarily and customarily does in fact" (discussed in the analysis section below).

Profile of the Profession

The following profile of the profession is based on the *Occupational Outlook Handbook* of the U.S. Department of Labor. Among other things, landscape architects design residential areas, public parks, playgrounds, college campuses, shopping centers, golf courses, parkways, and industrial parks. Landscape architects design these areas so that they are not only functional, but also aesthetically pleasing and environmentally friendly. They plan the location of buildings, roads, and walkways, as well as the arrangement of flowers, shrubs, and trees. Increasingly, landscape architects are becoming involved with projects in environmental improvement, such as preservation and restoration of wetlands. Historic preservation is another important task to which landscape architects may apply their knowledge of the environment, as well as their design and artistic talents.

¹ Section IV of Sunrise Application.

In practice, landscape architects create detailed plans indicating new topography, vegetation, walkways, and other landscaping details, such as fountains and decorative features. After studying and analyzing a site, landscape architects prepare a preliminary design. To account for the needs of the client and the conditions of the site, they frequently make changes before a final design is approved. They also take into account any local, state, or federal regulations, such as those protecting wetlands or historic places. Computer-aided design (CAD) has become an essential tool for landscape architects in their work. Many landscape architects also use video simulation to help clients envision the end-product. For larger scale site planning, landscape architects may also use geographic information systems (GIS).

Landscape architects spend most of their time in their offices doing research, creating plans, designs and models; as well as preparing cost estimates, or attending meetings with clients and other professionals involved in a project. The remainder of their time is spent on the site. During the design and planning stage, landscape architects visit and analyze the site to evaluate whether the design can be incorporated into the landscape. After the plans and specifications are completed, they may spend additional time at the site observing or supervising the project.

A bachelor's or master's degree in landscape architecture is usually necessary for entry into the landscape architecture profession. The bachelor's degree takes 4 or 5 years to complete. There are two types of accredited master's degree programs. The most common type is the master's degree as a first professional degree and is a 3-year program designed for students with an undergraduate degree in another discipline. The master's degree as a second professional degree is a 2-year program for students who have a bachelor's degree in landscape architecture and wish to teach or specialize in some aspect of landscape architecture, such as regional planning or golf course design.²

² Occupational Outlook Handbook.

In Colorado there are two accredited institutions and programs according to the applicant. Colorado State University (C.S.U.) offers a Bachelor of Science in Landscape Architecture (BSLA) degree. C.S.U. receives approximately 40-60 applications per year, but on average only admits 20 students per year. This represents a stable replacement rate since approximately 20 students matriculate each year. The 5-year program cost is \$10,944 for Colorado residents. The University of Colorado at Denver offers a Master of Landscape Architecture (MLA) degree. On average 30 students graduate per academic year. The 3-year program cost is \$10,098 for Colorado residents. Nationwide there are about 45 accredited undergraduate and 30 accredited graduate programs in landscape architecture. The Landscape Architecture Accreditation Board (LAAB) is recognized by the Council for Higher Education Accreditation (CHEA) as the accrediting agency for first-professional baccalaureate and masters degree programs in landscape architecture in the United States.

To the extent that technology, such as computer-aided design, impacts the profession of landscape architecture, continuing education courses and requirements would be beneficial for the continued competence of practitioners. In addition, knowledge of Colorado climatic conditions and indigenous plants would be beneficial for out-of-state landscape architects to acquire through continuing education.

Summary of Current Regulation

The Colorado Regulatory Environment

Colorado county and municipal codes do not require the regulation of landscape architects as a profession, although there are numerous permit and other regulations that may apply in certain functional areas of landscape architecture. More specifically, particular zoning codes or requirements may be in force, such as those related to the placement of sprinklers, and so on.

The Applicant notes that architects are responsible for making buildings accessible. At the same time, landscape architects have the equally challenging responsibility of applying the American with Disabilities Act (ADA)³ to accessible routes to and from buildings, in parking areas, on public trails, sidewalks, parks and public plazas, waterfronts, children's playgrounds, and at athletic facilities such as amphitheatres, stadiums, soccer fields, and golf courses.

The American with Disabilities Act applies to any public accommodation, commercial facility, as well as any private entity that offers examinations or courses related to applications, licensing, certification, or credentialing for higher education and professional or trade organizations. Federal regulations do not appear to specifically address landscape architects as a profession with particular responsibilities under the Act, although general knowledge of the Act may be beneficial for design practitioners. The federal government does not require its own landscape architects to be licensed.

In connection with this review, we spoke with the program administrator of the Board of Examiners of Architects and the Board of Registration for Professional Engineers and Professional Land Surveyors housed in the Department of Regulatory Agencies. The program administrator expressed concern with the potential work overlap among these design professions in relation to landscape architects. In this official's opinion, professional engineers would actively oppose any prospective regulation of landscape architecture in Colorado.

³ Pub. L. 101 - 336, 104 Stat. 327, 42 U.S.C. 12101 - 12213 and 47 U.S.C. 225 and 611.

The “practice of engineering” is defined in section 12-25-102 (10), C.R.S. as:

The performance for others of any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical and engineering sciences to such professional services or creative work, including consultation, investigation, evaluation, planning, design, surveying, and the observation of construction to evaluate compliance with plans and specifications in connection with the utilization of the forces, energies, and materials of nature in the development, production, and functioning of engineering processes, apparatus, machines, equipment, facilities, structures, buildings, works, or utilities, or any combination or aggregations thereof, employed in or devoted to public or private enterprise or uses.

The “creative work” and “materials of nature” language of this definition thus appears to overlap with the formulation of “graphic and written criteria to govern the planning, design and management of land and water resources” language proposed by the applicant.⁴ Appropriate exemptions for architects, professional engineers, and land surveyors are envisioned by the applicant, however, reciprocal exemptions are absent from the allied design professions.

Regulation in Other States

In 2000, 46 states required landscape architects to be licensed or registered. The exceptions are: Colorado, North Dakota, New Hampshire, and Vermont. In states where licensure is required, new hires may be called “apprentices” or “intern landscape architects” until they become licensed. Interns must perform all work under the supervision of a licensed landscape architect. Additionally, all drawings and specifications must be signed and sealed by the licensed landscape architect, who takes legal responsibility for the work.

⁴ Submitted “Model Law”, as amended p. 1.

Licensing is based on the Landscape Architect Registration Examination (L.A.R.E.), sponsored by the Council of Landscape Architectural Registration Boards and administered over a 3-day period. Admission to the exam usually requires a degree from an accredited school plus one to four years of work experience, although standards vary from state to state. Currently, 16 states require the passage of a state examination in addition to the L.A.R.E. to satisfy requirements. State examinations, which usually are one hour in length and completed at the end of the L.A.R.E., focus on laws, environmental regulations, plants, soils, climate, and any other characteristics unique to the state.

Given that the various state requirements for licensure are not uniform, landscape architects may not find it easy to transfer their credentials from one state to another. However, those who meet the national standards of graduating from an accredited program, serving three years of internship under the supervision of a registered landscape architect, and passing the L.A.R.E. can satisfy requirements in most states. Through this means, a landscape architect can obtain certification from the Council of Landscape Architectural Registration Boards, and so gain reciprocity in other states.

Analysis and Recommendation

Public Harm

The first sunrise criterion asks:

Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependent on tenuous argument.

According to the Colorado Council of Landscape Architects (Applicant), landscape architects have an integral role in the design of roads, sidewalks, bikeways and trails. Among other things, improper location and design of traffic lanes and pedestrian crosswalks or the placement of improvements that obscure lines of sight could cause injury to pedestrians, bicyclists, or motorists.

The Applicant furnished several cases that they considered to be examples of public harm. The most dramatic example involved a skatepark in Eagle County constructed by volunteers. The Applicant furnished a supporting newspaper article involving this case. A landscape architect was not involved in the design of the skate park. In another example the same landscape architect who designed a park and pond was brought in to correct a problem. A third example involved an out-of-state (Florida) company. In its supplementary materials, the Applicant relied on a case in Telluride in which a ski developer apparently damaged wetlands. The underlying theme in all these cases seems to be that had a licensed landscape architect been involved these instances of harm would not have occurred. Not only is this proposition not established, the examples of harm provided to the Department of Regulatory Agencies (DORA) were not compelling, and the arguments on the whole were tenuous.

In response to a lead, we contacted a representative of the Boulder District Attorney's Office who reported to us that there were numerous landscaping industry problems in her jurisdiction, but that these problems revolved around landscape contractors rather than landscape architects.

We also checked the Federal Trade Commission's (FTC) website for any complaints against Colorado landscape architects. The FTC enforces a variety of consumer protection laws enacted by Congress. Its actions include individual company and industry-wide investigations. According to FTC's website, no action has been taken against Colorado landscape architects in the recent past.

Need for Regulation

The second sunrise criterion asks:

Whether the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional or occupational competence.

The second sunrise criterion is dependent on the first. That is to say, any assurances of initial and continuing professional competence are contingent on the presence of harm. As discussed above, given the absence of clear and significant harm under criterion one, the existence of educational programs in Colorado, which were discussed in the "Profile of the Profession" earlier in this report, serve the professional development of landscape architects rather than mitigating against potential harm.

Alternatives to Regulation

The third sunrise criterion asks:

Whether the public can be adequately protected by other means in a more cost-effective manner.

The Applicant advanced a sound argument concerning the competitive disadvantage of landscape architects in relation to other design professionals in Colorado. They note, with adequately documented examples, that "employers in the design professions routinely prefer, if not require, licensing or registration, and the existence of such a credential is integral to the management of major development projects."⁵ This argument, however, does not take into account the public protection concerns enumerated in any of the three criteria that govern sunrise reviews.

⁵ July 30, 2002 supplement to Colorado Council of Landscape Architects application, p. 4.

According to the Applicant, the State of Colorado is currently relying on the courts to define “usual practice” or a standard of care for the practice of landscape architecture. In determining whether a professional is negligent, the courts look at what a “reasonably well-qualified professional ordinarily and customarily does in fact.” So to determine a standard of behavior, the court looks at how most professionals in a locality would behave under similar circumstances. The profession “sets the standard by its own custom and practice.” The Applicant notes that this is a broad standard, and that one benefit of licensure to consumers is that standards are set ahead of time. The Applicant makes a valid point in noting the latter, but as noted earlier, proposes a broad standard of professional conduct that does advance public protection in practice. In short, courts currently enforce similar standards as those proposed by the Applicant. The only difference between the two approaches appears to be one of timing. Given the relatively small group size of landscape architects in Colorado and the small number of cases of harm, the existing system of remedies appears to be adequate.

Other cost-effective means of public protection include the internal, professional standards of a given profession. One such indication concerning landscape architecture is that the American Society of Landscape Architects (ASLA) has a Code of Professional Ethics that members are asked to honor. There are disciplinary procedures for members who violate the code of professional ethics. The American Society of Landscape Architects displays this code on its web site and states:

If the Ethics Committee determines that a violation has occurred, then it may; in addition to appropriate negotiation efforts:

- Write a confidential Letter of Admonition. This action may be appealed to the ASLA Executive Committee, which shall hear all parties and render a binding decision.
- Refer the issue to the Executive Committee to write a Letter of Censure. This action may be appealed to the ASLA Board of Trustees which shall hear all parties and render a binding decision.

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- Refer the issue to the Executive Committee for review for Probationary Suspension of Membership. During the suspension, the former member is prohibited from using any indication that they are a member of ASLA. This action may be appealed to the Board of Trustees and its decision shall be binding.
 - Refer the matter to the Executive Committee for review for possible Permanent Termination of Membership. This action may be appealed to the Board of Trustees which shall hear all sides and its decision shall be binding.⁶

In short, there is a well-established system of private sanctions that can ameliorate unprofessional tendencies.

In the case of landscape architects there is also a complementary means of public protection. DORA asks applicants to “..indicate functions which are similar to those performed by other groups and identify those groups.”⁷ In response to this question the Applicant notes that

there are certain aspects of the functions performed by Landscape Architects that overlap functions that are provided by the other design professions (licensed architects and engineers). For example, site planning is often done by architects or engineers. Grading and storm drainage plans, often designed by Landscape Architects, must normally be stamped by licensed professional engineers.

To help resolve issues related to this overlap, the Council of Landscape Architectural Registration Boards (CLARB) works jointly with the National Council of Engineer Examiners and the National Council of Architectural Registration Boards to form the Interprofessional Council on Registration, known as ICOR.⁸

⁶ ASLA Code of Professional Ethics, accessed on March 4, 2002 on <http://www.asla.org/governance/ldrshdbk/code.htm>

⁷ Question 4 of the standard sunrise application.

⁸ Sunrise Application, p. 4.

Clearly then, not only does significant overlap exist among the above listed design professions, but this overlap is formally and professionally recognized. In the case of landscape architects, allied design professionals may serve as a system of checks and balances for some projects, for example, when licensed engineers sign-off on drainage plans.

Conclusion

Landscape architecture is a mature, distinct, and partially self-policing profession closely allied with other design professions, such as licensed architects and engineers.

Regarding public harm, the most important criterion, the Applicant provided DORA with a small number of cases of actual harm, some of which had a tenuous connection to landscape architects, or could be easily attributed to other factors. The Applicant was not persuasive given the existing mechanisms of public protection, including the courts, consumer protection laws, internal professional standards, the overlap with other regulated professions, and market forces.

Recommendation - The General Assembly should not implement the Applicant's proposal to regulate landscape architects.