

# OFFICE OF PROFESSIONAL REGULATION

**Landscape Architects:  
Second Sunrise Application**

**Docket No. LA-01-0706**

## **Summary of Testimony and Evidence Preliminary Assessment on Request for Licensure**

### **Background**

In 2003 The American Society of Landscape Architects (ASLA) sought licensure for landscape architects. The Office of Professional Regulation, as required by law, issued a 2003 Sunrise Assessment. The assessment concluded that landscape architects as an unregulated profession did not clearly harm or endanger the public health, safety, or welfare. The preliminary assessment concluded that licensure of this profession was not consistent with the statutory criteria. We concluded that the potential for harm was remote or speculative. This year landscape architects applied once again for licensure. Their quest for licensure is part of a highly organized on-going national effort by their professional society to raise the status and visibility of this profession. As the ASLA web site points out, no argument for licensure is more persuasive than “making the case that landscape architects impact the public health, safety and welfare.”<sup>1</sup> This renewed application requires a new Sunrise assessment.

### **Regulatory Considerations State Policy on Regulation of Professions**

Chapter 57 of Title 26 of the Vermont Statutes states,

“It is the policy of the state of Vermont that regulation be imposed upon a profession or occupation solely for the purpose of protecting the public. The legislature believes that all individuals should be permitted to enter into a profession or occupation unless there is a demonstrated need for the state to protect the interests of the public by restricting entry into the profession or occupation. If such a need is identified, the form of regulation adopted by the state shall be the least restrictive form of regulation necessary to protect the public interest....”

26 V.S.A. § 3101 Policy and Purpose.

Vermont law provides a detailed set of criteria which must be addressed before regulation

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<sup>1</sup> See, [http://www.asla.org/members/govtaffairs/licensure/licensure\\_toc2.html](http://www.asla.org/members/govtaffairs/licensure/licensure_toc2.html)

of a profession may occur:

**“A profession or occupation shall be regulated by the state only when:**

- (1) it can be demonstrated that the unregulated practice of the profession or occupation can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is recognizable and not remote or speculative;**
- (2) the public can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and**
- (3) the public cannot be effectively protected by other means.”**

26 V.S.A. § 3105(a).<sup>2</sup>

The legislature delegated responsibility for a preliminary assessment of requests for regulation to the Office of Professional Regulation. “Prior to review under this chapter and consideration by the legislature of any bill to regulate a profession or occupation, the office of professional regulation shall make, in writing, a preliminary assessment of whether any particular request for regulation meets the criteria set forth in subsection (a) of this section. The office shall report its preliminary assessment to the appropriate house or senate committee on government operations.” 26 V.S.A. § 3105(d). Pursuant to that mandate, the Office of Professional Regulation has reviewed the sunrise application of landscape architects.

### **Summary**

For the reasons set forth below this report concludes again that the unregulated practice of Landscape Architecture does not clearly harm or endanger the health, safety, or welfare of the public. Their application shows only a remote or speculative potential for the harm if this profession remains unregulated. The public does not need regulation of this profession to assure initial and continuing professional ability. The public is and can continue to be protected by other means. This report incorporates and supplements the 2003 Sunrise Assessment. The 2003 assessment is found in the appendix.

### **Process**

Pursuant to 26 V.S.A. § 3101 et seq. the Director of the Office of Professional Regulation held a properly noticed hearing on October 26, 2006 at the Redstone building, 26 Terrace St. Montpelier to take evidence to see if the applicants, landscape architects, satisfy the statutory prerequisites for regulation by the State of Vermont. Attending the hearing were several

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<sup>2</sup> Colorado has a similar statute. The landscape architects have had three sunrise reviews in Colorado. Each recommended against licensure. The most recent can be found at <http://www.dora.state.co.us/OPR/archive/2005LandscapeArchitectsSunriseReport.pdf>. The Landscape Architects persisted, and a licensing bill was passed in 2006, but vetoed by the governor.

landscape architects. No members of any other profession attended the meeting. The office did receive one letter from a professional engineer opposing licensure. The author of that letter believed that landscape architects do not possess adequate education and training to engage in some of the activities for which they seek licensure. The applicants brought to the hearing substantial new material regarding their education and licensing examinations for other states. Those materials should have been submitted with their sunrise application in July. This late introduction of new material caused delay in the completion of this report.

### **Analysis**

Although the practice of Landscape Architecture has not changed since 2003, this 2006 landscape architects' application portrays the profession in a different light. The applicants have re-characterized the description of their scope of practice. In 2003 they wrote, "landscape architects fill the void *between the professions of architecture and engineering.*" (emphasis added). In 2006 they again describe landscape architecture as a "design profession." But this year they admit that, "not all of the work of landscape architects directly affects the health, safety, and welfare of the public." In fact, they admit that much of the landscape architecture scope of practice does not affect public health, safety, and welfare.

In 2003 the landscape architects stated that their profession affects public health, safety and welfare in the areas of Site Design, Site Planning, Urban Planning, Regional Landscape Planning, Park and Recreation Planning, Land Development Planning, Ecological Planning and Design, Historic Preservation and Reclamation. The landscape architects' 2006 application limits the focus to four areas of their practice which they say affect public health, safety, and welfare, and therefore, they argue, should qualify them for licensure:

- 1) grading, drainage, and storm water management;
- 2) site design;
- 3) road way design; and
- 4) park design.

Each area uses a broad definition to cover a range of activities<sup>3</sup>. The landscape architects provide examples of each to show how their activities affect public health, safety, and welfare. We note again, the test is not whether the activities affect public health, safety, and welfare, but whether leaving the profession unregulated clearly harms public health, safety, and welfare, and whether there exists no lesser governmental response than licensing.

### **Grading**

The landscape architects dictate how earth is to be moved for certain projects, and how

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<sup>3</sup> "Storm water management" is used in the application for all situations where rain runs across land, no matter how small or large the project.

they make use of and direct land contours so that water run off is safely managed. They argue that incorrect grading can result in erosion and “even landslides.” The Office of Professional Regulation Sunrise application asks, “What harm or danger to the health, safety, or welfare of the public can be demonstrated if the practice of this profession/occupation were to remain unregulated? (Note: the potential for harm must be recognizable and not remote or speculative.)” The landscape architects answer that civil engineers are required to “seal” every grading plan they do, “indicating that the State of Vermont has already determined that this type of work could create a recognizable harm.” The seal indicates the work is that of an engineer, not that the state has determined that the work can be harmful. The landscape architects do not show how Vermonters will be harmed if landscape architects who design grading for projects remain unregulated.

The applicants have two arguments for licensure. Essentially they boil down to this:

- 1) If an activity can hurt someone, and landscape architects can do it, the activity should be licensed.
- 2) Licensed professional engineers create plans for projects. When licensed engineers create plans, they must use their stamp that comes with licensure. Therefore, any project which an engineer must stamp requires a stamp and license.

Both arguments are incorrect. The first is not consistent with Vermont law. The second makes an erroneous assumption. Any plan which an engineer prepares, *regardless of its nature*, requires a stamp and seal:

“b) Plans, specifications, plats and reports issued by a licensee shall be stamped with his seal and shall also be signed by the licensee.” 26 V.S.A. § 1188(b).

The engineer’s seal shows that the plan is based on the education and training of a trained licensed engineer. The seal requirement assures the public that the plans are prepared by licensed engineers, and that the plans should meet the expected high standards that an engineer must possess to obtain a license. An engineer affixes a stamp and a seal to all work because she is required to, not because a particular project requires a stamp. The engineers’ stamp and seal is not a declaration that the state deems that a particular project requires a licensed professional.

As the discussion below shows, grading and storm water management projects are performed both by members of regulated and unregulated professions.

The landscape architects argue that serious harm can occur when certain activities they perform are done incorrectly. Yet, many of the activities they cite are those also performed by members of unregulated professions and trades. Were the state to require licensure *for those activities*, consistency would require that all who perform them be licensed.

“‘Licensing’ and ‘licensure’ mean a process by which a statutory regulatory entity grants

to an individual, who has met certain prerequisite qualifications, the right to perform prescribed professional and occupational tasks and to use the title of the profession or occupation. Practice without a license is unlawful.” 26 V.S.A. § 3101a(a)(2).

The landscape architects’ proposed statute permits members of other licensed professions to engage in practices which fall under the broad definition of landscape architecture. It also exempts from licensure individuals as property owners and “a practitioner of another profession or occupation from carrying on in the usual manner any of the functions incidental to that profession or occupation, including landscape designers undertaking work that does not require a permit, foresters, preparing forest management plans, and professional planners.” Under the landscape architect’s proposal, any work in Vermont that could be called landscape architecture and that requires a permit would be off limits to anyone who does not have a professional license.

Requiring licensure for the permitted activities landscape architects wish to perform would bar other professions from work which they now do safely without licensure.

What kind of grading and storm water management harm can occur? The applicants cite several cases.

Example #1. The applicants cite a case involving improper supervision during construction of a fill source and retention basin (with no fence). A hill collapsed causing the death of an 11 year old. There is no indication that this incident involved any licensed professional or a landscape architect. Nor is there an indication whose responsibility it was to fence the area to keep children away during the construction process.

Example #2. Grading and drainage problems occurred at a golf course. During the construction phase water sediment, sand, and debris flowed unabated down a golf course property creek causing damage to a neighbor’s property. The case was offered as a “prime example of the problems that can be encountered with grading and drainage design.”

Example #3. A developer changed and deviated from a landscape architect’s plans by failing to build culverts. The repairs cost more than the originally designed project would have.

Example #4. A negligent grading plan caused water to accumulate near a school and eventually damage a gymnasium floor.

Example # 5. A contractor placed soil in a manner so that a hill “failed.”

Example #6. A contractor graded land so that it pitched toward a house.

Example # 7. Erosion (the occupation of the person responsible is not disclosed.) caused water to flow onto a road creating an icy patch where three people were killed.

Example #8. Selection of a sewer grate which “tilted.” This was a 1965 case involving a landscape architect.

Example #9. Faulty design of a drain inlet (occupation of person responsible not disclosed).

**Grading, drainage, & storm water management conclusions.** The landscape architects submit that with licensure consumers can expect that grading and water flow concerns will be competently addressed. This conclusion would only be valid if those activities (fencing construction zones, golf course design, construction site supervision, school construction grading, home construction grading, any grading where water might run onto a road, sewer grate selection, drain inlet selection) could be performed or supervised by licensed professionals only. This conclusion would be valid if licensure also guaranteed that mistakes would not occur. These tasks are currently performed by many unregulated professionals, land use designers, planners, private contractors, construction companies, excavating companies, and private property owners. The Agency of Natural Resources permits storm water designs by, “any individual whose qualifications are acceptable to the Secretary. The Secretary may require that a stormwater system design be prepared by a licensed professional engineer practicing within the scope of their engineering specialty and licensed in the State of Vermont, as necessary to protect the public or environment.”<sup>4</sup> If landscape architects are indeed qualified to undertake those tasks, then the landscape architects’ scenarios of harm in grading drainage and storm water management, as we noted in our 2003 preliminary assessment, make good arguments for engaging the services of landscape architects, not a reason for the State to regulate them.

### **Site Design:**

The landscape architects offer several examples of how improper site design can hurt the public. They say that as site designers landscape architects are trained to avoid the harms shown in these examples. The examples reveal a very broad definition of site design.

Example #1. Design defects in a fence around a pool caused severe injury to a 19 month old.

Example #2. A school gate near an intersection encouraged students to enter a dangerous intersection where one was struck by a car.

Example #3. The choice to locate power lines over a park where 3 children were electrocuted. One died, the other two had serious injuries.

Example # 4. The initial design for installation of marble statues outside a government building allegedly caused problems for the blind, pedestrians and bicyclists.

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<sup>4</sup> Agency of Natural Resources, Department of Environmental Conservation, General Permit 3-9015, see, [http://www.anr.state.vt.us/dec/waterq/stormwater/docs/sw\\_3-9015-finalpermit.pdf](http://www.anr.state.vt.us/dec/waterq/stormwater/docs/sw_3-9015-finalpermit.pdf) .

Example #5. An exterior stairway made from landscape timbers designed with uneven risers, inadequate handrails and “a lack of positive drainage” on the steps leading to ponding of water and ice.

Example #6. Lack of guardrails for decks. (No indication of the occupation of the person who failed to install one).

Example # 7. Failures to construct barriers to prevent cars from hitting pedestrians in sidewalks.

Example #8. Students injured when a car in the school parking lot jumped a curb.

Example #9. Design of a picnic area in a theme park where people injured by a vehicle - inadequate barrier protection blamed.

Example # 10. Failure to put a guard rail so that a person fell from a parking lot to the driveway below.

Example #11. Using a wooden railing, rotten at the time of the accident and placed too low, so that a boy fell 12 feet after leaning on the rail.

Example #12. Hotel retaining wall collapse. (The occupation of the person who designed the wall is not disclosed).

Example #13. A college student was killed when a freestanding brick wall designed by an architect collapsed (allegedly because of inadequate supports) after it was hit by a car.

Example #14. Two deck collapse cases: where the decks collapsed because of bad fasteners.

Example #15. “As an example, landscape architects design fences to enclose outdoor service and utility areas. In one case, the door to a trash enclosure was designed without a lock or latch. On a gusty day, the door of the enclosure spontaneously flew open, striking a passerby on the head. Following the incident the injured party suffered cognitive problems, including memory loss, prompting the land owner to settle the negligence case for \$900,000.”

Example #16. Improper closing of a park path where an unlit wire 20 inches off the ground without a warning injured a walker.

Example #17. In another path closing case, a 13 year old ATV rider was injured when his ATV hit a wire closing off a path.

Example #18. Warning signs: An insufficient warning sign at a construction zone failed to prevent an 11 year old from sledding there and being killed. The description of the case says that a landscape architect was held liable, though it does not give enough details to say if anyone else

shared responsibility. The description does not say where the incident took place or if, in a licensing state, any licensing action was taken against the landscape architect.

Example #19. Wheel chair ramp design and placement. A five year old “using the ramp for recreational purposes [undisclosed which] was killed after going into the street and colliding with a vehicle.

**Site design conclusions:** As with grading, the landscape architects submit that with licensure consumers can expect that site design concerns will be competently addressed. This conclusion would be valid if those activities, pool fencing, placement of school fence gates, location of electrical wires, placement of statues, building exterior stairways, decks, parking lot barriers and curbs, placement of picnic areas near traffic, guard rails, wooden rails, trash enclosure doors, path closings and construction signs could be performed by licensed professionals only. This conclusion would be valid if licensure guaranteed that mistakes would not occur. These tasks are performed now by contractors, builders, handy men, landscape designers, planners, private contractors, construction companies, and property owners. Again, the landscape architects scenarios of harm, as our 2003 preliminary assessment noted, make good arguments for engaging the services of landscape architects, not a reason for the State to regulate them.

## **Park Design**

The landscape architects offer several examples of how improper park design can hurt the public. They say that as park designers landscape architects can avoid the harms shown in these examples.

Example #1. A landscape architect chose the wrong kind of basketball backstop for an outdoor court so that a player injured his wrists dunking the ball through the rigid frame.

Example #2. A child was hurt bicycling in a park’s half pipe. There is no indication what, if anything was wrong to cause the accident. The examples say only that designing such parks requires knowledge of construction techniques, design considerations, proper paving, avoiding conflicting uses, and more.

Example #3. Skate park death after a loose pipe rail “broke loose and crushed him.” The example says the park had been designed and built by “a group of non-professionals.”

Example #4. Pedestrian injured by bicyclist going the wrong way on a bike path.

Example #5. Bicycle path collision between bicyclists. The description notes: “If a user is injured on a trail, a lawsuit will frequently allege design defects.”

Example #6. A park trail case where a person was hit by a car where the trail crossed a local road.



Example #7. Park trails near cliffs. This example which purports to be a suit against a landscape architect quotes the trial judge who said, “We believe that the art of landscape architecture could have devised a wall, which would have been a barrier without marring the beauty of the spot.” The applicants put this example in perspective: “The desire of the *Brown* court for a design professional who will combine aesthetic sensitivity and life safety skills in trail design is representative of the demands placed on landscape architects as the profession has evolved.”

Example #8. Placement of “shallow water signs.” A park where a shallow water sign was not posted was held liable for a diver’s broken neck.

Example #9. No swimming signs or lack of a protective fence at a reservoir contributed to a drowning.

**Park design conclusions:** As with grading and site design, the landscape architects submit that with licensure consumers can expect that park design concerns will be competently addressed. This conclusion would be valid if those activities, basketball hoop selection, half pipe park design, skate park design, bicycle path design and placement vis a vis roads, park trail siting, placement of “shallow water” and “no swimming” signs, placement of fences around reservoirs could be performed or supervised by licensed professionals only. This conclusion would be valid if licensure guaranteed that mistakes would not occur. These tasks are performed regularly by land use designers, planners, private contractors, construction companies, and property owners. Bicycle paths are discussed by the Agency of Transportation which says that planners and engineers, “may lack the knowledge and training” to provide better accommodations for bicyclists and pedestrians.<sup>5</sup> The Agency says that landscape architects should be part of “The Bicycle and Pedestrian Advisory Committee.” Also that, “Because reconstruction projects often involve substantial redesign of the roadway, it is particularly important that regional and local bicycle and pedestrian planners, as well as landscape architects, be involved in the road reconstruction scoping and design phases.”<sup>6</sup> The landscape architects’ scenarios of harm in park design make good arguments for engaging the services of landscape architects, but not a reason for the State to regulate them. We note that licensure does not prevent lawsuits.

## Roadway Design

The landscape architects submit that they are trained to design some roadways. They design projects from “streets for subdivisions and other forms of new residential development to roadways serving parks and recreational facilities, business parks, academic and institutional campuses, and industrial parks.” At the public hearing one landscape architect described choosing the site for a roadway, then having civil engineers do the actual road design. The

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<sup>5</sup><http://www.aot.state.vt.us/planning/Documents/bikeped1998.pdf>

<sup>6</sup> State of Vermont, Bicycle and Pedestrian Plan (1998),  
<http://www.aot.state.vt.us/planning/Documents/bikeped1998.pdf>

landscape architects spoke about the collaborative nature of their profession and civil engineers.

The landscape architects state that since civil engineers are required to stamp their roadway design plans, roadway design requires a license. See, section on grading, above. Their application speaks of the many skills one must have in order to properly design the types of roadways they design. The essence of their argument is that roadway design for parks and colleges and the other areas listed above require specific expertise and therefore should be a licensed activity. We note that there are recognized state and national standards covering the roadway design considerations, lighting considerations, traffic control devices and road construction materials, paving requirements, traffic flow considerations, and more. Many developers, construction and excavating companies, land owners, and town road commissioners are constantly engaged in the design and construction of these kinds of roads. And, of equal importance in Vermont, members of these other professions frequently are called upon to do roadway maintenance and repair. They are familiar with Vermont standards. See for example AASHTO (American Association of State Highway and Transportation Officials) standards and Vermont specific standards found at:  
<http://www.aot.state.vt.us/progdev/standards/06local.htm#Alignment>

This area of landscape architecture is one which most clearly overlaps with civil engineering. Many who do not hold a state license are competent to design and build these types of roads. Developers, construction companies, excavators, property owners, planners, town planners, and contractors all design roadways. The phrase commonly heard about road construction is, “keep water out, keep water out, keep water out.” Road design is often done to standards set by towns. Civil engineers frequently design roads, but are not always required for road design. To quote one town planner, “It is not rocket science.” Foresters design roads so that water is kept out and proper drainage is assured. In Vermont the Agency of Transportation sets standards which are frequently referred to and copied for road design. Members of the professions above are aware of and follow the same standards that landscape architects follow. We have seen no example of landscape architects improperly designing in this limited aspect of roadway design.

### **Landscape Architects’ Arguments for Licensure**

We reiterate that regulation of a profession is warranted when the profession *left unregulated* poses a threat to the public health, safety, and welfare. We address those arguments below.

**Unqualified Practitioners:** The landscape architects introduction to their sunrise application says that licensure is a critical state function “for protecting the public from unqualified or incompetent individuals who engage in professional practice.” They have admitted that there has been no problem of unqualified people holding themselves out as landscape architects.

**Adequate Remedies for Consumers:** The landscape architects argue that licensure provides for investigation and discipline when consumers have been financially harmed due to technical defects. Technical defects which cause financial harm may constitute a breach of contract or warranty, but not rise to the level of “unprofessional conduct.” Further, licensure does not provide for restitution or contract damages. Civil remedies for breach of contract or warranty or tort are sufficient to protect Vermonters. In fact, the examples offered by the applicants show that even with licensure, the injured parties would not be “made whole.”

**Alternative Remedies for Consumers:** Landscape architects argue (page 17) with no supporting evidence whatsoever that investigation of cases and obtaining remedies “is difficult using general legal principles or a general statute such as a consumer protection act.” People hurt by licensed professionals should not be encouraged to use the regulatory process to gain advantage for civil litigation. Even if this statement was in any way correct, which it is not, the remedy would be to enact other civil or criminal remedies. Licensure is the last resort, not the first response, and then only when there is a clear harm to public health, safety, and welfare.

**Qualifications of Landscape Architects:** Landscape architects argue that consumers have no basis to discern qualified versus unqualified providers. They write, “[A] pattern of harm must develop before a provider’s capabilities or lack thereof are publicly known.” This is the market place model for which existing civil remedies are adequate. The State does not regulate to assure perfect performance in all transactions. At the public hearing the applicants admitted that there have been no problems with people holding themselves out as landscape architects. They have provided nothing to contradict their assertions of the general competency of landscape architects. In fact, many towns and the State of Vermont have the means to select proper persons from non-regulated professions for their projects. They do it all the time.

**Prevention of Incompetent Acts:** The landscape architects argue that licensure prevents incompetent acts from happening. We know of no instances or complaints of harm from landscape architects in Vermont. These arguments assume that incompetent practitioners will be prevented from entering practice or are later excluded from practicing. The applicants admitted that under-educated people have not been posing as landscape architects vying for projects. During the public hearing one participant who sits on the Connecticut licensing board said that most of the complaints in that state are brought by licensees and towns about unauthorized practice or ethics (statements at a public meeting), not incompetence.

**Standard of Care:** The landscape architects argue that licensure creates a higher standard of care. Licensure is designed to set a minimum competency level. They argue that mandatory continuing education will keep people up to changing standards. Again, we see no evidence that landscape architects are not practicing to acceptable standards.

**If Engineers are Regulated, Landscape Architects Should Be:** We note that the scope of practice for engineers is broad and encompasses activities which may be performed by members of other professions, licensed and unlicensed. What makes “licensed engineering”

unique is that it is defined not by the project, but by the education one wishes to bring to the project.

“ ‘Professional engineering services’ means any service or creative work, the adequate ***performance of which requires*** engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences. This includes consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of land and water and accomplishing engineering surveys. Such services or work may be either for public or private purposes, and may be performed in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and equipment systems of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property.” 26 V.S.A. § 1161(2)(emphasis added).

That is, if a project is determined to require engineering training, experience, and special knowledge, it is to be done by an engineer licensed by the state.

Finally, the most revealing reason that landscape architects seek state regulation. This rationale for licensure was submitted to the State of Colorado. Colorado asks in its sunrise application what benefit the applicants derive from licensure.:

“Landscape Architects ***are seeking recognition as professionals*** to produce plans that comport with standards for public health, safety, and welfare. For clients of the design professions and those who review construction design, a state-authorized professional stamp is the hallmark of a plan that has been specifically certified to meet standards for public health and safety. In the absence of state regulation of landscape architects, ***members of the profession may be unable to satisfy building and planning officials of the competency of their designs***; clients are unable to recognize or benefit from applicable standards of professional competency; and the general public has less assurance of a safe built environment and fewer avenues of recourse when construction projects with a landscape architectural component are designed negligently.

In addition to recognition of the role of landscape architecture and the design of the physical environment conducive to safety, ***regulation is sought by landscape architects to advance the practice of landscape architecture to an appropriate professional status. For landscape architects, licensure offers significant benefits that include an increased ability to compete in national markets, a level playing field with associated licensed design professionals with similar education in skills backgrounds, ownership rights, and financial advantages and a self-fulfilling.***”[sic](emphasis added).

### **Landscape Architects and Engineers**

The landscape architects say that licensure will assure clients of landscape architects

training and expertise. In this year's application they focus on the areas which may most closely fit the Sunrise statute to justify licensure. They argue that they are qualified to practice what has been traditionally within the realm of civil engineering. At the October 26, 2006 hearing they introduced educational comparisons between landscape architects' programs and engineering programs.

The Office of Professional Regulation does not have the expertise to evaluate landscape architecture educational programs and compare them to engineering programs. We cannot state whether or not landscape architecture education and training is comparable to that of engineers. That is not what a Sunrise assessment is designed to do. The landscape architects seek state endorsement of their claimed expertise in civil engineering. They say that as professionals they would know when their individual training is insufficient and when an engineer would be required. Licensure of this profession would be seen as an endorsement of their ability to engage in some civil engineering pursuits.

As we noted in our 2003 report, the hiring of landscape architects will continue to be made on how the profession's expertise is viewed. The landscape architects argue that only through full licensure will landscape architects be able to perform the functions that require a professional stamp or seal.

The Office asked the landscape architects to provide a list of towns and municipalities which require specific licensing requirements for projects. For a vast majority of projects e.g., residential developments, minor subdivisions, recreation path bridges, major developments, the towns require a licensed engineer or land surveyor. The towns do require engineers' or land surveyors' stamps, proof that they are licensed. The requirement is not that plans bear a professional's stamp, but that there be proof that they were submitted by licensed members of specific professions. The stamp is that proof. Some towns encourage applicants to seek the services of landscape architects, but do not require them. Some towns permit use of "qualified landscape architects." The rest do not require any specified professional. The towns which require engineers and surveyors to submit plans do so presumably because the towns have decided that their expertise is necessary for the plans. Even with licensure landscape architects would not qualify to submit plans for those towns' projects.

State regulations do not specify that a professional stamp is necessary for particular jobs. Agency of Transportation representatives report that roadway design plans submitted to them by private sector landscape architects for public highways have not been of acceptable quality. The Agency of Transportation accepts proposals and plans without specifying that they come from a licensee of a particular profession. That decision is made by project overseers who determine the level of expertise and training their project requires. For some municipal or state projects some landscape architects may be sufficiently competent to submit plans. No doubt, if landscape architects were granted licensure, they would go to towns and the state saying "the state has found that we are just as competent as engineers and surveyors."

*The challenge landscape architects face is one of consumer education. Licensure is not a recognized tool for educating towns, the state, or consumers about the value of using a particular profession.*

### **Regulatory Limitations on Practice**

As of 2005 only 36 of the 47 states regulating landscape architects regulated the actual practice of landscape architecture. Nine states had title acts, which means that anyone can practice the profession, but only those individuals who satisfy enumerated criteria are permitted to use the title “landscape architect.” The licensing requirements of the various states vary.

New Hampshire became the 48<sup>th</sup> state to regulate landscape architects. New Hampshire’s proposed scope of practice statute limits landscape architects.

“The practice of landscape architecture shall include the location, design, and arrangement of such tangible objects and features as are incidental and necessary to the purposes outlined in this paragraph, **but shall not include the design, assessment, analysis, or evaluation of structures or facilities with separate and self-contained purposes, streets or highways, utilities, storm and sanitary sewer systems and appurtenant structures, and water and sewage treatment facilities such as are exclusive to the practice of professional engineers, natural scientists, or architects as defined in this chapter.** Furthermore, this practice shall not include the making of land surveys or final land plats for official approval or recording, the official mapping of soils, or the analysis, testing, and reporting of soil and bedrock conditions, delineation of wetlands or determination of soil, surface, or groundwater related to hazardous waste contamination.”<sup>7</sup>

The Laws of New York, Article 148 Landscape Architecture § 7321 provides:

“This practice shall include the location and arrangement of such tangible objects and features as are incidental and necessary to the purposes outlined herein but **shall not include the design of structures or facilities with separate and self-contained purposes such as are ordinarily included in the practice of engineering or architecture; and shall not include the making of land surveys or final land plats for official approval or recording.**”

It would be unwise for the State to attach the imprimatur of equivalency to the broad scope of practice landscape architects seek. It would be unwise to imply that landscape architects are as competent as engineers to build roads, or walkways, or walls, or drainage and storm water systems, for which most consumers seek an engineer’s expertise and training. Informed hiring

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<sup>7</sup> See, Board of Landscape Architects, Initial Proposal, Lsa 100 Organizational Rules 10/24/06 <http://www.nh.gov/jtboard/lsa100ip.htm> .

decisions are best based on a review of a professional's qualifications and past performance. That practice continues to work well in Vermont.

### Conclusions

In 2003 and 2006 landscape architects requested sunrise reviews for licensure. In between they continued their legislative efforts towards licensure. As their statement as part of the Colorado sunrise process reveals, landscape architects desire government regulation to educate the public about the contributions their profession can make to enhance their professional status. The exemptions from licensure in their proposal show that licensure is more important than limiting activities to licensed personnel. Quite simply, the landscape architects seek licensure to expand their professional opportunities. Regulation will be a financial benefit their profession. Whether towns, developers or the state will hire landscape architects will turn on whether landscape architects are seen as competent in the fields they focus on in this application. Regulated or not, landscape architects will still have to convince potential clients of their expertise.

Again, there is no indication that landscape architects *as an unregulated profession* have caused any harm in this state. As they admit in their application, "Not all of the work of landscape architects directly affects the public health, safety and welfare of the public." That they have not been retained to design roads and similar projects in Vermont does not justify licensure. That some of them may have been hired to pursue these projects in other states is an argument landscape architects can make to obtain similar work in Vermont. A change of law is not necessary.

There is no indication that remaining an unlicensed profession in the performance of their various activities has or will clearly harm or endanger the health, safety, or welfare of the public. They have not shown that the potential for any harm is anything but remote and speculative. Whether an improvement in public health, safety, and welfare would be achieved by licensure of landscape architects is speculative. There is no indication that the public requires regulation to assure that landscape architects meet fixed educational requirements.

Following the criteria of 26 V.S.A. § 3105, we conclude:

- (1) **It has not been demonstrated that the unregulated practice of landscape architecture** can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is recognizable and not remote or speculative;
- (2) The public does not need through regulation an assurance of initial and continuing professional ability.
- (3) The public is effectively protected by other means.

(4) Existing common law sanctions are sufficient to reduce or eliminate any harm.

(5) No stronger civil remedies or criminal sanctions have been required, tried, or found to be insufficient.

(6) No lesser form of regulation, like registration or certification has been justified.

### **Recommendation**

The Office of Professional Regulation recommends that landscape architects **not be subject to professional regulation** in Vermont.

Respectfully submitted:

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Christopher D. Winters, Director  
Office of Professional Regulation  
December 29, 2006



**Landscape Architects:  
Second Sunrise Application**

**Docket No. LA-01-0706**

**Appendix**

1. Office of Professional Regulation Sunrise Report 2003.
2. <http://www.asla.org/land/110705/state.html>. Example of lobbying efforts.