

**Testimony** On behalf of the Oregon State Landscape Architect Board (OSLAB)  
by Susanna R. Knight, Administrator  
November 21, 2008  
Public Rule Making Hearing for Oregon Landscape Contractor's Board (OLCB)  
**Opposition to OAR 808-002-0780**

On September 18, 2008, a letter was addressed to the Chair of OLCB regarding Administrative Rules under consideration. (*Note:* OSLAB had received no notification of a Rule Hearing convened in August 2008 for purposes of providing comment on the Administrative Rule change.) Because of OSLAB's concern about this change, OSLAB's staff was asked to provide public comment at the September 19, 2008, OLCB meeting. At that meeting, OLCB was informed that OSLAB was neither present at the hearing nor had appropriate time to prepare information and submit it into the record of that hearing and the September 18, 2008, OSLAB letter was distributed to members of OLCB.

I offer into the Hearing record a copy of the aforementioned letter dated September 18, 2008, from OSLAB Chair Timothy Van Wormer on behalf of OSLAB. In addition, I offer the following verbal comments for the record today so that the concerns of OSLAB are duly noted.

At the OSLAB quarterly Board meeting convened in Salem last Friday, November 14, 2008, OSLAB confirmed that input about this OLCB Administrative Rule change is critical and asked me to appear on its behalf and enter the following information into the hearing record. With all due respect, neither the Board Chair Timothy Van Wormer nor the Board Member Liaison to OLCB John Pellitier is able to attend this hearing today. Public Member Ron Nichols and Bob Edwards reside in Salem and are joining me here today.

OSLAB is very concerned about the expansion of the scope of practice of Landscape Contractors which has occurred over the past two Legislative Sessions.

During the 2005 session, OLCB made a significant semantic change to ORS 671.520 (1)(a)(d) by replacing the word "and" in "plan and install" to "or". OSLAB has no record of being contacted by OLCB either during the development of the legislative concept before the session; testifying in support of this change during the session; or signing off on this change to ORS 671.520 as it became law.

To those who have no knowledge of the practice of landscape architecture versus the practice of landscape contracting, this change of "and" to "or" may seem quite insignificant. However, once you consider the following information, OSLAB believes that you will agree that this change carries with it the potential for impact to the health, safety, and welfare (HSW) status of the citizens of the State of Oregon. This appears to be an attempt to expand the scope of practice of licensed landscape contractors into the design field without the addition of the education and experience level required of Landscape Architects.

During the 2007 Legislative Session, Staff of OSLAB was contacted when the Governor received an OLCB bill for signature that was changing ORS 671.321(1)(e) of the Landscape Architect Law. The name Landscape Contractor was being changed to Landscape Contracting Professional. OSLAB was not previously informed of this change, neither during the development stages of the Legislative Concept nor during the Legislative session. OSLAB went on record opposing this name change when asked to sign off as the last step in the process.

Webster's Dictionary defines "*profession*" as "*an occupation requiring advanced study or training*". To emphasize the extensive education of Landscape Architects which allows them to be identified as a *professional*, the website of the American Society of Landscape Architects (ASLA) [[www.asla.org](http://www.asla.org)] summarizes the requirements as follows:

- Sixty universities currently offer at least one program in landscape architecture accredited by the Landscape Architectural Accreditation Board (LAAB).
- There are two undergraduate professional degrees in Landscape Architecture. These degrees usually require five years of university study in design, construction techniques, art, history, and natural and social sciences:
  - 1) Bachelor of Landscape Architecture (BLA-eligible for accreditation) and
  - 2) Bachelor of Science in Landscape Architecture (BSLA-eligible for accreditation).
- There are two types of accredited graduate-degree programs:
  - 1) The three-year Master of Landscape Architecture (MLA) option is for persons who hold an undergraduate degree in a field other than landscape architecture and intend to become landscape architecture practitioners.
  - 2) The two-year Master of Landscape Architecture (MLA) is for persons who hold an undergraduate professional degree in landscape architecture.

OSLAB examines, registers, and regulates Registered Landscape Architects (RLA). As a registered professional, an Oregon Landscape Architect must meet very stringent criteria which require a total of eight years of preparation *before* the title Landscape Architect (RLA) is legal. A 5-year university program is required prior to being eligible to begin sitting for 5 different required exams. Candidates may begin sitting for three of those five exams with the degree completion which represents five of the eight required years. Following one year of experience under an RLA, candidates can be approved to sit for two additional exams, one being a five-hour exam on Site Design and the other a 5-hour exam on Grading and Drainage.

Upon passing all exams and meeting the total of 3-years of supervised experience, a candidate may apply with OSLAB for registration as an RLA. This professional level of education and experience is what allows *plans* prepared under an RLA to be duly stamped to protect the health, safety, and welfare of the citizens of Oregon. *This is why the word PLAN is critical*, and this was outlined by the OSLAB Chair in his September 18, 2008, letter.

How does an RLA protect the public? Landscape Architects generally work as consultants in the same way Architects and Professional Engineers do, defined by contractual agreements which spell out scope and fees for specific tasks for specific projects. The typical design process involves site analysis, conceptual design, design development, and construction documents (detailed plans and specifications). The majority of the work involves planning and design for development and/or protection of natural resources. Planning and design is based on thorough graphic and narrative documentation of site analysis (recording on-site observations, doing document research of site conditions, and conducting scientific testing of site elements and resources). Site analysis involves an investigation of specific site characteristics such as soils, climate, topography, drainage, natural features, views, sun, shade, seasonal changes, etc. These characteristics influence design. Design details for features and facilities must also comply with planning and code requirements and design standards of appropriate jurisdictions.

The education and testing of Landscape Architects allows them to plan and design while protecting the public. Some examples are: grading and structure design to protect adjacent property from flooding; designing to eliminate tripping hazards; designing to save energy through use of shade or solar orientation; designing for intuitive wayfinding; designing for the efficient use of water; designing for the functional and aesthetic enhancement of development features; designing for the protection or enhancement of natural resources such as wetlands; and much more.

As explained by ASLA in its role of promoting the profession, Landscape Architects plan and design traditional places such as parks, residential developments, campuses, gardens, cemeteries, commercial centers, resorts, transportation facilities, corporate and institutional centers and waterfront developments. They also design and plan the restoration of natural places disturbed by humans such as wetlands, stream corridors, mined areas and forested land. Their appreciation for historic landscapes and cultural resources enables Landscape Architects to undertake preservation planning projects for national, regional and local historic sites and areas. Working with Architects, City Planners, Civil Engineers and other professionals, Landscape Architects play an important role in environmental protection by designing and implementing projects that respect both the needs of people and the environment.

In protecting the people, Landscape Architects design ramps, stairs, handrails, guardrails as part of their technical design standards and as required according to the American With Disabilities Act of Congress. National testing insures that Landscape Architects have the basic understanding of this information for the health, safety, and welfare of citizens using the resulting design product.

Forty-nine states regulate Landscape Architects; only Vermont and the District of Columbia do not. All of the states work together in the ongoing examination development process of updating and revising the national examination. Oregon initially registered Landscape Architects beginning in 1968. A sunset law in 1982 was subsequently overturned and the registration in Oregon has been continuous since 1983.

When OLCB revised its statute during the 2005 Legislative Session and changed the “and” to “or”, individuals licensed by OLCB were set up to “plan” without subsequent installing or likewise, installation without planning. Since installation of (a) landscape design is the purpose of landscape contractors, this part of the work of a landscape contractor did not change and is not of concern to OSLAB (*Note: Initially the OLCB definition in statute was to “plant and install”, not “plan and install”. Research is unclear as to how the “t” was dropped from the word “plant”.*)

OSLAB has great concern about the role of a landscape contractor who is only doing a “plan” and not an installation of that “plan”. That is why Chair Van Wormer requested a definition of the word “plan” in his letter of September 18, 2008. As of today, no draft definition of “plan” has been presented for consideration to OSLAB by OLCB.

As a licensed landscape contractor doing both “planning and installing”, the bond required by OLCB of such persons may protect the public. But OSLAB is unclear as to how the public will be protected with the replacement of the “*and*” by the “*or*” and without a definition of the word “plan”. This is of critical concern to the members of OSLAB in its charge to protect the public.

OSLAB is actively enforcing the statute against 1) designers preparing landscape architecture work and 2) designers advertising that they prepare landscape architecture work. Since 2005, civil penalties in the amount of \$7500 have been collected in applying the Landscape Architecture statute against such violations. Of concern to OSLAB in the separation of the “plan and install” concept is the role of OLCB in licensing design businesses.

- 1) Will these “designers” practicing landscape architecture now become licensed as a contractor to legitimize their design business but not otherwise meeting the standard that Landscape Architects must meet for protecting the HSW of Oregonians?
- 2) How will OSLAB protect the public from poor landscape architecture when these designers are regulated by OLCB?

To protect the health, safety, and welfare of the citizens of Oregon, the members of OSLAB officially goes on record to oppose any further expansion of the work of landscape contractors into the practice of planning and design legally established by the education and testing of Landscape Architects.

*Respectfully entered into the record on behalf of the following members of OSLAB:*

Timothy Van Wormer, RLA, Board Chair, Portland	Mel Stout, RLA, Vice Chair, Portland
Ron Nichols, Public Member, Treasurer, Keizer	Robert Edwards, Public Member, Keizer
David Olsen, RLA, Bend	John Pellitier, RLA, Eugene
Susan Wright, Public Member, Portland	

cc: Danny Santos, Policy Advisor, Office of the Governor  
Senator Ginny Burdick, Senate District 18  
Senator Richard Devlin, Senate District 19  
Representative *Elect* Chris Garrett, House District 38  
Senator Larry George, District 13  
Representative Paul Holvey, House District 8  
Representative Mary Nolan, House District 36  
Senator Floyd Prozanski, Senate District 4  
Representative *Elect* Judy Stiegler, House District 54  
Senator *Elect* Chris Tefler, District 27  
Representative Kim Thatcher, House District 25

Attachments: State of Hawaii, Professional Services for  
Construction Projects and Land Surveys  
State of Iowa, Building Code Official's Handbook  
State of Maryland, Licensed Design Professionals' Overlapping Practice  
Guide for Local Government Officials  
State of New Mexico, Handbook for New Mexico Building Officials