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The Legal Environment for Landscape Architecture in Utah

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THE LEGAL ENVIRONMENT FOR LANDSCAPE ARCHITECTURE IN UTAH

By

Jeffrey J. Scarborough

A thesis submitted in partial fulfillment
of the requirements for the degree
of
Master of Landscape Architecture
in
Landscape Architecture and Environmental Planning

UTAH STATE UNIVERSITY
Logan, Utah

1996
ABSTRACT

The Legal Environment for Landscape Architecture in Utah

By

Jeffrey J. Scarborough, Master of Landscape Architecture

Utah State University, 1996

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This paper explores and delineates the legal environment for the practice of landscape architecture in Utah. The national, state, and local (city and county), codes that apply to landscape architecture and the related professions of architecture, engineering, and land surveying are documented, as is pertinent case law. Figures allow comparisons to be made between the various government levels to demonstrate contradictions and congruencies, as well as the clarity of the ordinances. Major findings include significant differences among the city and county regulations of landscape architecture and the related professions, and weaknesses in the state law for landscape architecture. Major recommendations include the pursuit of a practice law, and other methods of clarifying and increasing the authority of landscape architects in the state.

(78 pages)
I would like to express my appreciation to the Utah Chapter ASLA Executive Committee for recommending and supporting this research. I am especially grateful to Robert Desmond and Elloise Sahlstrom for their special interest and insight into this topic.

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Jeffrey J. Scarborough
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Introduction

The ASLA (American Society of Landscape Architects) Utah Chapter Executive Committee is currently preparing recommendations for state level revisions to the definition and practice of landscape architecture in Utah. An understanding of the influence of the current laws on the practice of landscape architecture is vital to this undertaking. Through understanding current conflicts and misunderstandings, the committee will be able to act to reduce or alleviate problems in the future. This study is intended to provide that understanding by investigating, analyzing, and documenting the state, municipal, and county regulations pertaining to the practice of landscape architecture in Utah.

Statement of the Problem

Questionnaires and interviews of the ASLA Utah Chapter Executive Committee, Utah State University professors, and licensed landscape architects have revealed inconsistency and confusion regarding the legal aspects of landscape architecture practice in Utah. Most of the problems are due to two major reasons. First, state laws contain vague definitions of services that can be performed by design and engineering professionals. For instance, the Landscape Architect's Licensing Act (Utah Code 58-53), states that landscape grading plans are within the scope of work for landscape architects. The term
"Landscape grading plans" could be interpreted to mean grading plans for vegetated areas only, or it could be interpreted to include other exterior areas as well, such as sidewalks, parking lots, urban plazas, and streets. Furthermore, vague definitions obscure the overlap between related professions, leaving the parameters of professions open to interpretation. This creates a real problem for landscape architects, as they have long suffered from a misconception of their roles in the design and construction processes.

Second, as a result of the vague state definitions, landscape architecture is perceived differently among local level governments. This has created problems for landscape architects who work in more than one city and/or county. For example, landscape architect Paul Keeler found that some communities require an engineer's stamp for retaining wall designs, while others do not (1995).

To provide clarification and insight into these problems, the following three objectives were set:

**Objectives**

1. To describe the legal environment for the practice of landscape architecture in Utah.

2. To delineate congruencies, contradictions, and ambiguities among the definitions and regulations of landscape architecture in Utah.

3. To provide a set of recommendations to improve the legal environment for the practice of landscape architecture in Utah.
Overview of Procedures

The first objective provides the foundation of the study. It was met by collecting information from various legal sources and government entities, and includes:

a. Common law criteria for state licensing laws.

b. The structure and authority of state government agencies in charge of regulating landscape architecture, architecture, engineering, and land surveying.

c. Relevant portions of state professional licensure laws for landscape architecture and the related professions.

d. County and municipal policies and regulations pertaining to the work of landscape architecture and the related professions.

The second objective was met by analyzing the documents collected in objective 1. This analysis focused on:

a. Ambiguities such as vague terms.

b. Contradictions and congruencies between various statutes.

c. Overlap of responsibilities between landscape architecture and related professions.

d. Common law precedents concerning the practice of landscape architecture and related professions.

The third objective focused on recommendations designed to:

a. Clearly define the work inherent to landscape architecture and the related professions.
b. Resolve or manage ambiguities and discrepancies among the various regulations.

c. Achieve consistency among the various regulations.

d. Cover tasks that have not been mentioned in the various legal descriptions of landscape architecture.

e. Promote the profession of landscape architecture in Utah.

**Data Presentation**

This study was undertaken primarily to aid the Utah Chapter ASLA Executive Committee in preparing recommendations for state law revisions. However, this information will also prove useful to licensed landscape architects, members of related professions, and local and state level officials who wish to better understand the legal environment for the practice of landscape architecture in Utah. To accommodate these various groups most effectively, the following modes of communication will be used:

a. *MLA Thesis.* This document shall conform to the standards and requirements of Utah State University and the Department of Landscape Architecture and Environmental Planning.

b. *Executive Summary of Findings.* This five to ten page document shall be bound. Copies shall be made available to the ASLA Utah Chapter Executive Committee for distribution to all ASLA Utah members, and to use as they see fit. Ten additional copies shall be provided to the ASLA National Headquarters.
c. *Archive Copies.* All legal documents collected for the research shall be stored in the LAEP department library at USU.

d. *Presentation of Findings.* Findings shall be presented at ASLA Utah Chapter meeting as time and scheduling permit.
CHAPTER 2
METHODOLOGY

Introduction

Chapter 1 gave a brief overview of the objectives and procedures to be followed for this study. Chapter 2 gives a more complete delineation of the methodology, covering the procedures in depth. The study area, data collection methods, analysis methods, and the basis for recommendations are explained.

Study Area

This study is focused on Utah, specifically, to the state, county, and city laws that regulate landscape architecture and the related professions. The national context is briefly discussed to set the background for the study, but the major focus is on the 25 largest population municipalities and the 9 counties they reside in (see Figure 1 and Appendix A).

The 25 largest population municipalities were chosen for three major reasons. First, they represent a majority of the people. The study area comprises 33% of the state, and contains 89% of the population (U.S. Census Bureau, Feb. 91). Second, the larger cities have more comprehensive government structures. Evidence of this can be found in the Directory of Utah Local Officials (Utah League of Cities and Towns, 1958-), where larger cities and counties are found to have more government employees than smaller ones. With more comprehensive government structures, it is more likely that these issues
25 largest population municipalities and the 9 counties they reside in.

Figure 1. Study area.
will have been addressed and resolved to some degree. Third, there is more work for landscape architects in larger cities. With more large-scale development projects, such as public buildings and subdivisions, there will be more work for landscape architects, and therefore more interest in the study.

The 9 counties that the municipalities reside in were chosen so that comparisons could be made between the regulations of the counties and the cities within them. Where development codes and zoning ordinances are concerned, the city and county governments have equal and independent power. The incorporated areas are regulated by municipal governments and the unincorporated areas are regulated by county governments. Despite this distinction, comparisons should give insight into regional correlations or contrasts. Rural areas were not studied leaving the possibility of some unanswered questions. There may be significant differences in policies and regulations for rural cities, counties, and service districts. This is an area where further research is recommended if an interest exists.

**Data Collection**

Five major sources were used for this study. Information from these data sources was presented as a background report in chapter 3, and provides the basis for analysis in chapter 4. The sources, with an overview, follow:

*ASLA Committee and Landscape Architect Interviews, and Questionnaires.*

Questioning of licensed landscape architects was intended to further define the study by
making sure important considerations had not been overlooked. The landscape architects interviewed were chosen because of their interest in the subject, or because of their relation to the ASLA Committee. A scientific sample was not necessary because the objectives of the study were already set through initial meetings with the ASLA Executive Committee and USU professors. Information gathered through the survey is not formally presented, however, quotes are used throughout the document. Interview questions were intended to get feedback from landscape architects regarding:

a. Problems encountered due to laws and regulations.

b. Specific counties or municipalities where problems occurred.

c. Opinions as to possible solutions.

d. Relevant experiences in other states or countries.

State License Laws. The state license law research focused on the state definitions of landscape architecture, architecture, engineering, and land surveying; and the state definitions and penalties for unprofessional and unlawful conduct. The professional definitions are presented in chapter 3, and analyzed in Chapter 4. In the process of analyzing the professional descriptions, portions of the laws were summarized, leaving room for misinterpretation. To reduce this, exact legal descriptions are printed in Chapter 3, and archive copies of the legal documents are stored in the LAEP department library at USU.

County and Municipal Policies and Regulations. The source of the regulations was the county and municipal codes, specifically, the zoning ordinances and the development codes. The purpose of this research was to gain information regarding the development
approval process, specifically, submittals needed for project approval, and professional certification needed on the submittals. This information was gathered directly from the 25 largest population municipalities and the 9 counties they reside in (see Figure 1 and Appendix A). Information gathered includes regulations pertaining to work landscape architects, architects, engineers, and surveyors may perform. The regulations were also searched for specific mention of "landscape architect".

National Standard Codes. These national construction codes have been adopted by the state, and all of the cities and counties in this study. National codes include the Uniform Building Code (UBC), the National Electric Code (NEC), The Uniform Plumbing Code (UPC), and the Uniform Mechanical Code (UMC). These codes provide further detail as to where a professional is needed for a particular task, for example, the height of a retaining wall at which a building permit is required. The codes were searched for any mention of professional certification and any exemptions from that certification.

United States Common Law. Case law summaries were studied to find past resolution of legal controversies. This information was documented and used to scrutinize the laws, policies, and regulations. The research was done using common law summaries and individual Utah cases involving pertinent landscape architecture issues.

Analysis Methods

The analysis followed a step-by-step procedure (see Figure 2). Analysis data included: state profession definitions, city and county regulations, standard uniform codes
Figure 2. Analysis methodology.
(UBC, NEC, UPC, UMC), and case law summaries. Explanations follow:

Step 1. This involved the state license law definitions of the four professions: architecture, landscape architecture, land surveying, and engineering. Comparisons were made between professions to pinpoint areas of overlap.

Step 2. This step involved documenting the city and county regulations (see Figure 2). Differences were discussed and observations were noted. The documentation was of required certification needed on the submittals for approval of large scale projects. From this analysis, congruencies, contradictions, and ambiguities among county and municipal codes were displayed, and statistics were noted. Copies of the original ordinances are stored with the state laws in the LAEP department library at USU. Step 2 also addresses other relevant data discovered in the codes, including specific mentions of "landscape architect."

Step 3. In this step, the standard codes (UBC, NEC, etc.), were searched for mentions of professional certification on submittals, and exemptions to certification. The standard codes are a part of the city and county codes through adoption, with few minor exceptions. These codes give more insight into the level of complexity where specific professions are needed to perform specific tasks.

Step 4. This step compares the state definitions, the city and county regulations, and the standard codes. From this analysis, congruencies, contradictions, and ambiguities between the levels of government were discussed. This step exposed city and county submittals that landscape architects should be able to certify but cannot, and tasks that could be included in the state definitions but are not.
Step 5. In this step, the state definitions, the county and municipal regulations, and the standard codes were analyzed in the light of case law. Legal precedents were used to point out controversial laws and regulations, giving insight into the legality of state definitions, and city and county codes.

Basis for Recommendations

The recommendations are based on the results of the analysis. Each step, as delineated above, provided a set of data. The ramifications of these data sets were discussed and recommendations were made in chapter 5.
CHAPTER 3
BACKGROUND

Introduction

This chapter is a research report covering the current legal structure and powers of Utah state agencies in charge of regulating landscape architecture and the related professions. It covers: the national context for licensure, the Utah State Code, county and municipal powers and codes, and national standard codes. Definitions of key terms can be found in Appendix B.

National Context

Authority of states to enact licensure laws comes from the "Tenth Amendment" of the United States Constitution which states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively, or to the people." According to USU Professor David Daines, states can legislate statutes under three purposes. First, to repeal or modify common law. Second, to define a law when common law precedents are in conflict. Third, to define a law concerning a limited issue if no common law precedents exist (1996). Because of these points, licensure legislation prepared by individual states varies. The role of the courts, in this context, includes the important function of interpreting and applying both legislation and common law and establishing new common law where there is no legislation. Following is a brief overview of common law precedents relating to the authority of
states to require licensure and permits.

States can impose license requirements under two purposes: revenue generation or regulation of activity. The authority to require licensure for revenue generation comes under the power of taxation, and has no monetary limit. The authority to require licensure to regulate comes under the police power, and should be tied directly to protecting the public health, safety, and welfare. This includes protecting the public from such dangers as ignorance, incompetence, and fraud in the practice of the particular calling. Other purposes for regulatory licensing include: discouragement of certain activities and the adjustment of competitive inequalities. Municipalities are given the same power to regulate professions under the same purposes as the states, however, municipal regulation of particular occupations or trades depends upon the grant or delegation of authority from the state. Dual regulation of activity by a state and its municipalities is not prohibited as long as the municipal regulation does not conflict with the state regulation (58 Am Jur 2d §2, §3, p.1172).

The fact that licensees enjoy the privileges of being licensed not available to unlicensed persons does not disclose an unconstitutional granting of special privileges. However, licenses that confer exclusive privileges or rights to individuals or private corporations are often struck down by the courts (paraphrased from 51 Am Jur 2d, p.11-27).

Common law precedents specific to landscape architecture and the related professions are covered in detail in Chapter 4. Following, however, is a brief summary of how states have applied licensing with regard to landscape architecture. State license legislation
concerning landscape architecture has a short history. California was the first to require licensure in 1954. By the early 1960's, four more states required licensure. The trend continued despite the 'sunset laws' of the 70's that caused Colorado and Oregon to eliminate all license legislation referring to landscape architecture. By 1981, 38 states required licensure, and presently, with the latest addition of Wisconsin, 45 states require licensure for landscape architects (Marshall, 1981 p. 55, L.A. News Digest, June 1994 p. 5).

State landscape architecture license laws fall into two major categories: title law and practice law. According to Marshall, "Title law governs the use of the term 'landscape architect' and limits its use to those people who meet the licensure criteria," and, "Practice law limits the performance of activities generally thought of as landscape architectural in nature to those people who meet the licensure criteria," (1981). A practice law provides the most advantage to licensed landscape architects by excluding from actual practice those who haven't passed the requirements for basic competency. Practice law also confers the greatest responsibility, as licensure is based on competency, and therefore leaves little excuse for inadequate or unsafe work. Currently, 25 states have practice laws, and 20 states, including Utah, have title laws, leaving 5 states with no state law governing the practice of landscape architecture (see Figure 3). All states have practice laws for architecture, engineering, and land surveying.

_Utah State Code_

The professions are regulated by the Utah Code in several ways. State-wide
Figure 3. States with landscape architecture laws.
regulation is accomplished through state governing bodies and statutes, including those that empower cities and counties to further regulate. There is an individual professional licensing act for every profession that requires a license in Utah. Of the many professional licensing acts, three were used for this study: the Landscape Architect's Licensing Act (Utah Code 58-53), the Architect's Licensing Act (Utah Code 58-3), and the Professional Engineer's and Land Surveyor's Licensing Act (Utah Code 58-22). The acts generally contain the following sections: Title, definitions, board, requirements for licensure, term of license, seals, exemptions, and disciplinary procedures. For this study, only the sections of definitions, and exemptions, and disciplinary procedures were discussed. The following discussion will give more detail on all of these regulating mechanisms.

Division of Occupational and Professional Licensing Act. This is Title 58, Chapter 1 of the Utah Code. The act creates and empowers the Division of Occupational and Professional Licensing whose purpose is to, "Administer and enforce all licensing laws of Title 58," (58-1-103). The Division is overseen by a 'Director' appointed by the governor (58-1-104), with the job of, "Prescribing, adopting, and enforcing rules to administer (Title 58)," (58-1-106). This act is in compliance with Title 13, Chapter 1, Department of Commerce, and Title 63, Chapter 46b, Administrative Procedures Act. Each licensed profession has a director appointed, five-member board with three major duties: recommending rules and policies to the director, overseeing testing of applicants for licensure, and presiding over adjudicative hearings. The Division in collaboration with the board has several duties (paraphrased from 58-1-203), as follows:
1. Defining suitable learning institutions.
2. Prescribing license qualifications.
3. Setting license application rules.
5. Defining unprofessional conduct.
6. Establishing advisory peer committees and their authority.
7. Establishing conditions for license reinstatement or renewal.

The Division allows exemptions from licensure under certain conditions (paraphrased from 58-1-307), as follows:

1. A person working for a federal agency if he has a recognized license from another state or jurisdiction.
2. Training work done by a student in a recognized school.
3. Division approved on-the-job training under supervision.
4. A person residing and licensed in another state consulting for a licensed person in Utah.
5. A guest lecturer or demonstrator invited by a recognized school, or other association approved by the Division, if the person has no established business or practice in Utah.
6. A person licensed under state law other than Title 58 while engaged in the lawful, professional, and competent practice of that occupation or profession.

Unlawful conduct, violation of which is a class A misdemeanor, includes (paraphrased from 58-1-501):
1. Practicing without a license.
2. Employing a non-licensed person to do work requiring a license.
3. Cheating to obtain a license.

Unprofessional conduct includes (paraphrased from 58-1-501):
1. Violating, or helping someone to violate any statute, rule, or order under Title 58, or any generally accepted professional or ethical standard under Title 58.
2. Engaging in unlawful conduct that affects the safe and competent practice of the profession.
3. Engaging in conduct that results in disciplinary action by another licensing or regulating agency having jurisdiction over the licensee.
4. Engaging in substance abuse that might impair the licensee's ability to safely perform the profession.
5. Engaging in a profession despite being physically or mentally incompetent to do so.
6. Gross incompetence or gross negligence or a pattern of incompetence or negligence in the practice of a profession.
7. Dishonest communication or action in the practice of a profession.
8. Practicing a profession beyond the scope of the person's ability or license.
9. Abusing or exploiting someone in connection with the practice of a profession.

Landscape Architect's Licensing Act. This is Title 58, Chapter 53 of the Utah Code, 1993. It states that the "Practice of landscape architecture' means rendering or offering to
render any of the following services for the purpose of landscape preservation, development, or enhancement:

(a) investigation, selection, and allocation of land and water resources for appropriate use;

(b) preparation of feasibility studies;

(c) formulation of graphic and written criteria to govern the planning and design of land construction programs;

(d) preparation, review, and analysis of master plans for land use and development, production of overall site plans, landscape grading, and landscape drainage plans, irrigation plans, planting plans and construction details;

(e) producing specifications, cost estimates, and reports for land development;

(f) collaboration in the design of roads, bridges, and structures with respect to the functional and aesthetic requirements of the areas on which they are to be placed;

(g) negotiation and arrangement for execution of land area projects; and

(h) field operation and inspection of land area construction, restoration and maintenance.

The act further states that "'Unlawful conduct' as defined in Section 58-1-501, includes using the title 'landscape architect' or any other description, words, letters, or abbreviation indicating that the person is a landscape architect when the person is not licensed as a landscape architect under this chapter, and 'Unprofessional conduct' as
defined in Section 58-1-501 and as may be further defined by rule includes:

(a) affixing a seal or allowing a seal to be affixed to any document of which the landscape architect was neither the author nor in responsible charge of preparation; and

(b) having a pecuniary interest in the performance of the contract for the work designed, planned, or supervised by the landscape architect without the knowledge and consent of the person employing the landscape architect.

The act then states, "In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in the practice of landscape architecture subject to the stated circumstances and limitations without being licensed under this chapter:

(1) an individual property owner doing work on his own premises; or

(2) a city planner, horticulturist, nurseryman, gardener, or landscape contractor, as these terms are generally used, except that these persons may not use the designation 'landscape architect' or any description, words, letters of abbreviation tending to convey the impression that he is a licensed landscape architect."

Architect's Licensing Act. This is Title 58, Chapter 3, 1993 of the Utah Code. It states, "'Practice of architecture' or to 'practice architecture' means the performance of or the offering to perform any or all of the professional services of planning and design of buildings, preparation of working drawings and specifications of the construction of buildings, observation of construction, and administration of construction contracts for the construction of buildings. It includes the performance of engineering work that is
incidental to the practice of architecture." The act also states that, "Any person granted a license by the division may practice architecture and may use the title 'architect'. No other person may practice architecture or assume or use the title 'architect' or any other words, letters, or abbreviations indicating that the person using them is an architect." The act also states that, "'Unlawful conduct' as defined in Section 58-1-501 includes using the title 'architect' or any other words, letters, or abbreviations indicating that the person using them is an architect if the person has not been licensed under this chapter," and, 
"'Unprofessional conduct' as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) affixing a seal or allowing a seal to be affixed to any document of which the architect was neither the author nor in responsible charge of preparation; or

(b) having a pecuniary interest in the performance of the contract for the work designed, planned, or supervised by the architect without the knowledge and consent of the person employing the architect."

As for exemptions, the act states, "In addition to the exemptions from licensure set forth in Section 58-1-307, the activities of the following persons are not considered the practice of architecture and are exempt from the requirements of this chapter:

(1) a person employed and acting in the scope of any other profession, including a person licensed to practice engineering under Title 58, Chapter 22, Professional Engineers and Land Surveyors Licensing Act, or the employment or utilization of the services of any other profession;

(2) draftsmen, clerks of the works, superintendents, and other employees of
architects who act under the direct instructions, control, or supervision of their architect employer;

(3) any person who prepares plans or specifications for or supervises the alteration of or repairs to an existing building affecting an area not exceeding 3,000 square feet when structural elements of a building are not changed, such as foundations, beams, columns, and structural slabs, joists, bearing walls, trusses; and

(4) a person who personally prepares plans or specifications for and supervises the construction of a nonresidential building to be held in title by himself if the building:

(a) is not for sale, rent, lease, or use by the public; and

(b) the total floor area does not exceed 2,000 square feet."

*Professional Engineers and Land Surveyors Licensing Act.* This is Title 58, Chapter 22, 1993 of the Utah Code. It states that the, "'Practice of Engineering' means the performance of any service or creative work requiring engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to services or creative work such as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of land and water, and the review and supervision of construction for the purpose of assuring compliance with drawings 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,
buildings, structures, works, utilities, or any combinations of them, employed in or devoted to, public or private enterprise or uses, insofar as they involve safeguarding life, health, property, or the public welfare. It includes the performance of architectural work that is incidental to the practice of engineering." And that the, "'Practice of Land Surveying' means any service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence, for measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water, for the purpose of determining areas and volumes, for the documenting of property boundaries, and for the platting and laying out of lands and subdivisions including the topography and alignment of streets, for the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent this work." The act further states that, "'Unlawful conduct' as defined in section 58-1-501 includes:

(a) stamping or sealing any document with the seal of a professional engineer or land surveyor whose license has expired or has been suspended or revoked;

(b) using, or attempting to use, a title, letterhead, seal, or other instrument which would represent or imply that a person, firm, partnership or corporation is engaged in or attempting to engage in the practice of engineering or land surveying when the person or business entity is not licensed to do so under this chapter;

(c) using the title 'professional engineer', 'licensed engineer', 'registered engineer',
'land surveyor', 'licensed land surveyor', or abbreviation, or combination of title, initials, or abbreviations which may reasonably cause another person to believe that the individual using the title is a licensed professional engineer or licensed land surveyor;

(d) unless exempted from licensure under Section 58-55-4.5, engaging in, or representing itself as engaging in, the practice of professional engineering or land surveying as a corporation, proprietorship, partnership, or limited liability company unless the business entity has a licensed Utah professional engineer or land surveyor who is a licensed Utah professional engineer or land surveyor who is:

(i) employed by the business entity and who provides direct supervision;

or

(ii) an officer, owner, or general partner of the entity who provides direct supervision."

Furthermore, the act states, "'Unprofessional conduct' as defined in Section 58-1-501 and as may be further defined by rule includes having a pecuniary interest in the performance of the contract for the work on which a professional engineer or land surveyor has rendered his professional services, without the knowledge and consent of the person employing him." The act then gives two exceptions to licensure:

(1) "In addition to the exemptions from licensure in Section 58-1-307 the following persons may engage in the practice of engineering and land surveying subject to the stated circumstances and limitations without being
licensed under this chapter:

(a) an employee or subordinate of a person holding a license under this chapter if the work does not include responsible charge and if the employee or subordinate is under the direct supervision of a person holding a license under this chapter;

(b) an employee or a communications, utility, railroad, mining, petroleum, manufacturing company, or an affiliate of such a company if the engineering work is done solely in connection with the products or systems of the entity and is not offered directly to the public;

(c) students enrolled in an approved engineering or land surveying curriculum if the work performed is part of the curriculum and if the engineering services offered or performed do not involve work or facilities which directly involve the public health, safety, or welfare; and

(d) agents, officers, or employees of the United States government while engaged in activities regulated under this chapter as a part of their employment with a federal agency.

(2) A person licensed to practice architecture under Title 58, Chapter 3, Architects Licensing Act, may engage in acts or practices of engineering if the engineering acts or practices do not exceed the scope of the education and training of the person performing engineering.

City and County Powers. The Utah Code gives the cities and counties certain rights
and responsibilities that allow them to further regulate what professions can do, however, most of this authority is indirect, being a result of authority to regulate land use and construction. The Utah Code refers to municipalities, stating that, "Each municipality shall have a governing body which shall exercise the legislative and executive powers," (10-3-101). And that, "The governing body shall exercise its legislative powers through ordinances," (10-3-701). And that, "The governing body may pass any ordinance to regulate, require, prohibit, govern, control or supervise any activity, business, conduct or condition authorized by this act or any other provision of law," (10-3-702). The Utah Code refers to counties, stating that, "A county has power to manage and dispose of its property as the interests of its inhabitants may require," (17-4-3). The Utah Code appears to refer to both cities and counties stating that, "All projects of an authority are subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the project is situated," (9-4-617), but it also states that, "The governing body of each municipality shall prescribe rules and regulations which are not inconsistent with the laws of this state, as it deems best for the efficient administration, organization, operation, conduct and business of the municipality," (10-3-815).

In regard to land-use and development regulations, cities and counties are completely separate from one another. A city governs its incorporated area, and a county governs all non-incorporated areas. In the Utah Code chapter delineating county powers, two references demonstrate this, first, "Nothing contained in this chapter is intended to diminish, impair, or in any wise affect the power conferred upon incorporated cities and towns," (17-5-245), and second, "Elements of the county plan that address incorporated
areas are not an official plan or part of a municipal plan for any municipality, unless it is adopted by the municipal planning commission and the governing body of the municipality," (17-27-302ii).

County and Municipal Codes

City and county codes are very similar in their structure and content. They generally contain 15 to 20 sections. For the purposes of this study, only two sections will be relevant. They are the development code and the zoning ordinance. They may be called by different names by different cities or counties, but their intent is the same. The purpose of studying these is to find out what landscape architects may and may not do according to the statutes of the cities and counties. Only large scale projects (see Appendix B), requiring city or county approval before a building permit may be issued will be studied. Within these two sections, the information most pertinent to this goal includes:

1. Subdivision approval procedures, with additional requirements for special projects or special zones.

2. Special mentions of 'landscape architect'.

3. Pertinent exceptions to the uniform codes (UBC, NEC, etc.).

The subdivision approval procedures are important because they spell out the various plans, reports, and specifications needed for city or county approval. In the descriptions of these necessary submittals some mention is made of who may prepare and certify them. Special projects and special zones are important because they may require
additional submittals. Special projects include large-scale developments such as: planned unit developments, cluster subdivisions, trailer subdivisions, and recreational vehicle parks. Special zones include such places as: sensitive areas, hillsides, planned commercial or industrial areas, and others. The code search for special mentions of 'landscape architect' is to find tasks that are exclusive to landscape architecture. The Utah Code gives specific guidelines as to the minimum that cities and counties must require for subdivision approval. It requires that the cities and counties prepare a subdivision ordinance (10-9-802, 17-27-802), and that a plat map must be prepared with certification by a licensed land surveyor for all subdivisions (10-9-804-2b, 17-27-804-2b), with the exception of subdivisions of less than 10 lots if:

1. a recommendation has been received from the planning commission;
2. the subdivision has been approved by:
   a. the legislative body; or
   b. other officers that the legislative body designates in an ordinance;
3. the subdivision is not traversed by the mapped lines of a proposed street as shown in the general plan and does not require the dedication of any land for street or other public purposes; and
4. if the subdivision is located in a zoned area, each lot in the subdivision meets the frontage, width, and area requirements of the zoning ordinance or has been granted a variance from those requirements by the board of adjustment (17-27-806).
National Standard Codes

The Utah Code has adopted the national standard codes including: the Uniform Building Code (UBC), the National Electric Code (NEC), the Uniform Plumbing Code (UPC), and the Uniform Mechanical Code (UMC) (58-56-4). This means that these codes are a part of all city and county development codes with few minor exceptions. The standard codes are important because they are an extension of the city and county codes. They may mention certification needed for individual design tasks that make up the submittals needed for city and county approval. This may show parts of the submittals that landscape architects or anyone can prepare.
CHAPTER 4
RESULTS

Introduction

The purpose of this chapter is to display the compiled research through graphics and text. Where possible, the research data has been organized into matrices for effectiveness and simplicity. The data includes: state code findings, city and county code findings including specific mentions of "landscape architect", standard code findings, state definitions vs. city and county codes, and common law findings.

State Code Findings

The Utah State Code has been analyzed by documenting the legal definitions of the professions as contained in the individual licensing acts. The definitions have been scrutinized for any mention of services rendered, and documents, maps, reports, etc. produced. Figure 4 shows how the services of each profession (architecture, landscape architecture, engineering, and land surveying), overlap with the related professions. A dark circle shows where a profession is directly involved in rendering a service of another profession, and a light circle denotes where there is partial involvement with a service. The basis for determining overlap are the other professional definitions, however subjectivity in determining overlap could not be avoided.

Two points should be noted concerning Figure 4. First, the profession definitions are vague. The engineer's law is vague due to an abstract overall definition, having no
<table>
<thead>
<tr>
<th>STATE DEFINITIONS</th>
<th>ARCHITECTURE</th>
<th>LANDSCAPE ARCHITECTURE</th>
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<th>LAND SURVEYING</th>
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</table>

* Indicates overlap of service
* Indicates partial overlap of service

Figure 4. State definition overlap.
mention of any documents, plans, or reports produced. The architect's definition is more specific, mentioning building working drawings, and building specifications as documents produced. The landscape architect's law is the most specific, mentioning 12 distinct documents, however, the landscape architect's law is still vague due to specific undefined words such as "landscape grading plans".

Second, the definitions of architecture, engineering, and land surveying are all supported by a practice law, while the definition of landscape architecture is only supported by a title law. This is very significant to this study, because without a practice law, landscape architects have no legal exclusivity to provide the services mentioned in the landscape architects' law.

County and Municipal Code Findings

The city and county development codes and zoning ordinances are very similar in their content and structure allowing generalizations to be made. For ease of understanding, the submittals required for issuance of a building permit on large scale projects have been divided into two major categories: site analysis submittals and site design submittals. Site analysis submittals involve study of the existing site only, while site design submittals involve alterations to the site. Most of the cities and counties require these submittals in a preliminary, and a final form (see Appendix B for definitions of submittals).

The data collected from the cities and counties has been arranged into a matrix (see Figure 5). The cities have been arranged with their county, and are listed along the left
See Figure 6 for key to abbreviations and numbers.
See Appendix B for definitions of submittals, professions, zones, and projects.

Figure 5. City and county submittal certification requirements.
side of the matrix. The listing of site analysis and site design submittals needed to obtain a building permit are listed along the top of the matrix. Two kinds of data are represented, first, the letters indicate the abbreviation of the profession required to certify a submittal (see Figure 6 for key to abbreviations). Second, the numbers indicate a specific project or zone that requires certification of the submittal (See Figure 6). The numbers are accompanied by the profession(s) that must certify.

Several points should be noted concerning the data as follows:

1. Many of the cities and counties were in the process of updating their codes at the time this research was conducted. The research is current up to May 1995.
2. Some of the code books have statements equivalent to "other regulations apply as city requires".
3. Only submittals that require certification by a profession(s) have been marked in Figure 5, the city or county may require the submittal, but if it does not require certification it will not be marked.
4. Although the codes were searched thoroughly, the possibility exists that some certifications were missed.
5. Some of the codes have inconsistencies, for instance, the Sandy City Code states that landscape architects can certify site development plans, {15-22-2}, however, the chart of the same information does not include landscape architects, {p.15-246}.
6. Most city and county employees were conscientious and professional, however, when questioned concerning their development policies, some
employees' answers differed from what was found in the code books.

Specific Mentions of "Landscape Architect"

Submittals requiring certification of a landscape architect or other professional are indicated in Figure 5. However, because of the relevance to this study, specific mentions of "landscape architect" are displayed in detail. Figure 6 is a summary of the mentions categorized by the nature of the mention, the city or county, and the code reference. The actual code quotations as written in the city and county codes are listed in Appendix C.

Two relevant observations should be noted concerning specific mentions of "landscape architect." First, although many cities and counties include landscape architects in the list of professionals, or as a member of a team that may certify a particular submittal, only Bountiful and Orem have submittals that require certification by a landscape architect exclusively. Second, Saint George had more mentions of "landscape architect" in earlier codes. Some of the mentions have been deleted or modified.

State Definitions vs. City and County Codes

Figure 7 is a matrix that compares the services from the state profession definitions against the city/county building permit submittals. The solid circles represent submittals that correlate with the service definitions. This figure should demonstrate two things: first, where city and county requirements for certification are out of line with state profession definitions, and second, where the state definitions need revamping, or clarification and refinement.
The final development plan shall be prepared by a team consisting of an architect, a landscape architect, a land surveyor, an engineer, etc.

Persons or firms having expertise in the practice of revegetation (i.e., landscape architects or nurserymen) shall supervise the planning and installation of revegetative cover.

Required final landscape and sprinkler plan shall be prepared by a landscape architect licensed to practice in the state of Utah.

The final landscape plan must be prepared by an engineer, architect, or landscape architect, etc.

A site plan shall be prepared by an architect, landscape architect, engineer, land surveyor, etc.

The requirement for a permanent irrigation system may be modified upon the recommendation of a landscape architect based on the type of plants selected, the planting methods, and the soil and climatic conditions of the site.

See Appendix B for definitions of submittals, professions, zones, and projects.

**KEY TO FIGURES 5 AND 6**

<table>
<thead>
<tr>
<th>PROFESSIONS</th>
<th>ZONE / PROJECT</th>
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<tbody>
<tr>
<td>en - engineer</td>
<td>1 - foothill / hillsides zone</td>
</tr>
<tr>
<td>ee - civil engineer</td>
<td>2 - sensitive zone</td>
</tr>
<tr>
<td>su - land surveyor</td>
<td>3 - hazardous zone</td>
</tr>
<tr>
<td>pe - professional engineer</td>
<td>4 - floodplain zone</td>
</tr>
<tr>
<td>se - soils engineer</td>
<td>5 - natural resource zone</td>
</tr>
<tr>
<td>st - structural engineer</td>
<td>6 - mob. home / R.V. / rec. coach project</td>
</tr>
<tr>
<td>te - traffic engineer</td>
<td>7 - condonminum project</td>
</tr>
<tr>
<td>ec - engineering contractor</td>
<td>8 - multi-unit development project</td>
</tr>
<tr>
<td>ge - geotechnical engineer</td>
<td>9 - P.U.D. / planned community project</td>
</tr>
<tr>
<td>eg - engineering geologist</td>
<td>10 - commercial or manufacturing zone</td>
</tr>
<tr>
<td>gl - geologist</td>
<td>11 - public recreation zone</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>&quot;landscape architect&quot; mention</th>
<th>city/county</th>
<th>zone/proj.</th>
<th>reference</th>
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<td>Utah County</td>
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<td>6-2:E</td>
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<td>West Jordan</td>
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<td>West Valley</td>
<td>7</td>
<td>9-4-105(2)</td>
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<td>Persons or firms having expertise in the practice of revegetation (i.e., landscape architects or nurserymen) shall supervise the planning and installation of revegetative cover.</td>
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<tr>
<td>Sandy</td>
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<td>15-19-66(2)</td>
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<td>Required final landscape and sprinkler plan shall be prepared by a landscape architect licensed to practice in the state of Utah.</td>
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<td>The final landscape plan must be prepared by an engineer, architect, or landscape architect, etc.</td>
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<td>The requirement for a permanent irrigation system may be modified upon the recommendation of a landscape architect based on the type of plants selected, the planting methods, and the soil and climatic conditions of the site.</td>
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See Appendix B for definitions of submittals, professions, zones, and projects.

Figure 6. Mentions of landscape architect.
Figure 7. State definitions vs. city/county submittals.
National Standard Code Findings

Parts of "Section 106 - PERMITS" of the 1994 Uniform Building Code are relevant to this study, specifically, the subsections covering: required building permits and exemptions, submittal documents, and architect or engineer of record. Portions of these subsections are quoted and paraphrased as follows:

"Except as specified in Section 106.2 of this section, no building or structure regulated by this code shall be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted or demolished unless a separate permit for each building or structure has first been obtained from the building official" (106.1). Exemptions from obtaining a building permit include:

1. One-story detached accessory buildings used as tool and storage sheds, playhouses and similar uses, provided the projected roof area does not exceed 120 square feet (11.15 sq.m.).

2. Fences not over 6 feet (1829 mm) high.

3. Oil derricks.

4. Movable cases, counters and partitions not over 5 feet 9 inches (1753 mm) high.

5. Retaining walls which are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or III-A liquids.

6. Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons (18 927 L) and the ratio of height to diameter or width does not
exceed 2 to 1.

7. Platforms, walks, and driveways not more than 30 inches (762 mm) above grade and not over any basement or story below.

8. Painting, papering or similar finish work.

9. Temporary motion picture, television and theater stage sets and scenery.

10. Window awnings supported by an exterior wall of Group R, Division 3, and Group M Occupancies when projecting not more than 54 inches (1372 mm).

11. Prefabricated swimming pools accessory to a Group R, Division 3 Occupancy in which the pool walls are entirely above the adjacent grade and if the capacity does not exceed 5,000 gallons (18927 L).

"Unless otherwise exempted, separate plumbing, electrical and mechanical permits will be required for the above exempted items, and, exemption from the permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction" (106.2).

"Plans, specifications, engineering calculations, diagrams, soil investigation reports, special inspection and structural observation programs and other data shall constitute the submittal documents and shall be submitted in one or more sets with each application for a permit. When such plans are not prepared by an architect or engineer, the building official may require the applicant submitting such plans or other data to demonstrate that state law does not require that the plans be prepared by a licensed architect or engineer. The building official may require plans, computations and specifications to be prepared
and designed by an engineer or architect licensed by the state to practice as such even if not required by state law," with an exception, "The building official may waive the submittal of plans, calculations, construction inspection requirements and other data if it is found that the nature of the work applied for is such that reviewing of plans is not necessary to obtain compliance with this code (106.3.2)."

"When it is required that documents be prepared by an architect or engineer, the building official may require the owner to engage and designate on the building permit application an architect or engineer who shall act as the architect or engineer of record. If the circumstances require, the owner may designate a substitute architect or engineer of record who shall perform all of the duties required of the original architect or engineer of record. The building official shall be notified in writing by the owner if the architect or engineer of record is changed or is unable to continue to perform the duties," and, "The architect or engineer of record shall be responsible for reviewing and coordinating all submittal documents prepared by others, including deferred submittal items, for compatibility with the design of the building (106.3.4.1).

Common Law Findings

The United States common law research was done using the common law summary American Jurisprudence 2d. Pertinent common law information of a general nature was outlined in Chapter 3. In this chapter, common law precedents specifically related to landscape architecture and the related professions of architecture, engineering, and land surveying are documented. The documentation is comprised of actual quotes from
American Jurisprudence 2d. Categories include: state regulation of professions, duty of care and skill required of professions, liability of professions, construction project prime, and profession definition and overlap.

State Regulation of Professions. Regarding landscape architecture, "The regulation and practice of landscape architecture is clearly related to the public health and welfare, and, as such constitutes a valid exercise of the police power," also see Paterson v. University of State of New York, 14 NY2d 432, 252 NYS2d 452, 201 NE2d 27 (58 Am Jur 2d §87, p.1220).

Regarding land surveying and engineering, "There is little question as to the power of the state to regulate civil and structural engineers and land surveyors, as well as mechanical and electrical engineers. The purpose of statutes governing the practice of engineering is to protect the public from persons who undertake to represent themselves as professional engineers and to offer services as such," (58 Am Jur 2d §69, p.1211).

"The state may, in the exercise of its police power, license civil and structural engineers, and require that all persons engaged in such pursuits have a prescribed degree of skill and learning as determined by an examining board. Thus, by statute, the unlicensed, unregistered, or unauthorized practice of engineering may be prohibited," (58 Am Jur 2d §70, p.1211).

Regarding architecture, "Pursuant to the state's police power, many states have enacted statutes requiring that those intending to engage in the profession of architecture secure from the proper board, commission, or officer a license or certificate to practice, and that all persons engaged in that profession have a prescribed degree of skill and
learning as determined by an examining board in order to receive such a license. The
statute may also make it a criminal offense to practice the profession without first
procuring the required license," (5 Am Jur 2d §4, p.629).

_Duty of Care and Skill Required of Professions._ Regarding architecture, "In
contracting for the provision of architectural services, an architect implies that he or she
possesses and will exercise and apply skill, ability, judgment, and taste reasonably and
without neglect. The skill and diligence which the architect is bound to exercise are that
ordinarily required of architects, and the efficiency of an architect in the preparation of
plans and specifications is tested by the rule of ordinary and reasonable skill usually
exercised by one in that profession," (5 Am Jur 2d §10, p.632-3).

Regarding land surveying and engineering, "Although surveyors are not insurers of
the accuracy of their work unless they so undertake, civil engineers or surveyors are
required to exercise the proper degree of care and skill. If they fail in this respect and
their negligence causes injury they will be liable for that injury," (58 Am Jur 2d §137,
p.1246-7).

_Liability of Professions._ Regarding land surveying and engineering, "Although
surveyors are not insurers of the accuracy of their work unless they so undertake, civil
engineers or surveyors are required to exercise the proper degree of care and skill. If they
fail in this respect and their negligence causes injury they will be liable for that injury,"
(58 Am Jur 2d §137, p.1246-7).

Regarding architecture," An architect is ordinarily liable for breaches of professional
duty for design defects, negligent supervision of construction, and other actions causing
foreseeable harm. As in other negligence cases, however, there can be no recovery against the architect for personal injury or wrongful death if it is not proven that the architect's negligence was the proximate cause of the personal injury or wrongful death sued for. In addition, liability requires a showing of the existence of a duty toward the person injured," (5 Am Jur 2d §24, p.647). "An architect is generally liable for foreseeable consequences of the failure to exercise reasonable care in preparation of architectural designs. Thus, an architect is liable when the design plans and specifications are faulty and defective," (5 Am Jur 2d §25, p.647).

Construction project prime. Regarding architecture and engineering, "In building and construction contracts the parties frequently provide that the completion, sufficiency, classification, or amount of the work done by the contractor shall be determined by a third person, usually an architect or engineer," (13 Am Jur 2d §32, p.34).

Professional definitions and overlap. Regarding architecture, "Services such as designing a building for another, or the furnishing of plans and specifications for such a building, are generally considered to constitute architectural services. However, the mere making of a survey of existing conditions, with recommendations and preliminary sketches and layouts, does not constitute architectural services. Similarly, the laying out of a plat, showing building placements, total building, recreation areas, parking areas, and the like has been considered not to constitute the practice of architecture," (5 Am Jur 2d §1, p.626-7).

Regarding architecture and engineering, "Where a licensed engineer performs architectural services, the determining factor of the legality of such performance is
whether such services are necessarily embraced within the scope of engineering covered by that license, or are entirely within the sphere of the architect and outside that of the engineer," (5 Am Jur 2d §3, p. 628).

The Utah case law research involved individual cases, and was done using legal case database programs by The Michie Company, and Westlaw. Only four Utah cases involving landscape issues were found. Of the four, three were not applicable to this study. The only pertinent case is Wessel v. Erickson Landscaping Company, 711 P.2d 250 (Utah 1985). In this case, Wessel (customer) brought action against Erickson (landscape architect and contractor) for designing and installing a series of faulty retaining walls. Wessel's primary witness was a structural engineer who testified that the walls were not designed properly. Although the structural engineer's testimony went unrefuted, the original case was dismissed on the grounds that, "A structural engineer was not qualified to opine as to the standard of care owed by a landscape architect." Wessel appealed and the case went to the Supreme Court of Utah.

The Supreme Court accepted the structural engineer's testimony stating that, "Ordinarily, the standard of care in a trade or profession must be determined by testimony of witnesses in the same trade or profession. Nothing, however, precludes the court's consideration of expert testimony from an individual in a trade different than that in issue when the standard of care is identical for both."

According to excerpts from the Supreme Court case review, "Erickson had a duty to landscape Wessel's yard with the care, skill, and diligence normally exercised by professional landscape architects in good standing. To prove that Erickson violated that
duty and was liable to her, Wessel was required to establish (i) that Erickson did not meet the standard of care owed by a landscape architect in constructing and designing retaining walls (ii) that as a consequence, the walls collapsed, and (iii) that the collapse of the walls caused her to incur damages."

The engineer testified that he had designed numerous substantial retaining walls in the course of his professional employment and was therefore familiar with the standard of care required in constructing retaining walls, and that conduct of all persons building retaining walls was governed by building code requirements regarding the design and construction of retaining walls. Based on the engineer's testimony, the case was reversed and remanded for reconsideration of the motion to dismiss in the light of the structural engineer's testimony.

It should be noted that the landscape architect was held responsible for the "Care, skill, and diligence normally exercised by professional landscape architects in good standing." When this case was tried in 1985, Utah had no laws governing the practice of landscape architecture, but this case is important because it demonstrates the court's interpretation of common law in the absence of state legislation.
CHAPTER 5
ANALYSIS AND RECOMMENDATIONS

Introduction

The following recommendations are based on the research and on the researcher's analysis of the findings. The recommendations are classified into categories of government levels, and public information channels including: state level, city and county (local) level, national level, and public information. Many of these recommendations are closely related and could fall into more than one category.

State Level Recommendations

State Recommendation 1. The first and foremost recommendation is to fervently pursue a state practice law. This process should be initiated because the way the state law is currently written, a licensed landscape architect has no more state level authority to practice landscape architecture than a city planner, horticulturist, nurseryman, gardener, or landscape contractor (Utah Code 58-1-307(2)). The current state law only gives Utah landscape architects the license to call themselves "landscape architects." Many would argue that the current law will never command the respect of architects and engineers, or the city and county governments as long as it does not convey the practice rights and responsibilities afforded to other technical professions. Furthermore, attainment of a state level practice law would eliminate the need to petition cities and counties separately, as they would all be required to follow the state law.
This recommendation is supported by an abundance of legal material. *American Jurisprudence 2d* points out that, "The regulation and practice of landscape architecture is clearly related to the public health and welfare, and, as such constitutes a valid exercise of the police power," (58 Am Jur 2d §87, p.1220). Although state legislatures are free to interpret common law as they wish, their duty is to clarify and articulate their interpretation for the benefit of the people. The current law does not clarify the common law, but rather makes it more fuzzy and complex and therefore more difficult for the layman to understand. It spells out the services of a landscape architect, but then allows anyone to perform them.

This inequity is compounded by the fact that to become a licensed landscape architect, one must pass a rigorous and expensive licensing examination, comparable to the examinations necessary for the practice of engineering or architecture. Under case law precedents (see Chapter 3), licensure fees can be extracted under two purposes only: revenue generation or regulation. Under revenue generation the licensing examination fee is not sensible because taxation has nothing to do with competence, and under regulation the licensing examination itself is not sensible because the title law does not protect the public health, safety, or welfare. Therefore, in a court of law, the examination would most likely be used to prove that the new landscape architect may now be held liable for the standard of care owed by a landscape architect, while the license law would prove that the new landscape architect has no special rights or privileges associated with his license other than to legally call himself a 'landscape architect.'

The pursuit of a practice law should begin immediately. An informal look at the 25
states that have practice laws seems to indicate that they are the states with more densely populated cities. With unprecedented population growth occurring in Utah, the state governing agencies will, most likely, be favorable to beneficial changes in the legislation. This is heightened by the fact that Utah will be hosting the 2002 Winter Olympics. With the eyes of the world on Utah, more emphasis should be placed on good functional and aesthetic landscape design. Proper landscape architecture is vital to making this happen, and landscape architects should take advantage of the need.

Even if landscape architects do not pursue a practice law with fervor, they should at least do the research, and prepare a plan for obtaining a practice law. A written procedure, or "plan" would limit mistakes and thereby save time, effort, and money. It would also have the effect of uniting landscape architects with a well defined goal and a common direction, allowing them to act, rather than react as opportunities are presented.

Legal research should uncover every necessary precedent for the preparation of the plan. Suggested areas of research are as follows:

*Other states.* Because similar issues must have been considered, states with practice laws should be studied. This research should document successful and detrimental arguments, and thereby uncover useful strategies for attaining a practice law. The fact that half of the states of America require a person to be licensed to practice landscape architecture is a powerful argument alone. The research should also look at states that have failed to obtain practice laws to see why.

*Public health, safety and welfare issues.* Public health, safety and welfare issues should be further emphasized. Common law recognizes the fact that landscape
architecture is clearly related to health and welfare, however, more research should be done to document all instances where landscape architects have been sued for unhealthy, or unsafe designs, or other practices that have been harmful to the public. Efforts should also further demonstrate the intimate connection between environmental sensitivity and aesthetics with public welfare, and the need for competent licensed professionals to ensure sensitive design. Utah Chapter ASLA President Robert Desmond has initiated a listing of landscape architecture services that are directly tied to the public health, safety and welfare. This list, when complete, should be thoroughly supported by case law, and should prove very instrumental in the attainment of a practice law.

*State legislative processes and procedures.* A rapport should be built with Utah lawmakers to establish open lines of communication and to determine exactly what they would like to see in a well-designed practice law. Steps, documents, and timetables necessary to the legislative process should be fully understood. By pursuing this issue in a positive manner, many conflicts and misunderstandings may be avoided. The Utah Chapter ASLA Executive Committee has made considerable progress along these lines.

*Landscape architecture definition.* Using the research previously discussed, the definition of landscape architecture should be revised. It is interesting to note that the engineer's definition is the least specific and affords the most exclusivity, while the landscape architect's is the most specific and affords the least exclusivity (See Chapter 4). This is probably because the link of engineering to public health, safety, and welfare is unquestioned by society. Perhaps a revised definition of landscape architecture could establish the same unquestionable link to these public concerns. In consideration of this
point, a revised definition should be as broad as possible, while remaining focused
directly on the responsibilities vital to the public health, safety, and welfare including
large scale environmental and aesthetic concerns. Perhaps the parameters of landscape
architecture could be defined as a function of the project size, complexity, monetary
value, sensitivity to the environment, or a combination thereof. This would grant the
necessary authority and responsibility to landscape architects, while limiting conflicts and
encouraging cooperation and goodwill with the "green industry."

State Recommendation 2. The second state level recommendation is to pursue other
avenues of increasing the authority of landscape architecture within the title law system.
If a practice law cannot be implemented, the attempt should be to allow landscape
architects to perform some of the tasks currently held exclusively for other professions.
As it stands, landscape architects have no more authority over limited engineering
projects than a person with no training at all. Perhaps a quasi-engineering certification
could be implemented for certain engineering tasks. Landscape architects receive some
limited engineering training, comprising such things as load calculations and subsequent
lumber sizing for decks, run-off calculations and subsequent pipe sizing for sub-surface
storm drainage systems, and overturn, slide, and crushing calculations for retaining walls.
This training should allow landscape architects to certify specific engineering projects up
to a certain size limitation or cost limitation. Perhaps quasi-engineering courses could be
expanded at the university level to prepare students for more stringent licensing
examinations, and more authority to certify certain engineering submittals.

State Recommendation 3. The third state level recommendation is to monitor what
the related professions are proposing as changes to their license laws. Tasks currently performed by landscape architects may seem vulnerable at this time because no state level certification is required to perform them. People of another profession may attempt to prove the relevance of landscape architecture tasks to the performance of their profession and try to claim them under their license laws. To negate this, landscape architects should know and defend the common law precedents they are being held accountable for. It should be noted, for example, that according to common law, "The mere making of a survey of existing conditions, with recommendations and preliminary sketches and layouts, does not constitute architectural services. Similarly, the laying out of a plat, showing building placements, total building, recreation areas, parking areas, and the like has been considered not to constitute the practice of architecture," (5 Am Jur 2d §1, p.626-7). It should further be noted that architects and engineers share overlapping services on the basis of common law precedents, not necessarily because of mutual respect among the two professions (5 Am Jur 2d §3, p. 628).

County and Municipal Level Recommendations

Local Recommendation 1. The first local level recommendation is to actively promote landscape architecture throughout the cities and counties of Utah. As with the state government, most of the city and county governments appear to misunderstand the qualifications and capabilities of landscape architects. The research shows that some cities require certification by an engineer or other professional for a submittal that is clearly in the realm of landscape architecture. Due to functional and aesthetic
considerations and liability issues, it is in the best interest of cities and counties to achieve the highest standard in the layout and design of their large scale construction projects. If they had a better understanding of what landscape architects could offer them, they would most likely require more landscape architecture input with building permit submittals. As can be seen in Figure 5 and 6, and Chapter 4, some of the communities along the Wasatch front are already beginning to understand the importance of landscape architecture. Landscape architect Dave Racker has been very instrumental in promoting these changes. With the help of Mr. Racker, a plan could be developed to approach all cities and counties in the most effective manner to promote the need for landscape architects.

**Local Recommendation 2.** The second city and county recommendation is to attempt to bring more standardization to the development codes of the various cities and counties in Utah. This would reduce the confusion encountered in dealing with the various local governments. This could be accomplished in conjunction with the first city and county recommendation. As part of the promotion of landscape architecture, standardized methods of submittal certification could be developed and presented to the cities and counties for their consideration. Standardization would benefit the cities and counties, the landscape architects, and other professions as well.

**Local Recommendation 3.** The third recommendation for cities and counties is to hold them responsible to their codes. Some of the code books have statements to the effect of "other regulations apply as city requires." This begs the question, can a city or county require regulations beyond those stated in the code book? Furthermore, although
most city and county personnel are very conscientious and professional, some did not appear to know their codes, in fact, many of the counter people did not even know what the code book was! These facts reveal that some cities and counties may be operating under an informal system where the rules can change as they wish. Because of these points, developers, design professionals, and engineers should demand to see the code books if they are not satisfied with the answers they receive from the city and county employees. According to the Utah Code (10-3-711), the code books must be made available to the public.

*Local Recommendation 4.* The fourth local level recommendation is to promote the hiring of landscape architects to the city and county staffs. Many of the cities and counties have employees in positions of planning and community development who were educated as landscape architects, however, none of them have a designated landscape architect (Utah League of Cities and Towns, ND). As a result of the wholistic education received, landscape architects are highly qualified to oversee the overall physical development of an area, review development submittals, and go beyond static ordinances to allow for more creativity on the part of the developer while maintaining appropriate design qualities. Landscape architects do not have the qualifications to design buildings or to make the necessary calculations for successful engineering projects, but, landscape architects are the best qualified, based on their training, to integrate the overall scheme. With the goal of achieving an aesthetically pleasing solution to functional problems, the landscape architect would arguably be the most qualified to determine the best general locations and orientations of buildings, and the best general locations and design
considerations for flood control structures, roads, etc. and should, therefore, have more pronounced authority over the design of cities and the large scale projects within them.

National Standard Code Recommendations

*National Code Recommendation.* The recommendation is to petition the International Conference of Building Officials who write the code to consider including landscape architecture in the list of professions that are required to certify submittals needed for building and structural projects. Although this research is not intended to address national issues, it would be pertinent to make a recommendation concerning the Uniform Building Code (UBC) because it is recognized by the state, and all cities and counties studied. Currently, the UBC stipulates that all submittals must be certified by or under the direction of an architect or engineer with few minor exceptions (see Chapter 4), even though other professions are more qualified to prepare particular submittals. No other professions are even mentioned in the code.

Public Information Recommendations

*Public Recommendation.* The public information recommendation is to promote landscape architecture to the general public. The general public probably does not know the difference between a landscape architect, a landscape designer, a nurseryman, and a landscape contractor. The public probably also does not know that they have limited legal recourse for a faulty design prepared by an unlicensed person. A plan should be developed to inform the public of the education, training, and qualifications of landscape architects. One such solution pointed out by recent USU landscape architecture graduate
Greg Kloberdanz, was implemented in Calgary, Alberta, Canada, where the landscape architects went together on a large advertisement in the Yellow Pages of the Calgary phone book. In the advertisement, they explained what a landscape architect is, the education and training received, and the benefits of employing a landscape architect. The advertisement then lists all of the qualified landscape architects working in the city. This, and other creative approaches could be utilized to educate the general public in Utah.

Conclusion

It is the researcher's intent that this research will prove useful to the Utah Chapter ASLA Executive Committee and to other professionals who wish to create a better legal environment for the practice of landscape architecture and other professions in Utah. The officers of the ASLA Executive Committee deserve to be congratulated for their constant and dedicated efforts to improve the practice of landscape architecture, but they need the cooperation of all landscape architecture professionals to carry the profession forward. With society's changing attitudes towards the environment, and increasing desire for a higher standard of design in our outdoor spaces, now is the time to act. If landscape architects could all unite with well thought out, well defined goals, the profession could undergo significant progress.
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APPENDICES
APPENDIX A. COUNTIES AND MUNICIPALITIES STUDIED
## COUNTIES AND MUNICIPALITIES STUDIED

25 Largest Population Cities and the Counties they Reside in.

<table>
<thead>
<tr>
<th>City</th>
<th>County (within)</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salt Lake City</td>
<td>Salt Lake County</td>
<td>159,936</td>
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<td>West Valley City</td>
<td>Salt Lake County</td>
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<td>Provo City</td>
<td>Utah County</td>
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<td>Salt Lake County</td>
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<td>North Ogden City</td>
<td>Weber County</td>
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9 Counties where Cities are Located

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<thead>
<tr>
<th>County</th>
<th>Population</th>
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<tr>
<td>Salt Lake County</td>
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<tr>
<td>Iron County</td>
<td>20,789</td>
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</table>

APPENDIX B. DEFINITIONS
DEFINITIONS

Architect. A person licensed under Title 58 Chapter 3 of the Utah Code to conduct the practice of architecture in Utah (Utah Code, 58-3-2).

"As built" drawings. These are prepared after construction has been completed. They show the project facilities, such as utilities, streets, etc. as they were constructed.

Building plans. These are the architectural plans for the proposed structures.

Building official. The officer or other designated authority charged with the administration and enforcement of the (Uniform Building Code), or his duly authorized representative (UBC Section 403).

Certification. Professional stamp or authorization required on plan submittals to make them valid.

Cluster subdivision. A subdivision of land in which the areas and widths of residential lots are reduced below the minimum lot areas and lot width requirements of the zone in which the subdivision is located and where equivalent common open space areas are provided to compensate for such lot reduction (Ogden City Development Code, 19-4-27).

Condominium project. A real estate condominium project where ownership of a single unit in a multi-unit project, together with an undivided interest in common in the common areas and facilities of the property, is transferred; a plan or project whereby four or more apartments, rooms, office spaces, or other existing and proposed apartments, or commercial or industrial buildings or structures are separately offered or proposed to be
offered for sale and meeting all requirements of the Condominium Ownership Act of the State of Utah. Structures shall conform with all area, yard, frontage and height regulations of the zone district in which they are located (Ogden City Development Code, 19-4-28).

**Contour map.** This is a map showing the topography of a proposed development site. The contour lines represent elevations delineated by a common vertical increment in feet or meters.

**Development code.** The section(s) of a city or county ordinance that delineates the legal regulations for all development within the city or county.

**Drainage plans.** These engineering drawings show the natural and proposed drainage systems, including the locations and details of any drainage structures to be employed in the proposed development.

**Environmental impact assessment.** This is a general report that may contain several of the other submittals. It details the probable impacts of a proposed development on the existing environment of the proposed site and the surrounding areas.

**Feasibility report.** This report documents the financial details of a proposed development project. The analysis is intended to show the project’s potential for financial success.

**Final plat.** This is the survey plat in final form, and is a legal document.

**Fire protection report.** This report is usually required for proposed developments on sloped areas, where the fire hazard is very high. Documentation includes such things as water sources and access limitations.
Geology map. This is a map of the geologic conditions of an area proposed for development. It usually accompanies a geology or geotechnical report.

Geology report. This report is similar to the geotechnical report, however it documents the existing geology in a more general way, dealing with larger issues such as earthquakes, etc.

Geotechnical report. This report looks at the existing geologic conditions of the proposed site and surroundings and the possible impacts on structural and engineering projects.

Grading / erosion control report. This report is usually only needed in sloping areas such as foothill zones. It details how the soils, drainage ways, vegetation, etc. of a site and its surroundings will be affected by a proposed development.

Geotechnical report. This report looks at the existing geologic conditions of the proposed site and surroundings and the possible impacts on structural and engineering projects.

Grading plans. These show the existing topography of the site and proposed alterations to the topography to accommodate structures, and other functional and aesthetic concerns.

Hillside development zone. Legal zone set up by many cities and counties to impose specific regulations for development in foothill areas.

Hydrology / storm drainage report. This report is similar to the grading / erosion control report. It documents the probable results of a proposed development on hydrologic systems such as streams and drainages.
**Land surveyor.** A person licensed under Title 58 Chapter 22 of the Utah Code, who is qualified to practice land surveying by reason of his special knowledge of the technique of measuring land, the basic principles of mathematics, the related physical and applied sciences, the relevant requirements of law for adequate evidence, and the requisites to surveying of real property (Utah Code, 58-22-2).

**Landscape architect.** A person licensed under Title 58 Chapter 53 of the Utah Code to practice landscape architecture, and use the title of landscape architect in Utah.

**Landscape plans.** These include the planting plan, the irrigation plan, and landscape details of a proposed development.

**Large scale projects.** Development projects that are greater in size and scope than single family projects. These include: subdivisions, P.U.D.'s, mobile home parks, R.V. parks, cluster developments, etc.

**Mobile home park.** A parcel of land which has been planned and improved for the placement of mobile homes for residential use (Ogden City Development Code, 19-4-68).

**Natural hazards report.** This report is usually required in areas such as Earthquake faults, or flood plains, where there is greater risk to public safety.

**Professional engineer.** A person who is licensed under Title 58 Chapter 22 of the Utah Code, who is qualified to practice engineering by reason of his special knowledge of the mathematical, physical, and engineering sciences and the principle and methods of engineering analysis and design, acquired by engineering education and experience (Utah Code, 58-22-2).
Planned residential unit development (P.R.U.D.). A residential development planned as a whole, single complex, incorporating a definite development theme which includes the elements of usable open spaces, diversity of lot design or residential use, amenities, a well planned circulation system, and attractive entrances as part of the design (Ogden City Development Code, 19-4-79).

Planned unit development (P.U.D.). See “planned residential unit development (P.R.U.D.).”

Preliminary plat. This is a survey plat of the proposed development showing the property description and the boundaries, as well as the contour lines and existing uses.

Property report. This report documents the existing condition of the property that is proposed for a new development project. This is usually necessary when a property is occupied by a use other than the proposed project, for instance an apartment complex being converted into a condominium project.

Site analysis submittals. Category of required city and county submittals based on the study of a natural site without regard to the proposed development.

Site design submittals. Category of required city and county submittals based on the proposed alteration and construction of a site.

Site development plans. These include the general layout of the proposed site developments drawn to scale.

Soils report. This report documents the surficial soils and the effects the soils will have on a proposed development. For instance, it will show soils with a high shrink-swell potential, or low depth to ground water.
Slope classification map. This is a map which delineates categories of slope percentage for the area of a proposed development project. It does not show elevations, but rather the steepness of slopes.

Sprinkler plans. These include the irrigation layout, connections, specifications, and details.

Street plans. These include the vertical and horizontal layout of streets, and the details for curb and gutter, etc.

Subdivision. Any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions. Subdivision includes (1) the division or development of land whether by deed, metes and bounds description, devise and testacy, lease, map, plat, or other recorded instrument and (2) divisions of land for all residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes (Utah Code, 10-9-103q).

Traffic impact report. This report documents the development's potential effects on the traffic patterns of the area, as well as necessary modifications.

Utility plans. These are the engineering drawings of the proposed utility systems, such as water, sewer, electricity, etc.

Vegetation plans. These show existing vegetation and proposed alterations including vegetation removal and new vegetation. These are usually required in vegetation sensitive areas such as hill sides.
**Vegetation report.** This report documents the existing vegetation of the area of a proposed development, and the probable effects the development will have on the vegetation. The report would cover such things as endangered plant species, or wildlife habitat that would be disrupted by the proposed development.

**Zoning ordinance.** The section(s) of a city or county code that delineates use zones and the special requirements for development within each zone.
APPENDIX C. CITY AND COUNTY MENTIONS OF "LANDSCAPE ARCHITECT"
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Bountiful. "Landscape plan including plant materials list and details of installations prepared by a landscape architect or licensed landscape installer..." {14-2-304-B3}. "The use of persons or firms having expertise in the practice of revegetation (i.e. landscape architects or nurserymen) shall be employed to supervise the planning and installation of revegetation cover." {14-13-106-B3} (foothill overlay zone). "Required final landscape and sprinkler plans shall be prepared by a landscape architect licensed to practice in the state of Utah." {14-16-103}.

Brigham City. "The plans for a mobile home park, recreational coach park, or a mobile home subdivision shall be prepared by a team of competent professionals in planning, engineering, architecture, and landscape architecture." {27.01.080.B}.

Iron County. "Persons or firms having expertise in the practice of revegetation (i.e., landscape architects or nurserymen) shall supervise the planning and installation of revegetation cover for the total development site." {17.24.050(9)}.

Layton. "The use of persons or firms having expertise in the practice of revegetation (i.e. landscape architects or nurserymen) shall be employed to supervise the planning and installation of revegetation cover." {19.07.090} (foothill zone). "All applications for conceptual approval shall be accompanied by a site plan drawn to scale by an architect, registered land surveyor, engineer, or landscape architect licensed to practice in the state of Utah..." {19.07.100}.

Logan. "All shall be certified to by a licensed engineer, architect, or landscape
architect." {17.32.130} (site plans in commercial and manufacturing zones).

Murray. "The project name, exact street address, date, and by whom the plan was prepared, and the name and phone number of a contact person (architect, landscape architect, builder, etc.)..." {17.32.030(B1&C1)} (landscape plans).

Ogden. "The use of persons or firms having expertise in the practice of revegetation (i.e., licensed landscape architects or nurserymen) shall supervise the planning and installation of revegetative cover." {19-27-5(B)} (hillsides).

Orem. "A final landscape plan prepared by a licensed landscape architect showing, ...." {22-17-7} (high density apartments). "The final plan must be prepared by an engineer, architect, or landscape architect, licensed to practice in the state of Utah." {22-18-3(B)} (mobile home park).

Saint George. "Site development plans prepared by a licensed engineer, architect or licensed landscape architect containing...." {10A-6(1)} (hillsides). "Prior to final plat or site plan approval of a project, a landscape plan, prepared by a licensed landscape contractor or a landscape architect, in conjunction with the overall site plan, must be submitted for approval." {10A-6(7)}(hillsides). The following was removed from the code, "Xeriscapes must be designed by licensed landscape architect," and "Any landscaping required by this ordinance which covers 4000 square feet or more must be designed by a licensed landscape architect to ensure the irrigation system is at least 80% effective."

Salt Lake City. "Detailed plans for the site, and if appropriate, information relating to the landscaping on adjacent or surrounding areas affected by the proposed development."
Such landscape plans shall be prepared by a licensed engineer, architect, landscape architect, or other qualified person." {47.3.4.9f} & {47.5.2.2f} (subdivisions).

**Sandy.** "A plan by a landscape architect may be required." {15-19-6e} (regarding revegetation after grading). "The requirement for a permanent irrigation system may be modified upon the recommendation of a landscape architect based on the type of plants selected, the planting methods, and the soil and climatic conditions at the site." {15-19-6f(2)} (regarding maintenance). "Site development plans shall be presented at the preliminary review conference, drawn to a scale no smaller than 1" = 30' by a qualified architect, landscape architect, planner, or engineer." {19-22-2d3(B)}. It should be noted that the text includes landscape architect, but the chart (p.15-246) does not.

**South Jordan.** "Plan preparation team. The final development plan shall be prepared by a design team which is composed of an architect, a landscape architect, an engineer or land surveyor, all licensed to practice in the state of Utah." {12-19-040(b)} (planned unit developments).

**Utah County.** "Plans for planned unit developments and recreation resorts shall be prepared by design team consisting of an architect, a landscape architect, a civil engineer or structural engineer, and an attorney, all licensed to practice in the state of Utah." {6-2:E} (County Commission may waive one or more members if not needed).

**West Jordan.** "The final development plan shall be prepared by a design team which is composed of an architect, a landscape architect, and an engineer or land surveyor, all licensed to practice in the state of Utah." {10.22.9.B} (planned community).

**West Valley.** "The final development plan shall be prepared by a design team
composed of an architect, a landscape architect, and an engineer or land surveyor, all licensed to practice in the state of Utah." \{9-4-105(2)\} (condominium project).