

Colvin, Judith

From: mweo-bounces@water.ca.gov on behalf of Perez, Teresa [tperez@sdewa.org]
Sent: Wednesday, March 26, 2008 8:47 AM
To: mweo@water.ca.gov
Subject: [MWEO] Letter re: Comments on the Draft Landscape Model Ordinance
Attachments: commentltr.pdf; commentltr.pdf

<<commentltr.pdf>>

Dear Ms. Colvin:

Attached consensus comments from San Diego Region's Conservation Action Committee on the Draft Landscape Model Ordinance update are forwarded on behalf of Nora Jaeschke, Glen Schmidt, and Scott Molloy.



San Diego County Water Authority

4677 Overland Avenue • San Diego, California 92123-1233
(858) 522-6600 FAX (858) 522-6568 www.sdcwa.org

March 26, 2008

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Municipal Water District

OTHER REPRESENTATIVE

County of San Diego

Department of Water Resources
Office of Water Use Efficiency and Transfers
Attention: Judy Colvin
P.O. Box 942836
Sacramento, CA 94236-0001

RE: CONSENSUS COMMENTS FROM SAN DIEGO REGION'S CONSERVATION ACTION COMMITTEE ON THE DRAFT LANDSCAPE MODEL ORDINANCE UPDATE

Dear Ms. Colvin:

Thank you for this opportunity to provide comments on the Department of Water Resources AB1881 Draft Model Landscape Ordinance. This letter is on behalf of the San Diego County Water Authority Conservation Action Committee (CAC) and the CAC Model Ordinance Working Group. The Conservation Action Committee consists of a diverse community of stakeholders with an interest in water conservation in San Diego County, including landscape architects, engineers, landscape contractors, property managers, manufacturers of irrigation equipment, water agency staff, city and county staff, gardening experts, botanical gardens, agricultural interests, educators, professional associations, sustainability consultants, and leading industry practitioners. The comments conveyed in this letter are the product of more than a year of collective work by members of our Model Ordinance Work Group.

As a result of the 2006 San Diego Water Conservation Summit, a Model Ordinance Working Group was formed to draft a regional model ordinance in conformance with the requirements of Government Code, Article 10.8, Section 65591 et seq., adopted in 2005 as a part of AB 1881. There is a strong interest regionally in San Diego County in having cohesive and consistent local ordinances that would advance the efforts of water conservation. Through a year of work, our Working Group took the initiative to develop a draft Water Conservation Landscape Ordinance and Landscape Design Manual for the San Diego Region. The draft regional ordinance was presented to the public and various stakeholders at the 2007 San Diego Water Conservation Summit for review and comment. A copy of this draft model ordinance was submitted to the Department of Water Resources (DWR) as part of our input to DWR's stakeholder process for developing the update to the model ordinance. It is our goal to develop, by January 2009, a viable regional ordinance that can be adopted by our region's eighteen local cities and the County of San Diego.

A public agency providing a safe and reliable water supply to the San Diego region

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The CAC's Model Ordinance Working Group has reviewed the State's ordinance in detail. While the State draft and our regional draft each follow the same technical approach, namely a water budget with a 0.7 ETAF, we have serious concerns about the ability of local jurisdictions to adopt and implement many provisions contained in the State draft. The model ordinance is long, technical, and imposes substantial and expensive burdens on local agencies. We also do not believe that the state's model ordinance is the appropriate regulatory vehicle to outline the enforcement requirements on local agencies, independent of what those requirements are. The draft ordinance, in its current form, cannot be implemented successfully because it crosses over to address both requirements on local agencies *and* on applicants. These two separate sets of directives need to be bifurcated as regulations. The model ordinance itself should be limited to the design and performance standards that can be enforced through existing permitting channels. Any enforcement directives required of local agencies need to be embodied in a separate regulatory framework because this is how these two separate issues (design versus enforcement) would be handled at the local level.

The Department of Water Resources has indicated in its Statement of Reasons that the ordinance will not increase costs to local jurisdictions. We strongly disagree with this assertion. Both public and private sector representatives on our Model Ordinance Working Group have indicated that the local agency costs to implement the State's proposed auditing and enforcement requirements would be substantial, resulting in an unfunded mandate on local agencies. Requiring all landscapes down to 2,500 square feet to comply with the model ordinance would also require a new plan check and a permitting staff in planning and development services departments.

Attached to this letter is a table with detailed comments to the draft ordinance, organized by section. Also attached is a list of parties actively involved in our Model Ordinance Working Group and a copy of the draft regional Model Landscape Ordinance that was presented at the 2007 Water Conservation Summit. Our most serious concerns and some recommended alternative approaches are discussed in this letter. Consistent with Government Code Section 11346.5(a)(13), we request that you consider these alternatives. These comments are offered in a constructive spirit. It is our sincere hope that the insights shared here and elsewhere in the record, will assist the State in improving the ordinance's structure and technical basis, thus ensuring effective and viable implementation of AB1881.

The Model Ordinance is not Easily Understood because It Lacks Performance-Based Criteria for Determining Whether a Local Ordinance is At Least as Effective.

A regulation must be easily understandable and have a rationale behind it. Under the provisions of Government Code, Section 65595(c), local jurisdictions must adopt an

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ordinance that is at least as effective in conserving water as the State's updated model ordinance. Currently the proposed State Model Ordinance is very prescriptive in nature and the scope fails to include criteria for assessing the effectiveness of an alternative local or regional ordinance as compared to the State ordinance. Local jurisdictions in our region plan to adopt an ordinance that is at least as effective as the State ordinance, yet there is no way to measure "at least as effective" because the model ordinance does not provide a rationale or measurement for how "effective" it will be upon implementation, thus, there is no way to measure whether a local ordinance is "at least as effective." We request that the model ordinance clearly communicates understandable, simple, and objective criteria for local agencies to meet an "at least as effective" standard for local ordinances from a global perspective. Further stakeholder outreach and participation may be needed to develop these objective criteria.

The draft model ordinance also confuses the roles of water suppliers and local agencies in implementing the ordinance. Local agencies are not always the water suppliers within their jurisdictions, yet the model ordinance assumes the use of water consumption data that resides exclusively with water suppliers. The model ordinance should set forth the expectations and obligations of the local agency in clear, understandable terms, with no reliance on data from outside agencies. The model ordinance itself must be limited to the areas of legal authority held by the local agency. Section 65595(e) states "Nothing in this ordinance shall be construed to require the local agency's water efficient landscape ordinance to duplicate or conflict with a water efficiency program or measure implemented by a public water system." An "at least as effective" approach should take into consideration landscape conservation efforts currently being implemented by the local water agency, since these measures aim to achieve the same overall goal of the model ordinance: preventing the wasteful and unreasonable use of water and promoting best practices for water-use efficiency. These include financial incentives, public outreach and education, tiered water rates, water budget programs, customer surveys and audits, landscaper training and certification, and other efforts currently being implemented by local water agencies.

The Proposed Approach to Regulation Enlarges the Scope of the Statute

DWR is required under Section 65594 to update the model water efficient landscape ordinance originally adopted pursuant to Chapter 1145 of the Statutes of 1990. The updated model ordinance must consider the recommendations of the AB 2717 Task Force and the requirements of Section 64496. The 1993 model ordinance applied to new private commercial, industrial and multi-family residential projects. There is no indication in the statute or as part of the AB 2717 recommendations that the applicability of the ordinance should be significantly expanded. However, DWR has expanded the overall applicability of the proposed model ordinance to include all

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new, rehabilitated and existing landscapes with a minimum of 2,500 square feet of landscape area. This could potentially apply to a significant portion of the existing single-family residences in the state. This is an overreach that is unprecedented and it creates major implementation and enforcement challenges for local agencies.

Audit Requirements

The audit requirements are extremely burdensome and are not required by the statute. Section 65596(l) of the statute states that the ordinance must include provisions for landscape maintenance practices that foster long-term, landscape water conservation. The statute states that this “**may** include” performing routine audits, irrigation repair and adjustments, and prescribing the amount of water applied per landscape, but audits are not mandated by AB1881. The proposed ordinance includes a requirement to audit twenty percent of all landscapes with a landscape area from 2,500 square feet to one acre that use in excess of their maximum applied water allowance (MAWA). Twenty percent of all sites that are over one acre must be audited each year, even if they are operating within their MAWA. This would require the local agency to determine the landscape area for each customer, obtain water use data (potentially from one or more outside agencies), and track and/or complete audits for each site. Local jurisdictions simply do not have the resources or financial capacity to handle this substantial increase in workload. Further, this is not the least burdensome and effective alternative because an audit is not necessary if the site is operating within its MAWA. In addition, this potential significant cost on residents and businesses has not been addressed in the Statement of Reasons.

We recommend an alternative approach to addressing the enforcement of water use at landscape sites that is consistent with the existing code enforcement approach currently used by local agencies. Local agencies can only enforce an objective standard. Expanded enforcement of water waste standards are within the capacity of local agencies and should be utilized. Water waste resulting from inefficient landscape irrigation, such as runoff, low head drainage, overspray, over-irrigation above a maximum applied water allowance, or conditions where water flows onto non-targeted areas, such as adjacent property, non-irrigated areas, hardscapes, roadways, or structures should be prohibited. Penalties for violations could include an agency’s full complement of enforcement tools, including progressive warning letters, citations, fines, and penalties. First time violators could be offered an audit and technical assistance in lieu of harsh action and penalties. Persistent violators could be mandated to obtain an audit to identify areas where they can improve efficiency and make necessary repairs.

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Requirements for New and Rehabilitated Landscapes Exceed those Required by Statute

For new and rehabilitated landscapes, the ordinance's "one size fits all" approach to regulating the universe of applicants is too broad to be effectively implemented as written. The AB 2717 Task Force recommended simplified user materials and approaches to obtain compliance with the ordinance. The current draft would require local agencies to exercise the same level of oversight and complex permitting requirements for individual homeowner projects as it does for master planned communities. This is not the least burdensome and effective alternative. It is unreasonable for local agencies to provide excessive permitting and monitoring where it is not most effective, such as in the landscaping of a typical home- or small-property.

This ambitious drive to regulate small lots has also apparently led to the need to rely on trades other than landscape architects, architects, and engineers to "stamp plans," a practice not contemplated for C-27 licensed contractors in the licensing authority administered by the Department of Consumer Affairs. The prescriptive design and plan review requirements in the ordinance cannot be feasibly and cost effectively implemented for the smaller lot residential market.

In order to address this issue of compliance with small lot homeowners, the ordinance should establish a higher threshold coverage area to trigger compliance (5,000 square feet) for detailed design and plan review. Emphasis should be placed on provisions that can be enforced as part of the standard permitting process. For smaller parcels, local agencies should be allowed the discretion to develop compliance protocols emphasizing the use of educational resources that are attuned to the needs and limitations of the average homeowner. The compliance criteria approach would allow a property the presumption of compliance when developed using local agency standards and the approach would be less burdensome on applicants and local agencies. In addition, we note that to sustain this ordinance's sweeping vision, State agencies would need to direct significant resources to the development and refinement of reliable information resources (e.g., CIMIS, WUCOLS, independent testing of irrigation equipment) that ultimately support all parties involved in the implementation of best practices for sustainable landscaping.

In closing, we are concerned that the balance of the process outlined by DWR (another public release and a 15-day comment period) will be insufficient to adequately incorporate the changes needed to the ordinance. It is imperative that the DWR increase its outreach and communications activities to collaborate more closely with stakeholders, particularly the local agencies charged with administering and enforcing the model ordinance. The CAC Model Ordinance Working Group looks forward to continuing to work with DWR on that effort and we look forward to the

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successful implementation of this important piece of the state's water conservation efforts.

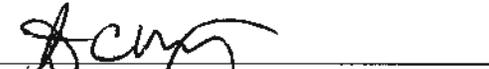
Sincerely,



Nora Jaeschke, Chair
Conservation Action Committee



Glen Schmidt,
American Society of Landscape Architects
Co-Chair CAC Model Ordinance Working Group



Scott Molloy, San Diego
Building Industry Association
Co-Chair, CAC Model Ordinance Working Group

Enclosures: Regional Ordinance
 Comments
 List of Participants

DRAFT

The LOCAL JURISDICTION ordains as follows:

Section 1. SHORT TITLE.

This Ordinance shall be known as the “Water Conservation Landscape Ordinance.”

Section 2. PURPOSE AND INTENT

The purpose of the Water Conservation Landscape Ordinance (Ordinance) and Landscape Design Manual (Manual) is to establish specific standards for landscape and irrigation design and installation to assure beneficial, efficient, and responsible use of all available water resources for all citizens of San Diego County. The Ordinance is also intended to implement the new development landscape design requirements of the Water Conservation in Landscaping Act. (California Government Code §§ 65591, et seq.) These design requirements are intended to support landscapes that are essential to the quality of life in California by providing areas for active and passive recreation and aesthetic enjoyment and enhancement. The Ordinance and Manual establish design criteria that are specific to the regional needs and climate of San Diego County. The Ordinance and Manual are intended to be at least as effective in conserving water as the model ordinance adopted pursuant to Government Code § 65595. The requirements meet a variety of landscaping objectives, including preventing erosion, filtering, treating, and utilizing storm water runoff; offering fire protection; and replacing ecosystems lost to development. Landscape design, installation, maintenance, and management can and should be water-efficient. The right to use water is limited to the amount reasonably required for the beneficial use to be served and the right does not and shall not extend to waste or unreasonable method of use. This ordinance supersedes the model ordinance imposed by operation of law pursuant to chapter 1145 of the Statutes of 1990, as applied to counties and cities except in charter cities. (AB 1881 applies to charter cities as well.)

Section 3 DEFINITIONS

Applicant: Any person required to submit a Landscape Design Application. Applicant may include the property owner or an agent of the owner.

Architect: A person licensed to practice architecture in this state under the authority of Chapter 7 (commencing with Section 5500) of Division 3 of the Business and Professions Code.

Civil Engineer: A professional engineer in the branch of civil engineering licensed to practice civil engineering in this state pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code.

Covenant, Conditions and Restrictions (CC&Rs): The declaration or other governing document containing covenants and restrictions enforceable as equitable servitudes, inuring to the benefit of and binding on all owners of property within a development project.

Development: The division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure; and

any change in use or extension of the use of land, including re-landscaping of existing developed properties.

Developer: A landowner or owner's agent responsible for the development of land. Does not include homeowners or landlords of single-family homes.

Discretionary Permit: Any permit requiring a decision making body to exercise judgment prior to its approval, conditional approval, or disapproval.

ET Adjustment Factor: A factor that when applied to reference evapotranspiration adjusts for plant water requirements and irrigation efficiencies, two major influences on the amount of water that is required for a healthy landscape.

Evapotranspiration: The quantity of water evaporated from adjacent soil surfaces and transpired by plants during a specific time period.

Hydrozone: A section or zone of the landscaped area having plants with similar water needs that are served by a valve or set of valves with the same schedule. A hydrozone may be irrigated or non-irrigated.

Landscape Architect: A person licensed to practice landscape architecture in this state pursuant to Chapter 3.5 (commencing with Section 5615) of Division 3 of the Business and Professions Code.

Landscaped Common Area: Landscaped areas of a common area within a common interest development. Landscaped common areas are maintained by a homeowners association or some other form of cooperative organization. The common area does not include open space, which cannot be legally disturbed.

Landscape Design Application: Application to the LOCAL JURISDICTION for new landscaping or re-landscaping which may include a landscape concept plan and/or landscape construction drawings. The portion of the application submitted with a discretionary permit application will include a landscape concept plan. The ministerial portion of the application will include landscape construction drawings.

Landscape Concept Plan: That portion of a Landscape Design Application submitted with a discretionary permit application that proposes a conceptual landscape design that conforms with the requirements of this ordinance.

Landscape Construction Drawings: The ministerial permit portion of a Landscape Design Application that shows the design and improvement of landscaping, including drawings, specifications, a planting plan, an irrigation plan, a grading plan for reference when available, and a water management plan.

Landscape Design Manual: The manual, approved by the LOCAL JURISDICTION, that establishes specific design criteria and guidance consistent with the requirements of this ordinance.

Maximum Applied Water Allowance: The upper limit of annual applied water for a specifically identified landscape area based on the area's reference evapotranspiration, ET adjustment factor, and the maximum size of the landscape area. The estimated applied water shall not exceed the Maximum Applied Water Allowance.

$$\text{MAWA} = \text{square feet of landscape area} \times \text{ETo} \times 0.7 \text{ ET Adjustment Factor} \times 0.623 \text{ conversion factor}$$

Where:

ETo - reference evapotranspiration

ET Adjustment Factor - A factor applied to ETo that adjusts for plant factors and irrigation efficiency.

Ministerial Permit: A building, grading or other similar permit the approval or disapproval of which involves only the use of fixed standards or objective measures, and does not require the exercise of special discretion or deliberation prior to issuance.

Mulch: Any organic material such as leaves, bark, or inorganic material such as pebbles, stones, gravel, decorative sand or decomposed granite left loose and applied to the soil surface to reduce evaporation.

Non-potable water: Water not meant for human consumption that is not treated to legal standards for human consumption.

Overspray: The water that is delivered beyond the landscaped areas onto pavements, walks, structures or other non-landscaped areas, not including runoff.

Reference Evapotranspiration: A standard measurement of environmental parameters that affect water use of plants.

Recycled Water: Water which, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource.

Runoff: Water that is not absorbed by the soil or landscape to which it is applied and flows from the area.

SMART controller: Weather-based or soil moisture-based irrigation controller that monitors and uses information about environmental conditions for a specific location and landscape to automatically adjust water schedules.

Water Management Plan: Plan submitted with the construction drawings.

Section 4. APPLICABILITY

4.1 Development Projects

This ordinance applies to all development as defined in this ordinance, for which any development permit application is filed on or after *Insert Effective Date of Ordinance*. All development listed in Section 9.3 of this ordinance is exempt from the requirements of this ordinance.

4.2 Model Homes

At least one model home that is landscaped in each project consisting of eight or more homes shall demonstrate via signs and information the principles of water-efficient landscapes described in this ordinance.

4.3 Covenants, Conditions and Restrictions

In the event that Covenants, Conditions and Restrictions are required by the LOCAL JURISDICTION for any permit subject to this ordinance, the following shall be required as part of the project approval:

4.3.1 Covenants, Conditions and Restrictions shall be consistent with the Manual.

- 4.3.2 The Covenants, Conditions and Restrictions shall require low-water-use landscaping, with a MAWA based on an ET adjustment factor of less than or equal to 0.7, that conforms to the Manual for all common area landscaping and all homeowner landscaping subject to the review and approval of the association's review board.
- 4.3.3 The Covenants, Conditions and Restrictions shall require proactive management and maintenance of the irrigation system to maintain water use within the water budget.

Section 5. LANDSCAPE DESIGN MANUAL

5.1 Preparation of Landscape Design Manual

The ADMINISTRATOR shall prepare a Landscape Design Manual for the design of landscaping and irrigation systems. The Manual shall be valid upon review of the local planning agency and approval by the GOVERNING BODY.

5.2 Amendments to Manual

The ADMINISTRATOR shall submit any amendments to the Manual to the local planning agency for its review and approval prior to transmitting them to the GOVERNING BODY for approval.

5.3 Consistency with local water agency requirements

Where a local water agency serving a proposed development project has adopted more stringent water conservation landscape requirements, the local water agency requirements shall be incorporated into the Manual.

Section 6. STANDARDS APPLICABLE TO REQUIRED LANDSCAPING

All landscaping and associated irrigation systems associated with development regulated by this Ordinance shall be designed, installed, and maintained in accordance with a Landscape Design Application that meets the minimum standards of the Manual and subsections 5.1 through 5.3 of this section.

6.1 Plant Requirements

- 6.1.1 Plant Selection: Plants shall be selected to meet a MAWA determined by the water budget formula and specifications in the Manual. The formula shall use an average ET adjustment factor of less than or equal to 0.7. In the event that the Department of Water Resources develops a model ordinance with a different ET (evapotranspiration) adjustment factor, then that ET adjustment factor or any related water budget formula calculations, or any other changes shall be

automatically incorporated into this ordinance and the Manual. Nothing in this ordinance shall be construed to require or limit use or the amount of specific tree, shrub, vine, or groundcover species, except those prohibited in open space buffers or adjacent to wildlife preserve areas as 'invasive.'

- 6.1.2 Hydrozones: Plants shall be grouped into hydrozones with plant species having similar water demand and by their, soil, sun, and shade requirements.
- 6.1.3 Soils Test: The applicant shall prepare a soils test that conforms to the Manual, with recommendations for fertilizers, amendments and horticultural maintenance practices. Recommendations shall be based on soil samples taken from the site at the completion of finish grading. The soils testing requirement may be included as a part of the specifications for installation.
- 6.1.4 Soil Amendments: Soil amendments shall be used, when necessary, to improve water retention in the soil, to improve the functional structure of the soil for greater water infiltration and percolation, to buffer pH and to optimize plant growth.
- 6.1.5 Mulches: Mulches of organic or inorganic material shall be used in all non-turf, irrigated areas to minimize evapotranspiration, runoff, and moderate the temperature of the root zone. All mulches shall meet the criteria set forth in the Manual.

6.2 Non-Plant Materials for Landscaping

When appropriate for the site and intended use, the landscaping may include natural features such as decomposing granite groundcover, rock and stone, non-vegetated natural areas, and structural features including, but not limited to, fountains, reflecting pools, art work, screens, walls, and fences. These areas shall be included in the maximum allowable water use calculations for the project and its various hydrozones per the design criteria in the Manual.

6.3 Irrigation System Requirements

- 6.3.1 Runoff Prevention: All irrigation systems shall be designed to prevent runoff, overspray, low-head drainage, and other similar conditions where irrigation water flows or sprays on to areas not intended for irrigation and not part of the parcel's landscape area, such as walkways, driveways, roadways, neighboring properties, or the public right-of-way.
- 6.3.2 Separate Water Meters: Except for a parcel that contains a single-family home, a separate landscape water meter shall be installed to all parcels for new development with landscaped areas greater than 5,000 square feet.

6.3.3 Irrigation System Design: Irrigation systems shall be designed, constructed, and managed to maximize overall irrigation efficiency, and to meet the MAWA. Irrigation systems (valve systems, piping and pressure regulators) shall be designed to deliver water to hydrozones based on the moisture requirements of the plant grouping.

6.3.4 Non-Potable and Recycled Water: If non-potable water service, including recycled water, is determined to be required for the project by a local agency or water agency, the irrigation systems must be designed, installed and operated in compliance with State and local laws, requirements, and regulations applicable to the use of recycled water. The local water agency will provide the customer with applicable conditions for the use of recycled water within its jurisdiction.

Section 7. PLAN PREPARATION AND REQUIREMENTS

Applicants subject to the requirements of this Ordinance shall submit a complete water-conserving Landscape Design and Installation Application to the ADMINISTRATOR. The Application may be submitted in two parts: A Landscape Concept Plan, which is submitted with a discretionary permit application or when otherwise required by the LOCAL JURISDICTION, and Landscape Construction Drawings, submitted as a ministerial application. All applications and plans shall conform to the plant, irrigation, and water budget formula requirements set forth in this ordinance and the Manual.

7.1 Landscape Concept Plan

All applications, subject to the requirements of this ordinance, submitted in conjunction with a discretionary permit shall include a landscape concept plan prepared in accordance with this ordinance and the Manual. All landscape concept plans shall include:

- (1) An introduction and statement of site conditions. The introduction shall include the project address and location. The statement of site conditions shall include a description of the site, climatic conditions, annual precipitation rates, anticipated evapotranspiration rate, and proposed water source along with calculations demonstrating an overall water budget of not more than 0.7 ET adjustment factor.
- (2) A landscape design statement, irrigation notes, planting notes and a conceptual plant palette that commits to the design and installation methods specified in the Manual, and
- (3) A water conservation plan and notes that identify the proposed hydrozones.

7.2 Landscape Construction Drawings

All applications subject to the requirements of this ordinance shall include landscape construction drawings that comply with the design standards and specifications contained in the Manual. The construction drawings shall conform to the landscape concept plan.

All landscape construction drawings shall include an irrigation plan, a planting and soils plan and a water management plan with detailed notes and legends necessary for a complete landscape plan review.

7.2.1 Irrigation Plan

The irrigation plan shall be a separate document from, but use the same format as, the planting plan. The irrigation plan shall be concise and accurate, and prepared in accordance with the requirements of the Manual and shall include, as a minimum, pressure calculations and the location, installation details, and specifications of control valves, irrigation heads, piping, irrigation controllers, and power supply.

7.2.2 Planting Plan

The planting plan shall include, but not be limited to:

- (1) A description of any existing plant material to be retained or removed.
- (2) A plan showing the planting areas, plant spacing, plant location and size, natural features, water features and all paved areas.
- (3) A legend listing the common and botanical plant names and total quantities by container size and species.
- (4) A description of the seed mixes with application rates and relevant germination specifications.
- (5) Soil test results and recommendations for soil amendments in proportion to the needs of the intended plants. Soils recommendations can be included as a generic specification if significant grading will occur on the site in the future. Verification of a soils test, and compliance with soil amendment requirements, must be completed by the contractor after grading is complete and prior to the landscaping installation.
- (6) A grading plan, when available, shall be submitted for reference.

7.2.3 Water Management Plan

A Water Management Plan shall be prepared in accordance with the requirements of the Manual. The Plan shall include:

- (1) An introduction and statement of site conditions as described above. (For projects that do not require a landscape concept plan.)
- (2) Identification of the party(ies) responsible for implementation of the Water Management Plan.
- (3) The anticipated water requirements in inches per year, and water budget for the various hydrozones identified in the landscape concept plan to include calculations demonstrating an overall water budget that requires no more irrigation than the 0.7 of the ET adjustment factor.
- (4) A description of the water delivery systems, including the type of irrigation system to be used; water conservation methods to be applied, and precipitation rates for each hydrozone.
- (5) Seasonal irrigation water schedules or procedures for programming of proposed SMART controllers.

- (6) A maintenance plan for the ongoing operation and maintenance of the irrigation system.
- (7) All applications for model homes shall include the nature of public information documents and signage that will be placed at model homes describing water conservation principles used in the landscaping for the model home.

7.3 Plan Preparation

The Landscape Design Application shall be prepared by an architect, civil engineer, or landscape architect.

7.3.1 Licensed Landscape Architect Plan Certification and Approval

Plans Prepared by Licensed Landscape Architects:

Landscape construction drawings prepared by a California licensed landscape architect shall include a signed statement of compliance on the plan sheets by the landscape architect. It shall state that the plans conform to accepted landscape architectural standards of practice and that they comply with the most current version of the following:

- (1) The requirements of this Ordinance;
- (2) Applicable local permits and codes;
- (3) Landscape Design Manual

Landscape plans having this signed statement of compliance will not be subject to plan check by the ADMINISTRATOR for the items listed in this subsection. The required compliance statement is as follows:

“I find that this sheet conforms to accepted landscape architectural standards of practice and is in substantial compliance with this ordinance.” (LOCAL JURISDICTION may insert own language.)

Notwithstanding the previous paragraph, the ADMINISTRATOR may monitor the adequacy of landscape plans and require correction if needed.

7.3.2 Civil Engineers or Architects Plan Submittal

Landscape plans prepared by a civil engineer or architect shall be submitted for plan check by the ADMINISTRATOR with the required plan check fee.

Section 8. FINAL INSPECTION OR CERTIFICATION OF OCCUPANCY

8.1 Statement of Installation Compliance Prior to Occupancy

Prior to the issuance of a certificate of occupancy, the applicant shall provide a signed statement of compliance by the preparer of the approved landscape plans verifying the following:

- 8.1.1 Landscaping and irrigation system have been installed in substantial conformance with the approved planting and irrigation plans and appropriate soil amendments have been made in accordance with soils tests.
- 8.1.2 The irrigation system and controller have been adjusted to maximize the irrigation efficiency and eliminate overspray and runoff.
- 8.1.3 A copy of the approved Water Management Plan has been given to the owner and the appropriate water agency.

Any changes to the irrigation system, plant materials, or location or size of landscape areas that occur in the field due to site conditions or plant material availability must be submitted to the LOCAL JURISDICTION prior to installation. Substantive changes to an approved landscape plan that would affect more than 10% (LOCAL JURISDICTION will decide percent) of the project's identified landscape area or areas require resubmittal of the landscape plan for review and approval.

Installed landscaping found not to comply with the approved landscape plan is subject to correction. Under such circumstances, the LOCAL JURISDICTION may require re-submittal and plan check of landscape plans.

8.2 Inspection

Upon notice of the Applicant, the ADMINISTRATOR shall have the right to enter the project site to conduct inspections for the purpose of enforcing this Ordinance.

Section 9. WAIVERS, EXEMPTIONS AND APPEALS

9.1 Authority to Issue Waivers

The LOCAL JURISDICTION may administratively waive or modify one or more such requirements when practical difficulties make their strict application infeasible, and upon a determination that the waiver or modification is consistent with the purpose and intent of the Manual, or if full compliance with the requirements of this Ordinance and the Manual would not materially contribute to the objectives of water conservation.

9.2 Waiver Application and Review Procedure

9.2.1 Waiver Application

Applications for waiver shall be submitted to the ADMINISTRATOR. Applications for waiver shall include the following information:

- (1) Name of Applicant.
- (2) Address or location of site, including Assessor's Parcel Number.
- (3) Calculation of the total area of the site to be landscaped.
- (4) A minimum of eight photographs of the site, four looking into the property and four looking out from the property from each cardinal direction.
- (5) An explanation of the reason for the waiver request.

9.2.2 Waiver Review Process

Administrator shall review the application and, upon determination of one of the following findings, may grant a waiver:

- (1) Practical difficulties make the strict application of the ordinance infeasible.
- (2) The waiver is consistent with the purpose and intent of the Ordinance and Manual.
- (3) Full compliance with the requirements of this Ordinance and the Manual would not materially contribute to the objectives of water conservation.

9.3 Exemptions

Unless a condition of discretionary approval requires a landscape plan, the following development is exempt from the requirements of this ordinance:

- (1) Landscaping of less than 3,000 square feet for single family homes, where the landscaping is not installed by the developer.
- (2) Re-landscaping of less than 3,000 square feet of land.
- (3) Cemeteries, historical sites, and public recreation sites requiring turf.

9.4 Appeals

A decision by the ADMINSTRATOR relating to the interpretation or application of these water conservation requirements to specific projects may be appealed as provided in the Administrative Appeal Procedure of the LOCAL JURISDICTION.

Section 10. COORDINATION WITH LOCAL WATER AGENCY

10.1 Design Criteria

Upon receipt of a landscape design application, the LOCAL JURISDICTION shall coordinate with the local water agency providing service to the applicant to determine if the local water agency has adopted more stringent water conservation landscape design requirements.

10.2 Water Management Plan

Upon issuance of the certification of occupancy, the ADMINISTRATOR shall provide a copy of the site Water Management Plan to the local water agency providing service to the applicant for enrollment of the site in a water budget program based upon the square footage of irrigated landscape and the local evapotranspiration rate.

DETAILED COMMENTS TO THE DRAFT LANDSCAPE MODEL ORDINANCE

San Diego Region Conservation Action Committee

Section	Title	Comments
490	Purpose	<p>It is not clear if the legislative intent was to apply to all existing landscapes or just place ongoing requirements where a landscape permit has been issued.</p> <p>The proposed model ordinance expands the purpose of the ordinance to apply to both new and existing landscapes. This is a significant change from the existing model landscape ordinance which applied only to new landscapes. The scope proposed in the draft model ordinance represents a significant expansion of responsibility for local agencies which will pose a significant burden for applicants and local agencies.</p>
490.1	Scope	<p>DWR should define objective performance criteria for meeting the “at least as effective” standard for local ordinances with consideration of local water utility programs. While local agencies may comply with the regulation via a local ordinance, the Department has not provided an objective framework for determination of compliance with the “at least as effective” standard. Locally developed ordinances are a viable alternative approach, which must be addressed in DWR's ongoing process. Although the statute states that “<i>Nothing in this ordinance shall be construed to require the local agency's water efficient landscape ordinance to duplicate or conflict with a water efficiency program or measure implemented by a public water system</i>”, the draft ordinance compels duplication of water utility conservation programs. The scope of the ordinance clearly applies to all local agencies, including cities and counties and does not apply to water agencies. However, the ordinance lacks clarity in the role of water agencies and local agencies and includes prescriptive requirements that are unenforceable because they are not under the jurisdiction of the local agency.</p>
490.2	Intent	<p>1. The current draft is overly prescriptive in its enforcement provisions. DWR needs to provide a clear delineation of requirements on agencies that will develop a local ordinance. Procedures for compliance by applicants are best delegated to local agencies. The desire for “<i>consistent landscape ordinances with neighboring local and regional agencies</i>” is shared at the local level. The path to attaining such consistency is not for the State to unilaterally prescribe procedures for applicants in excessive detail. DWR's focus should be on communicating simple and objective performance criteria for local agencies based on the mandatory elements of AB 1881. Many of DWR's prescriptive requirements are perceived to be out of touch with the needs and limitations of local agencies, industry, and property owners. It's improbable that the draft ordinance could be implemented successfully because it crosses over to address both requirements on agencies <u>and</u> on applicants. The State needs to emphasize in its ordinance items that can be controlled during the permit process (design), and delegate procedures for the compliance (enforcement) to local agencies.</p>
490.2	Intent (continued)	<p>2. The intent should recognize that water agencies provide direct economic incentives to customers for irrigation system and landscape improvements. The current stated intent of the ordinance only includes the coordination with the local retail agency to implement a tiered rate structure as an economic incentive for water use efficiency.</p>
490.3	Applicability	<p>1. The range of sites subject to the design criteria in the ordinance is too broad to be effectively implemented without a simplified approach for small sites. 2. The ordinance applies to new construction and rehabilitated landscapes for projects with a landscape area greater that 2,500 square feet requiring a permit, plan check or design review. It should be clarified that this provision will not trigger a new permit requirement where one does not already exist 3. The ordinance is also unclear in how it relates to the design review procedures for landscapes that are subject to reveiw by the Design Review Board (DRB) at a homeowner's association. 4. The proposed ordinance would apply ongoing audit requirements to existing landscapes with a landscape area greater that 2,500 square feet. This is a huge burden for local agencies which do not have landscape area information available for existing landscapes to determine which properties should be included under the ordinance.</p>

DETAILED COMMENTS TO THE DRAFT LANDSCAPE MODEL ORDINANCE

San Diego Region Conservation Action Committee

Section	Title	Comments
490.3	Applicability (continued)	DWR should raise the coverage area threshold from 2,500 to 5,000 sq. ft. for detailed design submittals, and delegate to local agencies the development of compliance protocols for applicants. The current draft would require local agencies to exercise the same level of control over individual homeowner projects that it does over master planned communities. This is unreasonable for local agencies and overly burdensome to the typical homeowner. Consistent with AB 1881, solutions for small-scale landscape projects (2,500 to 5,000 sq.ft.) should emphasize use of educational resources. The current draft's requirements are administratively infeasible for local agencies to implement based on the sheer volume of projected applicants. Moreover, the prescriptive nature of the draft ordinance would preclude the possibility of effectively employing educational resources and streamlined procedures as a means for achieving substantial compliance. For effective implementation, such matters must be delegated to local agencies.
491	Definitions	<p>Several definitions require further refinement. It's important that DWR's use of terms of art and other nomenclature be consistent with the established use in practice by industry.</p> <p>1. Landscape Area: The definition of landscaped area is ambiguous and will result in confusion on how to calculate the area subject to MAWA. By limiting the square footage of pervious non-irrigated planting areas, it is not clear if all areas that are not wetted areas should be excluded. Stakeholders suggest the definition is counterproductive to DWR's purpose, since it may lead designers to maximize the total irrigated area, in lieu of incorporating non-irrigated design elements. Conceivably, two otherwise identical sites could be subject to very different water budgets. The proposed definition may discourage the use of natural plants that do not require supplemental irrigation. It should be made clear that the calculated landscape area shall be used to determine both the the applicability of the site to the requirements of the ordinance and the MAWA .</p>
491	Definitions, cont.	<p>The following definition of Landscape areas should be used: <i>The entire parcel less the building footprint, driveways, non-irrigated portions of parking lots, hardscapes such as decks and patios, and other non-porous areas. Water features are included in the calculation of the landscaped area. Areas dedicated to edible plants such as orchards or vegetable gardens are not included .</i></p> <p>2. Check valve. Check valves can be located at various locations and are not necessarily on the sprinkler. Therefore the definition should be changed: "check valve" or "anti-drain valve" means a valve used to hold water in the system to prevent drainage from the sprinkler heads when the system is off.</p>
491	Definitions, cont.	<p>3. Recreational area: This should be further defined. Parks are often defined as "passive recreation or active recreation" While a passive area may not be a surface for high use recreation, they are intended to allow spontaneous play and informal activities (parties, carnivals, public events, etc) These areas will need to be turf and will most likely require the higher ET. Both passive and active recreation areas should be included in the definition.</p>
491	Definitions, cont.	<p>4. The following definitions should be added: contract documents, flow sensor, master control valve, sub-meter, operating pressure, control control system</p>
492.1	Compliance with landscape documentation package	<p>The required documentation needs to be reduced and streamlined. All that is needed is one worksheet demonstrating MAWA compliance, a landscape design plan, an irrigation design plan, a grading plan for reference, and a soil analysis report. 2. A copy of the Water Efficient Landscape Worksheet should be submitted to the local retail water purveyor by the local agency instead of the applicant to ensure that the retail water purveyor receives the final approved worksheet.</p>
492.2	Compliance with the Certificate of Completion	<p>1. Final sign-off of the project installation should be consistent with what is allowed by landscape architects and licensed contractors in the Business and Professions Code. See Chapter 3.5, commencing with Section 5615, of Division 3 for landscape architects. Section 7027.5 for landscape contractors. Auditors are not licensed professionals under the business and professions code and are not authorized with final sign off authority. 2. For a new irrigation system, where the installation has been approved by a licensed professional, an audit is not necessary. This will only increase costs to the applicant with no additional benefit. 3. The local agency should have the option of relying on the final sign-off of the project by a licensed landscape architect without an additional requirement to conduct a final agency inspection. 4. The certificate of completion section should separately address sign off procedures for homeowner designed and installed projects.</p>

DETAILED COMMENTS TO THE DRAFT LANDSCAPE MODEL ORDINANCE

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Section	Title	Comments
492.3	Waivers and Variances	This section does not provide specific criteria for a waiver or variance. It should state: <i>"The local agency may establish criteria to administratively waive or modify one or more requirements of the ordinance when unusual difficulties make their strict application impossible and upon determination that the waiver is consistent with the purpose and intent of the ordinance"</i>
492.4	Penalties	"Terminate water service" should be deleted as a penalty. Local agencies that do not supply water lack authority to terminate water service. In addition, there are public health concerns and equity issues associated with termination of water service where termination would not be merited based on landscape water use.
492.5	Landscape Documentation Package	1. The landscape documentation package is overly burdensome. All that is needed for professionally designed landscapes is one worksheet demonstrating MAWA compliance, a landscape design plan, an irrigation design plan, a grading plan for reference, and a soil analysis report. The model ordinance should include (or allow for) a simplified approach for single family homeowners. 2. The ordinance (Sections 492.8, 492.9 and 492.10) states that a licensed landscape contractor may sign and stamp the landscape design plan, irrigation design plan and grading plan. Licensed contractors do not have a professional stamp under their license and are limited in what they can approve.
492.6	Water Efficient Landscape Worksheet	Section (b)(1) states "In areas where precipitation amount is not significant, applicants can skip this section." However, it provides no guidance on where precipitation would be significant. San Diego receives approximately 9-10 inches per year of precipitation, generally in a short period of time. The effective precipitation calculation should not apply to the San Diego region because it is not significant.
492.7	Soil Management Plan	1. The ordinance requires a statement of recommendations by a qualified soil specialist, but fails to define what constitutes a qualified soil specialist. 2. The proposed approach of requiring field testing by a "soil specialist" is not consistent with industry practice. The ordinance should be revised to better reflect industry practice. Normally a soil specialist would analyse soil samples submitted to a laboratory by a designer and the designer would use the results to determine what soil amendments are needed for the proposed plants.
492.8	Landscape Design Plan	1. The design criteria calls for no sprinklers within 24 inches of hardscape. This requirement creates a hardship for recreational areas where movement from hardscape to turf is natural and allows for freedom of play and access. While subsurface drip for turf is possible the technology/maintenance requirements have not been proven and could be costly. This requirement should be removed for recreational areas. The requirements should also be removed for shrub areas that can be irrigated without overspray. 2. The design criteria should require consideration of plant selection, location and mature size when selecting irrigation methods to avoid blocking irrigation spray and reducing uniformity.
492.9	Irrigation Design Plan	1. 1(a)(5) The requirement for rain sensors is ambiguous as to when this would be required "as appropriate to climatic conditions." 2. 1(b)(6) The requirement for check valves on sprinkler heads should be limited to sloped areas that are subject to low head drainage. 3. 1(b)(10) Low volume spray irrigation should be allowed on slopes of 4:1 for the purposes of irrigating hydroseed mix and to assure established plantings. 4. 2(e)(4) The ordinance requires the application of best management practices for installation of irrigation systems, but fails to define what would constitute a best management practice.
492.10	Grading Design Plan	The ordinance requires a grading design plan to be submitted with the landscape design package. It should be clarified that a copy of the project's grading plan prepared by a civil engineer will meet the requirements and that a grading design plan is not required for projects where a grading permit would not normally be required. The grading plans are used by the designer for reference purposes only.
492.11	Certificate of Completion	1. The number of site visits required by the Certificate of Completion is onerous (see comments on Section 492.2). This will result in increased fees and expenses for local agencies that conduct the reviews. These costs should be addressed in the Statement of Reasons for the ordinance. 2. The irrigation audit report is an unnecessary requirement for a new landscape where plans that have been signed off by a licensed landscape architect and the system was installed per the plans. Auditors are not licensed professionals. The costs of implementing this added requirement should be included in the Statement of Reasons for this regulation.

DETAILED COMMENTS TO THE DRAFT LANDSCAPE MODEL ORDINANCE

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Section	Title	Comments
492.12	Irrigation Scheduling	The ordinance should recognize that irrigation schedules will change over time as plants, water pressure, and irrigation system components are changed and that the ultimate goal is to meet the MAWA. Because the regulation requires smart controllers, in lieu of conventional scheduling requirements, a full set of the data used for the initial programming should be documented.
492.13	Landscape and Irrigation Maintenance Schedule	The ordinance requires a "regular" maintenance schedule to be submitted with the certificate of completion. It should be clear that "regular" is determined on a case by case basis for each site. The following wording is recommended, "A regular maintenance schedule, consistent with the specific site needs, shall be submitted with the Certificate of Completion."
492.14	Landscape Irrigation Audits and Audit Schedules	1. All audits must be performed by a certified landscape irrigation auditor in accordance with the Irrigation Association Certified Landscape Irrigation Auditor Training Manual. Full irrigation audits can be expected to cost between approximately \$500 and \$1500 depending on the landscaped area. The Department in their Statement of Reasons failed to estimate the number of audits that would be required under the ordinance and the cost impact to local agencies and property owners for conducting, reviewing and tracking the audits. 2. For new construction, an audit upon completion of construction is not necessary where the plans were certified by a landscape architect or irrigation designer, where a complete irrigation schedule has been submitted and approved, and where the installation has been fully inspected. This is a redundant requirement and would be costly to implement. This requirement should be deleted from the ordinance.
492.14	Landscape Irrigation Audits and Audit Schedules, Cont.	4. A full audit requirement is expensive and onerous. The Statement of Reasons failed to consider less expensive alternatives that could be implemented including implementation of an aggressive water waste ordinance and homeowner education and technical assistance. 5. The ordinance includes a requirement to compare water use to the MAWA to the extent that customer water use data is available. This makes the requirements dependent on local water agencies. For lots less than one acre and more than 2,500 square feet, audits are required for 20% of the landscapes that are over the MAWA. 6. The audit requirement in Sections 492.14 and 493.1 are a significant mandate on local agencies to track and implement this program that is unprecedented. In addition, some local agencies may not be able to provide "for payment" services based on their city charter.
492.14	Landscape Irrigation Audits and Audit Schedules, Cont.	7. Actual landscape water use data is only available for sites with dedicated irrigation meters. These would include existing sites with dedicated meters and new sites over 5,000 square feet. Water use data for other sites includes other non irrigation uses. The audit requirement should be removed from the ordinance and should be replaced with strong water waste provisions. Audits should only be required for those sites where there has been a violation of a water waste ordinance.
492.16	Recycled Water	1. Use of recycled water on sites less than one acre may not be practical. The wording should be changed to say "Irrigation systems shall make use of recycled water unless a written exemption has been granted by the local water agency." 2. Consumers using recycled water should be exempt from the restrictive provisions of the model landscape ordinance. Recycled water is already subject to significant regulatory requirements by the Regional Water Quality Control Board and Department of Public Health and a MAWA requirement is not necessary where ample recycled water capacity exists. 3. The 2,000 mg/L TDS exception is irrelevant since irrigation with water at 2,000 TDS is not practical. Any adjustment for TDS should apply equally to all sources high in TDS.
492.18	Public Education	It is not clear in the ordinance if the public education requirement applies only to homeowners of new homes with over 2,500 square feet of landscape area or to all new homeowners. It should be revised to state "A local agency shall provide information to all new owners of new, single family residential homes regarding the design, installation, management and maintenance of water efficient landscapes." It should also include a provision allowing the local agency to require the developer to provide the mandatory educational materials to the homeowner.
493.1	Landscape Irrigation Audits (existing landscapes)	1. Please see comments on landscape irrigation audits for new and rehabilitated landscapes. 2. For existing landscapes there are inadequate bases to require a property owner to grant permission to to the local agency to enter their site for the purpose of conducting a landscape irrigation audit. Therefore, this is not a practical requirement to include in the ordinance and should be removed. The audit requirement should be replaced by more stringent water waste prohibition requirements.

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Section	Title	Comments
493.2	Water Waste Prohibition	The ordinance should include strong water waste prohibitions in lieu of the audit requirement: <i>Water waste resulting from inefficient landscape irrigation, such as runoff, low head drainage, overspray, over-irrigation above a maximum applied water allowance, etc. is prohibited. Conditions where water flows onto non-targeted areas, such as adjacent property, non-irrigated areas, hardscapes, roadways, or structures are also prohibited. Penalties for violations may include warning letters, citations, monetary penalties, fines. First time violators may receive an audit and technical assistance. Persistent violators shall be mandated to obtain an audit to assess irrigation efficiency and make recommendations for improvements.</i>
494	Effective Precipitation	Effective precipitation appears to be optional, but this is not clearly stated in the ordinance. Effective precipitation does not need to be considered for the San Diego region.
495	Appendix A, Reference Evapotranspiration Table	The data in the reference tables reportedly does not correspond to the data from the CIMIS system. These values are derived from CIMIS, Reference Evapotranspiration Zones Map 1999, UC Dept. of Ag. and Nat. Resources Bulliten 1997 and Determining Daily Reference Evapotranspiration, Coop. Extension of UC Division of Ag. Publication 1997. It should be made clear in the model ordinance that the table in Appendix A should be used for design purposes only. Actual CIMIS data should be used for irrigation purposes.
495.2	Appendix C, Certificate of Completion	Section B, the Landscape Architect of Record should make the field observations instead of the applicant. If the landscape architect could not make the observations because trenching was covered, they should make this statement and disclaimer as part of the inspection signoff. Landscape contractors should be required to sign a statement that they have installed the landscaping according to plans. A disclaimer should be included for local agency landscape architects stating that they are reviewing the project for compliance with the ordinance and are not liable for any errors in design.

Stakeholder Participants in Ordinance Working Group

Sara Agahi, county of San Diego, Public Works
David Akin, city of San Diego Water Utilities
Gary Arant, Valley Center Municipal Water District
Larry Breitfelder, Otay Water District, Board Member
Celia Brewer, San Diego County Water Authority
Teresa Chase, Olivenhain Water District
Rozanne Cherry, city of Escondido, Planning
Patsy Chow, city of Vista, Community Dev. Dept.
John Conley, city of Vista
Kathy Copley, The Lightfoot Planning Group
Stephen Copley, Copley Design
Richard Diaz, county of San Diego, Public Works
Wayne Dernetz, Interested Party
Vickie Driver, Retired Principal Water Resources Specialist
Ann Ellis, Building Industry Association
Debby Fahmer, San Diego County Water Authority
Margaret Ferguson, Vallecitos Water District
Linda Flournoy, Planning & Eng. for Sustainability
Gary Gelinias, Water2Save
Luis Generoso, city of San Diego
Teresa Gomez, city of Oceanside Water Utilities Dept.
Sergio Graham, Westturf Landscape Maintenance
William Granger, Otay Water District
David Hill, CLCA/West Turf Landscape
Craig Hooker, city of San Diego
Gary F. Hoyt, GFH Landscape Architect
Chris Jacobs, city of La Mesa
JoEllen Jacoby, city of San Diego
Deborah Jardin, city of Escondido, Utilities
Nora Jaeschke, NN Jaeschke
David Kahler, county of San Diego, Department of Planning and Land Use
Sandra Lozano, Sweetwater Authority
Marisa Lundstedt, city of Chula Vista
Marian Marum, Howard Associates
Dale Mason, Vallecitos Water District
Mike Massey, PIPE Trust Fund
Helen McBrady, S.M.A.R.T. Building Products
Rob McGann, Hydro-Plant, Inc.
Mark McMaster, McMaster & Jackson, Inc.
Carlos Michelin, San Diego County Water Authority
Kristen Mignone Crane, city of Poway
Scott Molloy, Building Industry Association
Kelly Mooney, San Diego County Water Authority
Sue Mosburg, Sweetwater Authority

Patrick Murphy, city of Encinitas
David Otterstein, P.I.P.E. Trust Fund
Alan Pentico, San Diego County Apt. Assoc.
Mayda Portillo, SDCWA
Mary Radley, city of Chula Vista
Brent Reyes, Vista Irrigation District
Carol Rosas, city of Poway
Toby Roy, San Diego County Water Authority
Glen Schmidt, ASLA/Schmidt Design Group, Inc.
Christine Sloan, county of San Diego, Watershed Planning
Tim Smith, Wynn-Smith Landscape Architecture, Inc.
Fred Thompson, San Diego County Water Authority Board
Robert Watts, Accredited Home Lenders, Inc.
Mark Weston, Helix Water District
Gary Halbert, City of Santee
Mike Uhrhammer, Padre Dam Municipal Water District
Melissa McChesney, Padre Dam Municipal Water District