Colvin, Judith

From: mweo-bounces@water.ca.gov on behalf of Teresa Gomez [TKGomez@ci.oceanside.ca.us]
Sent: Wednesday, March 26, 2008 3:38 PM
To: mweo@water.ca.gov
Subject: [MWEO] City of Oceanside's Consensus Comments on the DraftLandscape Model Ordinance
Attachments: 3-26-08_OsideCommentsonModelLandscapeOrd.DOC.pdf

Attached please find the City of Oceanside's response to DWR's Draft Landscape Model Ordinance. A hard copy will be sent via U.S. mail as well.

Thank you,

Teresa Gomez

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CITY OF OCEANSIDE
WATER UTILITIES DEPARTMENT

March 26, 2008

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:

The City of Oceanside would like to be on the record as supporting the comments of the Conservation Action Committee (CAC) on the draft State Model Landscape Ordinance submitted to the Department of Water Resources on March 26, 2008. The table of detailed comments is attached to this letter. We support the efforts of the CAC Ordinance Working Group and the San Diego County Water Authority to develop a regional model landscape ordinance that increases water use efficiency in landscape irrigation in San Diego County, that is supported by local jurisdictions and the landscape industry, and that can be effectively implemented by local jurisdictions. Having a State Model Landscape Ordinance that can be implemented in a reasonable manner will increase the active involvement and enforcement by local jurisdictions in the landscape requirements. Therefore, we encourage you to consider the comments provided by the CAC.

The DWR asserts in its Statement of Reasons that there will be no increase in costs to local agencies. The fact that this is a mandated program and that there would be a need for additional staff leads the City of Oceanside to strongly oppose this position. We believe that the costs to implement the State's proposed auditing and enforcement requirements would be substantial. Requiring all landscapes down to 2,500 square feet to comply with the model ordinance would also require new plan check and permitting staff in planning and development services departments. Ultimately we feel that there are significant budget implications connected to this model ordinance.

Sincerely,

Lonnie Thibodeaux
City of Oceanside
Water Utilities Director

Attachments

cc: Peter A. Weiss, Oceanside City Manager
Lauren Wasserman, Oceanside Development Services Director

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DETAILED COMMENTS TO THE DRAFT LANDSCAPE MODEL ORDINANCE

San Diego Region Conservation Action Committee

Section	Title	Comments
490	Purpose	**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.** 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.
490.1	Scope	**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 *"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"*, 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.
490.2	Intent	**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 *"consistent landscape ordinances with neighboring local and regional agencies"* 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.
490.2	Intent (continued)	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.
490.3	Applicability	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 rehabilited 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.

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 shear 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	**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.** **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 .
491	Definitions, cont.	**The following definition of Landscape areas should be used:** ***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 .*** **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.
491	Definitions, cont.	**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.
491	Definitions, cont.	**4. The following definitions should be added:** contract documents, flow sensor, master control valve, sub-meter,operating pressure, control control system
492.1	Compliance with landscape documentation package	**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.
492.2	Compliance with the Certificate of Completion	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.

DETAILED COMMENTS TO THE DRAFT LANDSCAPE MODEL ORDINANCE

San Diego Region Conservation Action Committee

Section	Title	Comments
492.3	Waivers and Variances	This section does not provide specific criteria for a waiver or variance. It should state: ***"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"***
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 forprofessionally 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 refect 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 crtieria 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. 2. 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. 3. 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 unneccesary 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 include in the Statement of Reasons for this regulation.

DETAILED COMMENTS TO THE DRAFT LANDSCAPE MODEL ORDINANCE

San Diego Region Conservation Action Committee

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 agressive 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 irrgation 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 restictive 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.

DETAILED COMMENTS TO THE DRAFT LANDSCAPE MODEL ORDINANCE

San Diego Region Conservation Action Committee

Section	Title	Comments
493.2	Water Waste Prohibition	The ordinance should include strong water waste prohibitions in lieu of the audit requirement: ***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-irrigatied areas, hardscapes, roadways, or structures are also prohibited. Penalties for violations may include warning letters, citations, monetary penalties, fines. First time violators may recieve an audit and technical assistance. Persitent violators shall be mandated to obtain an audit to assess irrigation efficiency and make recommendations for improvements.***
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 ststem. 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. Ectension 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.