

Additional CBIA and CBPA Comments on the Current

Draft Model Landscape Ordinance

January 9, 2009

At the request of DWR Director Lester Snow, CBIA and CBPA are submitting recommended changes to the Certificate of Occupancy section (Section 492.2) and other priority changes that need to be made for the Model Ordinance to be effective.

Unfortunately, we believe that the Model Ordinance requires several substantive changes to be effective in improving landscape water use efficiency and should be redrafted and recirculated with substantial additional public review time to meet the clarity, consistency, and nonduplication standards of the Office of Administrative Law review of proposed regulations. As currently drafted, the Model Ordinance is not as effective as it should be in differentiating the appropriate roles and responsibilities of local government, water agencies and applicants for landscape permits. We do not believe it will be effectively implemented without greater buy-in from the regulated community and local government.

Certificate of Occupancy

Homes and buildings are occupied, landscapes are not. This proposed approach is very confusing to us as builders and will be confusing to local governments who already have numerous other ordinances and requirements addressing "certificates of occupancy." This approach needs to be withdrawn from the Model Ordinance.

Cities and counties approve land uses and landscaping using a plan submittal, plan review, plan approval process followed by inspections to confirm that land uses and landscaping have been built as required by the plans, usually including a long list of specific conditions on a map or plan. DWR should follow the same approach to facilitate local implementation of the Model Ordinance.

What needs to be confirmed is that the landscape plan and irrigation system has been built as designed to meet the water budget, or Maximum Applied Water Allowance. We do not need to create a new cottage industry to do landscape water audits, which are expensive and meaningless compared to confirming actual water use from long-term meter readings.

Recommended Changes to Proposed Section 492.2 (Page 9)

§492.2. Compliance with the Certificate of Completion (see also Section 492.11)

1. The local agency shall:

(b) conduct a final field inspection of the project to confirm that the landscape plan and irrigation system comply with the approved Certificate of Completion;

2. The project applicant shall:

(a) upon project installation, have a licensed landscape architect or licensed landscape

Deleted: (a) receive the signed Certificate of Completion from the project applicant.¶

Deleted: (c) approve the Certificate of Completion; and¶
(d) issue a Certificate of Occupancy, or equivalent, to the project applicant.¶

Deleted: (a) prior to backfilling, have a licensed landscape architect, certified irrigation auditor, or¶
licensed landscape contractor conduct a preliminary field observation of the irrigation¶
system.¶

Deleted: b

contractor conduct a final field observation for the approval of the certificate;
(b) submit the signed Certificate of Completion to the local agency for approval;
(c) submit copies of the approved Certificate of Completion to the local retail water purveyor and the property owner or his/her designee.

Despite their inclusion in the current model landscape ordinance, irrigation audits are not routinely done today because of their expense and limited value. The current draft Model Ordinance language is confusing because it proposes multiple approvals (Section 492.1) of "Certificates of Completion."

Deleted: (c) upon project installation, have a certified irrigation auditor conduct a landscape irrigation audit as required under Section 492.14.

Deleted: d

Deleted: (e) receive the Certificate of Occupancy or equivalent from the local agency; and

Deleted: f

How Should the Model Ordinance Be Structured?

The Model Ordinance should be redrafted and recirculated because it confuses the roles and responsibilities of cities, counties and water agencies. Cities and counties approve landscape plans, but only water agencies know how much water is being used by their water customers. Requiring expensive landscape irrigation audits to provide potential water use information to cities and counties, when water districts have responsibility for water use, is poor public policy and not a very effective approach.

Existing law (AB 1881, 2006) required beginning January 1, 2008, that all landscape areas 5,000 square feet or larger have a separate dedicated landscape water meter. This creates an opportunity to more clearly define local government and water agency roles in improving landscape water use efficiency. It would require new legislative authorization, but we believe it could be implemented in a voluntary manner that would be attractive to both local governments and water agencies.

We recommend that DWR consider redrafting the Model Ordinance to incorporate the following approach:

1. Set a performance standard based upon the lower ET adjustment factor and let the landscape designer develop a plan that meets the Maximum Applied Water Allowance. If the design meets the landscape water budget, the documentation is provided to the city or county, and they approve the plan and inspect it after construction to document the landscaped area has been built with the irrigation equipment and plants as approved.
2. Eliminate all landscape water audits. As a superior alternative, take advantage of the fact that all landscaped areas of 5000 square feet or larger are required to have a separate, dedicated, water meter for the landscape area. This threshold level will capture the vast majority of the state's new common areas, community, slopes and other landscaped areas. The water districts will know by meter readings exactly how much water is being used for the majority of new landscaped areas being installed as a result of the new Model Ordinance or local alternatives. The cities and counties will not.
3. Rather than create some huge new costly water audit industry and reporting regimen to cities and

counties, let's give the water districts new authority (voluntarily, not as a mandate) to reduce landscape water waste! Our proposal:

a. The current and proposed Model Ordinance require the Certificate of Completion be given to the retail water suppliers, so they should have the approved Maximum Applied Water Allowance for each new landscaped area. This provides the water district with the landscape area location and water budget.

b. Water districts could be authorized (not required or mandated) to charge a customer who substantially exceeds the water budget for the specific (and metered) landscape area a higher water rate, a fee, or a fine for wasting water.

c. The proceeds from the higher rate, fee or fine could be used to pay the water district's cost to administer their landscape monitoring and water conservation programs.

d. It would be a voluntary program. Water agencies could choose to participate or not.

4. The advantages are:

a. No cost to the state.

b. Appropriate roles for local agencies and water districts.

c. Actual measurement of water use, rather than a periodic and costly landscape water audit.

d. Real water savings, because the water agencies would have monthly monitoring of not just the landscape design, but the ongoing landscape management.

e. It's a fair approach. The only water customers affected would be the ones wasting water. Safeguards could be included to ensure water customers are notified and provided assistance to correct problems and to reduce water waste before any higher rates or penalties are imposed.

f. Water districts could be given the flexibility to choose the thresholds appropriate for their area. Some might want higher rates or charges if you exceed the landscape budget by 25%, others might want to just focus on the most egregious abuses, such as 50-100% over the MAWA.

Summary: This recommended approach maintains the current and understood roles in local government and water agency approval and water use for landscape areas. It takes advantage of new landscape metering law and trends within the water community. It would permit ongoing monitoring of

landscape water use in a more effective way to reduce wastes than the irrigation audit dependent approach in the proposed Model Ordinance.

Other Priority Changes in the Model Ordinance

- **Rewrite to be a performance-based approach, rather than so prescriptive.**
 - Provide realistic landscape irrigation efficiency parameters, and place the burden on landscape professionals to demonstrate compliance through their design, irrigation equipment, and plant selection.
 - Eliminate requirements for specified drip irrigation on slopes, landscape areas less than 8 feet wide, and no irrigation within 24 inches of hardscape.
 - Eliminate overly detailed plan specifications (telling applicants to include a north arrow!) and let the local cities and counties use their existing plan submittal and ordinance requirements.

- **Eliminate the costly and prescriptive "soil management plan" with expensive new laboratory soil analyses required at the wrong times in the process.**
 - The Model Ordinance requires a "Soil Management Plan" as a part of the design package. For many projects mass grading may not have begun and fine grading will not have begun and therefore cannot be submitted as a part of the Landscape Documentation Package.
 - Delete the soil management plan from the Landscape Documentation Package or develop an alternative plan that can use soil information when it becomes available.

- **Delete Section 492.8(f) on requiring Landscape Design Plans to include stormwater BMPs, capture and infiltration requirements regulated by federal NPDES and Municipal Stormwater Permits.**
 - Water quality/run-off management documentation is based on other state and federal legislation and is governed by a myriad of existing ordinances and codes. These documents require separate submittal and permits. Including additional requirements in the Model Landscape Ordinance adds complexity and could create conflicts without water savings.
 - Stormwater requirements are appropriately addressed in proposed Section 492.17.
 - By licensure statute in the State of California, all licensed landscape architects are required to sign each sheet of project documentation acknowledging their compliance with all regulations applicable to the subject project. Requiring a separate acknowledgement of compliance with this ordinance is unnecessary and redundant.

- **Amend Section 492.10, Grading Design Plan, to accurately reflect the finished grade of the landscape area.**
 - Requiring that grading "shall avoid disturbing natural drainage patterns and to avoid soil compaction in landscape areas" is a huge land use planning requirement that goes far beyond any legislative authorization from AB 1881 or any other source. This is

inappropriate and impractical for the mass grading required for any large new development project and could be cost prohibitive for smaller projects. Subsection (b) must be deleted.

- Grading design is legislated by public works / engineering ordinance and code. Moreover, grading documentation requires separate permitting. It is inappropriate and confusing to include grading design and specification criteria in a water efficient ordinance. The landscape improvement base sheets should include all grading and drainage information, but should not duplicate the submittal of this civil engineering scope of separately permitted work.
- **Delete Section 492.11, another confusing and duplicative "Certificate of Completion" requirement, and incorporate appropriate requirements into Section 492.2.**
 - Delete the irrigation audit requirements.
 - Requiring an irrigation audit of a new system prior to final installation certification is unnecessary, very costly and will impact completion schedule. Water audits may be warranted when exceeding water allotments and should not necessarily have a schedule requirement. A water audit schedule submitted with the initial landscape development package is not necessary or beneficial.
- **The requirements of Section 492.12 for Irrigation Scheduling, Section 492.13 for Maintenance Schedules, and Section 492.14 for Irrigation Audits and Schedules are way too prescriptive for application on a statewide basis for effective implementation.**
 - No attention has been paid to the huge costs of these provisions or compared to the minimal water savings that would result. They are infeasible, and they are not cost effective.
 - We agree with the extensive, multiple page, comments on these sections submitted by the American Society of Irrigation Consultants, in their March 18, 2008, document that were ignored by DWR staff.