

County of Santa Clara

Department of Planning and Development

Planning Office



PLN02 092810

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DATE: September 28, 2010

TO: Board of Supervisors

FROM:

A handwritten signature in black ink that reads "Jody Hall Esser" with a stylized flourish at the end.

Jody Hall Esser
Director of Planning and Development

SUBJECT: Water Conservation in Landscaping Ordinance

RECOMMENDED ACTION

Consider recommendations from the Department of Planning and Development relating to Water Conservation in Landscaping Ordinance.

Possible action:

- a. Accept report relating to Water Conservation in Landscaping Ordinance, and direct staff to prepare a revised draft ordinance for future consideration by the Board.
- b. Provide specific direction to staff regarding two recommended changes discussed in this report: (a) landscape professionals, and (b) water features.

FISCAL IMPLICATIONS

Not applicable.

CONTRACT HISTORY

Not applicable.

REASONS FOR RECOMMENDATION

- Pursuant to Assembly Bill 1881, the Planning Office has been working to develop a water-efficient landscape ordinance since August 2009. The County's proposed Water Conservation in Landscaping Ordinance would implement the requirements of AB 1881.
- The County is obligated to provide a landscape ordinance status update to the California Department of Water Resources (DWR) no later than September 30 (see Attachment 6).
- On March 23, 2010, the Board of Supervisors directed the Planning Commission to review the draft Water Conservation in Landscaping Ordinance and provide comments to the Board. This report provides a summary of the Planning Commission recommendations (Attachment 1), and some discussion on the proposals.
- The Planning Commission recommendations (Attachment 1) include changes to the original draft ordinance provisions that would relax requirements for: (a) project applicability (landscape area threshold), (b) soil analysis and conditioning, and (c) maintenance documentation. The Planning Office believes that, in balance, these changes should not significantly impact water conservation efforts, particularly when individual project conditioning and enforcement are prudently applied.
- The Planning Office is requesting special Board consideration for the Commission's recommendations regarding: (a) the use of landscape professionals, and (b) the exemption of water features, which are discussed in the Background section of this report. In both cases, Planning staff has concerns regarding the impact of the recommended changes on the effectiveness of the ordinance.
- The Commission has recommended a change regarding automatic irrigation controllers/sensors, which is also discussed in the Background section. In addition to staff's concerns of its impact on water conservation, a problematic conflict has been discovered. The California Green Building Ordinance will have overriding authority in its requirements for automatic irrigation controllers/sensors, which are consistent with the original language from the DWR model ordinance. This recommended change

cannot be implemented, so it should not be adopted as a part of the landscape ordinance.

Based on the above (and Background discussion), Planning staff is requesting that the Board provide specific direction as we prepare to draft the ordinance:

1. Should landscape professionals be required to prepare landscaping and irrigation system plans and documents? (For projects larger than 5,000 square feet)
2. Should water features (pools, spas, fountains, ponds) be exempt from the ordinance's water efficiency provisions?

BACKGROUND

State Mandate: AB 1881

In September 2006, Governor Schwarzenegger signed Assembly Bill 1881 into law. That legislation updated water-efficient landscaping statutes to require greater water savings and broader applicability (including single-family projects) than what had previously been required. It directed the Department of Water Resources (DWR) to update the State Model Water Efficient Landscape Ordinance, and local jurisdictions to begin enforcing the state model or a comparable ordinance "at least as effective" as the state model as of January 2010.

AB 1881 and the DWR model ordinance strive to achieve greater water efficiency through the following means:

- Low water using plant choices.
- Professional design of landscaping and irrigation.
- Grouping of compatible plants into "hydrozones."
- Irrigation water budget component.
- Demonstrably efficient irrigation systems, including sensors and automatic controllers.
- Soil assessment and soil management.
- Post-installation inspection and maintenance.
- Limited exemptions.

Should a local jurisdiction choose to adopt its own ordinance (versus applying the default DWR model), AB 1881 requires the jurisdiction to file a notice with DWR that includes a declaration of findings demonstrating how the local ordinance is "at least as effective" as the DWR model ordinance. A template letter and findings from the Bay Area Water Supply and Conservation Agency (BAWSCA) is included as Attachment 5.

Senate Bill 7

In November 2009, Senate Bill 7 (2009 Water Conservation Act) was adopted and signed into law. SB 7 requires water providers to increase water use efficiency in several specific ways, including a per-capita reduction of urban water use by 20% over the coming decade. SB 7 specifically targeted greater water allocation to the Sacramento-San Joaquin Delta for environmental mitigation. It mandates additional conservation beyond what had been envisioned when AB 1881 was

being written. SB 7 was factored into the development of the County's draft ordinance, as it poses new water-supply challenges to local water purveyors.

Local Regional Efforts

Between August 2009 and January 2010, the Planning Office participated in two working groups to develop regionally adapted versions of the landscape ordinance. The working groups, which included conservationists, water purveyors and planning representatives, were led by two local water agencies: (1) the Bay Area Water Supply and Conservation Agency (BAWSCA), and (2) the Santa Clara Valley Water District (SCVWD).

Each of the two working groups developed a local model ordinance that was meant to achieve greater water conservation than the DWR model, with specific emphasis on local water supply challenges and projected shortages. Both model ordinances include alternate "turf limitation" options to demonstrate water efficiency instead of using a water budget, and both models include a water-efficiency checklist that would accompany certain application types. Both models were developed with consideration of the practical needs of project applicants and administering jurisdictions.

AB 1881 contains language (65596(c)) that promotes the benefits of consistent local ordinances toward water conservation. Consistent ordinances also facilitate understanding and ease of use by landscape professionals and applicants. Both the BAWSCA model and the SCVWD model have been adapted by numerous local jurisdictions as a basis for their own ordinances that either have been enacted, or are in the process of being enacted.

Draft County Ordinance

The original draft County of Santa Clara ordinance (Attachment 2) followed closely the model ordinance developed by the SCVWD regional group. Following public outreach, two reports to the Housing, Land Use, Environment and Transportation Committee (HLUET), and an informational update to the Planning Commission, the draft ordinance was presented to the Board of Supervisors for a public hearing on March 23, 2010. On that date, the Board referred the ordinance to the Planning Commission to provide for additional review and comment.

Planning Commission Ad-Hoc Subcommittee

At a public hearing on April 1, 2010, the Planning Commission established an ad-hoc subcommittee to study the landscape ordinance and provide comments. The subcommittee's objectives were to further simplify the ordinance and reduce the burden on property owners while recognizing the water conservation goals of the State of California. Three commissioners, Scott Lefaver, John Vidovich and Dennis Chiu, agreed to participate as subcommittee members.

The subcommittee convened with staff and County Counsel on three occasions to discuss the ordinance and options for alternatives. On June 3, 2010, Commissioner Lefaver presented an oral report to the Planning Commission that detailed those components of the ordinance where the subcommittee had comments and recommendations for alternate language. The Planning Commission accepted the report and directed staff to forward the comments to the Board of Supervisors for consideration.

Planning Commission Recommendations

Attachment 1 is a version of a worksheet used by the Subcommittee and Planning Commission to develop the recommendations. It lists the main components of three reference landscape ordinances (DWR model, SCVWD model, and the original draft County ordinance). It notes those components where the Planning Commission had alternate recommendations, highlighting eight (8) such components where recommended changes could impact water efficiency, implementation effectiveness, or both.

Noteworthy recommendations include raising the threshold for project applicability from 2,500 square feet of landscape area to 5,000 square feet. This will be less burdensome to applicants as it will not require landscape plans and documentation of projects 5,000 square feet or smaller; only a simple checklist. The Commission has also recommended that the ordinance not require mandatory soil testing and conditioning for all projects, and that it not require landscape maintenance documentation.

In light of the AB 1881 mandate that the County's ordinance be "at least as effective" as the DWR model ordinance, the following three (3) recommended changes warrant particular consideration by the Board.

1. Landscape Professionals

The DWR model requires landscape professionals to prepare plans and documents required for a landscape submittal. The County (in agreement with SCVWD) included this in the draft.

PC Recommendation: The Planning Commission has recommended removing this requirement from the ordinance for all landscape projects associated with single-family residences.

Comment: The recommendation to remove the requirement for professional design and document preparation raises the following issues.

- Professional design and installation of landscaping and irrigation systems is a component of the DWR model ordinance. It ensures that the landscape plan meets the technical specifications required by the state, meets water efficiency targets, and has a strong likelihood of becoming successfully established. In conditioning projects for landscaping (e.g. design review, grading), the Planning Office has routinely required that the plans be prepared by landscape professionals. Experience has demonstrated the value of landscaping professionals in achieving a successful installation, long-term viability, and cost-effectiveness to the property owner.
- The Planning Office's practice of requiring landscape professionals has effectively supported specific planning efforts. During the development of the Viewshed Protection Ordinance, for instance, strong landscaping conditioning (including professional design) was deemed a primary tool for mitigating visual impacts of hillside development.
- The Planning Office does not currently have the technical expertise of a licensed landscape architect or designer. Plans prepared by non-professionals would need to be reviewed by an outside landscape professional(s) to assure the County that the plan complies with the state's requirements, and raises issues of costs, timing, and billing that may not always be to the advantage of the applicant.

2. Water Features

The DWR model defines water features and regulates them as equivalent of high water use plants. The County (in agreement with SCVWD) included the water feature restrictions in the draft, and also provided that pools and spas with covers be regulated as equivalent of medium water use plants, to encourage water and energy conserving practices.

PC Recommendation: The Planning Commission has recommended not regulating water features as part of this ordinance.

Comment: Swimming pools and other water features have been proven to be high water users. On a square-foot basis, water features can use more water than the most water intensive turf grass, and the state recognizes the impact of water features in outdoor water conservation. The exemption of water features would result in reduced water savings, which staff believes would be incompatible with the mandate of local ordinances being "at least as effective" as the DWR model.

3. Automatic Irrigation Controllers/ Sensors

The DWR model requires irrigation systems to include automatic sensors (either soil moisture-based or weather-based) to be installed with irrigation systems. The landscape professional would have the discretion to use either (or both). The County (in agreement with SCVWD) has included these requirements in the draft.

PC Recommendation: The Planning Commission has recommended changing the language such that only soil moisture based irrigation sensors be required.

Comment: The change recommended by the Planning Commission would have the effect of precluding wind and weather based sensors in situations where they would be more effective in conserving irrigation water than soil moisture based sensors.

The California Green Building Ordinance, which takes effect January 1, 2011, has a requirement for irrigation controllers that is very similar to the language in the DWR model ordinance. Any alternate language in the draft County ordinance would thus be superseded by the Green Building Ordinance. (Note: This Green Building Ordinance conflict was discovered after the Planning Commission made its recommendations, and so was not part of their discussion.)

Other Improvements

Other improvements suggested by the Planning Commission will be incorporated into the next draft. These include clarification of language, elimination of unnecessary definitions of terms, and improving the format of "applicability" provisions. An additional option for an applicant to demonstrate water efficiency (entitled "Native Plant Emphasis") will be provided.

Case-by-Case Project Conditioning

Project conditioning and enforcement are key to the effectiveness of this ordinance, and one aspect of this warrants clarification. During one Planning Commission Subcommittee meeting, a commissioner raised a question regarding whether the Subcommittee's recommended ordinance changes might limit project conditioning. If the ordinance were revised such that, for instance, soil analysis and conditioning were not expressly required, could soil analysis and conditioning *ever* be required as a condition of approval? Would the Planning Office lose its ability to require soil conditioning on a project where native topsoil has been removed and the ground has been rendered unsuitable to support most plant growth?

Section 5.20.120 of the Zoning Ordinance provides the scope of conditioning authority on development projects. It would empower an approving authority (Zoning Administrator, Planning Commission, ASA Committee) to judiciously condition projects to require such things as soil conditioning and maintenance documentation (items the Planning Commission is recommending be removed) on an "only-as-needed" basis, while otherwise respecting the Planning Commission's desire to not require such conditions of *every* landscape project.

CONSEQUENCES OF NEGATIVE ACTION

If no action is taken, Planning staff will defer work on updating the draft ordinance until given direction by the Board. The state (DWR) model ordinance will continue to apply by default.

STEPS FOLLOWING APPROVAL

The Planning Office will receive direction from the Board of Supervisors and prepare a revised ordinance for the Board to consider at a future hearing date.

ATTACHMENTS

- Attachment 1: Worksheet of Landscape Ordinance Components
- Attachment 2: Original Draft County Ordinance
- Attachment 3: California Department of Water Resources Model Ordinance
- Attachment 4: Assembly Bill 1881
- Attachment 5: Template DWR Letter and Findings
- Attachment 6: Notice from DWR