

# Attachment A

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## Discussion

On March 1, 2016, staff met with two stakeholders that presented concerns to the Board at the hearing on February 23; Michael Waxer, representing the American Institute of Architects (AIA) Monterey Bay Chapter, and Pam Silkwood, representing the Refinement Group. Staff presented proposed landscape regulations to facilitate a discussion and allow the exchange of information to fully understand the intent of the proposed regulations and the concerns of the public.

Interpretation and implementation of the proposed ordinances were of general concern with a desire to create incentives that encourage a preferred outcome. Staff has categorized the concerns into four specific topics of discussion. The following discussion explains the concern identified by the public, staff's thought process behind addressing the concern, and staff's proposed solution for the Board of Supervisors to consider:

### Agricultural Cultivation Exception

A concern was expressed that, as drafted, there could be possible inconsistent interpretation of this exemption resulting in applying these regulations to projects when they should be found exempt. Staff was requested to consider adding a definition for agricultural cultivation activities as they are exempt from the proposed landscape ordinances. The group provided staff with the proposed definition and list of examples of agricultural cultivation activities below:

“Agricultural cultivation activities’ means the cultivation of land for the production of food, products, or feed, whether for commercial or individual use. Agricultural cultivation activities include the cultivation of land to serve a function that is non-ornamental in nature. Agricultural cultivation activities include, but are not limited to, the following:

- Producing crops for human or animal feed
- Planting of grapevines for producing grapes used in wine making
- Planting seed for production of fiber
- Raising or keeping livestock (i.e. farm and ranch animal regarded as an asset)
- Raising or keeping of exotic animals for the production of human food or other tangible products having commercial value
- Planting cover crops
- Planting of filter strips for stormwater treatment
- Planting for stormwater management
- Raising or keeping bees for pollination or production of human food
- Use of land for wildlife management
- Fuel modification for wildlife preparedness planning.”

Staff agrees that clarifying what is found to be an agricultural cultivation activity may be helpful, and the state law is drafted for more urbanized settings. However, in consultation with County Counsel, staff determined that adding the proposed definition would not be appropriate because it presents a potential unintended consequence by limiting types activities considered exempt. Instead of attempting to craft an all-inclusive definition, staff finds that we should clearly state the intent and purpose of the proposed ordinances; which is to govern those types of landscapes that are ornamental in nature, making a clear distinction that it is not meant to apply to agricultural planting. Furthermore, staff proposes to modify the exception language contained in the ordinances to provide a general, yet illustrative, list of agricultural cultivation activities.

To address this concern, and to clarify future use of the ordinances, staff proposes to add a finding to Section 1 of the ordinances that clearly states the intent and purpose of the regulations while explaining the exemptions. Sections 16.63.030.D.5 of the coastal ordinance and 16.64.030.D.5 of the inland ordinance will be modified to include a list of examples considered as agricultural cultivation. This is consistent with the existing formation, as other exempt activities are further explained through a general list of examples.

### Definition of Rehabilitated Landscapes

Staff was requested to consider modifying the definition for Rehabilitated Landscapes so that it is not “overly broad.” Proposed language provided by the group states that rehabilitated landscapes do not include “landscapes sustaining ordinary maintenance and repair,” “restoration of landscapes after a natural disaster,” or the “temporary use of irrigation to restore an area of land back to its natural state.”

State regulations require local ordinances adopted in place of the Model Water Efficient Landscape Ordinance (MWELo) to be **at least** as effective in conserving water. Definitions provided in the draft ordinances were derived from definitions provided in the MWELo. The intent of the state law is to reduce/limit water use in landscapes, so staff recommends limiting the scenarios where there are non-conforming landscapes.

Staff finds that proposed “except for” language would weaken the definition by adding a gray area. For instance, ordinary maintenance and repair of existing landscapes may consist of the same activities of re-landscaping (i.e. removal and replacement of planting and/or irrigation systems). Maintenance/repair activities that meet the rehabilitated threshold of 2,500 square feet should not be considered minor and applicability to the regulations would be appropriate. The definition should clearly reflect that.

Staff agrees that “temporary use of irrigation to restore an area of land back to its natural state” should be excluded from the requirements. Ecological restoration projects that do not require permanent irrigation systems are already found to be exempt from the ordinances. Therefore, adding this language to the definition would be redundant.

During the meeting, staff agreed to make an attempt to clarify the meaning of “re-landscaping” noting that any modification must meet the intent and purpose of the ordinance and be consistent with state law. After careful analysis, staff has determined that the definition, as proposed, meets the intent and purpose of state law and additional language would not add value. Therefore, staff proposes no change to the definition.

### Native Vegetation Exemption

Staff was presented with concerns over potential inconsistent interpretations of “native vegetation” and “natural areas” and how they qualify for exemption. The concern for the lack of incentivizing the use of native vegetation was also expressed. Several potential scenarios were presented and real-life examples of natural planting and restoration activities were provided to staff to facilitate a discussion on how planners might analyze landscape projects and how the regulations would be applied once adopted.

The primary purpose of the ordinances is to reduce water consumption in ornamental landscaping. Incorporating the use of native plants in a landscape’s design is one of the identified techniques for property owners to achieve water conservation. An additional technique

identified by the MWELo is the protection and preservation of native species and natural vegetation. Therefore, the protection and use of native plants should be seen as an incentive, not a disincentive.

The MWELo addresses these in two different ways resulting in two different benefits. Portions of the property to be maintained in their natural state or restored back to its natural state are exempt from the regulations, resulting in allocating any additional water allowance to the landscape area instead. Native plants are low and very low water users and incorporation into the landscape design would result in superior water conservation, allow a trade off for property owners to incorporate high water use plants, or expand their landscape area.

Based on the list below, staff finds that the language contained in the ordinances provide sufficient information to determine whether or not a project component is exempt:

- The definition for “landscape area” clearly states “footprints of buildings or structures, sidewalks, driveways, parking lots, decks, patios, gravel or stone walks, other pervious or non-pervious hardscapes, and other non-irrigated areas designated for non-development (e.g., open spaces and existing native vegetation)” are not included as part of this area.
- Sections 16.63.030.D and 16.64.030.D of the ordinances provide a list of exempt activities. Ecological restoration projects that do not require a permanent irrigation system and natural areas including, but not limited to: open space, native vegetative areas, and pervious or non-pervious hardscapes that do not require a permanent irrigation system are considered exempt.
- The landscape ordinances include requirements for the use of native and native-compatible plants within the landscape design.
- The landscape ordinances require submittal of plans providing information on planting and irrigation for the project. These plans are to include general information that pertain to each project, such as a depiction of the entire lot, a clear delineation of the limits of the landscape area as well as the other areas on the property not included in the landscape area (i.e. not meeting the definition or found to be exempt).

When analyzing a project, a planner must first understand the whole site; making the distinction between “natural areas to remain” or “restoration of natural areas with native vegetation” and incorporation of native plants in the design of the landscape area. Plans submitted for review must clearly define all areas on the project site to ensure that this occurs.

Staff proposes to address these concerns by adding clarity to the Landscape Manual and provide options for incentive opportunities for the Board of Supervisors to consider.

Modification to the Landscape Manual will include:

- Elaborating on difference between natural areas with native plants and utilizing native plants in the landscape area; thoroughly explaining that the first is exempt from the ordinances while the latter is not (where there is permanent irrigation).
  - Provide a narrative explaining the points listed above with the intent of guiding the applicant to realize the benefits of incorporating both whenever possible (i.e. reduced water use, protecting existing habitat and creating new habitat areas by choosing local native plants).
- Explaining that incorporating and accounting for native plants as part of the ornamental landscape area should be seen as a desired method to achieve water efficiency, which should not be seen as a penalty, but as a benefit of design.

- Stressing the importance of clearly delineating information on the landscape plans; telling the whole story. Areas outside of the landscape area (not subject to the ordinance or found exempt) should be clearly defined and accounted for, showing a clear distinction from the landscape area.

Staff analyzed available opportunities for providing an incentive for the use of native planting. The following were identified as the best available options for Board consideration and direction:

Incentive	Pro	Con
A. Cost savings for the life of the project when native plants are incorporated into the landscape area.	Lower water use in landscape irrigation results in the reduction of costs.	Cost savings benefits may not be immediately realized.
B. Cost and time savings for projects that include elements outside of the definition of “landscape area” or found exempt and therefore not applicable to the ordinances.	Projects not subject to the ordinance will not incur costs for landscape permit fees and other fees associated with hiring consultants and licensed professionals to design and install landscapes.	Property owners that wish to have dedicated landscape area with ornamental and native landscape plants would not benefit from this incentive.
C. Provide reduced fees for applicants with native plants installed in the majority of the landscape area.	Cost savings benefits will be immediately realized.	Cost recovery proposed for review and approval of landscapes only cover staff time to review what a landscape architect submits, so savings are minimal.

Incentives “A” and “B” are already built into the landscape ordinances through the regulations. Should the Board of Supervisors chose to implement these incentives, staff would modify the Landscape Manual to include a new section discussing the benefits and provide examples of how they can be obtained and what that type of landscape could look like.

The application fee sections contained in the landscape ordinances would need modification if the Board of Supervisors chose to implement incentive “C”. Staff would request Board direction on the appropriate percentage for reducing these fees.

#### Temporary v. Permanent Irrigation

The type of irrigation for a project and its relation to applicability of the regulations was also discussed. It was proposed that staff consider including landscapes with temporary irrigation (including hand-watering) as an exemption.

The purpose of the MWELO is to conserve water in landscapes and applicability of the state regulations is based on the size of the “landscape area,” which by definition, does not include “non-irrigated areas.” There are allowances for certain landscapes utilizing temporary irrigation. Ecological restoration, mined-land reclamation, and erosion control projects as well as natural areas that do not require permanent irrigation systems are exempt from the ordinances. For example, those elements of a project specific to ecological restoration, open space areas, and/or erosion control activities that may require temporary irrigation for plant establishment would not

be considered part of the landscape area and found exempt from the regulations. All other temporarily irrigated landscape areas applicable to the regulations are calculated as low water use.

Based on the information above, irrigated landscapes (temporary or permanent) should be counted as part of the landscape area unless otherwise found to be exempt. Adding the proposed exemption to the ordinances would be inconsistent with the regulatory language contained in the MWEL. Therefore, staff proposes no change to the landscape ordinances or manual.

### Maintenance of Landscape

A concern was expressed with the language addressing the maintenance obligations of property owners and their successors and assignees. Specifically, the section stating landscapes are “maintained for the life of the project in healthy condition, free from disease, pests, weeds, and trash.” He identified a theoretical situation where due to the natural course of some native plants, or from implementation of water conservation measures, some landscapes could turn brown during the drier months. If that were to occur, would there be potential for a property owner to be non-compliant? Could there be a reasonable standard added to the language addressing this?

Minor and Major landscapes subject to the ordinances are required to maintain a minimum condition pursuant to Chapters 10.46 and 18.14 of the Monterey County Code. These regulations contain minimum requirements for clean, safe and sanitary conditions of private and public properties resulting in prevention of the promulgation of noxious weeds and/or a blighting problem, not for the promotion of lush green landscapes. Therefore, staff finds adding language for the reasonable maintenance of landscapes would be consistent with the Monterey County Code and help to clarify future use of the ordinances.

### Recommended Actions for the Board of Supervisors

Based on the information provided in this report, staff proposes the Board of Supervisors consider the recommended solutions contained within each subtopic and provide direction for implementation. The specific action items are listed below:

- Modify the Coastal and Inland Water and Energy Efficient Landscape ordinances to:
  - Add a finding stating the purpose and intent of the proposed ordinances is to reduce water use in ornamental landscapes, not agricultural planting;
  - Modifying exception language for agricultural cultivation activities; and
  - Modifying language contained in the “Obligation of Successors” section of the ordinances to include a reasonable maintenance standard.
- Modify the Landscape Manual to:
  - Be consistent with the changes to the ordinance listed above;
  - Include clarifying language for native plants; and
  - Include clarifying language regarding irrigation.
- Consider the incentive options presented and provide direction to staff for implementation.

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