



Helix Water District

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Setting standards of excellence in public service

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:

Helix Water District is located in East County San Diego. It serves 262,000 customers, and covers approximately 50 square miles. It has a commitment to water conservation that dates to 1965, and has aggressively marketed its conservation programs to the community through a variety of rebates, vouchers, events, and educational activities.

The Helix Water District would like to be on the record as supporting comments submitted by the Conservation Action Committee (CAC) on the draft State Model Landscape Ordinance submitted to the Department of Water Resources on March 26, 2008 with its attached table of detailed comments. 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.

Helix believes that water conservation is the most important new water supply. California requires a Model Landscape Ordinance that is effective and implementable by the cities. We will be happy to work with the Department of Water Resources to create an ordinance that will shape the future of the state.

Sincerely,

Mark S. Weston
General Manager

Attachments: (3)

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Legal Counsel:
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Stakeholder Participants in Ordinance Working Group

Sara Agahi, county of San Diego Public Works
David Akin, city of San Diego Water Utilities
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 Fahrner, San Diego County Water Authority
Margaret Ferguson, Vallecitos Water District
Linda Flournoy, Planning & Eng. for Sustainability
Gary Gelinis, 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
Sandra Lozano, Sweetwater Authority
Marisa Lundstedt, city of Chula Vista
Marian Marum, Howard Associates
Dale Mason, Vallecitos Water District
Mike Massey, PIPE Trust Fund
Sharon May, Agri Service; El Corazen Composting
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

Dan Noble, Association of Compost Products
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 SD Watershed Planning
Tim Smith, Wynn-Smith Landscape Architecture, Inc.
Robert Watts, Accredited Home Lenders, Inc.
Mark Weston, Helix Water District

March 25, 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:

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.

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 new plan check and 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. 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's 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 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 communicate 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 with the exception of including public sites. However, DWR has expanded the overall applicability of the proposed model ordinance to include all 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.

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

Very truly yours,

Nora Jaeschke,
[Professional Affiliation]
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