

BUILDING STANDARDS COMMISSION

MEETING MINUTES

MAY 29, 2015

1. CALL TO ORDER

Meeting called to order at approximately 10:00 a.m. at the address of 400 R Street, First Floor Hearing Room, California Victim Compensation and Government Claims Board, Sacramento, California 95811.

ROLL CALL

Commissioners Present: Secretary Marybel Batjer
James Barthman
Larry Booth
Elley Klausbruckner
Erick Mikiten
Cheryl Roberts
Kent Sasaki
Steven Winkel
Rajesh Patel

Secretary Batjer announced that a quorum was present.

Vice Chair Winkel led the Commission in the Pledge of Allegiance.

2. PROPOSED EMERGENCY STANDARD ADOPTIONS AND APPROVALS

Chair Batjer discussed that there are four state agencies that will be presenting the proposal for the Emergency Building Standards to discuss outdoor landscape in the California Green Building Standards Code. The Commission will take action to consider the finding of emergency and determine whether the finding is acceptable. If approved, the Commission will consider the proposed change to the subject building standard and take action to approve, disapprove, return for further study, or approve as amended the proposed code change based upon the criteria stated in the Health and Safety Code Section 18930. If disapproved, the Commission will take no further action.

2 a) The California Building Standards Commission - These proposed building standards would add, amend and/or repeal building standards relative to water efficiency effecting a reduction in outdoor irrigation water usage relative to Chapters 2, 5, and A5 within Part 11 of Title 24.

Ms. Marvelli, representative from the California Building Standards Commission, expressed gratitude to the four agencies for their quick response, particularly the Department of Water Resources, as the regulations enhance the existing regulations, which they handle, and MWELD, which is the Model Water Efficient Landscape Ordinance, to amend the regulation.

The proposed emergency regulations are only in CALGreen. It affects the definitions in Chapter 2. There's new definitions and some repealed definitions. They are enabled to support the mandatory and voluntary sections that are being amended in Sections 5.304, outdoor water use. They would affect state-owned buildings, the UC systems, CSU systems, and non-residential construction, and some commercial projects.

January 17, 2014 and again in April 2014, Governor Brown proclaimed a state of emergency throughout California due to the severe drought conditions. In April 2015, the Governor issued an executive order, which is B-29-15, due to record-low snowpack, decreased water levels in reservoirs, and declining supplies of underground water. The order also directs state agencies to implement immediate measures to save water, increase enforcement against water waste, invest in new technologies, and streamline government response to ongoing drought conditions.

Building Standards Commission reviewed the existing regulations, and then CALGreen determined that it's possible to further reduce the use of water in landscape areas by changing the Tier 2 voluntary measure for outdoor water used to mandatory regulations.

The regulations will not be in effect until January 1, 2017. The delay does not address the Governor's declared emergency. The Building Standards Commission proposed the adoption of these building standards through the emergency adoption process. If approved, they would have an effective date upon filing with the secretary, which will be May 29th or June 1st.

Secretary Batjer opens discussion for commissioners on the finding of emergency.

Questions from the Commissioners

Commission Klausbruckner asked about the Health and Safety Code section's outdated code references affecting anything voted on under

18938, Item B, for Uniform Fire Code and Western Fire Chiefs.

Mr. Nearman stated statutory changes are a slow process. They have not been updated since the early '90s. The new codes that are adopted are the codes that are available. The fact that the statute is different does not affect them.

2 a) i) No comments from the members of the public on the action for finding of emergency.

MOTION: A motion for a finding of emergency was moved by Commissioner Barthman and seconded. The vote was unanimous and the motion was carried.

Ms. Marvelli read from the Emergency Express Terms within Item 2 a) ii). The Building Standards Commission did it in conjunction with the Department of Water Resources, Housing and Community Development, the Division of the State Architect, and Offices of Statewide Health Planning and Development.

There's a water budget calculator that DWR uses to reduce outdoor water use. They enhanced the calculator. They moved it from Tier 2 to the mandatory provision, so it's a new language, new definition that is in alignment with the definition in the Department of Water Resources for the ET adjustment factor. For Building Standards purposes, the factor is replaced from a 0.7 factor to a 0.55 factor.

Definitions are being repealed that are no longer being used and definitions changed for water model efficient landscape ordinance to better align with DWR's definition.

Chapter 5, mandatory measures for nonresidential structures. It was asked to be approved because the underlying term "evapotranspiration adjustment factor" is incorrect. It should read just like the definition, which is the ET factors. Definitions on page 2 should match what's on the first page, which is ET adjustment factor (ETAF).

Section 5.304, outdoor water use, repealing the water budget and existing regulation because you need to follow all of MWEL0 for landscape areas greater than 2500 square feet. The notes point to where you can find the calculator online.

Methods to reduce potable water are listed.

There's a regulation that allows local jurisdictions to approve potable water in outdoor use for health and safety reasons.

Item 2 a) ii)

Open for commissioner questions.

Questions from the Commissioners

Commissioner Booth asked if Ms. Marvelli would view this proposal to enhance, degrade, or remain neutral on the use of graywater systems or the volume of graywater used.

Ms. Marvelli stated that under the special landscaped areas, you're able to utilize more water as it comes from a recycled or graywater system, so it would enhance it to some degree.

Commissioner Sasaki asked how they figured out about the ET adjustment factor that went from .7 to .55, which is a 25 percent reduction.

Mr. Nearman stated Tier 1 was a 10 percent increase and Tier 2 was a 15 percent increase in efficiency.

Commissioner Sasaki asked how many jurisdictions have developed their own ordinance.

Ms. Marvelli stated she doesn't have an exact number, but understands from DWR that there is about a 75 percent enforcement rate.

Commissioner Klausbruckner asked a question about the language in 5.394.2, whether they were using the language in reference to 5.304.1. She stated it says "other methods to reduce potable water use in landscape areas include but are not limited to," but thinks it's vague. Should it be saying, when applying the requirements prescribed in Section 5.304.1, then continue the language "other methods to reduce potable..." It doesn't tell you how much should be used or where.

Ms. Marvelli stated it's intended to be its own section. Page 5, plant coefficient, irrigation efficiency, use of captured rainwater, any of them can be used for outdoor water use. She said there would be better clarification of that section when approved.

Commissioner Klausbruckner strongly recommended wording the language so it's proper code language.

Commissioner Winkel said the definition of the special landscape area dedicated to edible plants and other areas of active play should be modified by changing the word "and" to "or." With the "and," you have to meet all the criteria. Note that the same definition is in the DSA.

Ms. Marvelli stated she will ask her boss if it can be approved. Mr. Nearman said his concern is that the requirements are based off of CALGreen's regulations. Maybe they can modify it to align. Commissioner Winkel said he will not pose an amendment if that will not align with DSA.

Public Comments

Helen Roth Doudan, representing Nexus eWater, stated under 43041.11 where it says "Use of captured rainwater, recycled water, graywater designed per the California Plumbing Code" that the Plumbing Code not only designs things, but it uses things, so she suggested changing it to say "designed and used per the Plumbing Code."

Mr. Nearman stated sections beginning with a 4 are for residential areas.

Helen Roth Doudan suggested when talking about what the alternatives are in the use of recycled water, including how that's different than graywater and can do that by putting "use of on-site recycled water," which is different from graywater. On-site water means it's not coming from a district, so that should be clarified. She also stated a clarification should be made about what the benchmarks are.

Tracy Quinn, Civil Engineer and Policy Analyst from the NRDC, stated she supports the improved landscape water efficiency in the proposal, with a few modifications. The rules don't fully respond to Directive 7 of the Governor's April 1st executive order because the new requirements for water budgeting only apply to landscapes larger than 2,500 square feet, so she recommended a minimum threshold for nonresidential of 500 square feet instead. She also recommended requirements for separate meters or submeters for outdoor irrigation in the nonresidential sector apply to new landscapes of 500 square feet or more. The CALGreen proposed water budget doesn't contain a method for determining actual efficiency for irrigation equipment, so recommended irrigation technologies meet the nationally recognized American National Standards Institute.

Bob Raymer with the California Building Industry Association is representing ten-member coalitions: Building Industry Association, Business Properties Association, Building Owners and Managers Association, California Chamber of Commerce, California Landscape Contractors Association, the Commercial Real Estate Association, International Council for Shopping Centers, California Retail Association, California Apartment Association, American Institute of Architect California Council. There's a 180-day period in which the regulations will go through a formal process to turn them into permanent standards, which things can be addressed during that time.

It was stated that the Governor's Executive Order states that potable water be delivered for landscaping by drip line or microspray. If that language stays in place, it would stop the use of graywater and recycled water. There's been little landscape conservation going on in the green standards that's about to change. Mr. Raymer would like to know what type of documentation BSC would like to see. DWR is in the process of updating MWELO, and that's going to happen in the middle of July. There's probably a lot less grass going in to new home construction in the coming months.

Secretary Batjer stated MWELO upgrades this summer would be an appropriate time to look at square footage, 2,500 square feet to 500 square feet.

Mr. Raymer agreed.

Vice-Chair Winkel asked if Mr. Raymer thinks it would be a good approach when talking about updating the MWELO in terms of prescriptive standards to apply those to smaller areas and treat it like prescriptive energy standards of having it zoned.

Mr. Raymer agreed it would be. He stated a prescriptive view in the context would be a house-by-house basis, not project by project. The language regarding the potable water reduction makes it clear that all of the emergent technologies, graywater, recycled water, et cetera, are viable products under the new building standards.

Commissioner Sasaki stated in the MWELO ordinance it says the local agencies shall review a landscape documentation package and wanted to know if that is currently the ordinance. The landscape documentation package requires six elements. Item 1 is project information; 2 is water efficient landscape worksheet; 3 is soil management report; 4 is landscape design plan; 5 is irrigation design plan; and 6 is grading design plan.

Wes Sullens with StopWaste stated addressing the code having to do with outdoor landscape is new and significant. Mr. Sullens wanted to offer an amendment to 5.304.2. It has two of the three critical elements that make up water conservation. You've got irrigation efficiency, good system to deliver the water, plant selection with ET factor, plant factor, but the part that is missing is using a soil that can keep the water and make use of it on site, so he would like to see a top dressing of mulch and compost and other fertilizers that add to the soil. It's in MWELO, but need to bring it into this section of the code.

MOTION: Secretary Batjer entertained a motion for action on the CBSC's proposed changes to the subject of the building standards. Commissioner Klausbruckner made a motion to amend Section 5.3042.1, to replace "evapotranspiration" with "ET" for

editorial and for consistency, and it was seconded.

Mr. Nearman stated the proposed agency had requested to make the amendment and based on that 9 point criteria to avoid error in publication. The amendment passed unanimously and was carried.

MOTION: A motion was made and moved and seconded to accept the California Building Standards proposed changes. The vote was unanimous and the motion was carried.

Secretary Batjer stated the order of 2 a) and 2 b) would be switched.

Chet Widom, State Architect; Dennis Corelis, principal architect.

Mr. Widom, DSA, is the proposer of change in regulation and enforcer. DSA is asking for adjustment on the ET factor. Schools are different from residential and commercial. They are looking at a factor of .65 for schools. Their intention is to have the calculator on the DSA website. Modernization is being done on campuses rather than new buildings. The goal is to have new regulations submitted around the 1st of July because there's a 15-day public presentation process.

Item 2 c) i)

Open for commissioners' discussion.

Commissioner Patel asked if they were looking for prescriptive methods for designers to follow and for them to review.

Mr. Widom stated they are looking for any method they can. The answer is "yes."

Commissioner Klausbruckner requested clarification on Section 5.304.1, which did not mention potable water. She wanted to know if that meant when using graywater you're allowed a lot more water in school.

Mr. Widom stated their goal is using graywater for turning around and developing their own purification system, that they can use as much as they can as long as it's not potable water.

(No sound for Speaker Mike and Speaker Ron on the phone.)

MOTION: A motion to consider the division of the state architect's finding of emergency. Moved and seconded. The vote was unanimous and the motion carried.

Item 2 c) ii

Open for commissioners' discussion.

Commissioner Klausbruckner stated the definitions do not say "ET adjustment factor" in Section 202 as well as Section 5.302.1 and proposed a code change to amend it if not out of order to do so.

Mr. Nearman stated the intent is to align them as closely as possible. They don't want to have varying definitions to describe the same item. They will work with DSA to clarify those so they can make those changes, but not an amendment at that time.

(No sound for Unidentified Speaker and Speaker Chad on the phone.)

MOTION: With the finding of emergency approved, a motion for action on the DSA's proposed changes to the subject building standards was moved by Commissioner Sasaki and seconded by Vice Chair Mikiten. The vote was unanimous and the motion is carried.

(A break was taken)

Shawn Huff, Assistant Deputy Chief of the Division of Codes and Standards for the Department of Housing and Community Development; Kyle Krause, Codes and Standards Administrator and Program Manager for State Housing Law Program; Emily Withers, Codes and Standards Administrator II.

Mr. Krause, HCD, requested the Commission to approve its proposed finding of emergency and emergency regulations developed for purposes of alleviating the drought impacts on the citizens of California effective immediately. Outdoor water use comprises 34 percent of residential water use. HCD mandates MWELO for development of water in new residential construction. HCD requests adjustment in the MWELO water budget formulas resulting in lower water use allowances for purposes of existing landscapes.

Secretary Batjer opened up discussion on the action of finding of emergency.

Public comments

No public comments.

2 b) i) Action for Finding of Emergency

Secretary Batjer asked commissioners to state their name when making a motion.

MOTION: A motion was made by Commissioner Barthman and seconded by Vice-Chair Winkel to consider the Department of Housing and Community Development's finding of emergency. The vote was unanimous and the motion carried.

2 b) ii) Action for the Adoption of the Proposed Regulations

Mr. Huff had no further testimony.

Opened for discussion of the commissioners.

Questions from the Commissioners

Vice-Chair Winkel commented about the special landscape areas in the body of the code, but there isn't a definition of SLAs. He asked if they were already in the body of the codes or if they were relying on the Commission's definitions.

Mr. Huff stated the definitions were already in MWEL0. If it's determined that they need to put that definition into CALGreen for ease of use, they will look into doing that during the certifying rule process.

Vice-Chair Winkel stated in Chapter 4 there is no threshold; it would apply to any project under HCD's jurisdiction.

Mr. Huff stated the reference in the building standards still takes it back to the model efficient landscape.

Ms. Withers stated in MWEL0 490.1 it lists the scope of the size, and it's 2,500 square feet for developer-installed in single-family and multi-family projects. And for new construction landscapes, which are homeowner provided or homeowner hired in single-family and multi-family residential area, it is 5,000 square feet or greater.

Vice-Chair Winkel recommended they coordinate the language with the Commission's language so there is no confusion; it says MWEL0 or local ordinance, whichever is more stringent.

Mr. Huff said they are hopeful during the certifying rule-making process in the 180 days that while working with the Department of Water Resources that they are looking at the scoping and the factors right now for the landscaped area and will adjust it at the same time.

Public Comments

Doug Hensel, Building Official for San Joaquin County, a member of the Board of Directors for CALBO and chair for the State Code

Committee. Mr. Hensel stated without good enforcement that the regulations aren't effective. Mr. Hensel would like the commissioners to consider talking with the state agencies and giving them guidance to work with DWR and work with CALBO and other stakeholders to look into developing something that is prescriptive and make it work together with CALGreen.

Mr. Norwood, on behalf of the California Pool and Spas Association, agreed with the comments made about the fact that MWEL0 is not well understood or enforced amongst building officials. Pool and spa contractors that do residential construction aren't familiar with MWEL0. His concern is the regulations don't treat swimming pools and spas differently from other water features such as lakes, ponds, and fountains, which is required by California Water Code Section 10632b. An average 1,200 square foot pool that often replaces turf is two or three times more efficient waterwise than the turf they are replacing. Pools are as efficient as drought-tolerant landscaping. If you cover the pool, it uses about half the water as drought landscaping. Standalone hot tubs are efficient. They are always covered. Spas don't lose more than 5 percent of the water in a year.

John Farner with the Irrigation Association stated they are a national trade association representing manufacturers of turf and landscape irrigation. Mr. Farner stated they continue to work with DWR to make the model water efficient landscape better. There are lasting things that they are looking at. He stated it's all about landscape plant material and not water use. Mr. Farner encouraged the Commission to look at options for prescriptive measures that do not stifle innovations.

Tracy Quinn with the NRDC talked about the threshold levels and what's appropriate when housing developments are put in by developers and whether that threshold applies to the individual home and each individual home within a development as a whole. They made the recommendation for the lower threshold to be 200, and she stated in the ITP meeting they voted and approved the recommendation to DWR for that to be 500 square feet for the owner installed. Ms. Quinn implored the Commission to move the voluntary submetering outdoor water use into the mandatory section of CALGreen through the emergency measure and set that threshold at 200 as well or at least lower than 2,500 or 1,000. She stated if they decide not to move forward with the emergency regulation that they direct staff to consider it as part of the ongoing CALGreen provision.

MOTION: Secretary Batjer made a motion for action on the Department of Housing and Community Development's proposed changes to the subject Building Standards. Commissioner Sasaki so moved, and Vice-Chair Winkel seconded the motion. The vote was unanimous and the motion was carried.

2 d) The Office of Statewide Health Planning and Development

These proposed building standards would add, amend and/or repeal building standards relative to water efficiency effecting a reduction in outdoor irrigation water usage relative to Chapter 3 within Part 11 of Title 24.

Glenn Gall with the Building Standards of OSHPD asked that they find the request for emergency passage of the regulations. OSHPD does not have discrete authority to regulate landscaping when it comes to health facilities under their jurisdiction.

(Audio malfunction.)

Vice-Chair Winkel asked if there was a reason that OSHPD 3 was not included with 1, 2, and 4.

Mr. Gall indicated that OSHPD 3 still resides wholly with the local jurisdiction. The outpatient clinics and outpatient clinical services provided in freestanding buildings are not under their jurisdiction.

Vice-Chair Winkel asked if Mr. Gall thought if there was local water conservation, it would be covered by the local agency.

Mr. Gall agreed.

Commissioner Patel asked if OSHPD 3 decided to come to the state for review, would they have that option and what would they be enforcing at that point.

Mr. Gall said there are two ways that OSHPD 3 facilities can come to the state for review. One is called a certification review. The only thing they review and certify is the health facility overlay. The building still remains and is permitted in the local jurisdiction. The buildings that would be OSHPD 3 typically are very proximate to the hospital.

Public Comments

No comments made.

MOTION: Secretary Batjer made a motion to consider the Office of Statewide Health Planning and Development for emergency. Commissioner Barthman so moved, and Commissioner Mikiten seconded the motion. The vote was unanimous and the motion was carried.

2 d) ii) Action for the Adoption of the Proposed Regulations

Mr. Gall stated they relied on all the heavy lifting of the Building Standards Commission because they are the regulations that apply to their facilities when there is nothing adopted locally. They do a direct reference to Section 5.304, outdoor water use, and require evidence of compliance prior to issuance of plan approval or building permit.

No comments from the commissioners or the public.

MOTION: Secretary Batjer made a motion for action on the Office of Statewide Health Planning and Development's proposed changes to the subject building standards. Commissioner Barthman so moved, and Vice-Chair Winkel seconded the motion. The vote was unanimous and the motion was carried.

3. FUTURE AGENDA ITEMS

No comments from the Commission or the public.

4. COMMENTS FROM THE PUBLIC ON ISSUES NOT ON THIS AGENDA

No comments from the Commission or the public.

5. ADJOURNED

MOTION: Vice-Chair Winkel moved and Commissioner Sasaki seconded to adjourn the meeting, and it was passed unanimously.