

**FINDING OF EMERGENCY
OF THE
DIVISION OF THE STATE ARCHITECT-STRUCTURAL SAFETY (DSA-SS)

REGARDING THE CALIFORNIA GREEN BUILDING STANDARDS CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, and PART 11**

The adoption of these regulations or order of repeal is necessary for the immediate preservation of the public peace, health and safety, or general welfare, as follows:

FINDING OF EMERGENCY

In response to State of Emergency proclamations issued by Governor Brown in January and April of 2014, and in particular Executive Order B-29-15 (issued April 1, 2015), DSA is proposing this subsequent emergency building standard regulation to supplant the new emergency code pertaining to outdoor water use regulations that was adopted and became effective on June 1, 2015. The Division of the State Architect and their stakeholders has developed the following emergency regulations that amend the 2013 California Green Building Standards Code (Title 24, Part 11, California Code of Regulations, also known as "CALGreen") as follows:

- Amends sections of the California Green Building Standards related to Section 5.304 pertaining to Outdoor Water Use including definitions in Section 202 and scope per Sections 105 and 301.4.

BACKGROUND

On January 17, 2014 (and again on April 25, 2014), Governor Brown proclaimed a State of Emergency to exist throughout the State of California due to severe drought conditions. On April 1, 2015, the governor issued Executive Order No. B-29-15, which 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. To carry out these provisions, Section 30 of the Order directs state agencies to adopt necessary emergency regulations and conduct a public meeting on the regulations prior to their adoption. Additionally, Section 30 of the Order suspends Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code (Administrative Procedure Act) for the development, and adoption of regulations needed for purposes of the Order.

Specific Purpose: The Department of General Services, Division of the State Architect (DSA) proposes to the California Building Standards Commission (CBSC) to amend the CALGreen Code the recently approved code language. DSA both promulgates regulations and enforces them. Due to the time constraints to issue the emergency regulations pertaining to the reduction of potable water use for exterior landscape irrigation for schools and community colleges, DSA was unable to include details of the scope requirements for existing sites. Other amendments are edits proposed to provide clarity to the code user. This code package will replace and enhance the new emergency code that became effective on June 1, 2015.

Problem: Section 5.304 of the CALGreen Code covers the scoping requirements for this code and now specifically describes what projects must comply with the Outdoor Water Use section recently adopted by emergency rulemaking and became effective June 1, 2015. However, it was not known during this previous rulemaking how existing sites would be required to comply with these new regulations. So, in the month of June 2015, DSA conducted two focus group meetings for K-12 schools, and two for community colleges. After the discussions, alterations were reconsidered and removed from the scope, and additions were discussed to be candidates for

requiring rehabilitation of existing landscape areas. The proposed changes to Section 301.4 (Scope) outline the different options to meet a minimum scope of work.

Rationale and Benefits: These amendments respond to current and future drought issues in order to maximize outdoor water at existing campuses.

AUTHORITY AND REFERENCE

(Government Code Section 11346.5(a)(2))

The California Building Standards Commission proposes to adopt these building standards under the authority granted by Health and Safety Code Section 18928. The purpose of these building standards is to implement, interpret, and make specific the provisions of Education Code Sections 17280 through 17317, and 81130 through 81147 and Health and Safety Code Section 16000-16023. The DSA-SS is proposing this regulatory action based on Education Code Section 17310 and 81142, and Health and Safety Code 16022.

INFORMATIVE DIGEST

(Government Code Section 11346.5(a)(3))

An informative digest drafted in plain English in a format similar to the Legislative Counsel's Digest shall include the following:

Summary of Existing Laws

Section 16022 of the Health and Safety Code authorizes the State Architect to establish building standards for the design, construction and inspection of building systems for state-owned or state-leased essential services buildings. Sections 17310, 81142 and 81053 of the Education Code authorize the State Architect to establish building standards for the design, construction and inspection of building systems for public elementary and secondary schools, and community colleges.

Summary of Existing Regulations

Existing green building standards apply to the planning, design, operation, construction, use and occupancy of every newly constructed building or structure throughout the State of California. It is not the intent that the green building standards substitute or be identified as meeting the certification requirements of any green building program. The green building standards are promulgated by the Division of the State Architect. These regulations are contained in the California Green Building Standards Code (CALGreen Code, Part 11, Title 24) and incorporate the following:

Part 5, the California Plumbing Code, with Chapter 16 for alternate water sources for non-potable applications authored by Department of Water Resources

Part 6, the California Energy Code, which contains minimum energy efficiency standards for non-residential buildings in California promulgated by the California Energy Commission (CEC)

Part 11, the California Green Building Standards Code (CALGreen Code), which contains mandatory and voluntary green building standards for residential, nonresidential, and medical facilities.

Other relevant CCR titles:

Title 17 includes regulations for air quality promulgated by the California Air Resources Board

Title 20, Article 4, Appliance Efficiency regulations, contains CEC standards for water consumption of widely used plumbing fixtures.

Title 23 includes the Model Water Efficient Landscape Ordinance updated by Department of Water Resources.

Summary of Effect

This proposed action will make effective, upon adoption and approval by the commissioners, emergency modifications to scoping requirements within Chapter 1 and Chapter 3, modification to definitions in Chapter 2, and modifications in Section 5.304 (Outdoor Water Use) in Title 24, Part 11 for buildings within DSA authority, with necessary amendments necessitating immediate action to avoid serious harm to the public peace, health, safety and general welfare in response to ongoing drought conditions and the subsequent State of Emergency proclamations and Executive Order B-29-15 issued by the Governor.

Comparable Federal Statute or Regulations

There currently are no federal laws or regulations for the mandatory reduction of outdoor water use.

Policy Statement Overview

DSA is responsible for the development of green building standards for public elementary and secondary schools and community colleges for which no other state agency has authority or expertise.

Evaluation of consistency

The proposed action is not incompatible or inconsistent with existing regulations.

MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

(Government Code Section 11346.5(a)(4))

The Department of Water Resources develops and maintains the Model Water Efficiency Landscape Ordinance (MWELo) contained within Chapter 2.7 of Division 2 of Title 23 of the California Code of Regulations. Government Code Section 65595 requires local agencies to either adopt the MWELo or a local water efficiency landscape ordinance that is at least as effective as the MWELo. The emergency building standard regulations promulgated by the DSA herein reference elements of the MWELo with regard to reductions in outdoor potable water use for landscape irrigation and define the scope of work required for existing sites.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

(Government Code Section 11346.5(a)(5))

The DSA has determined that projects following this regulation would impose a mandate on local K-12 school and community college districts having to enforce more restrictive standards pertaining to reduced potable water use for outdoor landscape irrigation, and requiring additional landscape on an existing site to be rehabilitated.

FISCAL IMPACT STATEMENT

- A. Cost or Savings to any state agency: **Unknown (see “Estimate” section below)**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **Unknown (see “Mandate on Local Agencies or School Districts” section above)**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **Unknown (see “Mandate on Local Agencies or School Districts” section above and see “Estimate” below)**
- D. Other nondiscretionary cost or savings imposed on local agencies: **Unknown**
- E. Cost or savings in federal funding to the state: **None**

Estimate: The DSA has reviewed the Economic and Fiscal Impacts concerning the proposed action and has found that:

- The modified evapotranspiration adjustment factor (ETAF) included in these emergency regulations will greatly reduce the regulated community’s ability to use potable water for outdoor landscape irrigation, which will likely result in a reduction in turf landscaping in

- favor of drought resistant landscaping and may affect the installation of water features such as pools, spas, fountains, etc. as calculated using MWELo or the local water efficiency landscape ordinance.
- Because drought resistant landscaping is generally more expensive to purchase and install than turf grass and a possible reduction in the installation of water features, the DSA anticipates a cost impact to the regulated districts and their own programs.
 - The DSA recognizes that implementation of these provisions will result in the benefit of water savings statewide, but acknowledges a probably negative fiscal impact to businesses that install water features, manufacture sod, and/or sell turf products.
 - The plan review and field inspection programs of the Division of the State Architect (the state agency regulating K-12 schools and community college construction) will be impacted by this mandate.
 - Due to the additional requirement to rehabilitate existing landscape areas on existing sites, DSA anticipates that a cost impact to the total project cost will occur.