

**INITIAL STATEMENT OF REASONS FOR
PROPOSED BUILDING STANDARDS OF THE
CALIFORNIA BUILDING STANDARDS COMMISSION (CBSC)**

**REGARDING THE CALIFORNIA GREEN BUILDING STANDARDS CODE,
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 11
(BSC EF-01-15)**

The Administrative Procedure Act (APA) requires that an Initial Statement of Reasons be available to the public upon request when rulemaking action is being undertaken. The following information required by the APA pertains to this particular rulemaking action:

STATEMENT OF SPECIFIC PURPOSE, PROBLEM, RATIONALE and BENEFITS:

(Government Code Section 11346.2(b)(1)) requires a statement of specific purpose of each adoption, amendment, or repeal and the problem the agency intends to address and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem the agency intends to address for which it is proposed. The statement shall enumerate the benefits anticipated from the regulatory action, including the benefits or goals provided in the authorizing statute.)

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. The Order cites evidence of a record low snowpack, decreased water levels in reservoirs, reduced river flows, and declining supplies in underground water basins. In addition, the governor acknowledged that a distinct possibility exists for drought conditions to continue. Further, the Order found that conditions of extreme peril to the safety of persons and property continue to exist due to water shortage and drought conditions with which local authority is unable to cope. To carry out these provisions, Item 30 of the Order directs state agencies to adopt necessary emergency regulations and conduct a public meeting on the regulations prior to their adoption. Objectives and individual directives applicable to this rulemaking are summarized below:

- 1. Save Water (Item 7 of Executive Order No. B-29-15)**
State Water Resources Control Board (SWRCB) shall prohibit irrigation with potable water outside of newly constructed homes and buildings that is not delivered by drip or microspray systems.
- 2. Increase Enforcement Against Water Waste (Item 11 of Executive Order No. B-29-15)**
DWR shall update the Model Water Efficient Landscape Ordinance (MWELO) through expedited regulation as specified; report on implementation and enforcement of local ordinances; provide information on local compliance to the SWRCB who shall consider adopting regulations or take appropriate enforcement actions to promote compliance.
- 3. Streamline Government Response (Item 30 of Executive order No. B-29-15)**
Suspends the Administrative Procedure Act (commencing with Government Code Section 11340) for development of adoption of regulations or guidelines needed to carry out the Executive Order; however, requires a public meeting prior to adoption.

In response to State of Emergency proclamations issued by Governor Brown, and in particular Executive Order B-29-15, CBSC proposed this emergency building standard regulation pertaining to the reduction of potable water use for exterior landscape irrigation for specified nonresidential buildings. CBSC, in coordination with the Department of Water Resources, developed the following emergency regulations that amend the 2013 California Green Building Standards Code (Part 11, Title 24, California Code of Regulations, also known as "CALGreen") as follows:

- Adds definitions to Chapter 2
- Amends Section 5.304 pertaining to Outdoor Water Use
- Amends and Repeals Sections from A5.304 pertaining to Outdoor Water Use

Proposed Regulatory Actions: This rulemaking action represents CBSC's proposal for the permanent adoption of building standards that were approved as emergency regulations by the California Building Standards Commission on May 29, 2015. The rationale for each adoption by chapter, division, and section is listed below.

ITEM 1. CBSC Proposes to add, amend, and delete specified definitions in Section 202, and to add and delete corresponding references to those terms in Section 5.302.1.

Section 202 Definitions

- **ET ADJUSTMENT FACTOR (ETAF)**
- ~~**HYDROZONE**~~
- ~~**LANDSCAPE (PLANT) COEFFICIENT (KI)**~~
- **MODEL WATER EFFICIENT LANDSCAPE ORDINANCE (MWEL)**
- ~~**REFERENCE EVAPOTRANSPIRATION (ET_o)**~~
- **SPECIAL LANDSCAPE AREA (SLA)**
- ~~**WATER BUDGET**~~

SECTION 5.302.1 Definitions

- **ET ADJUSTMENT FACTOR (ETAF)**
- **SPECIAL LANDSCAPE AREA**
- ~~**WATER BUDGET**~~

Specific Purpose:

Within Section 202 Definitions, CBSC proposes to add definitions for ET Adjustment Factor (ETAF) and Special Landscape Area (SLA), to amend the existing definition of Model Water Efficient Landscape Ordinance (MWEL), and to delete definitions for Hydrozone, Landscape (Plant) Coefficient (KI), Reference Evapotranspiration (ET_o), and Water Budget. CBSC also proposes to add corresponding references to the terms ET Adjustment Factor (ETAF) and Special Landscape Area (SLA), and to delete the corresponding reference to the term Water Budget, in Section 5.302.1 Definitions.

Rationale:

Adding, amending, and deleting these definitions in CALGreen has been deemed appropriate for purposes of aligning with the Model Water Efficient Landscape Ordinance in Title 23 of the California Code of Regulations, which was recently revised by the Department of Water Resources.

Benefit:

These changes will provide clarity to local agencies charged with enforcing elements of the MWEL specific to outdoor landscape irrigation, which is mandatory statewide. These changes will also help the regulated community to understand the new mandatory requirements approved by the commission in response to ongoing drought conditions, thereby protecting the health and safety of California's residents.

ITEM 2. CBSC Proposes to amend Nonresidential Mandatory Measures in Section 5.304 Outdoor Water Use

~~Section 5.304.1 Water budget~~

Rationale: CBSC is deleting the language in this section and expanding it in the new Section 5.304.1, which is applicable to landscape areas 2,500 square feet or greater (see below).

Section 5.304.1 Outdoor water use in landscape areas 2,500 square feet or greater. [BSC]

Rationale: CBSC is expanding the language in this section to state that the MWELo, or a local water efficient landscape ordinance that is at least as effective in conserving water, applies to landscape areas 2,500 square feet or greater. This section indicates that an ETAF of .55 and an additional water allowance for Special Landscaped Areas of .45 is applicable to landscape areas 2,500 square feet or greater. Notes are added to this section that provide information and links on allowable prescriptive measures, the DWR landscape ordinance webpage, and the water budget calculator for use with the .55 ETAF.

Section 5.304.2 Methods to reduce potable water use. [BSC]

Rationale: CBSC is adding this new section to address the use of captured rainwater, recycled water, graywater, and water treated for irrigation purposes and conveyed by a water district or public entity, as allowed by the MWELo. This section also specifies criteria for the authority having jurisdiction to allow the use of potable water as a back-up water supply for on-site water recycling and/or reuse systems.

Section 5.304.2.1 Authorized potable water use

Rationale: This section is added to authorize the use of potable water under emergency circumstances, as allowed by the MWELo.

Section 5.304.3 Outdoor water use in landscape areas 1,000 to 2,500 square feet. [BSC]

Rationale: CBSC is replacing existing Section 5.304.3, which deals solely with irrigation design, and replacing it with expanded language to include the scope of landscape areas 1,000 to 2,500 square feet, which was not addressed in the MWELo at the time the emergency was adopted.

Section 5.304.3.1 ~~5.304.3~~ Irrigation design controller and sensor application

Rationale: This section is renumbered and amended to further align with Section 5.304.3.

Section 5.304.3.2 ~~5.304.3.1~~ Irrigation cControllers.

Rationale: This section is renumbered and amended to further align with Section 5.304.3.

Section 5.304.4 ~~5.304.2~~ Outdoor potable water use meters.

Rationale: This section is renumbered and amended to align with the MWELo, which addresses the use of both potable and non-potable water for outdoor irrigation.

Specific Purpose:

In response to the governor's Executive Order B-29-15 and in coordination with DWR, CBSC moved voluntary provisions addressing the ETAF and scope into the mandatory section of CALGreen. Because the mandatory elements of the MWELo only addressed landscape areas 2,500 square feet or greater, the scope of application for both landscape areas 1,000 to 2,500 square feet and those greater than 2,500 square feet are specified in separate sections (see above). Additional amendments are made for consistency throughout.

Rationale:

These changes are proposed to further align with the MWELo (see each section for specific rationale).

Benefit:

These changes will provide clarity to local agencies charged with enforcing elements of the MWELo specific to outdoor landscape irrigation, which is mandatory statewide. These changes will also help the regulated community to understand the new mandatory requirements approved by the commission in response to ongoing drought conditions, thereby protecting the health and safety of California's residents.

ITEM 3. CBSC Proposes to delete definitions and amend specified Nonresidential Voluntary Measures in Appendix A5

Section A5.302 Definitions

- **HYDROZONE**
- **LANDSCAPE (PLANT) COEFFICIENT [KL]**

- **REFERENCE EVAPOTRANSPIRATION (ET_o)**

Rationale: CBSC proposes to delete these definitions as they are no longer referenced in Appendix Chapter A5 (see additional amendments below).

Section A5.304.1 A5.304.1.1 Reserved

Rationale: This section is renumbered for consistency.

Section A5.304.2 A5.304.2 Outdoor potable water use.

Rationale: This section is renumbered for consistency and amended because the MWELo addresses both potable and non-potable water use for outdoor irrigation.

Section A5.304.4 Potable water reduction.

Rationale: CBSC proposes to delete this voluntary section because similar requirements were made mandatory in order to enhance and align with the MWELo.

Section A5.304.4.1 Tier 1

Rationale: CBSC proposes to delete this section because similar requirements specifying the ETAF for landscape areas be lowered to .55 was made mandatory (see Section 5.304.1 above).

Section A5.304.4.2 Tier 2

Rationale: CBSC proposes to delete this section because similar requirements specifying the ETAF for landscape areas be lowered to .55 was made mandatory (see Section 5.304.1 above). Additionally, CBSC proposes to delete the following note as this language was moved into the mandatory chapter (see Section 5.304.2 above).

Section A5.304.4.3 Verification of compliance.

Rationale: CBSC proposes to delete this voluntary section because similar requirements were moved into the mandatory chapter.

Section A5.304.5 Potable water elimination.

Rationale: CBSC proposes to delete this voluntary section because similar requirements were moved into the mandatory chapter.

Division A5.6 – VOLUNTARY TIERS

Note: CBSC proposes to update TABLE A5.601 and TABLE A5.602 to reflect the approved emergency regulations.

Specific Purpose:

In response to the governor's Executive Order B-29-15 and in coordination with DWR, CBSC proposes to delete specified voluntary provisions and introduce them as mandatory in order to mandate the conservation of water used for landscape irrigation as required by the MWELo.

Rationale:

These changes are proposed to further align with the MWELo (see each section for specific rationale).

Benefit:

These changes will provide clarity to local agencies charged with enforcing elements of the MWELo specific to outdoor landscape irrigation, which is mandatory statewide. These changes will also help the regulated community to understand the new mandatory requirements approved by the commission in response to ongoing drought conditions, thereby protecting the health and safety of California's residents.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENTS:

(Government Code Section 11346.2(b)(3)) requires an identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the regulation(s).

1. Governor's Executive Order No. B-29-15. April 2015.
<http://gov.ca.gov/docs/4.1.15_Executive_Order.pdf>
2. Model Water Efficient Landscape Ordinance. June 2015.
<http://www.water.ca.gov/wateruseefficiency/docs/2015/EO_B_29_15_MWELO_Update_06_12_15%28VL%29_Public_Draft.pdf>

STATEMENT OF JUSTIFICATION FOR PRESCRIPTIVE STANDARDS:

(Government Code Section 11346.2(b)(1)) requires a statement of the reasons why an agency believes any mandates for specific technologies or equipment or prescriptive standards are required.)

California's building standards codes have historically been a mix of performance and prescriptive provisions and reference standards. This proposed code language continues this practice in that the requirements for achieving water efficient landscapes are performance-based as determined by water budget calculators developed by DWR. Additionally, prescriptive measures are also available in specified applications.

CONSIDERATION OF REASONABLE ALTERNATIVES

(Government Code Section 11346.2(b)(4)(A)) requires a description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific action or procedures, the imposition of performance standards shall be considered as an alternate. It is not the intent of this paragraph to require the agency to artificially construct alternatives or describe unreasonable alternatives.)

The modifications that CBSC proposed as emergency building standards are intended to clarify and correct as necessary the provision of the mandatory and voluntary codes being used in California. The amendments are responsive to the Governor's Executive Order No. B-29-15, which directs state agencies to implement immediate measures to reduce water use in California. Because these regulations seek to align with and enhance elements of the MWELO, which is mandatory statewide, no alternative to this responsive action was considered.

REASONABLE ALTERNATIVES THE AGENCY HAS IDENTIFIED THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.

(Government Code Section 11346.2(b)(4)(B)) requires a description of any reasonable alternatives that have been identified or that have otherwise been identified and brought to the attention of the agency that would lessen any adverse impact on small business.)

No alternatives were identified to lessen the adverse impact on small business. These proposed modifications to the code respond to directives within Governor's Executive Order No. B-29-15, which requires state agencies to implement immediate measures to reduce water use in outdoor landscape irrigation. Those proposals that are new to the code or are made more stringent are in response to ongoing drought conditions in California and are necessary to protect the health and safety of California's citizens, as well as preserving natural resources. These proposals, which enhance and align with elements of the MWELO, have been justified by proposing parties as providing benefits that are greater than costs under the current regulation, as summarized in the *Economic and Fiscal Impact Statement*. Overall, while there may be ongoing costs associated with these regulations, the regulated community may see a cost savings over time due to reduced water use. Further, this regulation will generally benefit the public health and environment through water conservation.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE OF NO SIGNIFICANT ADVERSE IMPACT ON BUSINESS.

(Government Code Section 11346.2(b)(5)(A)) requires the facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business)

BSC has determined that this regulatory action may have a significant adverse economic impact on California business enterprises and individuals, including the ability of California businesses to compete with businesses in other states, as detailed in the *Economic and Fiscal Impact Statement* and Exhibit A.

ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION

(Government Code Sections 11346.3(b)(1) and 11346.5(a)(10))

The California Building Standards Commission has assessed whether or not and to what extent this proposal will affect the following:

- The creation or elimination of jobs within the State of California.

BSC has determined that this regulatory action may have a significant adverse economic impact on jobs in California. Specifically, this regulation could result in an increase in jobs that involve drought-resistant landscaping products and services. Additionally, the regulation could result in the elimination of jobs within the turf industry.

- The creation of new businesses or the elimination of existing businesses within the State of California.

BSC has determined that this regulatory action may result in the creation of businesses that manufacture, sell, and/or install drought-resistant landscape products/services. Likewise, this action may also result in the elimination or reduction in businesses that manufacture, sell, and/or install turf products/services.

- The expansion of businesses currently doing business with the State of California.

BSC has determined that this regulatory action may have a significant adverse impact on businesses. It is not known at this time in the number of businesses will change, but specified businesses may be affected (see previous item).

- The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

BSC has determined that this regulatory action would have a benefit to the health and welfare of residents and workers as well as on the environment.

ESTIMATED COST OF COMPLIANCE, ESTIMATED POTENTIAL BENEFITS, AND RELATED ASSUMPTIONS USED FOR BUILDING STANDARDS

(Government Code Section 11346.2(b)(5)(B)(i)) states if a proposed regulation is a building standard, the initial statement of reasons shall include the estimated cost of compliance, the estimated potential benefits, and the related assumptions used to determine the estimates.)

Because these regulations align with those within the mandatory Model Water Efficient Landscape Ordinance, BSC estimates that any increased costs of compliance with these regulations will be offset by cost savings in the overall reduction of water use. For those regulations that make technical, non-substantive or clarifying changes, there will be no increased cost of compliance. The associated benefit of conserving water during California's severe drought, which will preserve natural resources, far outweighs the cost impact. The estimated potential benefits of these regulations include the protection of public health and safety, worker safety and the environment, and the general welfare of California residents, as indicated in the governor's Executive Order No. B-29-15.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

(Government Code Section 11346.2(b)(6)) requires a department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal to describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from these federal regulations upon a finding of one or more of the following justifications:

(A) The differing state regulations are authorized by law and/or (B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.)

These regulations do not duplicate nor conflict with federal regulations.