

PARTICIPATION COMMENTS FOR THE NOTICE DATED SEPTEMBER 25, 2015
Written comments are to be sent to the above address.

WRITTEN COMMENT DEADLINE: NOVEMBER 9, 2015 (no later than 5:00 pm)

Date: November 3, 2015

From:

Division of the State Architect (DSA) commenting on DSA EF 02/15

Name (Print or type)

(Signature)

Department of General Services, Division of the State Architect, Dennis Corelis

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We do **not** agree with:

The Agency proposed modifications As Submitted as various sections and definitions.

and request that this section or reference provision be recommended:

Approved Disapproved Held for Further Study Approved as Amended

Suggested Revisions to the Text of the Regulations:

See attached document for suggested amendments and reasons suggesting Approve as Amended to DSASS EF 02/15 regulations which incorporate the Model Water Efficiency Landscape Ordinance (MWELO) into the Title 24, Part 11, California Green Building Standards Code (CALGreen) and modify scope for existing public elementary and secondary schools, and community college campuses.

Reason: [The reason should be concise if the request is for "Disapprove," "Further Study Required," or "Approve As Amended" and should identify at least one of the 9-point criteria (following) of Health and Safety Code §18930.]

Modifications to the language to avoid conflict with criteria 3.

November 3, 2015

The Division of the State Architect (DSA) is commenting on its own rulemaking package DSA-EF 02/15 during the 45-Day Public comment period from September 25, 2015 – November 9, 2015. This document contains portions of the 45-Day Express Terms with Approve as Amended recommended language and rationale for the recommended changes.

LEGEND:

1. 45- Day language appears in underlined and ~~strikeout~~.
2. Proposed amended or repealed language appears in double underlined and ~~double strikeout~~.
3. Rationale: The justification for the proposed change is shown after each section or series of related changes.

GENERAL RATIONALE FOR RECOMMENDING APPROVED AS AMENDED.

The DSA recommends that the language in DSA EF 02/15 be Approved as Amended in order to avoid conflict with criterion 3 of the 9-point criteria, which state that the public interest (including consistency with environmental regulations) requires the adoption of building standards (Health and Safety Code §18930 (a)(3)). DSA's emergency regulation is inconsistent with other environmental regulations in Title 23, following the Department of Water Resources (DWR) July 15, 2015 update of the Model Water Efficient Landscape Ordinance (MWELO). This inconsistency between Title 23 and Title 24 of the California Code of Regulations also violates the Administrative Procedure Act, which requires that proposed regulations must not be inconsistent or incompatible with existing state regulations (Government Code Section 11346.5(a)(3)(D)). The proposed amendment language below will align specified building standards in the California Green Building Standards Code (CALGreen) with those recently adopted into Title 23 by DWR, thereby creating consistency and compliance with Building Standards Law and the Administrative Procedure Act (see proposed amendment language below).

ITEM 1 – SECTION 202 DEFINITIONS

Suggest modifying the following definition in Section 202:

SPECIAL LANDSCAPE AREA (SLA). ~~[DSA] For public schools and community colleges, Special Landscape Area means an~~ An area of the landscape dedicated solely to edible plants, planting areas used for educational purposes, recreational areas, areas irrigated with recycled water, water features using recycled water and areas dedicated to active play such as parks, sports fields, golf courses, and where turf provides a playing surface or gathering space. ~~For the purposes of this Part, the additional water allowance for SLA's shall be 0.35.~~

Rationale:

Suggest modifying the term, *Special Landscape Area (SLA)*, as used in Section 301.4.1 (Scope) to remove unnecessary language due the use of the DSA banner.

ITEM 2 – SECTION 202 DEFINITIONS

45-day language as shown:

EVAPOTRANSPIRATION ADJUSTMENT FACTOR (ETAF). ~~[DSA] For the purposes of this Part, ETAF means a~~ An adjustment factor of 0.65 that, when applied to reference evapotranspiration, that adjusts for plant factors and irrigation efficiency which are two major influences upon the amount of water that needs to be applied to the landscape.

Suggested format edit:

EVAPOTRANSPIRATION ADJUSTMENT FACTOR (ETAF). [DSA] An adjustment factor when applied to reference evapotranspiration that adjusts for plant factors and irrigation efficiency which are two major influences upon the amount of water that needs to be applied to the landscape.

Rationale:

This suggested format (*only*) change is proposed to clear up the inaccuracies of the July 21, 2015 emergency express terms due to the complexity of two consecutive emergency rulemakings: May 29, 2015 and July 21, 2015. The May 2015 emergency language never went through certifying rulemaking to make it permanent (per Government Code 11346.1(e), 11346.2-11346.3); however, it was supplanted by the second proposed regulatory language (DSA EF 02/15) approved July 21, 2015. In the July express terms, the proposed underlined text of the May emergency rulemaking was shown inaccurately as plain text. Plain text in an express terms document is supposed to indicate that the language is currently published in the code. So, to accurately show this as a new DSA definition proposed to be added to Section 202, DSA suggests the above format edits of double underlining for the term, *Evapotranspiration Adjustment Factor (ETAF)*. Note that ETAF is shown in Section 5.304.5, and is *not* the same as the 2015 MWELO which is why the definition is as a DSA specific adoption.

ITEM 3 – SECTION 202 DEFINITIONS

Suggest adding the following definition to Section 202:

FOOTPRINT AREA. [DSA] The total area of the furthest exterior wall of the structure projected to natural grade, not including exterior areas such as stairs, covered walkways, patios and decks.

Rationale:

Suggest adding the term, *Footprint Area*, as used in Section 301.4.1 (Scope).

ITEM 4 – SECTION 202 DEFINITIONS

Suggest deleting the following definitions in Section 202:

~~**HYDROZONE.** A portion of the landscaped area having plants with similar water needs.~~

~~**LANDSCAPE (PLANT) COEFFICIENT (K).** The product of the species factor multiplied by the density factor and the microclimate factor. $(K = K_s \times K_d \times K_m)$ The landscape coefficient is used in the landscape water budget calculation. (UCCE, 2000)~~

~~**WATER BUDGET.** Is the estimated total landscape irrigation water use which shall not exceed the maximum applied water allowance calculated in accordance with the Department of Water Resources Model Water Efficient Landscape Ordinance (MWELO).~~

Rationale:

Suggest deleting definitions, *Hydrozone*, *Landscape (Plant) Coefficient (k)*, and *Water Budget*, from the 2013 CALGreen language. Removing these definitions would align with the California Building Standards Commission (CBSC), CALGreen, and 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.

ITEM 5a – SECTION 301.4

Striking 45-day language, Section 301.4, and replacing language per Item 5b:

~~**301.4 Public schools and community colleges. [DSA]** Newly constructed buildings and facilities on new or existing sites shall comply with Chapter 5. Alterations of or additions, 1,000 square foot or more, to existing buildings shall only be required to comply with Chapter 5, Section 5.304, as it relates to the reduction of outdoor water use.~~

~~For existing sites, this code section 5.304 shall apply to a minimum square footage equal to seventy five percent of the total building or addition's site footprint in the project's scope of work and can be located in one or more of the following areas:~~

- ~~1. Construction of new landscape areas in the project's scope of site work.~~
- ~~2. Rehabilitation of existing landscape areas in the project's scope of site work.~~
- ~~3. Rehabilitation of existing landscape areas not included in the project's scope of site work.~~

Exceptions:

- ~~1. If the existing site meets the Water Resources Model Water Efficient Landscape Ordinance (MWELO) per Chapter 5, Section 5.304, then the minimum square footage is equal to the landscape area in the project's scope of site work.~~
- ~~2. If the project is only grading and landscaping, then the minimum square footage is equal to the landscape area in the project's scope of site work.~~

Rationale:

DSA is striking and replacing to simplify this comment and clear up the confusion with the formatting used for the 45- day language as it relates to plain text not coinciding with the existing language of the 2013 CALGreen Code.

ITEM 5b – Section 301.4 (Replacement language)

Proposed language to replace Section 301.4, in its entirety, with the following:

301.4 Public schools and community colleges. [DSA] Newly constructed buildings on new or existing sites shall comply with Chapter 5. Additions to existing buildings, newly constructed landscape work, and rehabilitated landscape work shall comply with Chapter 5, Section 5.304.5, Outdoor Water Use.

301.4.1 Minimum rehabilitated landscape area requirement for existing sites. [DSA] A minimum rehabilitated landscape area equal to seventy-five percent of the footprint area of a new building or of an addition to an existing building shall be provided and comply with Section 5.304.5.

Exceptions:

1. The new building or addition to an existing building is less than 1,600 square feet in floor area.
2. The entire existing site's irrigated landscape areas are in full compliance with Section 5.304.5.
3. The new building or addition to an existing building is be partially or entirely constructed on an existing irrigated landscape area equal to or greater than the minimum rehabilitated landscape area requirement of Section 301.4.1.

Rationale:

After further analysis and to coordinate with anticipated procedures, DSA suggests further modifications to the scope section language for clarity of the code user, and providing only regulatory language rather than informative language. DSA reviewed the implementation of the review process and deemed that better clarification would be needed for the square footage thresholds of the minimum landscape area

requirement for existing sites; and therefore, suggests adding subsection (301.4.1). DSA also talked with stakeholders regarding the square footage thresholds and revised the requirement from 1,000 square feet to 1,600 square feet. This would allow one regular sized portable classroom or special education classroom to be installed on an existing site without requiring additional landscape work.

ITEM 6a – SECTION 5.304.5

Striking 45-day language, Section 5.304.5, and replace language per Item 6b:

~~5.304.1 5.304.5 Outdoor potable water use in landscape areas 2,500 square foot or greater. When potable water is used for For public schools and community colleges, the outdoor irrigation for landscape projects that are 2,500 square foot or greater one of the following shall apply: shall comply with 1.A local water efficient landscape ordinance that is, based on evidence in the record, at least as effective in conserving water as the updated model ordinance adopted by the Department of Water Resources per Government Code Section 65595 (c) including an evapotranspiration adjustment factor (ETAF) of 0.65 and an additional water allowance for special landscape areas (SLA) of 0.35. 2.The California Department of Water Resources Model Water Efficient Landscape Ordinance (MWELo) commencing with Section 490 of Chapter 2.7, Division 2, Title 23, California Code of Regulations including an except that the evapotranspiration adjustment factor (ETAF) of shall be 0.65 and with an additional water allowance for special landscape areas (SLA) of 0.35.~~

~~**Note:** The MWELo prescriptive measures to assist in compliance with the water budget are listed in Sections 492.4 through 492.8, 492.10 and 492.11 of the MWELo, which may be found at: <http://www.water.ca.gov/wateruseefficiency/docs/WaterOrdSec492.cfm>.~~

Rationale:

DSA is striking and replacing this section to simplify this comment and clear up the confusion with the formatting used for the 45- day language as it relates to plain text not coinciding with the existing language of the 2013 CALGreen Code. Refer to rationale at Item 2 above for details.

ITEM 6b – Section 5.304.5 (Replacement language)

Proposed language to replace Section 5.304.5, in its entirety, with the following:

5.304.5 Outdoor potable water use in landscape area. [DSA] For public schools and community colleges, landscape projects as described in Sections 5.304.5.1 and 5.304.5.2 shall comply with the California Department of Water Resources' 2015 Model Water Efficient Landscape Ordinance (MWELo) commencing with Section 490 of Chapter 2.7, Division 2, Title 23, California Code of Regulations utilizing an evapotranspiration adjustment factor (ETAF) of 0.65 with an additional water allowance for special landscape areas (SLA) of 0.35.

Exception: Any project with an aggregate landscape area of 2,500 square feet or less may comply with the prescriptive measures contained in Appendix D of the MWELo.

5.304.5.1 Newly constructed landscapes. [DSA] New construction projects with an aggregate landscape area equal to or greater than 500 square feet.

5.304.5.2 Rehabilitated landscapes. [DSA] Rehabilitated landscape projects with an aggregate landscape area equal to or greater than 1,200 square feet.

Rationale:

Section 5.304.5: Suggest amending this section to align with DWR's 2015 MWELo regulations, specifically Section 409.1 Applicability, which reduced the outdoor water use trigger from 2,500 square

feet of landscape area to 500 square feet of landscape area.

Adding exception to 5.304.5: DSA suggests adding this exception to the square footage threshold for an alternate compliance method. DSA consulted DWR to understand the intent of Applicability Section 490.1(c) of the 2015 MWEL. After talking with the DWR, DSA learned that this section pertains to all projects, new and rehabilitated, allowing an option of compliance methods.

Adding subsections 5.304.1: Suggest adding subsections to define the square footage threshold for new landscape projects as indicated in the Applicability Section 490.1 (a)(1) of the MWEL.

Adding subsection 5.304.5.2: Suggest adding subsections to define the square footage threshold for rehabilitated landscape projects as indicated in the Applicability Section 490.1 (a)(2) of the MWEL with the exception that the square footage is lowered to 1,200 square feet to align with the minimum landscape area requirement for existing sites indicated in DSA's proposed new scoping section (Section 301.4.1).

ITEM 7 – SECTION 5.304.6

DSA 45-day language proposes:

5.304.2 5.304.6 Alternate methods to reduce outdoor potable water use in landscape areas. As allowed by a district's local city or county water or health agency, methods to reduce potable water use in landscape areas shall be permitted to include but are not limited to:

1. On-site: Use of captured rainwater, recycled water, or graywater designed per the *California Plumbing Code*.
 - a. Supplementary water supply: The use of potable water shall ~~only~~ be permitted as a back-up water supply for on-site water reuse systems.
2. Off-site: Water treated for irrigation purposes and conveyed by a water district or public entity.

Suggest repealing of Section 5.304.6:

~~5.304.6 Alternate methods to reduce outdoor potable water use in landscape areas. As allowed by a district's local city or county water or health agency, methods to reduce potable water use in landscape areas shall be permitted to include but are not limited to:~~

- ~~3. On site: Use of captured rainwater, recycled water, or graywater designed per the *California Plumbing Code*.
 - b. Supplementary water supply: The use of potable water shall only be permitted as a back-up water supply for on-site water reuse systems.~~
- ~~4. Off site: Water treated for irrigation purposes and conveyed by a water district or public entity.~~

Rationale:

Section 5.304.6: Suggest repealing Section 5.304.6. The Commission and the public commented on CBSC's related section (5.304.2) during the May 29, 2015 Commission meeting and stated that the language is more informative than regulatory. Although the language was approved as submitted during the emergency rulemaking hearing, CBSC is proposing to repeal this language during the certifying rulemaking process. As part of the 45-day review, DSA also proposes to repeal this language to align with CBSC.

ITEM 8 – SECTION 5.304.6.1

DSA 45-day language proposes:

~~5.304.2.1~~ **5.304.6.1 Authorized potable water use.** The use of potable water shall be authorized where necessary to address an immediate health and safety need or to comply with a term or condition in a permit issued by a state or federal agency.

Suggest repealing of Section 5.304.6.1:

~~**5.304.6.1 Authorized potable water use.** The use of potable water shall be authorized where necessary to address an immediate health and safety need or to comply with a term or condition in a permit issued by a state or federal agency.~~

Rationale:

Section 5.304.6.1: Suggest repealing Section 5.304.6.1. The Commission and the public commented on CBSC's related section (5.304.2.1) during the May 29, 2015 Commission meeting and stated that the language is more informative than regulatory; the use of potable water is already authorized for outdoor water use. Although the language was approved as submitted during the emergency rulemaking hearing, CBSC is proposing to repeal this language during the certifying rulemaking process. As part of the 45-day review, DSA also proposes to repeal this language to align with CBSC.

ITEM 9 – SECTIONS 5.304.7, 5.304.7.1, and 5.304.7.2

DSA 45-day language proposes:

~~5.304.3~~ **5.304.7 Alternate Outdoor water use in landscape areas 1,000 to 2,500 2,499 square feet.**

When water is used for outdoor irrigation for landscape projects at least 1,000 square feet but not more than ~~2,500~~ 2,499 square feet, the following shall apply:

~~5.304.3.1~~ **5.304.7.1 Irrigation controller and sensor application.** In new ~~nonresidential~~ construction or building addition or alteration with at least 1,000 but not more than ~~2,500~~ 2,499 square feet of cumulative landscaped area (the level at which the MWELO applies), install irrigation controllers and sensors which include the following criteria, and meet manufacturer's recommendations.

~~5.304.3.2~~ **5.304.7.2 Controllers.** Automatic irrigation system controllers installed at the time of final inspection shall comply with the following:

1. Controllers shall be weather- or soil moisture-based controllers that automatically adjust irrigation in response to changes in plants' needs as weather conditions change.
2. Weather-based controllers without integral rain sensors or communication systems that account for local rainfall shall have a separate wired or wireless rain sensor which connects or communicates with the controller(s). Soil moisture-based controllers are not required to have rain sensor input.

Note: More information regarding irrigation controller function and specifications is available from the Irrigation Association.

Suggest repealing of Sections 5.304.7, 5.304.7.1, and 5.304.7.2:

~~**5.304.3**~~ **5.304.7 Alternate Outdoor water use in landscape areas 1,000 to 2,500 2,499 square feet.** When water is used for outdoor irrigation for landscape projects at least 1,000 square foot but not more than ~~2,500~~ 2,499 square feet, the following shall apply:

~~5.304.3.1 5.304.7.1 Irrigation controller and sensor application.~~ In new nonresidential construction or building addition or alteration with at least 1,000 but not more than 2,500 ~~2,499~~ square feet of cumulative landscaped area (the level at which the MWELO applies), install irrigation controllers and sensors which include the following criteria, and meet manufacturer's recommendations.

~~5.304.3.2 5.304.7.2 Controllers.~~ Automatic irrigation system controllers installed at the time of final inspection shall comply with the following:

- ~~1. Controllers shall be weather or soil moisture based controllers that automatically adjust irrigation in response to changes in plants' needs as weather conditions change.~~
- ~~2. Weather based controllers without integral rain sensors or communication systems that account for local rainfall shall have a separate wired or wireless rain sensor which connects or communicates with the controller(s). Soil moisture based controllers are not required to have rain sensor input.~~

~~**Note:** More information regarding irrigation controller function and specifications is available from the Irrigation Association.~~

Rationale:

Sections 5.304.7, 5.304.7.1, and 5.304.7.2: Suggest repealing Section 5.304.7 and subsections regarding alternate outdoor water use in landscape areas of 1,000 to 2,499 square feet. DWR's 2015 MWELO reduced the performance compliance measures from 2,500 square feet of landscape area to 500 square feet of landscape area; and for smaller landscape areas, irrigation controllers and weather based sensors are required in the alternate prescriptive compliance measures contained in Appendix D of the 2015 MWELO regulations. Therefore, Section 5.304.7 provisions are no longer necessary and would be in conflict with the 2015 MWELO regulations.

ITEM 10 – SECTION 5.304.8

DSA 45-day language proposes:

5.304.4 5.304.8 Outdoor water use meters. For new or upgraded water service or for addition or alteration requiring upgraded water service for landscaped areas of at least 1,000 square feet but not more than 5,000 square feet (the level at which *Water Code* §535 applies), separate submeters or metering devices shall be installed for outdoor water use.

Note: Installation of multiple submeters is allowable for existing sites.

Suggest repealing of Section 5.304.8

~~5.304.4 5.304.8 Outdoor water use meters.~~ For new or upgraded water service or for addition or alteration requiring upgraded water service for landscaped areas of at least 1,000 square feet but not more than 5,000 square feet (the level at which *Water Code* §535 applies), separate submeters or metering devices shall be installed for outdoor water use.

~~**Note:** Installation of multiple submeters is allowable for existing sites.~~

Rationale:

Section 5.304.8: Suggest repealing Section 5.304.8. The 2015 MWELO regulation now requires landscape water meters to be installed for all non-residential irrigated landscape areas of 1,000 square feet, but not more than 5,000 square feet per MWELO Section 492.7, Irrigation Design Plan. Therefore, the provisions in this section 5.304.8 are no longer necessary.