

August 23, 2024

Notice of Public Availability of Modified Text and 15-day Comment Period
Amendments to California Code of Regulations, Title 23, Division 2
Chapter 2.7 Model Water Efficient Landscape Ordinance

Deadline for Public Comment:

5:00 p.m. on Monday September 9, 2024

On November 17, 2023, proposed amendments to the Model Water Efficient Landscape Ordinance (MWELo) were published in the Office of Administrative Law's California Notice Register (See Register 2023, No Z2023-1106-03). The initial 60-day public comment period ended on January 16, 2024. Additional text modifications to the proposed regulations that were substantially related to the originally proposed text were available for a 15-day comment period that ended on April 3, 2024. With this second 15-day public comment period, the Department of Water Resources (Department) is proposing additional revisions to the draft regulatory text, which are available for public comment for at least 15-days prior to adoption, pursuant to California Government Code Section 11346.8.

The originally proposed regulatory additions and deletions are shown in single underline and ~~single strikethrough~~ format, respectively. Additions and deletions to the proposed language that were made public in the first 15-day public notice is shown in double underline and ~~double strikethrough~~; new additions and deletions to the proposed language in this second 15-day notice are shown in bold dashed underline and ~~strikethrough bold dashed underline~~ format, respectively. Only these new additions and deletions are currently open for public comment.

The Administrative Procedure Act requires that the Department respond to comments received regarding all noticed changes. All written comments received by the **September 9, 2024**, deadline that pertain to the modified text shown in ~~strikethrough bold dashed underline~~ and bold dashed underline will be responded to in the Final Statement of Reasons. Though comments at this time are limited to the changes reflected in ~~strikethrough bold dashed underline~~ and bold dashed underline, all timely comments received by the Department during the initial 60-day comment period and first 15-day public comment period will be responded to in the Final Statement of Reasons.

Summary of Proposed Modifications

After careful consideration of the comments received and further review of the proposed regulation's text, modifications to the text of the regulations published on November 16, 2023, and March 18, 2024, are proposed. The following summarizes revisions made to specific sections and subsections; it does not include all modifications to correct typographical or grammatical errors, or all non-substantive revisions made to improve clarity.

CCR Title 23. Section 490.1(a)

Revised language to enhance clarity and better convey the purpose of MWELo's General Provisions. Previously the text stated that the General Provisions should be reviewed for applicability and did not clearly describe what was required. The General Provisions are an organized list of generally applicable requirements for all MWELo projects that should be

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reviewed for applicability by both the local agency and project applicant. Sections 490.1.(a)(3) and (4) are related statutes for recycled water and greywater use requirements and are unique in that they may or may not apply to the landscape project and should be reviewed by the local agency and project applicant to determine applicability.

CCR Title 23. Section 490.1(a)(3)(A)

To improve clarity and comprehension, the California codes relevant to recycled water use and irrigation system requirements have been consolidated from Sections 490.1(a)(3)(A) and (3)(C), into 490.1(a)(3)(A), ensuring that all pertinent requirements are reviewed by the local agency and project applicant.

CCR Title 23. Section 490.1(a)(6)(B)

Replaced the text “requires” with “describes the requirements for” to clarify that the Public Resource Code describes the appropriate requirements. Public Resource Code Section 4291(a) describes the requirements for those with authority to manage the landscape, while Section 4291(b) describes requirements for a person without the legal right to manage the property.

CCR Title 23. Section 490.1(a)(6)(C)

Added “per Public Resources Code Section 4291(a) and (b)” to clarify where these requirements are located.

CCR Title 23. Section 490.1 Notes:

In the Notes, the reference to Sections 1351 through 4100, and 4735 of Civil Code, and Sections 4291, 21080, and 21082 of the Public Resources Code are deleted because while these are cross-referenced regulations, DWR does not have authority to further implement these statute(s) and they should not be cited as a reference.

CCR Title 23. Section 490.2(a)(7)

Added “herein incorporated by reference” for the USEPA WaterSense Certification Program to clarify that these requirements are national standards incorporated by reference into the ordinance. The text “including the Irrigation Association’s Certified Landscape Irrigation Auditor program” is deleted because the Irrigation Association program is one of four programs recognized and labeled by the USEPA WaterSense Certification program. Any one of the four recognized programs is allowed and specifically identifying this program can create confusion.

CCR Title 23. Section 490.2(a)(14)

Added “person” to definition of designer of record for consistency with Division 3, Chapter 3.5, Article 3 of the Business and Professions Code.

CCR Title 23. Section 490.2(a)(30)

The definition of “friable” modifies the text “planting material requirements” is replaced with “planting instructions for the planting material” to clarify that the previously used word ‘requirement’ is intended to describe the general instructions about how deep and wide a plant should be placed in the ground to account for the diversity of various plants and is not meant as a specific requirement.

CCR Title 23. Section 490.2(a)(31)

Added a cross-reference in the definition of Fuel Modification Plan Guideline to Section 490.1.(a)(6) to clarify where the fire safe landscape requirements are described in MWELo.

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CCR Title 23. Section 490.2(a)(32)

The definition of gray water is corrected to mirror Health and Safety Code Section 17922.12 by deleting “but is not limited to”.

CCR Title 23. Section 490.2(a)(42)

Corrected the reference for the Landscape Documentation Package to the appropriate Section 491.4, and not Section 493.

CCR Title 23. Section 490.2(a)(92)

Added “herein incorporated by reference” for the WUCOLS IV database and identified it as WUCOLS IV, 2014, version.

CCR Title 23. Section 491.3(c)(2)(B)

Improved clarity by adding the text “unless the property owner is the project applicant” to acknowledge that if the property owner is also the project applicant, then the landscape documentation package does not need to be submitted to themselves.

CCR Title 23. Section 491.4(a)(1)(A)

Added clarifying text to the word “date” by including “the project information sheet is completed” to clarify what date should be used.

CCR Title 23. Section 492(c)(2)(F)

Added “which is herein incorporated by reference” for the ASABE/ICC 802-2020 Standard.

CCR Title 23. Section 492(d)

Deleted the text “Division 18, Chapter 5, Article 7” and added “Section 53481” to clearly explain where in the Food and Agricultural Code it describes how plants are identified.

CCR Title 23. Section 493.2(a)(14)

Simplified the Designer of Record reference by referring to its definition in Section 490.2(a)(14).

CCR Title 23. Section 493.2(b)(7)(A)

Added “which is herein incorporated by reference” for the 2007 Sunset Western Climate Zone System.

CCR Title 23. Section 493.2(c)(4)

Removed the reference of Division / Part / Chapter and included “subdivision (d) of Section 115921” to improve clarity to the pool cover requirement statute.

CCR Title 23. Section 493.3

The CIMIS Reference Evapotranspiration map, 1999, now includes the language, “which is herein incorporated by reference.”

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Written Comment Period

The Department will address written comments on the changes identified in the noticed text that are indicated by ~~bold dashed underline~~ and ~~strikethrough bold dashed underline~~. Interested members of the public may submit comments by postal mail, or email and any comments must be received by the Department on or before 5 p.m. Monday September 9, 2024, and must be addressed to the following:

By mail: Department of Water Resources
Attn: MWELo Update
Water Use Efficiency Branch
P.O. Box 942836
Sacramento, CA 94236-0001

By e-mail: WELo@water.ca.gov
The Department requests but does not require email transmission of comments to contain the subject line "Comment Letter – MWELo Update" to facilitate timely identification and review of the comment.

Hand-delivered to: Ryan Bailey or Shem Stygar
Department of Water Resources
715 P Street, 6th Floor
Sacramento, CA 95814

All comments, including email should include the author's name and U.S. Postal Service mailing address so that the Department can provide copies of any notices that may be required in the future. Due to limitations of the email system, emails larger than 20 megabytes (MB) may be rejected and will not be delivered and received by the Department of Water Resources. Therefore, emails larger than 20 MB should be submitted under separate emails or via another form of delivery.

Please note that under the California Public Records Act (Government Code §6250 et seq.), written comments, attachments, and associated contact information (e.g., address, phone, and email) become part of the public record and can be released to the public upon request. Additionally, the Department requests, but does not require, that persons who submit written comments reference the draft MWELo amendments in their comments to facilitate review.

The Department will address written comments on the changes identified in the noticed text that are indicated by ~~bold dashed underline~~ and ~~strikethrough bold dashed underline~~. Interested members of the public may submit comments by postal mail, or email and any comments must be received by the Department on or before 5 p.m. Monday September 9, 2024. Only comments received during this comment period and that relate to the above-described changes to the text of the regulations will be responded to by the Department in the Final Statement of Reasons.

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Availability of Proposed Regulations

This Notice, the modified text, the Initial Notice of Regulatory Action, Initial Statement of Reasons, the express terms of the regulation initially proposed, and all information upon which the proposed regulations are based are available on the Department's website at:

[60-day Public Comment Period Information ended January 16, 2024.](#)

[First 15-day Public Comment Period Information ended April 3, 2024.](#)

All subsequent regulatory documents, including the final statement of reasons, when completed, will be made available on the website.

Department Contact Persons

Requests for copies of the proposed regulatory text, the Initial Statement of Reasons, subsequent modifications of the proposed regulatory text, if any, or other inquiries concerning the proposed action may be directed to:

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