

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 Wednesday April 3, 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.

The Department of Water Resources (Department) is now proposing text modifications to the proposed regulations that are substantially related to the originally proposed text. The revisions to the draft regulatory text 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. New additions and deletions to the proposed language that are made public with this notice are shown in double underline and ~~double strikethrough~~ format, respectively. Only 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 **April 3, 2024**, deadline that pertain to the modified text shown in double strikeout and double underline will be responded to in the Final Statement of Reasons. Though comments at this time are limited to the changes reflected in double strikeout and double underline, all timely comments received by the Department during the initial 60-day comment period will also 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 17, 2023, 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)

The text “defined” is replaced with “described” because the MWELO definitions are in renumbered Section 490.2 and described in Section 491.

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

Added subheading (A) with the text “The allowable uses of Recycled Water are contained in the California Code of Regulations, Title 22, Division 4, Chapter 3.” to clarify that the California Code of Regulations contains the allowable uses of recycled water. The subheadings are renumbered following the addition of subheading (A). The MWELO general provisions section

lists related statues, regulations and guidelines from other codes relevant to landscape design and construction, but not contained within MWELo.

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

In the renumbered subheading (C) the text "Title 24, Part 5," is added so that the referenced code sections are consistent as Title / Part / Chapter. The text "with all" is included in front of "applicable local and State laws." to be consistent with the text from previous section 492.14(b), which states "All recycled water irrigation systems shall be designed and operated in accordance with all applicable local and State laws." The text "with all" was unintentionally left out of the draft regulation text.

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

The term "Landscape areas" replaces "Landscapes" so that it is consistent with the definitions. Additionally, "as defined in 490.2(a)(80)" is added to reference and clarify that recycled water is a special landscape area as described in the definitions.

CCR Title 23. Section 490.1(a)(4)(B)

The text "treated or untreated" in front of gray water is deleted because it is redundant; gray water is either treated or untreated and these terms are not needed.

CCR Title 23. Section 490.1(a)(5)(F)

The text "storm water projects" is changed to "landscape projects" to be consistent with the definition of a landscape project in Section 490.2(a)(44). The term "storm water projects" is vague and is undefined and is meant to be landscape projects that include stormwater. This clarification improves MWELo's understanding.

CCR Title 23. Section 490.1(a)(7)(A)

Subheading (A) is added with the text "Any plant may be selected for the landscape project provided that the requirements of the selected compliance option are met" is included to add clarity that any plant may be selected if it meets the requirements of the selected compliance option. This is an existing allowance per previous Section 492.6(a)(1)(A).

CCR Title 23. Section 490.2(a)(2)

The added definition for "aggregated landscape projects" is deleted because it creates inconsistent terminologies and causes confusion as noted in the public comments received.

CCR Title 23. Section 490.2(a)(2) through 490.2(a)(92)

Because the definition of "aggregated landscape projects" is deleted from 490.2(a)(2), the subsequent definitions from 490.2(a)(2) through 490.2(a)(92) are renumbered to be in chronological order. Throughout the draft regulation where definitions are referenced the definition numbers are updated.

CCR Title 23. Section 490.2(a)(4)

The text "For the purposes of this ordinance," is added in the definition of automatic irrigation controllers within the second sentence to acknowledge that many automatic irrigation controllers do not have the capability to include ET or moisture sensor adjusting. The requirement in MWELo for automatic irrigation controllers to use sensor data to adjust the irrigation schedule is per the previous section 492.7.(a)(1)(B) and previous Appendix D(b)(5)(B) and is specific to the MWELo.

CCR Title 23. Section 490.2(a)(5)

The text "(Title 24, Part 5, Chapter 6)" is added within the definition of backflow prevention device to specify where in the California Plumbing Code this requirement is listed and to be consistent with how other codes are reference in the MWELo.

CCR Title 23. Section 490.2(a)(12)

The definition of dedicated irrigation meter is changed from "an inline metering device installed by the local water purveyor at the irrigation supply point that records the volume of water used" to "a customer service meter dedicated to landscape use provided by the local water purveyor." The definition of a dedicated irrigation meter is within the existing regulation, previous section 492.7(a)(1)(A).

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

To be consistent with how other codes are cited in MWELo, only the Division, Chapter, and Article are referenced for the Business and Professions Code and the section numbers and descriptions are deleted.

CCR Title 23. Section 490.2(a)(41)

In the definition of landscape area, the term "planting" replaces "landscape" in the second sentence to be consistent with the description in the first sentence of the definition that describes the area as an "irrigated planting area". Using planting area instead of landscape deletes the circular reference of "landscape area" within the definition for "landscape area". To correct a run-on sentence the text "and" is deleted and a separate sentence is created defining that the landscape area is the sum of regular landscape areas and special landscape areas.

CCR Title 23. Section 490.2(a)(43)

In the definition of landscape project, the landscape area now references its definition in Section 490.2(a)(41).

CCR Title 23. Section 490.2(a)(49)

In the definition of matched precipitation rate, the phrase "similar precipitation rate" replaces "same volume" because it is an incorrect definition of matched precipitation rate. The matched precipitation rate is the comparison of the flow and the area where the flow is being distributed too, typically shown as a rate of inches per hour. Within the same hydrozone, it is common for individual emission devices to have different flow rates in order to achieve similar application rates or "matched precipitation" to the area of application.

CCR Title 23. Section 490.2(a)(55)

In the definition of new construction, the reference to "per Section 491" is deleted because the renumbered Section 491 is Applicability and includes new construction projects, rehabilitated landscape projects, existing non-rehabilitated landscapes, cemeteries, and landscapes that the ordinance does not apply too. The reference to Section 491 is confusing and unnecessary.

CCR Title 23. Section 490.2(a)(66)

In the definition of rain sensor, the phrase "interrupts" replaces the term "suspends" because the definition incorrectly describes the function of the rain sensor. The purpose of the rain sensor is to interrupt the irrigation cycle when rainfall is providing water to the landscape; the rain sensor does not suspend the irrigation cycle. The term "suspend" implies that the irrigation cycle would continue after the precipitation event.

CCR Title 23. Section 490.2(a)(69)

The definition of recycled water definition is clarified to include a reference for allowable Recycled Water uses described in the California Code of Regulations. The text "as described in California Code of Regulations, Title 22, Division 4, Chapter 3." is included in the definition to clarify that the use of recycled water is governed by the California Code of Regulations. MWELo does not regulate recycled water; but because recycled water is frequently used as a water source for landscapes the reference is needed for clarity and understanding.

CCR Title 23. Section 490.2(a)(70)

The definition of reference evapotranspiration is clarified by describing that it is "the annual reference" evapotranspiration is required to be used in the maximum applied water allowance calculation. The renumbered Appendix C shows reference evapotranspiration values as an annual value and a monthly value. The monthly reference ETO values are necessary for irrigation scheduling and auditing while the annual values are used in the water budget calculations.

CCR Title 23. Section 490.2(a)(77)

Clarity is added to the definition of soil moisture sensing device by describing that the device sends a signal to the automatic irrigation controller to either interrupt or initiate an irrigation event. The soil moisture sensor does not suspend or initiate an irrigation event, it sends a signal to the automatic irrigation controller which controls the irrigation events.

CCR Title 23. Section 490.2(a)(90)

The text "to leave the target landscape area" is added to the definition of water waste to be consistent with the previous description in previous section 493.2(a) where it states "prohibiting runoff from leaving the target landscape due to low head drainage, overspray" this is necessary to for clarity and understanding because runoff occurs when it leaves the target area, not when it stays in the designated landscape area that's being irrigated.

CCR Title 23. Section 490.2(a)(91)

The definition of watering window is further clarified to describe that the watering window refers to the "days per week and the hours per day" irrigation is allowed. The previous definition in the draft regulation text only defined watering window as the time of day that irrigation is allowed.

CCR Title 23. Section 491(a)(3)

The new definition of "aggregated landscape projects" is deleted, and this requirement previously from sections 492.5(a)(1)(C) and 492.12(b) are kept with those sections in the reorganization of the MWELo. The existing regulatory language with allowances for multiple landscape installations described in previous section 492.5(a)(1)(C) are kept with the soil management report in the renumbered section 493.1. Soil Management Report. The previous regulatory language with allowances for large projects or projects with multiple landscape installations described in previous section 492.12(b) are kept with the Irrigation Audit in renumbered section 493.6. Because the new definition for "aggregated landscape projects" is deleted; the previous numbering in the draft regulation text of 491(a)(4) and 491(a)(5) are renumbered in chronological order.

CCR Title 23. Section 491(a)(3)

The term "non-rehabilitated" is added in "existing non-rehabilitated landscapes" to use consistent terminology through the MWELo when referring to these types of projects; this is consistent with previous section 491(s) in the definition of "ET adjustment factor".

CCR Title 23. Section 491.2(a)(1) and Section 491.2(a)(2)

The prescriptive compliance option in Section 491.2(a)(1) and the performance compliance option in Section 491.2(a)(2) incorrectly reference the applicable sections. The references are corrected for the applicable sections pertaining to each compliance option, respectively. These are existing requirements and are included as references in these sections to reduce ambiguity and improve clarity and understanding.

CCR Title 23. Section 491.2(b)

The text “any new construction project with a landscape area between 500 and 2,500 square feet” is moved from the beginning of the sentence to the end to make a complete sentence and improve clarity.

CCR Title 23. Section 491.2(c)

The text “An applicant shall use the performance compliance option for any” is added to be consistent with section 491.2(b) and reduce ambiguity about who is required to implement MWELo. This does not change any existing MWELo requirement.

CCR Title 23. Section 491.2(b)(1) and Section 491.2(c)(1)

The provisions for aggregated landscape projects are moved to be subheadings underneath Section 491.2(b)(1) new construction projects and Section 491(c)(1) rehabilitated landscape projects to clarify that the provisions for aggregated landscapes, which have allowances for soil sampling and irrigation audits, applies to these project types.

CCR Title 23. Section 491.3(a)

The designation of responsibility, in previous Section 492 and now in renumbered Section 490.1(a)(1) is duplicated within section 491.3(a) to reduce ambiguity and add clarity that MWELo compliance responsibilities can be designated with either the local water purveyor or another agency. Previously the designation of responsibility was only included within the General Provisions section and could be overlooked by a local agency. The subsections beneath are re-lettered in chronological order following the insertion of Section 491.3(a).

CCR Title 23. Section 491.3(b)(1)(E)

The text “For the performance compliance option only, upon approval of the Landscape Documentation Package, the local agency shall submit a copy of the Water Efficient Landscape Worksheet to the local water purveyor” is moved from Section 491.3(b)(2) to Section 491.3(b)(1)(E) because it was incorrectly placed as its own section (2) instead of being associated with the requirements prior to construction. The previous MWELo Section 492.1(b) shows the correct location of this requirement. The subheadings following are renumbered to be in chronological order.

CCR Title 23. Section 492(c)(1)

In the reorganization of the existing regulatory text, “(unless contra-indicated by a soil test)” was mistakenly not included. It is now included in 492(c)(1) and is an existing requirement.

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

The text “dedicated irrigation meter or” is added in front of private submeter to acknowledge that non-residential projects above 1,000 square feet may use a dedicated irrigation meter to measure landscape water use. This does not change the existing requirements.

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

In the reorganization of the existing regulatory text, “along with the record drawings, and any other information” was mistakenly not included; it is included in Section 491.3(c)(2)(B) and is an existing requirement. The requirement is listed in previous Section 492.1(c)(2). The landscape documentation package submitted by the local agency to the local water purveyor may be different than the actual landscape installed and should be included on the record drawings of the landscape documentation package produced by the project applicant.

CCR Title 23 Section 492(c)(2)(G)

The draft regulatory text is modified to succinctly reference the California Code of Regulations for standards on non-rotating spray sprinkler bodies and is consistent with how the MWELo references other code sections using Title / Division / Chapter; the Section is referenced because it is difficult to find in the Chapter without the reference. The text is revised to state “Non-rotating spray sprinkler bodies are required to meet the standards described in California Code of Regulations, Title 20, Division 4, Chapter 4, Section 1605.3(x).”

CCR Title 23. Section 492(d)

The text of the regulation is modified to describe that the designer of record shall make plants identifiable during final inspection and does not specify how that should be done. The plants must be identifiable by botanical name, common name or cultivar as identified in the Food and Agricultural Code. The previous draft regulation text required the use of a plant legend with plant photographs, which has been deleted to allow the designer of record more flexibility with how to comply with Government Code 65596(n). To be consistent with how other codes are cited in the MWELo, only the Division, Chapter, and Article are referenced for the Food and Agriculture Code and the Section number is deleted. This regulatory text is moved from 492(e) to 492(d) to improve the organization of Section 492 requirements.

CCR Title 23 Section 492(e)

The draft regulatory text moves the previous draft regulatory language from section 492(d) to 492(e) because as the final step in completing the requirements for the prescriptive compliance option it improves the organization and understanding of the requirements.

CCR Title 23. Section 493

The text “and documented in the Landscape Documentation Package, Section 491.4(b), and the Certificate of Completion Package, as described in Section 494(b).” is added to the draft regulatory text under Section 493 to reduce ambiguity and improve the clarity and understanding about the document requirements of the performance compliance option, which include references to the appropriate sections as described.

CCR Title 23. Section 493.1(a)(1)(C)

The text “aggregated” is deleted because the definition for “aggregated landscape project” is deleted. The regulatory language is made to be consistent with previous MWELo section 492.5(a)(1)(C) and includes the language “with multiple landscape installations (i.e. production home developments)”. The term “individual” is deleted because upon further consideration it does not improve clarity.

CCR Title 23. Section 493.1(a)(1)(C).1

The last sentence of previous section 492.5(a)(1)(C) states “Large landscape projects shall sample at a rate equivalent to 1 in 7 lots.” and is made a separate subheading in renumbered Section 493.1(a)(1)(C) to reduce ambiguity and improve clarity. This reorganization clarifies that while the requirements are related, they are separate and does not change any existing requirement.

CCR Title 23. Section 493.2(a)(12)

The text of the regulation is modified to describe that the designer of record shall make plants identifiable during final inspection and does not specify how that should be done. The plants must be identifiable by botanical name, common name or cultivar as identified in the Food and Agricultural Code. The previous draft regulation text required the use of a plant legend with plant photographs, which has been deleted to allow the designer of record more flexibility with how to comply with Government Code 65596(n). To be consistent with how other codes are cited in the MWELo, only the Division, Chapter, and Article are referenced for the Food and Agriculture Code and the Section number is deleted.

CCR Title 23. Section 493.2(a)(13)

The text “performance compliance option” is added before criteria to the Landscape Design Plan to reduce ambiguity about which compliance option is being complied with.

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

To be consistent with how other codes are cited in the MWELo only the Division, Chapter, and Article are referenced for the Business and Professions Code and the Section numbers are deleted.

CCR Title 23. Section 493.2.2(c)(4)

The Division, Part, Chapter, and Article are referenced for the Health and Safety Code and the reference to the section numbers are deleted to be consistent with how other codes are cited in the MWELo.

CCR Title 23. Section 493.2(d)(7) and Section 493.2(d)(7)(A)

The text “Organic mulches are not required where prohibited by local Fuel Modification Plan Guidelines or other applicable local ordinances. (Public Resources Code Section 4291)” is moved from Section 493.2(d)(7) to Section 493.2(d)(7)(A) to improve the organization and understanding of the mulching requirements and remove the duplication of the text “Organic mulch materials made from recycled or post-consumer shall take precedence over inorganic materials or virgin forest products unless the recycled post-consumer organic products are not locally available.”

CCR Title 23. Section 493.2.1(a)

The Business and Professions Code (BPC) Section 5615 allows unlicensed personal property owners to develop grading plans as well as licensed professionals as permitted by the Business and Professions Code. The previous draft regulation text limited grading plans to only being submitted only by a licensed civil engineer inconsistent with allowable practices governed by the BPC. The draft regulation is updated to state: “A comprehensive grading plan approved by the local agency for other local agency permits satisfies this requirement.” The grading plans are documents already required to be approved by the local agency; MWELo does not need to specify who is allowed to prepare other documents because it is governed by other codes, not MWELo.

CCR Title 23. Section 493.2.1(a)(3)

The text “performance compliance option” is added before criteria to the Landscape Design Plan to reduce ambiguity that it is the performance criteria that is being complied with.

CCR Title 23. Section 493.2.2(c)(1)

The text “and submeters” is added to provide clarity that all meters including submeters, which are a type of meter, should be identified on the irrigation design plan. This does not change the existing requirement to identify the location and size of separate water meters, and only improves the clarity and understanding of what is required.

CCR Title 23. Section 493.2.2(c)(8)

The text “performance compliance option” is added to clarify that the performance compliance options are being met and reduces ambiguity.

CCR Title 23. Section 493.2.2(c)(9)

To be consistent with how other codes are cited in the MWELo, only the Division, Chapter, and Article are referenced for the Business and Professions Code and the section numbers are deleted.

CCR Title 23. Section 493.2.2(d)(10)(A)

The draft regulatory text “the landscape area is adjacent to pervious surfacing and” is deleted because it is redundant with the requirement in Section 493.2.2(d)(10) that states “Overhead irrigation shall not be permitted within 24 inches of any non-pervious surface.” The text regarding “no runoff occurs” is left because it requires no runoff to allow the restrictions to be modified. The general MWELo requirement in renumbered Section 490.1(a)(2) requires local agencies to prevent water waste from inefficient landscape irrigation.

CCR Title 23. Section 493.2.2(d)(11)

The text regarding restrictions for overspray and runoff was unintentionally left out of the revised draft regulation text. This text comes from previous Section 493.2(b)(1) and 493.2(b)(2), which allows the restrictions regarding overspray and runoff to be modified if they meet the requirements.

CCR Title 23. Section 493.2.2(d)(12)

The section numberings are corrected following the inclusion of section 493.2.2(d)(11).

CCR Title 23. Section 493.2.2(d)(13)

The section numberings are corrected following the inclusion of section 493.2.2(d)(11).

CCR Title 23 Section 493.2.2(e)(4)(C)

The draft regulatory text is modified to reduce ambiguity and provide clarity by referencing the California Code of Regulations for standards on non-rotating spray sprinkler bodies.

CCR Title 23. Section 493.4(a)(5)(B)

The text “meets” is replaced with “does not exceed” to be consistent with the definitions of the Maximum Applied Water Allowance (MAWA) and Estimated Total Water Use (ETWU) in the MWELo. Per the renumbered Appendix A “The ETWU (gallons per year) must be equal to or less than the MAWA (annual gallons allowed) to comply with MWELo.” The applied water does not need to meet the ETWU and is allowed to be less.

CCR Title 23. Section 493.6(b)

The text “aggregated” is replaced with “large” in front of landscape projects; “or landscape projects with multiple landscape installations” is added because the added definition for

“aggregated landscape project” is deleted and to be consistent with the previous section 492.12(b). This does not change existing MWELo requirements.

CCR Title 23. Section 493.6(c)

The reference to section 491 is corrected from “Section 491” to reference “Section 493” because the irrigation audits are specific to the performance compliance option requirements. The previous MWELo Appendix D describing the prescriptive compliance option does not have requirements for an irrigation audit and specific to the performance compliance option only.

CCR Title 23. Section 495(a)

Section 495(a) is combined with 495(b) to reduce confusion about reporting on MWELo implementation and enforcement; only one report is required to be submitted to the Department. Previous with the two sections creates confusion about whether one report is required or two separate reports. This reduces ambiguity and clarifies that when reporting on MWELo implementation and enforcement only one report is required.

CCR Title 23. Section 495(a)(5)

This section is moved from 495(a)(7) to 495(a)(5) so that the questions have some logic in how they are asked. The number of new construction projects is asked first, in the reorganized section, followed by 495(a)(6), which asks for the number of completed projects, by project type, then 495(a)(7) which asks for the total landscape area. Previously section 495(b)(7) asked for “new housing starts, new commercial projects, and landscape retrofits during the reporting period.” and is inconsistent with the MWELo definitions and the types of projects with MWELo requirements. By listing the project types in (A) through (D) the reporting is clarified, ambiguity is reduced and is consistent with the defined project types of multifamily residential, single-family residential landscape projects, non-residential landscape projects, and rehabilitated landscape projects.

CCR Title 23. Section 495(a)(6)

This section is moved from 495(a)(5) to 495(a)(6) so that the questions have some logic in how they are asked. The number of new construction projects is asked first, in the reorganized section, followed by 495(a)(6), which asks for the number of completed projects, by project type, then 495(a)(7) which asks for the total landscape area. Previously section 495(b)(5) asked for “the number of projects during the reporting period.” and is ambiguous about what should be reported. By listing the project types in (A) through (D) the reporting is clarified, ambiguity is reduced and is consistent with the defined project types of multifamily residential, single-family residential landscape projects, non-residential landscape projects, and rehabilitated landscape projects and is consistent with the clarified reporting requirements in section 495(a)(5).

CCR Title 23. Appendix A.

Added the text “the” and “or their designee” to improve grammar.

CCR Title 23. Appendix B. Element 2

A secondary signature line is added for the designer of record to allow for multiple signatures when more than one person is the designer of record.

CCR Title 23. Appendix B. Element 3

The Section 491.4 reference is corrected to reference section 491.4(b), which includes the requirements for the Soil Management Report within the performance compliance option.

March 18, 2024

Written Comment Period

The Department will address written comments on the changes identified in the noticed text that are indicated by double underline and ~~double strikethrough~~. Interested members of the public may submit comments by postal mail, email, or through the MS Forms link and any comments must be received by the Department on or before 5 p.m. Wednesday April 3, 2024, and must be addressed to the following:

Email:
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Comments may also be provided through an MS Forms comment form at the following link:
[2023 MWELo Update 15-day Comment Period - Public Comment Form](#)

Please note that under the California Public Records Act (Government Code Section 6250 et seq.), written and oral comments, attachments, and associated contact information (e.g. address, phone, email, etc.) become part of the public record and can be released to the public upon request.

Comments must be directed to the Department in one of the two forms described above and received by the Department by 5 p.m. Wednesday April 3, 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.

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:

<https://water.ca.gov/News/Public-Notices/2023/Nov-23/Regulation-Rulemaking-MWELo>

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

Department Contact Persons

Questions regarding the proposed regulatory action may be directed to:

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