

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

**REGARDING THE 2016 CALIFORNIA GREEN BUILDING STANDARDS CODE  
(CALGreen)  
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 11**

The Administrative Procedure Act requires that every agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding. The rulemaking file shall include a final statement of reasons. The Final Statement of Reasons shall be available to the public upon request when rulemaking action is being undertaken. The following are the reasons for proposing this particular rulemaking action:

**UPDATES TO THE INITIAL STATEMENT OF REASONS:**

(Government Code Section 11346.9(a)(1))

**For Items 1-11, 15, and 16 of the Final Express Terms**, there were no changes made to the proposed regulations published during the 45-day public comment period to the final statement of reasons.

**For Items 12-14 of the Final Express Terms**, CBSC is relying on the Initial Statement of Reasons regarding specific adoptions, amendments, or repeals to CCR, Title 24, Part 11 except for the following amended sections, to which sufficiently related changes were proposed during a 15-day public comment period:

- **202 RECYCLED WATER SUPPLY SYSTEM** (definition): In response to 45-day public comment, CBSC made an editorial amendment to this new definition by adding the words "or adjacent to." This aligns with co-adopted amendments made by HCD and DWR, and is also being proposed for adoption within the California Plumbing Code (Part 5, Title 24, CCR). This editorial amendment provides consistency and clarity for the code user with no intended change in regulatory effect.

**MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

(Pursuant to Government Code Section 11346.9(a)(2))

**Regarding Items 1-11, 15, and 16 of the Final Express Terms and Final Statement of Reasons:** The California Building Standards Commission has determined that the proposed regulatory action would not impose a mandate on local agencies, or school districts. CBSC does not have authority to adopt regulations for school districts. The mandate does not require reimbursement pursuant to Part 7 (commencing with section 17500) of Division 4, Government Code. H&SC section 18928 requires the CBSC to adopt the most current edition of the model codes. H&SC 18938(b) makes applicable the most current edition of the model building code to all occupancies throughout the State of California as prescribed.

**Regarding Items 12-14 of the Final Express Terms and Final Statement of Reasons:**

Because CBSC does not have authority to promulgate regulations applicable to school districts, this proposed regulatory action would not impose a mandate on school districts. However, the proposal may impose a mandate on local agencies within jurisdictions that have access to recycled water from a purveyor.

## **OBJECTIONS OR RECOMMENDATIONS MADE REGARDING THE PROPOSED REGULATION(S).**

(Government Code Section 11346.9(a)(3))

**Regarding Items 1-11, 15, and 16 of the Final Express Terms:** CBSC did not receive any objections or recommendations regarding the proposed regulations for Items 1-11, 15 and 16.

### **Regarding Items 12-14 of the Final Express Terms:**

The following is a summary of the comments CBSC received on Items 12-14 during the 45-day public comment period, CBSC's explanation for how changes were made in response to each comment, and reasons for making no changes, as specified:

#### **Commenter 1: Paul Cook, Irvine Ranch Water District**

*Recommend: Approve as Amended*

*(Note: For many of the comments listed below, the commenter only cited specific sections in BSC's amendments to the California Plumbing Code (Part 5, Title 24). However, because CBSC is proposing identical language in both Parts 5 and CALGreen (Part 11, Title 24), CBSC is including those comments herein)*

1. The commenter suggests modifications to Section 5.305.1.1, Exception (2) and addition of two new exceptions (5) and (6).
2. The commenter does not support the inclusion of the proximity provision (300 feet) in Section 5.305.1.1.
3. The commenter suggests the terms "Authority Having Jurisdiction" and "Enforcing Agency" not be used without reference to the permitted recycled water provider to ensure consistency with Title 22 and recycled water permits.
4. Section 202 – The commenter suggests the definition of "Recycled Water Supply System" to be changed to clarify that the recycled water plumbing system is located downstream of the water meter and under the control of the property owners.

**Agency Response:** CBSC acknowledges the commenter's concerns and appreciates their support and participation in the code development process. However, after further review and coordination with DWR and HCD, no changes to the Final Express Terms were made as a result of these comments. CBSC's responses for each comment are addressed below.

1. CBSC's 45-day Express Terms state "as determined by the Authority Having Jurisdiction in consultation with the water purveyor." Additionally, proposals for new exceptions 5 and 6 are based on service time frame, service area boundary and water uses proposed. Focus group meetings discussed AB 2282's requirement mandating recycled water supply systems "within a planned service area for the provision of recycled water for which a specific implementation timeline has been identified by the public water system in its most recent urban water management plan." The terminology used for this provision was ambiguous and difficult to interpret the application timeframe (5 years? 10 years?) and questions were raised as to what constituted an "urban management plan." As a result, CBSC did not propose requirements for recycled water supply systems in these areas. CBSC believes exception 2 already addresses issues of unavailability. While CBSC did not accept this comment, it may consider the issue during a future code cycle.
2. The distance threshold of 300 feet proposed by CBSC and HCD was requested by stakeholders in the enforcement community in response to their request for specificity in enforcement, and modified before the final distance was proposed as 300 feet (it was originally proposed at 500 feet). Furthermore, the Green-PEME Code Advisory Committee recommended that CBSC include this distance threshold in the nonresidential mandate language (in addition to HCD). As discussed during the precycle workshops and the Code Advisory Committee meeting, this distance threshold gives the enforcement community the specificity needed to enforce the code and does not conflict with the authority of the water purveyor to exempt recycled water developments that are not cost efficient or technically infeasible. Additionally, during the precycle workshops it was determined that enacting mandatory regulations for future use of recycled water supply systems in a planned service area was inappropriate for inclusion in Title 24 due

- to concerns of stranded costs of piping and infrastructure that would not be served with recycled water at the time of connection. This provision was then proposed as a voluntary Tier in CALGreen before its eventual removal when the indoor element of the mandate was recommended for further study by the Code Advisory Committee. While CBSC did not accept this comment, it may consider the issue during a future code cycle.
3. The definitions of “Authority Having Jurisdiction” and “Enforcing Agency,” as discussed during the precycle stakeholder workshops, are intentionally broad and inclusive, allowing local jurisdictions flexibility in enforcement. Referencing “permittee” as applicable would cause some confusion on the enforcement side. Typically, in the California Plumbing Code (CPC), permittee is the person(s) having the permit to install, alter, or repair a plumbing system regulated by the CPC. While CBSC did not accept this comment, it may consider the issue during a future code cycle.
  4. As discussed during the precycle workshops and the Code Advisory Committee meeting, Title 24 only applies to buildings and building systems that are downstream of the water meter and owned/operated by the customer/building owner (the building officials on the committee concurred with this assertion). While CBSC did not accept this comment, it may consider the issue during a future code cycle.

**Commenter 2: Daniel McIntyre, Dublin San Ramon Services District**

*Recommend: Approve as Amended*

*(Note: For many of the comments listed below, the commenter only cited specific sections in BSC’s amendments to the California Plumbing Code (Part 5, Title 24). However, because CBSC is proposing identical language in both Parts 5 and CALGreen (Part 11, Title 24), CBSC is including those comments herein).*

1. Section 202, Definition of “Recycled Water Supply System” – remove “Supply” to avoid confusion with the “supply side” (i.e. purveyor) of the system
2. Section 5.305.1.1 Outdoor Recycled Water Supply Systems – remove “Supply” to avoid confusion with the “supply side” (i.e. water purveyor) of the system, and include exceptions for the following:
  - a. Availability of recycled water
  - b. Recycled water supply reliability
  - c. Potable reuse
3. Section 5.305.1.2 Technical Requirements for Outdoor Water Supply Systems – Recommend language that outdoor applications also meet the requirements of the recycled water purveyor’s State Water Resources Control Board or Regional Water Quality Control Board water reuse permit.

**Agency Response:** CBSC acknowledges the commenter’s concerns and appreciates their support and participation in the code development process. However, after further review and coordination with DWR and HCD, no changes to the Final Express Terms were made as a result of these comments. CBSC’s responses for each comment are addressed below.

1. As discussed during the precycle stakeholder workshops, the term “Recycled Water Supply Systems” is consistent with the model code definition for “[Potable] Water Supply Systems.” Therefore, CBSC is retaining the existing definition in coordination with HCD and DWR.
2. Regarding recommendation to remove the word “Supply”, see previous CBSC response. Regarding the commenter’s request to add three additional exceptions, it is CBSC’s opinion that the current proposed exceptions address availability, reliability, and potable reuse as follows:
  - a. Availability of recycled water is currently addressed by Exception 2 and its corresponding Note
  - b. Recycled water supply reliability is currently addressed by Exception 2 and its corresponding Note
  - c. Potable reuse is currently addressed by Exception 1
3. CBSC is unclear as to what the Recycled Water Purveyors design requirements are. Similar to local ordinances that make more restrictive amendments to building standards

based on local conditions, it is generally understood that local requirements and/or requirements within other Titles of the CCR are applicable. With this in mind, it is unnecessary to clarify that requirements of the water reuse permit also be met be included in Title 24. While CBSC is not accepting this comment, it may revisit this issue during a future code cycle.

**Commenter 3: Michael L. Nearman, California Building Standards Commission**

*Recommend: Approve as Amended*

1. Section 202 – RECYCLED WATER SUPPLY SYSTEM (definition) – Suggest adding the words “or adjacent to” to align with similar amendments made by HCD and DWR, and to correspond to the suggested changes in the same definition proposed for the California Plumbing Code (Part 5, Title 24).

**Agency Response:** CBSC has accepted this comment and incorporated the suggested editorial change into its 45-day express terms. This modified language was published during a 15-day public comment period beginning May 9, 2017 and ending May 24, 2017. These modifications and the subsequent 15-day public comment period were coordinated with HCD and DWR to ensure consistency and clarity in the code.

**Commenter 4: Toby J. Roy, San Diego County Water Authority**

*Recommend: Approve as Amended (see below)*

*(Note: For many of the comments listed below, the commenter only cited specific sections in BSC’s amendments to the California Plumbing Code (Part 5, Title 24). However, because CBSC is proposing identical language in both Parts 5 and 11 (CALGreen), CBSC is including those comments herein).*

1. Section 202 Definition of Reclaimed (Recycled) Water should use the term “recycled water” only throughout the entire code.
2. Section 202 Definition of Recycled Water Supply System should be changed to state “The recycled system located downstream of the water meter, including...”
3. Section 202 should also include the definition of on-site treated nonpotable water

**Agency Response:** CBSC acknowledges the commenter’s concerns and appreciates their support and participation in the code development process. However, after further review and coordination with DWR and HCD, no changes to the Final Express Terms were made as a result of these comments. CBSC’s responses for each comment are addressed below.

1. During the precycle workshops the state agencies originally proposed removing the word “Reclaimed” from the model code definition of Reclaimed (Recycled) Water, but industry stakeholders indicated the term “Reclaimed Water” is still widely used and must be kept synonymous with “Recycled Water.” Additionally, retaining the word “Reclaimed” maintains consistency with the existing UPC definition. While CBSC did not accept this comment, it may revisit this issue during a future code cycle.
2. As discussed during the precycle workshops and the Code Advisory Committee meeting, Title 24 only applies to buildings and building systems that are downstream of the meter and owned/operated by the customer/building owner (the local building officials serving on the committee concurred with this statement). While CBSC did not accept this comment, it may revisit this issue during a future code cycle.
3. “On-site treated nonpotable water” is currently defined in Section 202 of CALGreen. This appears to address the commenter’s suggestion.

**Commenter 5: Michael A. Quiroz, 3<sup>rd</sup> Wave Construction Information & Technical Services/Laborers International Union of North American (LiUNA) and their local affiliates**

*Recommend: Disapprove*

1. The commenter expressed disapproval of the original chaptered legislation (AB 2282, Chapter 606, Statutes of 2014), and also indicates concerns regarding the authority of the proposing state agencies, the local enforcement agencies, and water purveyors.

2. The commenter also indicates that non-potable regulatory requirements would be better placed within the California Green Building Standards Code (Part 11, Title 24, California Code of Regulations, also known as “CALGreen”).
3. The commenter indicates that the subject matter of these regulations falls outside the scope of expertise of the commissioners.
4. The commenter indicates an absence of sufficient documentation regarding the cost efficiency of the regulations
5. The commenter expresses concerns regarding the application of the California Environmental Quality Act.
6. Lastly, the commenter formally requested an additional 15-day public comment period to address these concerns.

**Agency Response:**

CBSC appreciates these comments and the commenter’s participation during the code development process, but is unable to accept these comments as they do not cite specific sections of the 45- and/or 15-day Express Terms. Despite this lack of clarity and specificity, CBSC has attempted to respond to these comments as follows:

1. Despite the commenter’s opposition to the chaptered legislation, CBSC and HCD are required to research, develop, and propose for adoption mandatory recycled water building standards during the 2016 Intervening Code Cycle. This proposed rulemaking implements the chaptered legislation, which authorized CBSC and HCD to promulgate these regulations.
2. In addition to its proposed amendments to the 2016 California Plumbing Code, CBSC is also proposing corresponding amendments to the 2016 CALGreen Code. This appears to address the commenter’s suggestion for inclusion of the requirements in CALGreen.
3. CBSC disagrees with the commenter in that the subject matter of the proposed building standards is within the scope of expertise of the commissioners.
4. In coordination with HCD and DWR, CBSC solicited technical feedback from various key stakeholders during the precycle research and development of these proposed building standards. Information relative to the cost efficiency, reasonable cost, and other fiscal impacts is contained within the Economic and Fiscal Impact Statement (form 399), which was approved by the Department of Finance and is included in the rulemaking file.
5. Pursuant to budget trailer bill language enacted by SB 88 (Chapter 27, Statutes of 2015), the development and approval of building standards by state agencies for recycled water systems is exempt from the California Environmental Quality Act during the 2016 Intervening Code Cycle (this provision becomes inoperative July 1, 2017, and is repealed as of January 1, 2018).
6. CBSC published sufficiently-related changes during a 15-day public comment period.

**Commenter 6: Jennifer West, WaterReuse California**

*Recommend: Approve as Amended (see below)*

*(Note: For many of the comments listed below, the commenter only provided comments on BSC’s amendments to the California Plumbing Code (Part 5, Title 24). However, because CBSC is proposing identical language in both Parts 5 and 11 (CALGreen), CBSC is including those comments herein, as appropriate).*

1. General Comment - Clarify references to “Authority Having Jurisdiction” and “Enforcing Agency” throughout proposal.
2. General Comment - Use term “Recycled Water”
3. General Comment - Clarify definition of “Recycled Water Supply System”

**Agency Response:** CBSC acknowledges the commenter’s concerns and appreciates their support and participation in the code development process. However, after further review and coordination with DWR and HCD, no changes to the Final Express Terms were made as a result of these comments. CBSC’s responses for each comment are addressed below.

1. The definitions of “Authority Having Jurisdiction” and “Enforcing Agency,” as discussed during the precycle workshops, are intentionally broad and inclusive, allowing local

- jurisdictions flexibility in enforcement. Referencing “permittee” as applicable, would cause some confusion on the enforcement side. Typically, in the CPC, permittee is the person(s) having the permit to install, alter, or repair a plumbing system regulated by the CPC. CBSC may revisit this issue during a future code cycle.
2. During the precycle workshops the state agencies originally proposed removing the word “Reclaimed” from the model code definition of Reclaimed (Recycled) Water, but industry stakeholders indicated the term “Reclaimed Water” is still widely used and must be kept synonymous with “Recycled Water.” Additionally, retaining the word “Reclaimed” maintains consistency with the existing model code definition. CBSC may revisit this issue during a future code cycle.
  3. As discussed during the precycle workshops and Code Advisory Committee meeting, Title 24 only applies to buildings and building systems that are downstream of the water meter and owned/operated by the customer/building owner (the local building official committee members concurred with this assertion).

**Public Comments received during 15-Day public comment period May 9, 2017 – May 24, 2017.**

No comments received during the 15-Day public comment period.

**DETERMINATION OF ALTERNATIVES CONSIDERED AND EFFECT ON PRIVATE PERSONS**

(Government Code Section 11346.9(a)(4))

The CBSC has determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

**REJECTED PROPOSED ALTERNATIVE THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES:** (Government Code Section 11346.9(a)(5))

There were no proposed alternatives. The CBSC has determined that the proposed regulations will have no adverse impact on small businesses.