



Gwenyth R. Searer, S.E.
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Via Email

January 2, 2019

California Building Standards Commission
Attention: Mia Marvelli, Executive Director
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833

Re: Public Comments Regarding the Department of Housing and Community Development's Proposed Changes to the California Existing Building Code

Dear California Building Standards Commission:

I am taking this opportunity to provide public comments regarding the changes to the California Existing Building Code (CEBC) proposed by the Department of Housing and Community Development (HCD). Unfortunately, the proposed changes still continue to violate both the letter and the legislative intent of state law.

Background

At the public hearing on December 4, 2018, I communicated my concerns regarding the fact that HCD's proposed amendments violate state law, and I provided a six-point list of items that HCD needed to address in order to address the violations. A few days later, I followed up with HCD a series of emails, including proposed changes that would satisfy my concerns. For reasons unknown, HCD chose not to implement most of the changes that I recommended. I also offered several times to talk over the phone about my concerns, but HCD did not take me up on my offers.

Although I work for a nationally known consulting firm and although I serve on several national committees, my comments represent my personal opinion only. My comments are as follows.

HCD's Proposed Changes Still Violate the Letter of State Law

Section 17958.8 of the Health and Safety Code (i.e., state law) states:

“Local ordinances or regulations governing alterations and repair of existing buildings shall permit the replacement, retention, and extension of original materials and the use of original methods of construction for any building or accessory structure subject to this part, including a hotel, lodginghouse, motel, apartment house, or dwelling, or portions thereof, as long as the portion of the building and structure subject to the replacement, retention, or extension of original materials and the use of original methods of construction complies with the building code provisions governing that portion of the building or accessory structure at the time of construction, and the other rules and regulations of the department or alternative local standards governing that portion at the time of its construction and adopted pursuant to Section 13143.2 and the building or accessory structure does not become or continue to be a substandard building.”

HCD proposes to adopt all of the upgrade triggers in Section 405.2, including the snow damage upgrade trigger (Section 405.2.1.1), the disproportionate earthquake damage trigger (Section 405.2.2), and the two substantial structural damage triggers (Sections 405.2.3 and 405.2.4). All of these triggers violate the letter



of Section 17958.8 of the Health and Safety Code (HSC), which specifically permits replacement of original materials, retention of original materials, and the use of the original methods of construction for repairs in accordance with the building code at the time of construction.

In the 2016 CEBC (and prior codes), these triggers were explicitly not adopted by HCD to avoid conflicting with state law. Section 17958.8 of the Health and Safety Code has not changed; therefore, either HCD needs to make their proposal match the prior code (after adjusting for movement of various provisions) or their proposed changes will be in conflict with Section 17958.8 of the Health and Safety Code, and will thus be illegal.

Similarly, Section 302.5.1 requires that new structural members and connections comply with the detailing provisions for new buildings; this is a violation of the HSC in cases where repairs require new structural members or connections.

HCD's Proposed Changes Still Violate the Spirit of State Law

The relevant statement of legislative intent for Section 17958.8 of the Health and Safety Code can be found in the Legislative Counsel's Digest for Assembly Bill 1034 in 2003, which is the last time Section 17958.8 was amended. The Digest states that the amendment was meant to permit materials and methods of construction that "*comply with the building code provisions governing that portion of the building or accessory structure at the time of its construction and other requirements governing the building or accessory structure at that time...*"

The intent of Legislature to permit repairs that conform to the original building code under which the structure was built could not be clearer. The spirit/intent of the law will be violated if the upgrade triggers that HCD has proposed for adoption in Sections 405.2.1.1, 405.2.2, 405.2.3, and 305.2.4 are adopted.

It is for this reason that the upgrade triggers were not adopted for the last four code cycles (i.e., the 2016 CEBC, the 2013 CBC, the 2010 CBC, and the 2007 CBC). If HCD adopts the code upgrade triggers it has proposed, it would be violating that intent as well as the letter of the law. HCD would also be dramatically changing how HCD deals with existing residential structures, which would have a dramatic financial impact on California.

HCD's Proposed Changes Stemmed from a Mistaken Understanding Regarding Repair of Structural Damage

In HCD's Initial Statement of Reasons, HCD stated several times that the upgrade triggers they were proposing for adoption do not conflict with State Housing Law. The reasoning given for adopting the upgrade triggers was as follows:

"Although the SHL allows the extension of original materials and use of methods of construction, structural damage makes the building a substandard building."

The second half of this reason is false. Structural damage only makes a building "substandard" if the damage is sufficient to endanger the public or the occupants. More importantly, the repair of that damage does not cause the building to become or continue to be substandard; therefore in-kind structural repairs must be permitted according to state law.



HCD's premise that "structural damage" is somehow different than any of the other conditions that may temporarily render a building "substandard" is false. HCD's factually incorrect statements in their Initial Statement of Reasons will result in confusion among engineers, architects, owners, and building officials; HCD must recant the incorrect reasons previously given for adopting triggers that cannot be adopted without violating state law. Sweeping this error under the rug will only sow confusion going forward.

During the hearing on December 4, 2018, HCD staff testified that they did not intend to make any significant changes in how repairs should be implemented; rather, they implied that the changes were made simply to correlate and incorporate HCD's changes from the prior code into the newer code and that this was merely an administrative task. This testimony does not appear to be true. If HCD did not intend to modify how the 2019 CEBC will be implemented for residential structures, they should not have adopted all of the upgrade triggers that violate Section 17958.8 of the Health and Safety Code. These triggers were not adopted last four code cycles because they would have violated state law; no basis has been provided for adopting them this cycle other than the incorrect justification that structural damage makes a building substandard, and in-kind repairs cannot address the substandard condition.

Proposed Solution

In order to be in conformance with Section 17958.8 of the Health and Safety Code, the following changes must be made:

- Do not adopt Sections 302.5.1, 405.2.1, 405.2.1.1, 405.2.2, 405.2.3, 405.2.3.1, 405.2.3.2, 405.2.3.3, 405.2.4, and 405.2.4.1. These sections are in direct conflict with Section 17958.8 of the HSC and cannot be adopted without violating the requirement that in-kind repairs and in-kind construction be permitted.

- Add a Section 401.2.1:

[HCD 1] 401.2.1 In-Kind Repairs. Local ordinances or regulations shall permit the replacement, retention and extension of original materials, and the use of original methods of construction, for any building or accessory structure, provided such building or structure complied with the building code provisions in effect at the time of original construction and the building or accessory structure does not become or continue to be a substandard building. For additional information, see Health and Safety Code Sections 17912, 17920.3, 17922(d), 17922.3, 17958.8 and 17958.9.

This matches the language in the 2016 CEBC and correctly diverts users of the code away from the repair upgrade triggers.

- Add a Section 503.1.1:

[HCD 1] 503.1.1 Materials. Local ordinances or regulations shall permit the replacement, retention and extension of original materials, and the use of original methods of construction, for any building or accessory structure, provided such building or structure complied with the building code provisions in effect at the time of original construction and the building or accessory structure does not become or continue to be a substandard building. For additional information, see Health and Safety Code Sections 17912, 17920.3, 17922(d), 17922.3, 17958.8 and 17958.9.

This matches the language in the 2016 CEBC and correctly allows users the option of "extension" of original materials as part of an alteration.



In addition, the proposed addition to the definition of “unsafe” should not be adopted. The code already has a definition of “unsafe” and there is no need to confuse the issue by adopting a definition that is different than that for all other buildings.

Finally, HCD needs to recant their position that structural damage cannot be repaired in-kind without triggering upgrades of the structure. The Initial Statement of Reasons was factually incorrect on several key points, and unless HCD wishes to further confuse the issue, they need to clearly state that their prior position was incorrect.

If HCD is unwilling to correct their mistakes, the California Building Standards Commission should reject all of HCD’s proposed changes and retain the 2016 CEBC for residential structures.

Sincerely,

A handwritten signature in blue ink, reading "Gwennyth R. Searer". The signature is fluid and cursive, with a long horizontal line extending to the right.

Gwennyth R. Searer, S.E. #4450

PS. For clarity, I have attached a code change proposal that would address my concerns, very similar to what I provided to HCD on December 10, 2018. My requested changes are highlighted in yellow.

**15-DAY EXPRESS TERMS
FOR PROPOSED BUILDING STANDARDS
OF THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
REGARDING THE 2019 CALIFORNIA EXISTING BUILDING CODE,
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 10**

(HCD 05/18)

LEGEND FOR EXPRESS TERMS (Based on model codes – Part 10)

1. Model Code language appears upright.
 2. Unmodified California 45-Day amendments appear in *underline and italics*.
 3. California 15-Day amendments appear in *double underline and italics* or ~~*double strikethrough and italic*~~.
 4. Requested changes from Gwenyth R. Searer appear **highlighted in yellow**.
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15-DAY EXPRESS TERMS

1. **HCD proposes to amend Chapter 2, Section 202 as follows:**

**CHAPTER 2
DEFINITIONS**

**SECTION 202
GENERAL DEFINITIONS**

~~***SUBSTANDARD BUILDING. (HCD 1, HCD 2) Any building, structure or portion thereof, in which there exist any of the conditions listed in the Health and Safety Code, Section 17920.3, shall be deemed substandard. A building, structure, or portion thereof, declared as substandard, shall be considered unsafe, as defined in this chapter. See Health and Safety Code Section 17920.3.***~~

Rationale for change: HCD proposes to modify the above referenced new California amendment. Comments received at the California Building Standards Commission (CBSC) meeting on December 4, 2018, pointed out the inconsistencies between the proposed definition and the application of this term as codified in Health and Safety Code Section 17920.3. As originally proposed the reference to “any of the conditions” may be interpreted to mean that existence of any of the conditions specified in Section 17930.3 may cause a building to be deemed or declared as “substandard.” HCD proposes a direct reference to Section 17930.3 (as initially intended) which includes the phrase “...in which there exists any of the following listed conditions to an extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants thereof shall be deemed and hereby is declared to be a substandard building.” The proposed definition provides clarity and consistency to the code user for the term “substandard” as used in the California amendments in this code.

There is no intended change in regulatory effect since the term is used synonymously with “unsafe building.” A related new California amendment for the definition of “unsafe” clarifies that substandard buildings, as defined, are considered unsafe buildings. <GRS Note: This portion needs to be deleted>

2. HCD proposes to amend Chapter 2, Section 202 as follows:

UNSAFE. Buildings, structures or equipment that are unsanitary, or that are deficient due to inadequate means of egress facilities, inadequate light and ventilation, or that constitute a fire hazard, or in which the structure or individual structural members meet the definition of “Dangerous,” or that are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance shall be deemed unsafe. A vacant structure that is not secured against entry shall be deemed unsafe.

~~(HCD 1 & HCD 2) A substandard building, as defined in this chapter, shall be considered unsafe.~~

Rationale for change: There already exists a definition in the code for “unsafe”. There is no need to invoke “substandard” for a building to be considered “unsafe”, and introduction of “substandard” into the definition of “unsafe” would result in a definition different than for all other structures in California.

3. HCD proposes to amend Chapter 3, Sections 301.3 and 302.5 as follows:

**CHAPTER 3
PROVISIONS FOR ALL COMPLIANCE METHODS**

**SECTION 301
ADMINISTRATION**

301.3 Alteration, addition or change of occupancy. The alteration, addition or change of occupancy of all existing buildings shall comply with one of the methods listed in Section 301.3.1, 301.3.2 or 301.3.3 as selected by the applicant. Sections 301.3.1 through 301.3.3 shall not be applied in combination with each other.

Note: *(HCD 1 & HCD 2) Sections 301.3.2 and 301.3.3 shall be permitted only if the Prescriptive Performance compliance method and/or Work area compliance method are adopted by a local ordinance.*

Exceptions:

~~1.~~ Subject to the approval of the code official, alterations complying with the laws in existence at the time the building or the affected portion of the building was built shall be considered in compliance with the provisions of this code. New structural members added as part of the alteration shall comply with the ~~International~~

California Building Code. This exception shall not apply to alterations that constitute substantial improvement in flood hazard areas, which shall comply with Section 503.2, 701.3 or 1301.3.3. This exception shall not apply to the structural provisions of Chapter 5 or to the structural provisions of Sections 706, 806 and 906.

~~2. (HCD 1) Local ordinances or regulations shall permit the replacement, retention and extension of original materials, and the use of original methods of construction, for any building or accessory structure, provided such building or structure complied with the building code provisions in effect at the time of original construction and the building or accessory structure does not become or continue to be a substandard building. For additional information, see Health and Safety Code Sections 17912, 17920.3, 17922(d), 17922.3, 17958.8 and 17958.9.~~

Rationale for change: HCD proposes to relocate the above referenced new California amendment (Exception 2) being carried forward from the 2016 California Existing Building Code (CEBC). Comments received at the CBSC meeting on December 4, 2018, identified three specified provisions (401.2.1, 403.1.1, 404.1.1, from 2016 CEBC) which should be brought forward into Sections 302.4 Existing materials, Section 401 General and Section 503.1 General. HCD evaluated the location of the proposed amendment to Section 301.3 Alteration, addition or change of occupancy and has determined that the amendment is not applicable to additions or changes in occupancy and should be relocated to Section 302.5 New and replacement materials. Putting the text of the existing amendment into Section 302.5 should have the same clarification as being located in Sections 302.4, 401 and 503.1 since Section 302.5 is a general section allowing the use of like materials for repairs and alterations and it is applicable to all compliance methods.

In addition, HCD proposes an editorial modification to the newly proposed note. The text, as written, clarifies that Sections 301.3.2 and 301.3.3 are applicable only if the Prescriptive compliance method and/or Work area compliance method are adopted by a local ordinance. However, HCD intended to address the Performance compliance method since the Prescriptive compliance method is already covered in Section 301.3.1 and is proposed for adoption by HCD. The Performance compliance method is not proposed for adoption by HCD, but is available for adoption by local jurisdictions.

SECTION 302 GENERAL PROVISIONS

302.5 (Formerly 401.2.2) New and replacement materials. Except as otherwise required or permitted by this code, materials permitted by the applicable code for new construction shall be used. Like materials shall be permitted for repairs and alterations, provided that unsafe conditions are not created. Hazardous materials shall not be used where the code for new construction would not permit their use in buildings of similar occupancy, purpose and location.

(HCD 1) Local ordinances or regulations shall permit the replacement, retention and

extension of original materials, and the use of original methods of construction, for any building or accessory structure, provided such building or structure complied with the building code provisions in effect at the time of original construction and the building or accessory structure does not become or continue to be a substandard building. For additional information, see Health and Safety Code Sections 17912, 17920.3, 17922(d), 17922.3, 17958.8 and 17958.9.

(HCD 1 & HCD 2) 302.5.1 New structural members and connections (formerly part of 404.2.3) (No change to model code text. Not adopted.)

Rationale for change: See rationale for withdrawal of proposed Exception 2 in Section 301.3. **Regarding the non-adoption of Section 302.5.1, this section is not permitted due to Health and Safety Code Section 17958.8.**

4. HCD proposes to amend Chapter 4 as follows:

**CHAPTER 4
REPAIRS**

**SECTION 401
GENERAL**

401.1 Scope. (No change to model code text)

401.2 Compliance. (No change to model code text)

401.2.1 (HCD 1) In-Kind Repairs. Local ordinances or regulations shall permit the replacement, retention and extension of original materials, and the use of original methods of construction, for any building or accessory structure, provided such building or structure complied with the building code provisions in effect at the time of original construction and the building or accessory structure does not become or continue to be a substandard building. For additional information, see Health and Safety Code Sections 17912, 17920.3, 17922(d), 17922.3, 17958.8 and 17958.9.

Rationale for change: To be consistent with Health and Safety Code Section 17958.8, which permits in-kind repairs to structures that complied with the building codes at the time of original construction and provided that the building or structure does not become or continue to be a substandard building.

401.3 Flood hazard areas. (No change to model code text)

**SECTION 405
STRUCTURAL**

405.1 General. (No change to model code text)

405.2 Repairs to damaged buildings. (No change to model code text.)

405.2.1 Repairs for less than substantial structural damage. (~~No change to model code text.~~ Not adopted.)

405.2.1.1 Snow damage. (~~No change to model code text.~~ Not adopted.)

405.2.2 Disproportionate earthquake damage. (~~No change to model code text.~~ Not adopted.)

405.2.3 Substantial structural damage to vertical elements of the lateral force-resisting system. (~~No change to model code text.~~ Not adopted.)

405.2.3.1 Evaluation. (~~No change to model code text.~~ Not adopted.)

405.2.3.2 Extent of repair for compliant buildings. (~~No change to model code text.~~ Not adopted.)

405.2.3.3 Extent of repair for noncompliant buildings. (~~No change to model code text.~~ Not adopted.)

405.2.4 Substantial structural damage to gravity load-carrying components. (~~No change to model code text.~~ Not adopted.)

405.2.4.1 Lateral force-resisting elements. (~~No change to model code text.~~ Not adopted.)

405.2.5 Flood hazard areas. (No change to model code text.)

Rationale for change: To be consistent with Health and Safety Code Sections 17958.8, which permits repairs in-kind to structures that complied with the building codes at the time of original construction provided that the building or structure does not become or continue to be a substandard building. The Initial Statement of Reasons mistakenly implied that structural damage cannot be repaired in-kind; this correction fixes that error. <GRS Note: It is critical to recant the misleading implications in the ISOR that structural damage cannot be repaired in-kind.>

5. HCD proposes to amend Chapter 5, Section 503.1 as follows:

**CHAPTER 5
PRESCRIPTIVE COMPLIANCE METHOD**

**SECTION 503
ALTERATIONS**

503.1 General. Except as provided by Section 302.4, 302.5 or this section, alterations to any building or structure shall comply with the requirements of the International Building Code for new construction. Alterations shall be such that the existing building or structure is not less conforming with the provisions of the International Building Code

than the existing building or structure was prior to the alteration.

Exceptions:

1. An existing stairway shall not be required to comply with the requirements of Section 1011 of the International Building Code where the existing space and construction does not allow a reduction in pitch or slope.
2. Handrails otherwise required to comply with Section 1011.11 of the International Building Code shall not be required to comply with the requirements of Section 1014.6 if the International Building Code regarding full extension of the handrail where such extensions would be hazardous because of plan configuration.
3. Where provided in below-grade transportation stations, existing and new escalators shall have a clear width of less than 32 inches (815 mm).

[HCD 1] 503.1.1 Materials. Local ordinances or regulations shall permit the replacement, retention and extension of original materials, and the use of original methods of construction, for any building or accessory structure, provided such building or structure complied with the building code provisions in effect at the time of original construction and the building or accessory structure does not become or continue to be a substandard building. For additional information, see Health and Safety Code Sections 17912, 17920.3, 17922(d), 17922.3, 17958.8 and 17958.9.

Rationale for change: This change is so that HCD's amendments are consistent with Health and Safety Code Section 17958.8, which permits in-kind work and extension of materials for structures that complied with the building codes at the time of original construction provided that the building or structure does not become or continue to be a substandard building. This change brings the 2019 CEBC back into alignment with the 2016 CEBC.

NOTE:

Authority Cited: Health and Safety Code Sections 17040, 17050, 17920.9, 17921, 17921.5, 17921.6, 17921.10, 17922, 17922.6, 17922.12, 17922.14, 17926, 17927, 17928, 18300, 18552, 18554, 18620, 18630, 18640, 18670, 18690, 18691, 18865, 18871.3, 18871.4, 18873, 18873.1 through 18873.5, 18938.3, 18944.11, and 19990; and Government Code Section 12955.1.

Reference: Health and Safety Code Sections 17000 through 17062.5, 17910 through 17995.5, 18200 through 18700, 18860 through 18874, and 19960 through 19997; Civil Code Sections 1101.4, and 1101.5, and 1954.201; and Government Code Sections 12955.1 and 12955.1.1.