Dear Members of the CA Building Standards Commission:

Please accept the following comments for your review of the Division of the State Architect's proposed access standard changes to CA Title 24 for your consideration during the 45-day comment period ending Monday, October 22, 2018. As I have had problems with the corner wheelchair ramps and have been hit by drivers of motor vehicles and bicyclists many times over the last 28 years. I also cannot use the showers that you have proposed in any of the hotels I have stayed in. Most of the hotels I use have to style of showers and mentioned in the ADA making them fully accessible to me. Thank you. I have been using a wheelchair since 1982 at the age of 37 due to Post Polio Syndrome. Your suggestions for new regulations will not work for me. I am surprised that you have come up with such ridiculous suggestions and I am contacting many of the attorneys working for the disability community on these new changes. Please listen to a person who has had over 36 years of experience.

PREFACE NOTE: Before I begin my comments, I would like to bring your attention to the position that DSA has taken regarding violations of Government Code 4459. DSA attorney Kevin Dollison during a March meeting of DSA's Access Code Collaborative made several unsubstantiated statements that the ADA is the fundamental law guiding DSA and that state laws need not adhered to as long as the ADA standard is met. These statements will be challenged at the next Commission meeting. I ask that you hold any judgement of my comments regarding conflicts of the proposed standards with Government Code 4459 until these legal controversies have been reviewed and resolved. This may entail disapproving or at the least sending back some of DSA's proposed code changes for "Further study."

Item 11B.02.

11B-206.2.19. Restoring the Scoping Requirement for Curb Ramps.

Position: Approve as amended.

Rationale: The deletion of the requirement for curb ramps was approved by the Commission in 2013. This code change will restore the requirement and bring CA Title 24 Building Code into compliance with state and Federal laws.

Proposed Amendment: An amendment to the propose code change is needed in order to insure that persons with visual impairments and who use wheelchairs are not endangered by being led by diagonal curb ramps into traffic. Persons with mobility impairments who need curb ramps must not be endangered by not having an answering curb ramp across the street. Curb ramps must be required on both sides of the street. We submit the proposed wording: (Begin underline new text)

A curb ramp or blended transition shall be provided wherever the pedestrian access route crosses a sidewalk/street transition, including intersections, mid-block crosswalks, medians and islands traversed by crosswalks, alleys, accessible parking aisles, passenger loading zones, and locations where the public sidewalk ends and pedestrian travel continues in the roadway. EXCEPTION: A curb ramp or blended transition is not required where the pedestrian access route crosses a driveway and the elevation of the pedestrian access route is maintained.

Curb ramps or blended transitions shall be constructed at each corner of street intersections and where a pedestrian way crosses a curb. Built-up curb ramps shall be located so that they do not project into vehicular traffic lanes. The preferred and recommended location for curb ramps or blended transitions is in the center of the crosswalk of each pedestrian access route. Curb ramps or blended transitions must be provided on each side of the street in order to provide directionality. Curb ramps or blended transitions must not be placed outside of the pedestrian access route, which would require the pedestrian to travel in the street to access the opposite corner curb ramp or blended transition where there is no marked pedestrian access route. (End underline.)

BSC Criteria: This code change with the amendment is in compliance with the Nine Point Criteria of the BSC, specifically Criteria 3 in that "the public interest requires the adoption of the building standard." It does not conflict with CA GC 4459 in that it provides greater safety and is not an enhancement of access that is not already provided, that is, access between the street level and the sidewalk.

Item 11B.03

11B-207.1. Eliminating an accessible exit from existing buildings.

Position: Disapprove..

Rationale: This proposed code change is in violation of GC 4459. DSA bases this change upon a model code section. The model code, written by a private organization cannot take precedence over state law. In addition, this change endangers people with disabilities in times of emergencies and puts them at risk of losing their lives. Although existing buildings do not require architectural egress, a programmatic evacuation plan is required by the ADA. Adopting the proposed language without modification would expose businesses to tremendous liability.

BSC Criteria: This code change proposal is in conflict with Criteria 2 in that the proposed building standard is NOT within the parameters established by enabling legislation, and is, in fact in violation of enabling legislation, CA Government Code 4459. It conflicts with Criteria 3 because the public interest is not protected by the

adoption of the building code change proposal. The proposed building standard is in conflict with Criteria 4 because it is unreasonable, arbitrary, unfair, or capricious, in whole or in part as it unreasonably endangers members of the public; arbitrarily gives the model code precedence over state law, i.e. CA GC 4459 and others; unfairly puts people with disabilities at greater risks than others during emergencies; and is a capricious response to input from the public without due consideration given to the welfare and safety of people with disabilities.

Item 11B.04

Eliminating the requirement for roll-in showers in hotels with one guest room. Current code requires that hotels with 1 to 25 guest rooms provide a minimum of one roll-in shower, meaning that if the hotel has one guest room, it must provide a roll-in shower in that guest room. The proposed code change allows hotels with one guest room to provide a tub or a 36 x 36 inch shower, called the “transfer type shower compartment.”

Position: Disapprove

Rationale: In his Statement of Reasons, the state architect states, "CBSC-CAC Action: Further study.. DSA Response to CAC: Accepted. DSA has studied this item and has determined that no additional amendment to the table is necessary. DSA is aware that transient lodging facilities where only one guest room is provided are not the norm. The amendment to the table for requirements addressing facilities with one guestroom is in alignment with the table in the 2010 ADA Standards for Accessible Design.

The state architect is operating under the assumption that CA access standards must conform with the lesser requirements of the ADA where the CA standard provides greater accessibility. 42 USC 12201 which states **“*Nothing in the Act shall...invalidate or limit the remedies, rights, and procedures of any ...State...that provides greater or equal protection...*”**

Research is needed to demonstrate that a 36" x 36" shower compartment provides more access than or is equal to a 30" x 60" shower or a 36 by 60 shower compartment. A study that includes many people in wheelchairs is necessary to demonstrate that allowing more applications of the transfer type of shower stall will provide equal accommodation to what is required in current code to determine if the proposed change does not violate GC 4459.

BSC Criteria: This code change proposal is in conflict with Criteria 2 in that the proposed building standard is NOT within the parameters established by enabling legislation, and is, in fact in violation of enabling legislation, CA Government Code 4459. It conflicts with Criteria 3 because the public interest is not protected by the adoption of the building code change proposal. The proposed building standard is in

conflict with Criteria 4 because it is unreasonable, arbitrary, unfair, or capricious, in whole or in part as it unreasonably discriminates against a minority group of the public; arbitrarily gives the model code precedence over state law, i.e. CA GC 4459 and others; unfairly puts people with disabilities at greater risks due to inadequate bathing facilities; and is a capricious response to input from the public without due consideration given to the welfare and safety of people with disabilities. Further, this proposed change violates Criteria 7 in that it is contrary to the ADA, specifically, 42 USC 12201 which states**"*Nothing in the Act shall...invalidate or limit the remedies, rights, and procedures of any ...State...that provides greater or equal protection...*"**

Item 11B.12

202, 11B-249, 11B-813 Adult Changing Tables.

Position: Approve.

Rationale: This code change provides much-needed access for persons with disabilities. It is not in conflict with CA GC 4459 in that it does not enhance access, but meets enabling legislation and regulation requirements to provide access to toileting facilities for persons with disabilities.

BSC Criteria: This proposed code change meets the Commission's criteria.

Item 11B.17, Item 11B.18, Item 11B.19

11B-608.2.1, 11B.608.3, 11B. 608.4, Dimensions for transfer type showers, plus other requirements for the 36 x 36-inch transfer type shower.

Position: Disapprove.

Rationale: In his Statement of Reasons, The state architect states, "DSA is proposing this code change in response to users of mobility devices who prefer this type of shower stall. By not allowing the use of a transfer shower, in facilities regulated by Chapter 11B, persons with disabilities are denied an option that may better meet their needs"

He has taken this position without any study of the broad spectrum of disability needs. Relying solely on the word of a few wheelchair users, without conducting any formal study, the state architect is providing dimensions and requirements for the "Transfer Type Shower Compartments, in violation of CA GC 4459 and the ADA. This type of so-called accessible shower is only 36 inches by 36 inches. The Initial Statement of Reasons states, "DSA is proposing this code change in response to users of mobility devices who prefer this type of shower stall. By not allowing the use of a transfer shower, in facilities regulated by Chapter 11B, persons with disabilities are denied an option that may better meet their needs. The transfer type shower stall allows

for the mobility device to be placed outside of the wet area while using the shower compartment and provides for controls that are within reach range when seated. This amendment, if approved, will align the provisions for a transfer type shower compartment in Chapter 11B with the 2010 ADAS."

No research was done to verify that a 36 x 36-inch shower provides the same access as a roll-in shower that is 36 x 60 or 30 x 60 inches. In addition, the Statement of Reasons is totally misleading, as controls must be placed within reach range in the roll-in shower also, and there is sufficient room in roll-in showers to push the "mobility devise" out of range of the “wet area.”

BSC Criteria: This code change proposal is in conflict with Criteria 2 in that the proposed building standard is NOT within the parameters established by enabling legislation, and is, in fact in violation of enabling legislation, CA Government Code 4459. It conflicts with Criteria 3 because the public interest is not protected by the adoption of the building code change proposal. The proposed building standard is in conflict with Criteria 4 because it is unreasonable, arbitrary, unfair, or capricious, in whole or in part as it unreasonably discriminates against a minority group of the public; arbitrarily gives the model code precedence over state law, i.e. CA GC 4459 and others; unfairly puts people with disabilities at greater risks due to inadequate bathing facilities; and is a capricious response to singular input from the public without due consideration given to the welfare and safety of people with disabilities. Further, these proposed changes are in conflict with Criteria 7 in that it is contrary to the ADA, specifically, 42 USC12201 which states **“*Nothing in the Act shall...invalidate or limited the remedies, rights, and procedures of any ...State...that provides greater or equal protection...*”**

Item 11B.20

11B.609.5. Control standards for the Transfer Type Shower that is only 36 inches by 36 inches are placed opposite the seat require the user to lean forward to operate the controls. Those with spinal cord disabilities and others typically have balance limitations.

Position: Disapprove.

Rationale: This code change will create an unsafe condition. In addition, a standard that the maximum force of 5 lbs. is required to operate the water control is not provided. However, The state architect is providing these requirements for “Transfer Type Shower Compartments in violation of CA GC 4459 and the ADA. In addition, no research has been done to determine the usability of this small shower and the dimensions are far smaller than what has always been required in CA for “users of mobility devices.”

BSC Criteria: This code change proposal is in conflict with Criteria 2 in that the proposed building standard is NOT within the parameters established by enabling legislation, and is, in fact in violation of enabling legislation, CA Government Code 4459. It conflicts with Criteria 3 because the public interest is not protected by the adoption of the building code change proposal. The proposed building standard is in conflict with Criteria 4 because it is unreasonable, arbitrary, unfair, or capricious, in whole or in part as it unreasonably discriminates against a minority group of the public; arbitrarily gives the model code precedence over state law, i.e. CA GC 4459 and others; unfairly puts people with disabilities at greater risks due to inadequate bathing facilities; and is a capricious response to singular input from the public without due consideration given to the welfare and safety of people with disabilities. Further, this proposed change conflicts with Criteria 7 in that it is contrary to the ADA, specifically, 42 USC 12201 which states **"Nothing in the Act shall...invalidate or limit the remedies, rights, and procedures of any ...State...that provides greater or equal protection..."**

Item 11B.21, Item 11B.22

28. 608.7, Shower Thresholds; 11B-610.3 Shower compartment seats.

Position: Disapprove.

Rationale: A two-inch high threshold discriminates against many users of wheelchairs. However, The state architect is providing dimensions for "Transfer Type Shower Compartments in violation of CA GC 4459 and the ADA. In addition, no research has been done to determine the usability of this small shower and the dimensions are far smaller than what has always been required in CA for "users of mobility devices."

BSC Criteria. This code change proposal is in conflict with Criteria 2 in that the proposed building standard is NOT within the parameters established by enabling legislation, and is, in fact in violation of enabling legislation, CA Government Code 4459. It conflicts with Criteria 3 because the public interest is not protected by the adoption of the building code change proposal. The proposed building standard is in conflict with Criteria 4 because it is unreasonable, arbitrary, unfair, or capricious, in whole or in part as it unreasonably discriminates against a minority group of the public; arbitrarily gives the model code precedence over state law, i.e. CA GC 4459 and others; unfairly puts people with disabilities at greater risks due to inadequate bathing facilities; and is a capricious response to singular input from the public without due consideration given to the welfare and safety of people with disabilities. Further, this proposed change conflicts with Criteria 7 in that it is contrary to the ADA, specifically, 42 USC 12201 which states **"*Nothing in the Act shall...invalidate or limit the remedies,***

***rights, and procedures of any ...State...that provides greater or equal protection...*”**

Thank you for your consideration.

Sincerely,

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