BUILDING STANDARDS COMMISSION

MEETING MINUTES
October 17, 2017

1. CALL TO ORDER

Chair Batjer called the meeting to order at approximately 10:08 a.m., 400 R Street, First Floor Hearing Room, California Victim Compensation Board, Sacramento, California.

ROLL CALL:

Commissioners Present:	Secretary Marybel Batjer, Chair Steven Winkel, Vice Chair Larry Booth Elley Klausbruckner Kent Sasaki Rajesh Patel Peter Santillan Juvilyn Alegre Erick Mikiten
Commissioners Absent:	James Barthman

Commissioner Alegre led the Commission in the Pledge of Allegiance.

Chair Batjer commented on the very difficult period California has faced in the last few weeks. She stated of the 22,000 concert goers in Las Vegas, half were Californians and of those who were tragically shot and lost their lives, half were Californians. Thereafter, Sonoma, Napa and Mendocino counties caught on fire as well as tragic fires in the southern part of the state. Having spent much time at the Office of Emergency Services, she stated she was very proud of all the first responders, her fellow cabinet members, and Californians, who have come together and volunteered. It has been such a terrible tragedy for those who have lost their homes, their jobs, their livelihoods, and their families in some situations. The fires seem to be under more control however, there is much to do to recover. She requested a moment of silence for contemplation for our fellow Californians.

Chair Batjer read the meeting teleconference instructions to the public. She made some agenda changes regarding agenda items seven and eight.

2. REVIEW AND APPROVAL OF AUGUST 14 AND 15, 2017 MEETING MINUTES

Questions or Comments from the Commissioners:

No questions or comments from the Commissioners.

MOTION: Chair Batjer entertained a motion to consider approving the meeting minutes from August 14 and 15, 2017. Commissioner Booth made a motion to approve, and it was seconded by Commissioner Santillan.

Commissioner Mikiten requested that the two different dates be voted on separately.

MOTION: Chair Batjer entertained a motion to consider approving the meeting minutes from August 14, 2017. Commissioner Booth made a motion to approve, and it was seconded by Commissioner Santillan. The vote was unanimous to accept the motion with the exception of an abstention from Commissioner Mikiten.

MOTION: Chair Batjer entertained a motion to consider approving the meeting minutes from August 15, 2017. Commissioner Mikiten made a motion to approve, and it was seconded by Commissioner Klausbruckner. The vote was unanimous to accept the motion.

3. COMMENTS FROM THE PUBLIC ON ISSUES NOT ON THIS AGENDA

Chair Batjer stated comments from the public on issues not on this agenda may be briefly discussed, but no action may be taken by the Commission.

HolLynn D'Lil commented that there are no further speakers for item 7, so there is no need to switch today's agenda.

She stated she has been asked to speak on behalf of the following members of the disability community and supporters, who request their names be read into the record (see Appendix 1).

Chair Batjer requested a list of the names Ms. D'Lil just read into the record. Ms. D'Lil agreed to provide a copy to all the commissioners.

Ms. D'Lil stated she will present a petition regarding some concerns about the decision-making of the Commission since Chet Widom became the State Architect. She stated the one basic area of confusion on the Commission's part is a misinterpretation of a phrase in Government Code 4450. The petition calls for this question to be taken to the Attorney General's Office for clarification. She provided a handout that lists the following three major decreases in access the disability community has experienced since 2012, which have been decisions made by the Commission: (see Appendix 2).

Chair Batjer asked Ms. D'Lil if she could bring her comments to a close because of other public speakers wanting to speak.

Connie Arnold stated she would yield her time to Ms. D'Lil.

Ms. D'Lil thanked Ms. Arnold. She discussed legislative intent. She requested, pursuant to the petition, the Commission undertake this task immediately in order to stop the continuing destruction of access rights in California and to begin to take immediate action to readdress and restore the access rights that have been decreased. She stated if the Commission takes the position stated in Mia Marvell's letter of March 7, 2017, that "BSC has no jurisdiction over access regulations," then they must ask the Commission to ask the AG's office to determine the extent of jurisdiction that the Commission has over access regulations, given that such regulations must be adopted by the Commission before they can take effect.

Chair Batjer stated the Commission will accept and act upon the petition. This was a non-agendized item, so the commissioners did not take action at this time.

Ms. D'Lil asked if this issue can be placed as a future agenda item.

Mia Marvelli stated generally the petition will go to BSC, and they will make a determination as to which state agency the petition is applicable to. There are regulations in the California Administrative Code that are followed. There will be a response letter to the petitioner advising them of the status. She stated this body does not hear and take action on petitions in that form. The entire request will be reviewed, and a determination will be made as to what process needs to be followed.

Ms. D'Lil stated she might have used incorrect terminology, so she reiterated that they are requesting the Commission to clarify with the Attorney General's Office the decisions being made based upon what they believe to be an erroneous interpretation of the code.

Ms. Marvelli confirmed that BSC will take what has been presented, get their legal team involved to determine the course of action, and then respond accordingly. This may not follow the formal petition process, as that is a term that is used for a special process. She stated she is glad that Ms. D'Lil clarified.

Jedd de Lucia, Principal Consultant at The Shalleck Collaborative in Berkeley, stated he believes there is some discrepancy in the code and requested clarity. In CBC, Chapter 10, Section 1029.9.5, it permits dead-end aisles up to 20 feet in length. Exception No. 1 prohibits dead-end aisles beyond 20 feet Exception 2 allows dead-end aisles beyond 16 rows provided additional egress space is provided. There is a gap in between those two numbers, 16 and 20. He stated it seemed unlikely to him that the code intended for that gap and intended for there to be dead-end aisles allowed for under 20 feet as well as beyond 16 rows, so he wanted clarity on that issue and to know if the language update was changed in one exception and not the other. The 16-row exception was added in between 2013 to the current 2016, and previous to that Exception 2 had said 20 feet as well as Exception 1. Exception 2 language comes from ICC 300, which is the bleacher code. He asked what the correct venue was for getting that clarified or changed, whether it should be on this code cycle or the next.

Ms. Marvelli advised him that this is a question that can be asked of BSC staff and gave him the phone number for the main office. She stated they can do a little research as to when the code was changed. She stated they might be short on staffing at the present moment due to staff attending the commission meeting, so she suggested emailing his question or calling and waiting for a return call within the next couple of days.

Mr. de Lucia wanted clarification whether the code could be clarified in this cycle.

Ms. Marvelli said they would have to do some research, but another cycle is starting in the next couple of months. She stated depending on the confusion, it is possible it could be changed in the next cycle.

4. EXECUTIVE DIRECTOR REPORT

Chair Batjer stated Mia Marvelli, CBSC Executive Director, will provide an overview of the Commission's business.

Ms. Marvelli stated staff is currently finishing the intervening cycle. Work has begun on coordinating and working with the various state agencies on sending the blue supplement proofs to the publisher toward the end of the year, and the commissioners

will receive those January 1st. That supplemental information will be effective July 1, 2018. She thanked their publishing partners, who assist staff in working with short timelines to turn these corrections around. She stated they are preparing for the 2018 cycle, and one of the things they do before each cycle is have a rulemaking training specific for the process. The proposing and adopting agencies are invited to attend that one-day training. The training topics include the specifics of the building standards law, the requirements for submitting rulemakings and the entire process. It is beneficial because it finds checks and balances for the process; corrections are made; there becomes some familiarity with the stakeholders of the state agencies who submit the rulemakings and it also assists with consistency with the rulemaking packages being submitted.

Ms. Marvelli stated that they will be conducting a coordinating council meeting mid-November, and they are currently working on the agenda. The purpose of the meeting is to get the lead people at the state agencies together to discuss proposed code changes for the next cycle. It is normally a high-level discussion, but if there is anything notable that is coming out, that is the time it is discussed.

Additionally, they have been working with the model code publishers to receive the '18 model codes. The '17 Electrical Code is already out for revision. The I-Codes came in in September, and those were distributed to the state agencies. The Uniform Mechanical Code and Uniform Plumbing Code will be received later this year and will be distributed to the state agencies so the rulemaking process can begin. She stated the cycle timeline is on their website for the '18 cycle that will develop the '19 codes. Commissioners will be receiving large rulemaking packages in December of 2018 where they will be taking action on the '19 codes. There will be a couple of meetings probably December and January of 2019.

She discussed some admin staff changes as follows: Pam will be fully supporting the Commission now in her new position, and that allowed for the hiring of Barbara, an office technician position. Cynthia Biedermann has left, and Laura will be overseeing the 1473 fund process and education and outreach process and Leann returned. She wanted to thank Katrina Benny, Staff Services Manager, for her work in overseeing the admin staff and her efforts with the staffing of personnel.

She stated BSC will be monitoring several state agencies due to current rulemakings, such as the Air Resources Board, the Energy Commission, and CalRecycle for CALGreen standards. Those agencies have authority to develop Regs and policies to reduce Greenhouse gas, and that often flows into the CALGreen code. BSC will also be monitoring the Department of Water Resources' rulemakings for Model Water

Efficient Landscape Ordinance (MWELO), which they have pointers in the CALGreen code. They will also be monitoring State Resources Water Control Board regarding the recycled water quality and rulemakings that they will be conducting. She stated they will be busy in the next year possibly helping out with neighboring local jurisdictions and sending them information.

Questions or Comments from the Commissioners:

Chair Batjer thanked the following administrative staff for their great work: Pam, Laura, Barbara, Lee Ann, Katrina, and Alex. She asked for confirmation on the number of staff.

Ms. Marvelli stated there are 13.5 people on staff.

(A short recess was taken.)

5. EXTERIOR ELEVATED ELEMENTS

Chair Batjer stated the CBSC Exterior Elevated Elements (EEE) Ad Hoc Subcommittee may make recommendations to the appropriate state agency or agencies for development of proposed building standards for exterior elevated elements. The subcommittee is comprised of Commissioner Kent Sasaki and Vice Chair Steven Winkel. The purpose of this subcommittee is to review reports and other information regarding the balcony failures similar to the failure that tragically occurred in Berkeley in June of 2015. Based on the information gathered and reviewed, the subcommittee may make regulatory or statutory recommendations to the Commission and/or state agencies that have authority to amend the California Building Standards Code. She stated she will defer to the subcommittee members for their report. The Commission will not take action at this time.

Commissioner Sasaki provided a report to the Commission and to the state agencies. He stated the Library Gardens balcony collapse in Berkeley occurred on June 16, 2015, killing six and severely injuring seven people. Shortly afterwards, the city of Berkeley passed code changes and implemented an inspection program for existing exterior elevated balconies, decks, landings, stairways, walkways, and handrails, termed as exterior elevated elements or E3s. In the months after the collapse, the CBSC received and reviewed documents commenting on changes to current regulations to prevent future E3 failures. To study the need for code changes, an E3 subcommittee of the Commission was formed at the April 19, 2016 commission meeting. At the January 27, 2017 commission meeting, the Commission approved emergency regulations for E3s,

which were largely based on the draft amendments in the 2018 IBC and IEBC. On May 25, 2017, the subcommittee met to solicit E3 technical information from state agencies and industry representatives and experts. Currently three state agencies, BSC, HCD, and DSA, are engaged in certified rulemaking to make permanent the E3 emergency amendments previously approved by this Commission. The three rulemakings are out for a 45-day comment period, which ends October 23rd. The state agencies are allowed, by law, to make nonsubstantive and sufficiently related changes to the emergency regulations based on any comments received. He advised if anyone has any questions regarding the certifying rulemaking process, to please speak with BSC staff. So that the emergency rulemaking amendments do not expire before the certified rulemaking is complete, the emergency amendments need to be readopted at this commission meeting. As a reminder, the emergency amendments previously adopted apply to residential occupancies, including factory-built housing, hotels, motels and apartment buildings, as well as state buildings and public schools. The emergency amendments do not apply to the California Residential Code (CRC), which applies to one- and two-family dwellings and townhouses. The emergency regulations require details of the impervious moisture barrier system protecting the structural framing be shown on the construction documents, inspection of the impervious barrier system during construction, an increase in live loads for balconies or decks, positive sloping of waterproofing to reduce water retention, and ventilation of the soffit of enclosed E3s. The emergency amendments also reinstate a maintenance provision allowing local jurisdictions to reinspect buildings if deemed necessary.

The subcommittee believes that the current emergency regulations will help to reduce future E3 failures in new construction; however, the subcommittee's charge was to evaluate whether other or additional amendments should be recommended to state agencies. This subcommittee has met three times over the past year to review building code regulations reports, including the Library Gardens' collapse and technical and statistical data regarding exterior elevated elements to determine if regulatory changes are warranted. The subcommittee has reviewed the city of Berkeley's code changes and inspection programs for existing E3s. Through their inspection program, which has been in place over two years, Berkeley has amassed data about the pervasiveness of deterioration of existing E3s. 402 (19%) of the 2,176 properties inspected as of January 20, 2016 required repair. These figures show that the deterioration of E3s is a significant problem. It also shows that a post-occupancy inspection program is critical to reduce the risk of failure of existing E3s.

He stated that over the past several months, documents have been received and reviewed from constituencies expressing what they feel might be an effective means of reduction in failures for either open or enclosed elevated elements, including (1)

suggested detailing for weatherization for architectural elements, a Journal article by J. Lstiburek, who is an ASHRAE fellow (2) American Wood Council's submitted proposals to the International Code Council to amend the IBC and IEBC, many of which were accepted for publication in the 2018 editions (3) ABM Industries' discussion of waterproofing and substrate selection and approaches with the recommendation that waterproofing membranes not be directly installed over plywood sheathing (4) LifePaint's discussion of proper installation of materials, adequacy of code provisions, manufacturer's support and substrate selection (5) a discussion of proper design, construction, oversight, and inspection by Koppers, in addition to recommended definitions, standardization, and requirements for naturally durable and preservative treated wood support structures due to evolving properties of those materials (6) a Journal article submitted by Deck Experts covering best practices for the design profession and construction industry (7) CALBO's terminology and definitions to address proper scoping of the new regulation provisions and (8) the El Dorado County Building Department's recommendations that all E3 wood structural members be preservative treated.

Based on their review, the subcommittee has the following eight recommendations for state agencies: (1) E3 emergency regulations require the installation of ventilation openings at enclosed exterior balconies for elevated walking surfaces; however, these ventilation openings may be in conflict with the required fire resistant rated construction for those elements. To address that conflict, they recommend that the State Fire Marshal consider developing amendments that allow ventilation openings required by the emergency regulations. This may include adding an exemption in CBC Section 1406.3, balconies and similar projections, which requires those elements to have the same fire resistant ratings as the floor construction. For example, a one-hour fire resistant rating required for balconies and wood frame or type 5 construction (2) E3 emergency regulations use the term "balcony and elevated walking surfaces," yet do not provide definitions for those terms. For example, what constitutes an elevated surface? The subcommittee recommends that the state agencies consider providing definitions for those terms. They recommend that the definition for "elevated walking surfaces" include elevated decks, walkways, stairs, and landings (3) E3 emergency regulations use the term "balcony and elevated walking surfaces," yet the emergency regulation in the minimum uniform distributed live load table, 1607.1, refers to "balconies and decks." They recommend that the state agencies change the word "deck" in the table to "elevated walking surfaces." This is a substantial change since it would be applicable to elevated walkways, stairs, landings, as well as decks (4) alternatively, the state agencies could define a new term, which would be exterior elevated elements, which would include elevated balconies, decks, walkways, stairs, and landings (5) E3 emergency regulations do not apply to the California Residential Code which contains

the regulations for one- and two-family dwellings or townhouses. Since these structures are often built with E3s, we recommend HCD include E3 regulations into the CRC (6) since a key aspect to inspection of existing E3s is the ability to readily inspect the framing, they recommend that state agencies consider requiring access panels for enclosed E3s for periodic post-inspection or periodic post-occupancy inspections. Removable vents could be used on both access panel and access ventilation openings. The city of Berkeley currently requires access panels in their E3 regulations. Similar to the ventilation requirement, they recommend that the State Fire Marshal consider developing amendments that allow access panels required by E3 amendments (7) since impervious moisture barriers installed over E3s can deteriorate and leak damaging the sheathing and the framing, they recommend the state agencies consider requiring E3s supporting moisture permeable floors or roofs to be constructed of naturally durable preservative treated or corrosion resistant steel or similar approved materials. Current regulations waive that requirement if an impervious moisture barrier is installed. The City of Berkeley has this type of requirement in their E3 regulations. Since the definitions of naturally durable and preservative treated wood are old definitions that may not apply to currently available material and may allow installation of materials that are not durable in a moist environment, they recommend that the state agencies consider updating definitions for those two terms. They also recommend that state agencies research the performance of oriented strand board (OSB) in moist conditions and, if its performance is poor, consider prohibiting its use in E3s (8) periodic post-occupancy inspections are critical to preventing the failure of existing E3s. They recommend that state agencies encourage local jurisdictions to implement a periodic post-occupancy inspection program for E3s.

He stated it should be stressed that it is the state agencies that develop amendments to the code, not this commission or the subcommittee. Any amendments that arise out of their recommendations would have to go through the standard rulemaking process.

Vice Chair Winkel stated Commissioner Sasaki hit on all the high points of their discussions over the last year and a half, but he wanted to reiterate on a couple of things. He stated that the state agencies need to work together to reconcile the requirements for life safety in terms of E3s and fire safety in terms of the inspection elements or ventilation that would be required are in, at the moment, direct conflict with each other in type 5A, one-hour construction or any one-hour protection. There are starting to be elements that come from urban wildland interface materials, where you have vents which are designed to close in a fire so that there is now starting to be ways to make those two mutually conflicting requirements compatible.

He stated the other reiteration he wanted to make is if the agencies need to strengthen inspection requirements during construction, to make sure the inspections happen, because part of the issue with E3s is there are places where an incredible number of systems collide with each other: structure, waterproofing, walking surfaces, seals of doors that take you out on the deck, waterproofing materials around the door, intersections in stucco and exterior finishes particularly at the base where the E3 meets the wall. You have all these trades coming in at different times and can be fairly negligent of each other's work. That needs to be paid attention to and needs to be done in a way that is mandatory and also does not become an unfunded mandate either for the designer, the jurisdiction, or the contractor. He stated we also need to make sure that there is post-construction inspection, and that needs to be strengthened. He stated he would encourage, if necessary, the legislature to get involved and ensure that they, if need be, enlarge the jurisdiction of the appropriate agencies to develop the regulations, and what he would discourage the legislature from doing is writing detailed technical requirements into the law. Basically what they should do is find out which agencies should be enabled to develop the proper regulations, and then make whatever legislative changes are necessary to enable those agencies to make those changes.

Questions or Comments from the Commissioners:

Commissioner Patel commented regarding periodic post-inspections. He stated currently the responsibility for multi-family building inspections at the local level is broken up between either county or city fire, which looks at smoke alarms and exiting to make sure that it is appropriate; the Health Department, which may look at mold and other substandard housing issues; local code enforcement, or some cities have their own housing departments that do the same for substandard state law housing violations; and building and code enforcement departments that regulate some of the newer construction that gets built.

He reminded everyone that post-inspections require creation of a new program to identify buildings in your jurisdiction that have E3s. It would also require mailing notices and an entire tracking system to be able to ensure compliance. Since they are concerned about unfunded state mandates, he appreciated the comment from Vice Chair Winkel. Even though at times the legislature adds the ability to put fees in place that often happens after the program has been created, and so these agencies have to bear the burden of that fund. He stated since the Berkeley tragedy, he is aware that local jurisdictions have committed themselves to the enforcement of the new provisions as adopted by this Commission related to new construction and have done a lot for the educational outreach to make sure that builders are aware of the problems with these sorts of balconies and decks and that they do the appropriate weatherproofing to ensure

that they are safe. He stated he appreciates comments from this Commission about leaving the enforcement to local control; and that the city of Berkeley has shown that, when given the opportunity, local jurisdictions can develop a program that works and is the most appropriate for their jurisdiction.

Questions or Comments from the Public:

Robert Wangel, Assistant General Counsel for Koppers Performance Chemicals, stated Koppers is the world's largest chemical manufacturer for wood preserving chemicals for docks, decks, and etcetera. He stated he previously submitted materials to the State Architect and several others. His purpose for attending today was to reiterate a couple of things. He stated the eight items listed today is a good start in the right direction, but there are a few things that are worthy of being kept in the forefront of people's minds. A tragedy such as Berkeley will occur again based on the existing emergency legislation unless some drastic changes are made. He stated water cannot be controlled from coming into a structure; it can only be managed. The two main recommendations to help solve the problem were to increase ventilation and increase the live loads; yet neither of those have any impact on preventing future deaths. If you increase ventilation and allow untreated wood to get wet, you may lengthen the time frame for the degradation to the point of failure, but you're only talking about days, weeks, possibly months. He stated he does not believe that is the intent of the Building Standards Commission nor the International Code Council and that a much deeper look into what the causations and the problems are needs to be taken. He stated we sometimes have to look at the realities and how do we prevent another death and then move forward, not how do we play this to avoid responsibilities.

He stated how we define an EEE or a balcony has no impact on the effect of preventing another tragedy, for example, changing the word "deck" to "elevated walking surface." The fact that the EEEs do not apply to one- and two-family dwelling codes is very important. He stated as a member he is working with the ICC and trying to improve upon the 2021 code, now that the 2018 code is out, to make changes that don't necessarily rely only on an industry standard, such as the American Wood-Preservers' Association (AWPA), but rely on sound architecture and engineering. He stated the issue of naturally durable or preservative treated wood is a very important subject, and he has resubmitted information to BSC as part of the public comment. He suggested the Commission take a very serious look at what is determined to be durable species. What was once durable species was cut from old growth forests where you had cedar and redwood with the tannins that were developed over dozens or hundreds of years. Those products are highly durable from rot decay and insect attack. These days, the majority of naturally durable species are naturally durable to either rot and decay or

insects, but not both. For years it has been recommended that AWPA take a look at standardizing what is determined to be naturally durable material. He recommended that the Commission take a look at the 2016 AWPA's use categories, which are included in his submitted materials. That has had a drastic change in 2016 requiring the majority of above-ground wood products used to be treated to a ground contact condition. They have also suggested AWPA change the word ground contact to a general use category because treated wood is not like it once was. He suggested taking a look at intervals and the quality of on-site inspections. He commented that had there been proper inspections of the units in Berkeley and post-inspections, this tragedy could have been prevented. Regarding unfunded requirements and unfunded legislation and mandates, he suggested the burden be put on the real estate or property owners, and that they be required to do post-inspections. He offered to work with the State Architect, the state engineers, or the legislative body to add his input towards getting laws and regulations moving forward.

Michael Quiroz, representing Third Wave Construction, stated he has previously acted as a source for a local Southern California newspaper when the Berkeley tragedy occurred. He gave an overview of his background. He agreed with the comments made by Mr. Wangel. He added that when you have a penetration in any exterior membrane, you have to consider the potential of where water may migrate or potentially having an effect. He suggested using the word penetration in addition to projection. He mentioned as far as post-construction inspection, there was an enforcement conflict between the housing authority and the local authority having jurisdiction. He suggested, as a possible solution, the commissioning of a third party entity that would be able to provide and enact post-construction and post-occupancy. He commented regarding vent screeds and allowing moisture. He stated proximity to the ocean and high salinity content areas have a deleterious effect on different types of wood and steel support structures. He stated as far as vent screeds, urban wildland interface areas that may have these projections are areas that would be of great concern and should be looked at by the State Fire Marshal's Office, including the local fire authorities.

Stoyan Bumbalov, representing Housing and Community Development (HCD), requested clarification from Commissioner Sasaki whether the state agencies are being asked to work on these proposed recommendations during the current triennial cycle.

Ms. Marvelli stated workshops will be starting in the near future for the pre-cycle activities, so there is a possibility that these could be looked at during that time. There is a report due to the legislature by January 1st, but she is not certain whether that has to be the catalyst for anything. She stated today's testimony will assist with planning what can be coordinated in this cycle versus the intervening cycle. The current

emergency building standards will stay in effect through the end of 2017. She stated the state agencies can discuss at coordinating council.

Stoyan Bumbalov clarified his question was mostly related to the emergency certification and whether the state agencies work on these proposals during the triennial, which is not during the certifications.

Ms. Marvelli asked whether he meant separation of what can be handled in the certified rulemaking now versus the triennial..

Stoyan Bumbalov confirmed that is what he was referring to, especially because of the short time frame of 15 days.

Ms. Marvelli stated that might not be something that can be solved today, but the subcommittee may want to think about whether there are things to push during the certifying rulemaking to become part of these emergencies, for example, developing definitions and defining terms. That may take workshops and time; however, she did not want there to be a delay in the certifying rulemaking process.

Commissioner Sasaki stated what the subcommittee will do is look at their recommendations and see which ones are easier to implement, if any, and provide a list to staff and the state agencies.

Vice Chair Winkel stated the subcommittee's work has to be complete within the next two months when the report is due to the legislature. He stated his concern is that the subcommittee will take the time to try and prioritize things for some interim actions. He suggested completing the report as soon as possible and let the state agencies and the legislature move forward.

Ms. Marvelli stated what is important is the 45-day comment period for the certifying rulemaking for only the emergencies end October 23rd, so public comments need to be submitted before that time.

6. READOPTION OF EMERGENCY BUILDING STANDARDS

Chair Batjer stated there are three agencies requesting a second readoption of their exterior elevated elements emergency regulations that the Commission approved at its January 27, 2017 meeting. Pursuant to the Administrative Procedures Act, emergency regulations are effective for the 180 days. During the June 20, 2017 meeting, the Commission approved a readoption of the emergencies extending the effective date to

October 27th. This second readoption will extend the emergency regulation language an additional 90 days, to January 26, 2018, allowing the state agencies additional time to complete the certifying rulemaking process. The emergency regulatory language is not open for discussion at this meeting; however, the public comment period of certifying rulemaking process is now active. She advised anyone who would like to comment on the emergency regulations should contact the BSC staff prior to October 23, 2017.

a. Gary Fabian, Associate Architect, California Building Standards Commission, presented an overview of the readoptions for the emergency regulations from the three agencies. He stated they are not amending the language, but merely seeking time extensions in order to complete the matters of conducting the certifying rulemaking, which is designed to make permanent those provisions of the emergency. Up to two readoptions are permitted by Government Code Section 11346.1. BSC is requesting a second 90-day readoption of the emergency regulations filed as BSC EF 01/17, which amend the California Building Standards Code, Part 2, Title 24, California Code of Regulations; and the California Existing Building Standards Code, Part 10, Title 24, California Code of Regulations. The emergency regulations modified sections of these codes specific to the enhancement of design, construction, and inspection for exterior elevated elements for specified nonresidential buildings, including provisions in Chapters 1, 16, 23 of Part 2 and Chapter 1 of Part 10. The emergency regulations were partially based on an early draft edition of the 2018 International Building Code (IBC) and the International Existing Building Code (IEBC) containing provisions that were appropriate first steps. This second readoption request is being submitted to continue the emergency adoption approved January 27th by the Commission and effective upon filing with the Secretary of State on January 30th. They were originally set to expire on July 29th, and are currently set to expire October 27th under the first readoption. This action item will continue the emergency adoption until January 26, 2018. He stated BSC requests this additional adoption due to the time required to facilitate a 45-day public comment period as well as the other regulatory requirements pursuant to Government Code Sections 11346.2 through 11347.3. BSC has made substantial progress and has proceeded with diligence in pursuit of completion of the certifying rulemaking process by way of: (1) EEE subcommittee having met May 25th to allow any new information to be provided to the topic in general as assistance to BSC's knowledge in advance of certifying rulemaking (2) the Notice of Proposed Action was submitted to the Office of Administrative Law for publication in the Regulatory Notice Register notifying the public of the nature of the proposed regulations and the public comment period dates, the start of which was September 8th and the close date being October 23rd (3) BSC administers the above processes. Staff receives public comments, posts them to their website, and forwards them on to the appropriate state

agencies for consideration (4) BSC has reviewed the newly published 2018 model code language from ICC, which contains provisions similar to the emergency provisions in place, and would like to provide consistency with the model code provisions as they approach the next triennial cycle, so they are seeking to align language (5) BSC issued Information Bulletin 17-01 to the public and local jurisdictions on February 2nd explaining the details and the immediacy of the emergency standards.

He stated to complete the certifying rulemaking process, the following remains to be accomplished: (1) consider the submitted public comments and determine if additional edits are necessary during this 45-day period (2) finalize the rulemaking documents so that the Commission can take action at either the December or January meeting (3) upon Commission action, file with the Secretary of State. On behalf of BSC, he requested a second 90-day reapproval and readoption of BSC EF 01/17 emergency rulemaking.

Questions or Comments from the Commissioners:

No questions or comments from the Commissioners.

Questions or Comments from the Public:

No questions or comments from the Public.

MOTION: Chair Batjer entertained a motion to consider the California Building Standards Commission's request to readopt the exterior elevated elements emergency building standards for 90 days as the state agency has made substantial progress to complete its certifying rulemaking process. Commissioner Sasaki made a motion to approve, and it was seconded by Commissioner Booth. The vote was unanimous to accept the motion.

b. Emily Withers, Codes and Standards Administrator II, Department of Housing and Community Development, with Stoyan Bumbalov in attendance. Ms. Withers thanked Gary Fabian for his comprehensive discussion of the emergency regulations related to exterior elevated elements. She stated HCD requests approval for a second 90-day readoption of the emergency regulations filed as HCD EF 01/17, which amended 2016 California Building Code and the California Existing Building Standards Code. These emergency regulations based on draft versions of the 2018 model codes are specific to the enhancement of design, construction, inspection, and maintenance of exterior elevated elements for residential buildings and includes sections in Chapters 1, 16, and 23 of the California Building Code and Chapter 1 of the California Existing Building

Code. These sections are also similar to the published versions of the 2018 codes, with some editorial and punctuation changes. She stated HCD requests that the Commission approve its proposal for readoption to ensure the regulations remain effective until January 26, 2018. This is the last extension allowed by statute. The emergency regulations remain in effect until permanent adoption for the regular rulemaking process, as noted by
Mr. Fabian. HCD has issued an Information Bulletin, IB 2017-01, informing local code enforcement agencies, third party agencies for factory-built housing, and other interested parties of the emergency regulations. A supplement to IB 2017-01 was issued after the first readoption. Another supplement will be issued if the regulations are reapproved for another 90-day extension period.

Questions or Comments from the Commissioners:

No questions or comments from the Commissioners.

Questions or Comments from the Public:

No questions or comments from the Public.

MOTION: Chair Batjer entertained a motion to consider the Department of Housing and Community Development's request to readopt the exterior elevated elements emergency building standards for 90 days as the state agency has made substantial progress to complete its certifying rulemaking process. Commissioner Mikiten made a motion to approve, and it was seconded by Vice ChairWinkel. The vote was unanimous to accept the motion.

c. Diane Gould, Supervising Structural Engineer, Codes and Standards Unit, Division of the State Architect. She advised DSA has participated and is working together with BSC and HCD during these past activities as they proceed with the certifying rulemaking process in order to make permanent these emergency provisions regarding the EEEs. She stated DSA is here today to request a second 90-day readoption of the emergency regulations which were filed as DSA-SS/CC EF 01/17, which amend the California Building Standards Code, Part 2, Title 24, and the California Existing Building Standards Code, Part 10, Title 24. The emergency regulations modified sections of these codes regarding enhancement of design, construction, and inspection for exterior elevated elements for buildings under DSA's authority, which includes specified public schools, essential services buildings, including provisions in Chapters 1, 16, 16A, and 23 of Part 2, as well as Chapter 1 of Part 10. The three agencies based their emergency regulations upon early draft editions of the 2018 International Building Code

as well as the International Existing Building Code. DSA has reviewed these documents and is working on aligning any adjustments to the language. On behalf of HCD, she requested, pursuant to Government Code Section 11346.1(h), a second 90-day reapproval and readoption on an emergency basis of the DSA-SS/CC EF 01/17 emergency rulemaking package that was approved by the Commission on January 27, 2017.

Questions or Comments from the Commissioners:

No questions or comments from the Commissioners.

Questions or Comments from the Public:

No questions or comments from the Public.

MOTION: Chair Batjer entertained a motion to consider the Division of State Architect's request to readopt the exterior elevated elements emergency building standards for 90 days as the state agency has made substantial progress to complete its certifying rulemaking process. Commissioner Booth made a motion to approve, and it was seconded by Vice Chair Winkel. The vote was unanimous to accept the motion.

(A recess was taken.)

7. DIVISION OF THE STATE ARCHITECT-ACCESS COMPLIANCE (DSA-AC 01/16):
Proposed adoption of amendments to the 2016 California Building Code, Chapter 11B, Part 2, Title 24

Ida Clair, Principal Architect; Derek Shaw, Senior Architect; Debbie Wong, Senior Architect represented DSA today. Ms. Clair stated DSA thanks the Commission for extending a continuance in August, which allowed them to present a complete proposal for the amendments to the accessibility regulations of the California Building Code for this intervening code cycle. She thanked the stakeholders who attended the August 15th meeting and who, due to the continuance, are once again present and prepared to comment, and she appreciates their involvement in ensuring this process is thorough and transparent. At the August 15th commission meeting, DSA reported their pre-cycle outreach activities for this rulemaking cycle, which began in the fall of 2016, and consisted of two pre-development outreach meetings to identify and prioritize the regulatory amendments that were necessary to pursue the intervening code cycle and four meetings in which they discussed the proposed regulatory amendments with stakeholders. Today's formal code change proposals were selected based on necessity

and the need for clarity as determined from stakeholder comments and staff analysis. Upon thorough review and further consideration of the comments received throughout the rulemaking process, DSA has decided to withdraw Item 11B.01 in this package and explore further the proposed amendment in a future code development cycle. Future proposals will also be presented to the Access Code Collaborative, DSA's newly formed consultative group, for input and feedback. DSA requested approval of the proposed amendments to the building standards related to accessibility.

Mr. Shaw presented DSA's remaining code change proposals. He asked the Commission's direction on how they would prefer his presentation, individually or in group format.

Questions or Comments from the Commissioners:

Commissioner Mikiten stated that would be fine for most of it but asked him to go into greater detail on the items at the beginning of the proposal, 2.02 and 11B.01, in particular, along with a background of how the wording came up.

Vice Chair Winkel wanted confirmation that 11B.01 was withdrawn.

Chair Batjer and Ms. Clair confirmed that 11B.01 was withdrawn, but not 2.02.

Commissioner Booth stated he had questions on Item 2.02, and it merits discussion and clarification.

Chair Batjer asked the commissioners if they are aware of the location of this item. It was determined it can be found on page 1 of 10, final express terms.

Commissioner Mikiten wanted clarification that Item 11B.01, which adds the note, is withdrawn.

Ms. Clair confirmed that is correct.

Chair Batjer clarified that the Commission will be looking at the final express terms for the proposed building standards of the Division of the State Architect, page 1 of 10, 2.02, definitions, technically infeasible, Item 9.01 is a renumbering change Item 10.01 is a renumbering change; 11B.01 has been removed; Item 11B.02B, Division 2, scoping requirements, and anything after that will be reviewed. She asked whether Mr. Shaw could start on 2.02.

Mr. Shaw stated 2.02 relates to the definition "technically infeasible." This is an existing definition that has been in place in the California Building Code for over 20 years. DSA researched the source and found that it was in the building code at least back through the 1997 codes. The last line of this definition is the terminology that is the focus for today, and he read the language into the record. DSA is proposing to change the terminology "for new construction" and replace it with new language that says "of this code, so that that last portion would then read "...that are in full and strict compliance with the minimum requirements of this code and which are necessary to provide accessibility." This was a change due to public comments received over the last few years, and specifically about the existing term "for new construction." There was some confusion coming from the code users that had provided comments, in that Chapter 11B addresses both new construction and explicitly addresses alterations to existing buildings. Throughout 11B there are common requirements that are applicable to both new construction and alterations to existing buildings, but in many cases there are either alternative positive requirements in the code for alterations or exceptions which present a different level of technical requirements for buildings undergoing alteration. He stated some of the comments relating to alterations have suggested that the term "for new construction" is appropriate to be retained in the code, because in alterations new construction is the level of compliance that is required by the code; for example, where a door is replaced, then the door hardware does need to comply with the new construction requirements. He stated where the confusion lies is whether new code requirements are superior or do they obviate the other provisions in Chapter 11B that address existing buildings undergoing alterations. That has not been the intent of the code, and DSA researched back to the very first access codes from the early '80s where there have always been provisions that apply to both new and alterations and other provisions that are specific to alterations only. He stated DSA recognizes this phrasing in the definition of "technically infeasible" is incompatible with the technical requirements that are in Chapter 11B. He stated DSA is proposing to change it to require compliance with the code as it is expressed in Chapter 11B and the other chapters where DSA has code language adopted.

Questions or Comments from the Commissioners:

Commissioner Booth asked where specifically were the questions or confusion coming from.

Mr. Shaw answered that the source of the questions they received came from both the design community as well as the code enforcement community.

Commissioner Booth asked whether Mr. Shaw could recall if there were any specific things as far as a conflict in either the new code or a code that was applicable only to alterations that would trigger this.

Mr. Shaw stated one of the more significant examples would be accessible routes to an area of alteration. The code under alterations requires one accessible route to the area of alteration. Generally, where a new building is being constructed, most of the circulation routes are required to be accessible.

Commissioner Booth asked what the resolution would be if someone is going into an alteration and they only needed to provide one path, but the new construction requirement is for all paths.

Mr. Shaw stated typically what would happen is the designers and building officials will recognize that the technical requirements and scoping requirements within Chapter 11B are the paramount source of the requirements for that project and that the definition must be overlooked, in part, since it is not the definitions that establish the technical requirements.

Commissioner Booth stated since the jurisdiction having the authority would interpret the code, they could interpret it as they see fit.

Mr. Shaw stated they are obligated to interpret the code as their enforcement duties.

Commissioner Booth asked whether there is a difference in the access required between the new construction and alteration code sections.

Mr. Shaw stated throughout Chapter 11B, where a provision is specific to an existing building undergoing alterations, then that language is included within the language that regulates the alteration. It might take the form of "in alterations," and then present a technical or scoping requirement.

Commissioner Booth asked whether that will result in less complication.

Mr. Shaw stated that DSA has strived over the last 10 years to incrementally clarify and make the code language as clear as possible. They frown upon literal conflicts in the code. They find that has the unfortunate impact of leading to a misinterpretation of what the code requires. He stated there were large benefits in bringing the language of the federal ADA standards when they rewrote Chapter 11B for the 2013 code: consistency and language that has been reviewed by many professionals and legal experts. There

are a lot of cases where California has requirements that are above and beyond the federal standards.
Commissioner Booth asked by opening up the requirements to the entire code for an alteration past what it was before, which was just new construction, isn't there more information, therefore, more possibility for interpretation.

Ms. Clair clarified this is for the definition of technically infeasible. The need to resort to technical infeasibility for alterations and new construction is not even there. The code is interpreted as it is interpreted in the whole for alterations and new construction. She stated what this provision is addressing is that when something is technically infeasible, it explains what that means; that you can't meet the requirements of the code because it is technically infeasible, not that you can't meet the requirements for new construction. This does not have the major impact on every single plan review or the application of the code. It is only when the technical infeasibility is invoked, which basically says you can't meet the requirements of the code, so what are the next steps.

Commissioner Sasaki stated as a practitioner working on existing buildings and structures, he knows the building code provides regulations for new construction. In the areas where there is repair work, they look to Chapter 11B, and there are sections that only apply to alterations or repairs for existing buildings or structures, so it is pretty clear what the regulations are when you are working on those existing buildings. He stated that is where this definition comes into play.

Commissioner Booth asked whether that is when you can't meet the entire code.

Commissioner Sasaki stated that is correct.

Commissioner Mikiten asked whether there are any other places in the code where technically infeasible is applied to new construction or comes up on sections in new construction.

Mr. Shaw stated he did not believe so. The provisions for technically infeasible are provided under the top-level scoping section that addresses specifically alterations. It is an exception that is provided when, in an alteration, you can't meet the regular requirements of the code, even those that apply only to alterations.

Commissioner Mikiten asked because the code is set up in a hierarchical fashion, those mentions of technically infeasible are within an area that's talking about alterations, never about new construction.

Mr. Shaw believed that is correct.

Commissioner Mikiten asked if there was a way in which new construction in this definition has resulted in a finding by jurisdiction or an error in a project that tries to apply technically infeasible to a new building and whether that was part of the confusion that was cited.

Mr. Shaw stated he is not aware of any specific examples of construction projects that had a problem with relying on this definition however, he is aware of comments that have come in from designers and building officials about the difficulty of this language. Even in those comments, he has not heard of any comments that designers or building officials were attempting to grant waivers to the new construction requirements when they were applicable to new construction projects.

Commissioner Sasaki commented in the definition itself, it starts off with "...an alteration of a building or a facility," and when we think about code language, alteration means existing buildings. So this is not new construction, this is an existing building or facility.

Ms. Clair clarified that this is not as a result of problems that have arisen; it's more when someone's asking about technically infeasible, they read the definition and it does not make sense, so they are asking for clarity on why it says new construction. She stated DSA's goal is to constantly improve and provide clarity in the code, and when they get these questions often, they realize that a change needs to happen.

Vice Chair Winkel asked where the bulk of the questions come from. He stated the enforcing authority determines whether you can use the definition or whether it is applicable, and he asked whether it was the enforcing authorities or the designers who are having difficulty with the definition.

Mr. Shaw recalled that DSA has received comments from both of those groups.

Chair Batjer commented that this sentence has grammatical issues and is unartfully worded.

Commissioner Klausbruckner asked whether DSA is aware of anywhere else in the IBC or the federal regulations where they have defined technically infeasible that might clarify whether it was intended for new construction. She commented there was a technically infeasible definition that was changed in the 2015 IBC, and now it says "tensile member structure."

Ms. Clair stated she believed the ADA has a definition for technical infeasibility and that California's was a little different. She stated when DSA did their reconciliation and brought it forward, it may be that California was perceived to be more restrictive, so the language exists. It is not necessarily material to this language change as much as it is just a provision in general.

Vice Chair Winkel confirmed it is an ADA definition.

Chair Batjer deferred to counsel for advice on procedural matters.

Mr. Holtz reminded everyone that the questions and answers need to be confined to the rulemaking file, and new evidence cannot be introduced.

Commissioner Klausbruckner asked even if they are trying to find out the history of this definition.

Mr. Holtz advised any new evidence at this juncture beyond the public comment period would be inappropriate.

Questions or Comments from the Public:

Chair Batjer reminded everyone that, as stated on the agenda, the Commission's action will be guided by the nine-point criteria established in the Health and Safety Section Code 18930. The Commission will consider the Division of the State Architect's proposed changes and its justifications, the Code Advisory Committee recommendations, and comments submitted during the public comment periods. The public may comment on any of the challenges to the proposals or the Code Advisory Committee recommendations submitted during the comment periods. No new information challenging the proposed code changes may be presented to the Commission in the adoption of the proposed regulation. Those would need to be done during the public comment period during the process.

Kathleen Barajas, disability rights advocate from Los Angeles, representing Pushrim Foundation, Californians for Disability Rights, as well as holding the title of Miss Wheelchair California 2016, stated she and the disability community strongly oppose the code change proposals that would eliminate the requirement that buildings become accessible, both when constructing and remodeling, as it goes against access-related provisions set forth in the Americans with Disabilities Act. She stated she believes the set of standards that the Americans with Disabilities Act impose should be seen as the bare minimum of what businesses and communities provide in terms of accessibility.

She questioned how anyone can, in good conscience, approve reductions that include less access to sidewalks, decreased requirements for access on remodeling projects, decreased definition of an accessible route, and decreased access to parking. She stated individuals with disabilities do not have the options to get out of their wheelchairs, step up the curb, and walk to their destination. After 27 years of the adoption of the Americans with Disabilities Act, individuals with disabilities still need to be concerned that they will find accessible sidewalks and routes to wherever they choose to go. Along with benefiting the disabled community, she discussed some benefits of having wider doorways for the non-disabled community as well: rising obesity problems; easier for moving furniture, packages, et cetera, from room to room. California's Government Code 19230 states that the legislature hereby declares that it is the policy of the state to encourage and enable individuals with disabilities to participate fully in the social and economic life of the state and to engage in employment. Many individuals with disabilities work, run errands, and participate in social activities completely on their own, without any assistance from anyone, and have the right to do so without enduring hardship by encountering decreased access or no access at all. She stated the proposed changes go against all of this, treating the disability community as second class citizens whose access needs do not matter. She added that Items 2.02 and 11B.01 are in conflict with the Commission's criteria, numbers 1, 2, 3, 4, and 5. She urged the Commission not to move forward with these code changes.

Connie Arnold stated she is one of the 46 people who opposed the proposed code changes in Items 2.02 and 11B.01 in the 45-day comment period.

Chair Batjer requested Ms. Arnold address only Item 2.02, as 11B.01 has been withdrawn.

Ms. Arnold responded she understands that that is what was stated, but the two items are very closely related, so she will go ahead and give her brief comments. She stated these closely-related items are invalid in so far as they permit either equivalent facilitation or compliance to the maximum extent feasible. There is no choice permitted by statue and case law rather, they mandate equivalent facilitation. Therefore, the portion of the proposed Exception 2 that states "or comply with the requirements to the maximum extent possible" should be deleted from the first sentence in Exception 2, and the note underneath it should also be deleted in its entirety. The CBC Access Advisory Committee also did not approve of this code decrease. Even though 11B.01 was withdrawn, she suggested that the commissioners consider these closely-related items, 2.02 and 11B.01. She stated she is opposed to these two items and asked the Commission to ensure that access for persons with disabilities is not decreased.

HolLynn D'Lil stated she is still speaking on behalf of the 151 people whose names she read into the record. She added one more person to the list: Susan Molloy. She asked whether she could email BSC the names of any additional people that ask her to represent them so that they can go into the record (see Appendix 1).

Chair Batjer confirmed she could do that.

Ms. Arnold wanted to amend her public comment to include that she is opposed to what she previously addressed under the Commission's nine-point criteria 1, 2, 3, 4, and 5. The proposed building standards code does not conflict, overlap, or duplicate other standards. The proposed building standard is within the parameters of enabling legislation. The public interest requires the adoption of the building standard. No. 4, the proposed building standard is not unreasonable, arbitrary, unfair, or capricious. No. 5, the cost to the public is reasonable based upon the overall benefit derived from the building standard.

Ms. D'Lil stated last year, after raising money for expenses, over 60 people were in attendance in order to testify before the Commission; however, it didn't seem to have much of an effect, so she appreciated the ability to read the names into the record, thereby sparing the disability community the hardship of trying to be physically present. She stated she prepared comments on both 11B.01 and 2.02 together because they were interrelated. She stated the disability community does not have much trust in a definition when DSA says you have to comply with this code, rather than the law on new construction because, as DSA previously stated, in 1997 they changed the definition of equivalent facilitation and added something that is less than equal. Equivalent facilitation means equal. She stated it was a definite decrease in access. We have to have a definition that relies upon law because this code already circumvents law that has provided our protections for some time. She also stated that there is the belief that DSA misreads the laws about new construction. The following is DSA's response to the 45-day language comments: "DSA has extensively reviewed the text of California Health and Safety Code 19957 and is unable to confirm public comments which assert new construction as the standard under state law from which authorization can deviate in cases of practical difficulty, unnecessary hardship, or extreme differences rather, DA, Health and Safety Code 19957 indicates it is the 'literal' requirements of the standards and specifications required by this part."
She suggested DSA has misinterpreted the meaning of the phrase "by this part." A proper interpretation starts with Health and Safety Code 19955 and Government Code 4450(a), the enabling legislation giving DSA and CBSC, this Commission, the authority to promulgate and adopt access standards which provide access to construction, which can only mean new construction, because alterations are not addressed until Health

and Safety Code 19957, Government Code 4451(f), and Government Code 4456 were added. Health and Safety Code 19955 states, in part, "Any new requirements imposed by the amendments to this section enacted by the legislature in its 1973-74 regular session shall only apply to public accommodations or facilities constructed on or after the effective date of the amendments." California Government Code 4454 and 4456 state, "After the effective date of this section, any building or facility which would have been subject to this chapter, but for the fact it was constructed prior to November 13, 1968, shall comply with the provisions of this chapter when alterations, structural repairs, or additions are made to such building or facility. This requirement shall only apply to the specific alteration, structural repair, or addition and shall not be construed to mean the entire structure or facility is subject to this chapter." That was added by statutes 1971, Chapter 145A. Therefore, it is obvious that the body of the law beginning with Health and Safety Code 19955 and Government Code 4450 apply to new construction with specific amendments to address alterations later, later legislation, and Health and Safety Code 19957 and Government Code Sections 4451(f) and 4456. To base a decrease in access based upon the fact that the laws requiring access for people with disabilities in the building environment did not state that access applied to new construction, when the obvious intent was to apply to new construction with access to alterations required in later law is insulting to the community. To accept this would be a violation of the Commission's criteria. She wanted to thank the State Architect's office for pushing 11B.01 off for further discussion. She stated 2.02 has some serious legal questions, so she suggested it be sent back for further study, and stated it is in conflict with the Commission's criteria 1 through 5.

Natasha Reyes, Attorney for Disability Rights California, gave her support for withdrawing 11B.01. While the group understands the push for clarification, it is necessary to ensure that any new language facilitates compliance with both state and federal standards.

MOTION: Chair Batjer entertained a motion to consider the Division of State Architect's request for approval and adoption of their proposed amendments to the 2016 California Building Code.

Questions or Comments from the Commissioners:

Vice Chair Winkel asked whether it is proper for the Commission to ask that any other items in Item 7 be withdrawn and then vote on the remainder of the items.

Chair Batjer confirmed that an item can be removed within Item 7.

Vice Chair Winkel stated there are a number of items within Item 7, so the commissioners would be able to vote on a certain number of those items and not vote on others.

Chair Batjer advised that he could make that motion.

Vice Chair Winkel stated he is undecided whether he wants to make the motion.

Commissioner Mikiten advised he spoke with DSA yesterday via phone regarding the note item that was withdrawn on public housing.

Chair Batjer asked how the public is able to read DSA's answers to comments during the formulating time.

Ms. Marvelli clarified that at the end of the 45-day comment period the state agencies assemble all the received comments and respond to each of them in the final statement of reasons, which is in the rulemaking. That is posted with the final express terms and the other documents that are on the web 15 days prior to this meeting date.

Chair Batjer asked whether those are posted on the DSA website.

Ms. Marvelli confirmed they are posted on BSC's website however, oftentimes the proposing state agencies have a link to BSC's website or they also post those documents.

Chair Batjer asked Ms. Arnold or Ms. D'Lil whether either or both had read some of the posted public comments.

Ms. D'Lil confirmed that they had read the responses from DSA to their comments during the 45-day comment period.

Vice Chair Winkel asked what the name of the new body was that is about to be convened.

Ms. Clair advised it is the Access Code Collaborative.

Vice Chair Winkel agreed that the definition technically infeasible is incomprehensible and has been incomprehensible for at least 20 years but it seems to be functional, if not confusing. He stated he hoped it would get looked at by the access group.

MOTION: Vice Chair Winkel made a motion to adopt all of Item 7 as proposed, with the exception of Item 2.02.

Chair Batjer commented his motion does not need to add the withdrawn portion because it has been formally withdrawn.

Vice Chair Winkel clarified Item 7 as submitted with Item 11B.01, which was withdrawn by DSA. He stated his proposal would be to also withhold approval of Item 2.02, with the expectation that it return for more wordsmithing, which can then be worked out with the Access Code Collaborative and resubmitted for adoption in the next code cycle.

Mike Nearman stated typically the agencies withdraw and the Commission approves, disapproves, or further studies.

MOTION: Vice Chair Winkel made a motion to approve Item 7, exclusive of the withdrawn item withdrawn by the agency, and to send back Item 2.02 to the agency for further study.

Commissioner Mikiten agreed that further study would be more appropriate than rejection because there is clearly something broken. He stated that invoking of new construction within a section that is not dealing with new construction is problematic. This is intertwined with what was withdrawn, two parts of a similar concept. If it had not been withdrawn, it might have been an item for further study as well.

MOTION: Vice Chair Winkel made a motion to adopt Item 7, as submitted, with the withdrawal as proposed by the Division of the State Architect, access compliance section, and that we return for further study Item 2.02

Mr. Holtz advised if the motion is going to be made to reject a portion of the rulemaking, the Commission will need to cite which of the nine-point criteria has failed. Specific findings for the rejection need to be stated, either that the proposing agency's factual determinations are arbitrary and capricious or that the determinations were substantially unsupported by the evidence considered during the rulemaking process.

Vice Chair Winkel stated he does not believe it was arbitrary and capricious, so there is not a problem with the nine-point criteria No. 4. As stated, the difficulty with the definition, as it stands, is that it has a built-in conflict. It talks about new construction in something which deals with an alteration. He stated the revised definition still has some of the same difficulties in it, so it does not comply with nine-point criteria No. 1: The

proposed building standards do not conflict, overlap, or duplicate other building standards. The definition is in conflict with other portions of the code.

Chair Batjer clarified the Commission is citing No. 1 of the nine-point criteria.

Vice Chair Winkel clarified specifically the conflicting portion of Item No. 1.

Mr. Holtz stated what needs to be established is what evidence in the rulemaking file has caused that part of the rulemaking file to fail. In the Final Statement of Reasons, the proposing agencies address each and every one of their concerns. What needs to be found is that they were insufficient in doing that and what has failed in that rulemaking process.

Vice Chair Winkel stated the suggested new language of this code does not remedy the deficiency, and it is still confusing. It is a different set of conflicts for the same reasons. He stated he has no intention of derailing the rest of the item because everything else in this item is perfectly acceptable to him.

Commissioner Mikiten suggested, along with Item No. 1, Item No. 6 in the nine-point criteria might be slightly more appropriate: the proposed building standard is not unnecessarily ambiguous or vague, in whole or in part.

Vice Chair Winkel stated he would support that discussion as well. The conflict is because of the ambiguity or vagueness. Items 1 and 6 go together in terms of what the stated change is and what the result of the change will be.

Chair Batjer clarified that the Commission will cite Items 1 and 6 of the nine-point criteria. She deferred to counsel's advice regarding the motion.

Mr. Holtz recommended that part of the motion needs to specifically state why it is being rejected.

Commissioner Booth stated he would disagree on No. 6 because it states it is not unnecessarily ambiguous. Vice Chair Winkel's point is it is necessarily ambiguous, whereas No. 6 says it is unnecessary.

Commissioner Mikiten stated this is a finding that the Commission has to find in favor of it not being ambiguous, and they are saying it does not meet that criteria.

Commissioner Booth stated it's that the building standards not necessarily ambiguous, because the current one is.

Vice Chair Winkel stated the way he reads it is the proposed building standard is not vague; however, to him it is vague. He stated he is citing the vague portion of it, not the unnecessarily ambiguous portion of it.

MOTION: Vice Chair Winkel made a motion to approve Item No. 7, without the previously withdrawn item, 11B.01, which was withdrawn by the DSA, and the recommendation to return Item 2.02 to DSA for further study. The stated criteria under the nine-point criteria are: It does not comply with nine-point criteria Item No. 1, in that the proposed building standard does conflict with other portions of the code and that the proposed building standard is vague, so it fails nine-point criteria No. 6.

Commissioner Sasaki commented that he spends the vast majority of his time looking at the regulations for existing buildings and structures. Prior to the 2016 codes, the regulations for existing structures were in Chapter 34 of the CBC. He stated in that code language, there are references to the same sort of language, this code and language in there about, for example, additions, work needing to comply with the regulations for new construction. He stated unless you are a reader of the regulations for existing structures, this language might be new or different to you, as well as confusing. However, it is language that has been in the code for a very long time. It is now in the 2016 California Existing Building Code. He stated obviously there are questions around the definition and the change to this code. He clarified that it does exist elsewhere in this code. He is unsure that even with further study of that definition technically infeasible, if most of that language carries forward, that there will be language which makes it better than the proposal in front of the Commission.

Commissioner Booth stated his question is: Does the change from just a piece of the code, new construction, to the change of including the entire code for the description of technically infeasible aid or denigrate access requirements? He stated in the final analysis he does not believe it does. He suggested the definition of technically infeasible may not be improved when it comes back before the Commission; however, he would support it.

Commissioner Booth seconded the motion.

Vice Chair Winkel stated he highlighted his major difficulty with this, which goes back to vehemently opposing what the IBC did with the model code in taking out Chapter 34 of existing buildings. One legal question he had was whether "of this code" relates to the

building code or whether that is the entire bookshelf of Title 24, because if it's this code, most users who pick this up, having the book in their hand, are going to think they are dealing with the building code. The alteration provisions that Commissioner Sasaki was speaking to previously resided in Chapter 34 now they reside only in the Existing Building Code. Is that "this code" or not? Is it the bookshelf or is it this book?

Chair Batjer asked whether DSA can answer what "of this code" means.

Mr. Shaw answered that the term "of this code" is actually pretty consistent language that is provided in the model code by the International Code Council. He stated he just did a word search on the California Building Code up to Chapter 4 and found over a dozen different examples of "of this code."

Chair Batjer asked whether "of this code" means the building standards code.

Mr. Shaw stated they would be of the opinion that it refers to the building code, and that any language that is in the Existing Building Code or that was previously in Chapter 34 is not germane to DSA's code proposal, because they have a long-standing practice of providing the requirements for existing buildings within Chapter 11B and providing courtesy notes within presently the Existing Building Code and previously within Chapter 34 as a courtesy reference for the code user to go back and look at Chapter 11B for the requirements applicable to existing buildings undergoing alterations.

Vice Chair Winkel and Chair Batjer stated they would still write it differently.

Commissioner Mikiten stated another aspect of the confusion is that sometimes the implementation of the phrase "of this code" is meant to say of this year's code as opposed to giving an allowance for "grandfathering in" a prior version of the code. Another way to interpret this is a way of saying the current code. He reiterated that implementing new construction in a section that is talking about alterations is confusing. He stated "of this code" may be too broad and confusing in other ways. He wondered whether there could be a phrase that reinforced that this is about alterations, so meet the strict compliance with the minimum requirements for alterations within Title 24 or, more specifically, state the source.

Chair Batjer stated that goes to the further study because the Commission cannot write code.

The vote was 6 in favor and 2 opposed to accept the motion.

(A short break was taken.)

Chair Batjer advised Commissioner Patel had to depart for a meeting however, there is still a quorum.

8. DISCUSSION ITEM REQUESTED BY COMMISSIONER SANTILLAN

Chair Batjer stated Commissioner Santillan requested this item be placed on the agenda. A discussion on the Commission's final approval of the motions on Items 9, 10, 11, 12, and 13 at its June 20, 2017 meeting to adopt the amendments to the 2016 California Plumbing and CALGreen Building Standards Codes (Parts 5 and 11, Title 24, California Code of Regulations) related to recycled water, which amendments were filed with the Secretary of State on June 23, 2017. She advised this is a discussion item, so no action is required by the Commission. She reminded everyone that the Commission cannot reconsider or rescind building standards which, upon their adoption approval, were final and became law. As such, the commissioners may only discuss this particular agenda item for informational purposes and not take further action on these regulations. In order for existing regulations to be amended or repealed, a state agency would need to propose a new rulemaking in a future cycle.

Commissioner Santillan thanked the Commission for allowing him to bring this matter before the Commission. He also thanked and recognized Mia Marvelli and all the staff who were very helpful in providing him the information that he needed to do his research and background for this matter. Since there is no opportunity today to rescind any previously adopted actions, he wanted to introduce his comments for the record. He stated, by way of background, there was a lot of confusion at the June meeting regarding the amendment and the mandate requirement, and there were discussions about the requirement, how many water purveyors there are and do we know that. He stated he had to go back and try to understand that. At the August 14, 2017 meeting, he requested that this matter be placed on this agenda as a motion to rescind the recycled water code provisions of the CALGreen Code and the Plumbing Code that the Commission passed on June 20, 2017. He was advised during the meeting that it would need to be placed on the agenda for this meeting. However, since the last meeting, he has been advised by the executive director and legal counsel that a motion to rescind would not be proper because our adoption of these items on June 20th was final. He stated he has tried to comprehend the process of trying to rescind a previous motion, since, in his mind; it was not going to be published until January and would not be effective until July 1, 2018.

He discussed one of the concerns he had related to public comments and public testimony at those meetings regarding Form 399. He stated, after his review, he does not believe the Commission gave the public the opportunity to review the Economic and Fiscal Impact Statement, which is on Form 399, prior to the Commission's June 20th meeting. Copies were made available to the public at the public's request when it was brought to the Commission's attention that the form was not made available.

He stated, secondly, after closely reviewing the Notice of Proposed Action that was published before the June 20th meeting, he had some concerns as to whether the notice included the required financial information that must be given to the public. He stated the first thing the notice does is cite Government Code Section 11346.5(a) 6. That section says that the notice must provide an estimate of the costs or savings to any state agency, the costs to any local agency or school district that is required to be reimbursed or other nondiscretionary costs or savings imposed on local agencies and the cost or savings in federal funding to the state. Unfortunately, the notice does not provide the public with any estimate of costs or savings. It simply answers yes or no to five questions about whether there are costs or savings to state agencies and whether any costs are reimbursable. In fact, the notice seems to say that these estimates would be forthcoming to the public. The notice says, "Provide a copy of the Economic and Fiscal Impact Statement, Form 399." However, a copy of Form 399 was not provided to the public in a meaningful way and certainly not before the June 20th meeting. He stated he does not believe that Form 399 provided an actual estimate, since the Commission did not even know at the June 20th meeting how many water purveyors furnish recycled water. Without knowing the number of water purveyors and, therefore, the potential for use of recycled water irrigation systems, there was really no way to estimate the cost or the savings.

He stated his third concern relates to the confusion that the Commission had about whether they were supposed to adopt code amendments to be followed if a developer wants to install recycled water irrigation systems or whether they were supposed to adopt mandates to install the system, which is what they did. As stated previously in other meetings, he believes the Commission was supposed to adopt amendments, not mandates.

He stated he compared the code sections they adopted in the CALGreen Code, which is where AB 2282 said we were supposed to insert the code sections with what they adopted in the Plumbing Code. There are some differences in the language. He stated he believes they should have only inserted the sections in the CALGreen Code, as required by AB 2282. If these amendments could have been inserted in both codes, the language should be consistent in both codes. For example, the sections they adopted

in the Plumbing Code cover residential and nonresidential projects as mandatory while the sections they adopted in the CALGreen Code covering nonresidential projects are mandatory, but the sections they adopted in the CALGreen Code for residential are nonmandatory.

He stated he was prepared to make a motion today; however, clarification has been given that it is not an option at this time.

Questions or Comments from the Commissioners:

Vice Chair Winkel stated it looks like the adoption train has left the station and it is going to be adopted and published. He asked Commissioner Santillan whether the sections in the Plumbing Code and CALGreen Code would be up for amendment or reconsideration in the next code cycle and whether that would be his intention.

Commissioner Santillan confirmed that is correct.

Questions or Comments from the Public:

Chair Batjer, on behalf of Isaac Velez, read the following letter into the record however, the Commission has not validated any of the items raised or its truth or accuracy, and it is not an endorsement: It is to the Members of the California Building Standards Commission from Mike Gatto, October 12, 2017, comments on agenda item No. 8 on the October 17th agenda, Executive Summary. (Attach Letter and Memorandum – see Appendix 3 & 4)

Chair Batjer stated that concludes the letter that she was requested to read into the record by Mr. Velez.

Mr. Quiroz wanted to address issues that were part of the rulemaking. Secretary Batjer deferred to counsel. Counsel explained that issues addressed in the rulemaking cannot be re-addressed at this time. Mr. Quiroz addressed what he considered new evidence and explained his position on whether the adopted regulations at the June 20th meeting were a mandate or an amendment. He believes that the Commission was provided inaccurate information and would like the Commission to take a look at reversing its decision. Mr. Quiroz further discussed the letter written by Mr. Gatto and the intent of AB 2282 per Mr. Gatto's letter.

Mr. Quiroz stated that the state agencies did not accept the public comments submitted by the group he represents. He stated that the mandate was used to leverage a decision prior to the July 1st CEQA deadline. He challenged the Chair that that the adoption of the regulations approved by the Commission on June 20, 2017 could be overruled. There have been past decisions overruled, as in the 2010 PEX decision that was eventually overruled by a court.

Questions or Comments from the Commissioners:

Commissioner Booth stated the Gatto letter focuses on cost. He asked Mr. Quiroz if he could explain why this is more costly than what he had intended.

Mr. Quiroz stated he doesn't know because that was the exercise that was given to the staff and Commission and the agencies involved to be able to provide as he stipulated in the bill language himself.

Commissioner Booth asked if he knew whether it was more costly, less costly, or either of those.

Mr. Quiroz stated he is not incumbent on being able to provide that. That was direction given by the author to the agency. He stated to answer the question, that information was never provided.

Bob Raymer, representing the California Building Industry Association, the Building Owners and Managers Association, and the California Business Properties Association, stated they worked extensively with the many groups that worked on AB 2282 especially with the author and his staff, who were fantastic. Although it was a very involved bill, the process was quite amenable. He stated he was perplexed today after hearing the content of Mr. Gatto's letter regarding the issue of mandate versus a guideline. If you look at the final version of the bill that was signed into law, Subsection (c) 1 states, "The department (HCD) shall submit for adoption mandatory building standards for the installation of recycled water systems," et cetera. He stated that sentence contains two effective mandates for the agency to go forward with: (1) they absolutely have to develop building standards and (2) the building standards have to be mandatory. He stated his group, who represent a huge chunk of the private sector, is not a big fan of mandates, but they will give their support when there are circumstances that exist which prompt the need for mandates. In 2014, California was in the fourth year of a five-year drought. The author, particularly his staff, made it clear that proactivity was needed. There were approximately 18 groups that were in support of

this bill. With regard to the statement he just read, the provision in the bill, another interesting note was that this direction to HCD and a similar direction later to the Building Standards Commission did not change. From the point it was introduced in February through the nine sets of amendments to this bill into August, that provision mandating HCD and BSC to go forth and develop and adopt mandatory building standards never changed. He stated, to him, that is a clear, unequivocal, black and white letter of the law. The building standards that HCD and BSC were going to have to develop were going to be mandatory. That is why they worked with the author, to help reduce unnecessary costs associated with the bill. The bill also directed HCD and BSC to go forth in the intervening cycle, which they did, to propose regulations. He stated one of the biggest amendments that were made to the bill was that the scope was downsized. It basically would only apply to those parts of the state that had access to centralized recycled water facilities. Geographically the vast majority of the state is not encompassed by this, so the overall scope of this legislation was dropped down immensely. In addition, the legislation clearly gave HCD and BSC the authority to further reduce in working with water agencies, and the approved language back in June did just that. There is a further limitation that if you are in an area that is served by a centralized water facility, that the existing infrastructure of that facility must be within 300 feet of the project perimeter. Furthermore, the bill gave HCD and BSC the authority to work with the cities and counties in consultation with a public water system to further reduce the scope. And that language was put into the bill saying, one, if you find it is not cost effective in your particular area, you do not have to comply and you can further reduce down the area of scope. He stated it indicated that if the water purveyor, in consultation with the city or county, finds that their subscription to water recycled water is already filled, that they don't have the capacity to respond to any new project. For the first time this regulation gives the local jurisdiction and the water purveyor the ability to say they do not have the capacity and cannot serve the project. He stated this is the first time, at least during his 35 years of doing this, where the Commission has adopted a building standard giving this much authority to local jurisdictions to reduce or eliminate this mandate. To him, that is going above and beyond the call as far as being cost effective and cost conscious. He wanted to comment on the issue relating to indoor recycled water plumbing. He stated the Regs of the proposal to bring the purple pipe indoors was deleted from the final set of regulations, so the adopted stuff that will be taking effect in July 2018 does not impact the indoors.

Thomas Enslow, California State Pipe Trades Council, stated he agreed with Bob Raymer. He stated he has done a lot of work with Mr. Gatto, but he is also confused by this letter. He was present during four or five meetings with his staff discussing this. From the beginning, it was a mandate. In fact, there was no conception was that it would require all buildings to be dual plumbed for recycled water, and then that would

create an incentive for more recycled water to be made available. He discussed recycled water availability. In looking at what the regulation requires, you first look at the plan language. He stated, as Mr. Raymer said, the plan language is clearly a mandate. He stated post-hoc legislative intent letters have no weight under the law, and it is inconsistent with the plan language that is to be complied with. Regarding the cost effectiveness issue, that was addressed both in the statute and in the regulations. He suggested the reason why there wasn't any more data on cost effectiveness is because there is an exception that if it is found not to be cost effective, you do not have to do it. He discussed the stakeholder participation and stated there was a whole year of workshops before it went out for public comment, so this wasn't a process that was rushed or that had low stakeholder participation. He stated regardless of whether it was a mandate or not, the legislation certainly gave the Commission the authority to mandate this and make it a requirement.

Questions or Comments from the Commissioners:

Commissioner Santillan stated he appreciated the public comments and for them taking time out of their day. He thanked the commissioners for allowing him to present this, and it is clear to him what needs to happen.

9. FUTURE AGENDA ITEMS

There were no future agenda items discussed.

Questions or Comments from the Public:

There were no public comments at this time.

10. ADJOURN

MOTION: Chair Batjer entertained a motion to adjourn the meeting. Commissioner Sasaki made a motion to approve, and it was seconded by Vice Chair Winkel. The vote was unanimous to accept the motion.

Susan Chandler, President of Californians for Disability Rights
Shawn Casey O'Brien
Alice Tidwell
Elliott Howard
Nancy Becker Kennedy
Janet Renison
Ruthanne Shipner
Toby Adams
Marilyn Golden, Policy Analyst at Disability Rights Education Defense Fund
Howard Chabner
Adrienne Lauby, Host and Producer of "Pushing Limits," KPFA's disability program
Linda Hunt
Terrell Terry
Max Ventura
Steven S. Brown
Dr. Bob Segalman
Richard Daggett, President of Polio Survivors Association
Tamar Raine
George Curtis
Stan Koslowski
Michaela Goldhaber
Sid Cohen, Esquire
Grace Lin
Christina Mills, Deputy Director, California Foundation of Independent Living Centers
Gail Ryall
Kathleen Barajas, Miss Wheelchair California 2016
Engracia Figueroa
Carol Wolfington
Linda Lin
Yuchun Che
Chiushanlin Lin
Carole Krezman
Michael Williams
Ben Rockwell
Sheela Gunn-Cushman
James Burnett
Judith Ann Smith
Ron Sidell
Craig Yates
Ellen Buckingham

Dylan Ryall
Dave Bennett
Tim Thimesch, Esquire
Peter Margen
Bonnie Lewkowicz
Jim Heinzmann
Eliza Riley
Stephen Graham
Don Carney
DebraDebosz
Mario Guzman
Arthur Larson
Tricia Roth
Sarah Bates
James L. Keenan
Lanie Gignilliat
Cynde Soto
Kathryn Dryer
Hazel Weiss
Marcia Gayle
Shira Leeder
Michael J. Mankin
Meg Paulson
Peter Mendoza, Director of Advocacy and Special Projects, Marin Center for Independent Living Connie Arnold
Catherine Campisi, Retired Director, California Department of Rehabilitation
Jeff Harrison, Esquire
Jordan Metz, Esquire
Sara Pezeshkpour, Esquire
Astrid Jansa
Karin Gallagher
Beverly Gingg
Bryan Gingg
Mark A. Gallagher
Devva Kasnitz, Ph.D.
Kristie Sepulveda-Burchit, Executive Director of Educate, Advocate
Ralph Black
Elizabeth Henry
Richard Skaff, Executive Director of Designing Accessible Communities
Rudy Contreras, Executive Director of SCRS-IL, Independent Living Center

David Clingerman
Neil Jacobson, Retired Wells Fargo Senior Vice President
Sasha Bitner
Beck Nivolo
Kathy Nasif
Mark F. Romoser
Guy W. Thomas
Amy Abruzzini
Blane Beckwith
Keith Yokem
Anthony Tusler
Cyndi Jones
Bill Stothers
Gordon Cardona
Kim Vuong
Kim Anderson
Jennifer Kumiyama, Miss Wheelchair California 2010
Hillary Marides, Miss Wheelchair California 2015
Ann Sieck
Randy Hicks, CDR Legislative Chair
Kathie Myers
Michelle Rousey
Brian Jacobson, Principal & Creative Director, Focus Design
Margaret Keith
Deanna Leitch
Jill Lessing
Deborah Miles
Greg Hertzler
Ellen Stohl
Janie Whiteford
Pilar Cole, Systems Change Advocate
Christine Fitzgerald
Marissa Shaw
Eli Gelardin, Executive Director of Marin Independent Living Center
Bob Planthold
Mark Beckwith
Pamela Hoye
Elizabeth Campbell
Christie Rudder
Mario Galdamez

Jose R. Martinez, Executive Director, Freedom2Roll
Dwight Bateman
Robert Reuter
Brett Estes
Rachel Estuar
Wayne Albert Glusker
Ashley Lyn Olson
Rocky A. Burks
Linda Gunther
Ken Ebbs
Otilia Ioan
Tina Foafoa
Andree Graham
Helen Nichols
Terri Wright
Melissa Crisp-Cooper
Annamarie Moreno
Joe Escalante
Chris Wilder, CEO, Valley Medical Center Foundation
Ann Ramirez
Art Blazer
Susan Tucker
William Blanchard
Bernie Mascher
Sunnie Whipple
Chandra Hauptman
Theresa De Vera, President, L.A. City Commission on Disabilities
Ray Pizarro, President, Pushrim Foundation
Carlos Benavides, President, L.A. County Commission on Disabilities
Anita Silvers, Professor, Philosophy Department, College of Liberal & Creative Arts, Faculty
Affiliate, SFSU Health Equity
Evan Levang, Executive Director of Advocates for Action in Chico, California, Independent
Living Center

October 17, 2017

Dear Members of the CA Building Standards Commission: I am before you today representing 90 plus members of the disability community to ask that you apply to the Office of the CA Attorney General to provide an interpretation as to whether the Commission has the authority or legal reason to adopt decreased access standards since 2012. In putting this question before the AG, we ask that you include the following information and positions. The writing of this petition was assisted by Patricia Barbosa, Esq.

Background

What follows is a summary of some of the access code decreases the Commission has adopted since 2012. The following information is provided by Peter Margen, Jonathan Adler and Kevin Jensen.

Curb Ramps.

The 2010 Access Requirement in 1127B.5 Curb Ramps stated, "1. General. Curb ramps shall be constructed at each comer 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 is in the center of the crosswalk of each street comer." Due to code changes adopted by the Commission in 2012, CBC Building Code, Title 24 Access Requirements contain no specific location scoping requirements for curb ramps. Further, all of the alternative design specifications in the 2010 standards such as Case "C" curb ramps, etc. were eliminated in the 2013 code. These were important to provide technical guidance on the best ramp layout to use. Government Code 4450 guarantees equal access to sidewalks, but this is not reflected in the regulations adopted by the CA Building Standards Commission. In summary, dropping the 2010 language reduced access to curb ramps in CA, in violation of GC 4450 and 4459.

Accessible Routes

In 2012, the Commission adopted access decreases for accessible proposed by the Division of the State Architect, as follows, "2013 CBC, Section 11B-2206.2.1 Site arrival points. 11B-206.2

11B-206.2.1 Site arrival points. At least one accessible route shall be provided within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks; and public transportation stops to the accessible building or facility entrance they serve. Where more than one route is provided, all routes must be accessible.

Exceptions:

1. Reserved.

2. An accessible route shall not be required between site arrival points and the building or facility entrance if the only means of access between them is a vehicular way not providing pedestrian access.

3. General circulation paths shall be permitted when located in close proximity to an accessible route.

Exception 2 is new to the 2013 CBC and has no precedent in earlier editions of the CBC. The effect of this new exception will be to allow newly constructed facilities and existing facilities that are being altered or added to simply avoid providing an accessible path of travel into the site. It effectively obviates a key provision in 11B-201.2.1 that accessible paths of travel are required into the site from the public right of way, etc. This should only be allowed in certain cases due to technical infeasibility only, but such a limitation on this huge new exception is not required. It will have the net effect of eliminating all but driveway access to many facilities that would otherwise be required to provide an accessible entrance.

Exception 3 is new to the 2013 CBC and has no precedent in earlier editions of the CBC. The effect of this new exception is to obviate a key provision in 11B-201.2.1 that states "where more than one route is provided, all routes must be accessible." This should only be allowed in certain cases due to technical infeasibility onlr, but such a limitation on this huge new exception is not required. It wil have the net effect of eliminating all but one separate accessible route of travel in new facilities, limiting full access to many new facilities that would otherwise be required to provide all new paths of travel to be accessible. The term "close proximity" is not defined but this is the stated basis for this huge new exception.

Accessible Seating in Restaurants

Here's what the CA access codes stated before the Commission adopted a proposed regulation from the Division of the State Architect which eliminated access to non-fixed restaurant seating:

The Commission adopted a proposed access code change from DSA that eliminated the clear language that restaurant seating shall comply with standards for built-in seating. As stated in a letter from Mia Marvelli dated March 7 of this year, the Commission based their adoption of DSA's change upon a change in the model code. Ms. Marvelli states,."In the 2001 and prior editions of the CBC the general scope of applicability was to "...any building or structure..." while the 2007 and more recent editions changed the general scope of applicability to "...every building or structure or any appurtenances connected or attached to such buildings or structures... " This difference in code language is due to the change in model code adopted by the California Building Standards Commission from the *Uniform Building* Code to the *International Building* Code (IBC).z" In arguments set forth below, we ask the Commission to seek the AG's opinion as to whether they should interpret the reference to the model code in CA GC 4450 as authority to decrease existing CA access standards to the model code standard.

Curb Ramps.

Here are the clear requirements in the 2010 Access Codes: "11278.5 Curb Ramps. 1. General. Curb ramps shall be constructed at each comer 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 is in the center of the crosswalk of each street comer."

The Commission approved a proposed code change from DSA which eliminated the specific requirements for where curb ramps must be constructed. Further, all of the alternative design specifications in the 2010 standards such as Case "C" curb ramps, etc. were eliminated in the 2013. These were important to provide technical guidance on the best ramp layout to use. Government Code 4450 guarantees equal access to sidewalks, but this is not reflected in the regulations adopted by the CA Building Standards Commission. In summary, dropping the 2010 language reduced access to curb ramps in CA, in violation of GC 4459.

This reduction in access standards has had a negative impact on the safety of persons with disabilities and our right to have access to the built environment.

Applicable Laws

Federal law states in, "28 C.F.R. § 35.103 Relationship to other laws. (a) Rule of interpretation. Except as otherwise provided in this part, this part shall not be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 **(29 U.S.C. 791)** or the regulations issued by Federal agencies pursuant to that title.

(b) Other laws. This part does not invalidate or limit the remedies, rights, and procedures of any other Federal laws, or State or local laws (including State common law) that provide greater or equal protection for the rights of

individuals with disabilities or individuals associated with them.

CA State Laws:

CA Government Code 4450
(b) The State Architect shall develop and submit proposed building standards to the California Building Standards Commission for approval and adoption pursuant to Chapter 4 {commencing with Section 18935) of Part 2.5 of Division 13 of the Health and Safety Code and shall develop other regulations for making buildings, structures, sidewalks, curbs, and related facilities accessible to and usable by persons with disabilities. The regulations and building standards relating to access for persons with disabilities shall be consistent with the standards for buildings and structures that are contained in pertinent provisions of the latest edition of the selected model code, as adopted by the California Building Standards Commission, and these regulations and building standards shall contain additional requirements relating to buildings, structures, sidewalks, curbs, and other related facilities the State Architect determines are necessary to assure access and usability for persons with disabilities. In developing and revising these additional requirements, the State Architect shall consult with the Department of Rehabilitation, the League of California Cities, the California State Association of Counties, and at least one private organization representing and comprised of persons with disabilities.
CA Government Code 4459.

1. (a) The State Architect shall develop amendments for building regulations and submit them to the California Building Standards Commission for adoption to ensure that no accessibility requirements of the California Building Standards Code shall be enhanced or diminished except as necessary for (1) retaining existing state regulations that provide greater accessibility and features, or (2) meeting federal minimum accessibility standards of the federal Americans with Disabilities Act of 1990 as adopted by the United States Department of Justice, the Uniform Federal Accessibility Standards, and the federal Architectural Barriers Act.

Petitions
First, please note that there are many other decreases in access adopted by the Commission since 2012. In addition, there are other laws that have been violated in the adoption process.

What we ask at this point is that the Commission request the Attorney General's Office for a legal opinion as to whether Gov code 4450 means that to be consistent with the "latest edition of the selected model code," CA codes need to be lowered to meet model standards. If the Commission interprets "consistent with" to mean the "same as," then why does GC 4450 state the state architect can adopt additional standards to insure access to buildings, structures, etc.? GC 4450 states "The regulations and building standards relating to access for persons with disabilities shall be consistent with the standards for buildings and structures that are contained in pertinent provisions of the latest edition of the selected model code, as adopted by the California Building Standards Commission, and these regulations and building standards shall contain additional requirements relating to buildings, structures, sidewalks, curbs, and other related facilities the State Architect determines are necessary to assure access and usability for persons with disabilities.

The Commission needs to explain why and how legally they are reducing minimum standards that DSA and CBSC **have already determined** are necessary for accessibility and usability are now not the minimum, but can be

reduced. Federal law 28 C.F.R. § 35.103 Relationship to other laws" dictates otherwise, as does CA GC 4459. We ask that they ask the AG's Office to review their position as to its legal integrity.

The Commission needs to explain how their interpretation that the CA GC 4450 requirement for access codes to be "consistent with" the current model code means the "same as" the current model code as that position appears to be in conflict with the requirements of GC 4459 that "no accessibility requirements of the California Building Standards Code shall be enhanced or diminished except as necessary for (1) retaining existing state regulations that provide greater accessibility and features, or (2) meeting federal minimum accessibility standards of the federal Americans with Disabilities Act of 1990 as adopted by the United States Department of Justice, the Uniform Federal Accessibility Standards, and the federal Architectural Barriers Act."

The Commission should seek clarification that their interpretation is consistent with the intent of body of law empowering the state architect to develop "regulations for making buildings, structures, sidewalks, curbs, and related facilities accessible to and usable by persons with disabilities." See People ex rel. Deukmejian v. CHE, Inc., 150 Cal.App.3d 123 (1983) , the court ruled, ")
(6) Statutes§ 21--Construction--Legislative Intent. In interpreting a statutory scheme: the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law.
(7) Statutes § 40--Construction--Consequences.
A statute must be given a reasonable and common sense interpretation consistent with the apparent purpose and intention of the lawmakers, practical rather than technical in nature, which, upon application, results in wise policy rather than mischief or absurdity.
(8) Statutes § 38--Giving Effect to Statute--Construing Every Word.
If possible, significance should be attributed to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose, as the various parts of a statutory enactment must be harmonized by considering the particular clause or section."

We ask that the Commission undertake this task forthwith in order to stop the continuing destruction of access rights in California, and to begin to take immediate action to redress and restore the access rights that have been decreased. If the Commission takes the position stated in the March 7, 2017 letter from Ms. Marvelli that , "BSC has no jurisdiction over access regulations... ," then we ask that the Commission ask the AG's office to detennine the extent of jurisdiction that the Commission has over access regulations, given that such regulations must be adopted by the Commission before they can take effect.

Thank you for your consideration.

Sincerely,
Hollynn D'Lil, member Californians for Disability Rights, Designing Accesible Communities, and the Coalition of Disability Access Professionals.
PO Box 160
Graton, CA 95444
(707) 829 9440

Agenda Item 8, Public comment from letter Appendix 3

LiUNA!

PACIFIC SOUTHWEST REGIONAL OFFICE
4044 North Freeway Blvd.
Sacramento, CA 95834
Phone (916) 604-5576 • Fax (916) 604-5588

October 16, 2012

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

Dear Executive Director Marvelli;

The Laborers' Union has recently been engaged with several state agencies regarding the development of building standards which best serve, consumers, contractors, and workers. The improper application of building standards can have disastrous effects on the construction industry. As such we have made several attempts to make sure the intent of AB 2282 is used in the development of new regulations as it was intended. We believe the intent of the bill was improperly interpreted by some state agencies. Therefore, we would like to share with you a letter from the author of the bill which clarifies the original intent of AB 2282. We hope this letter provides the appropriate state agencies with the
needed direction and guidance as to how to proceed.

I appreciate your time and attention to this matter.

Sincerely,

Rocco Davis

Rocco Davis
Special Assistant to the General President, Vice President at Large and Pacific Southwest Regional Manager

RD:kme

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Memorandum (Written Testimony)

To: Members of the California Building Standards Commission

From: Mike Gatto

Date: October 12, 2017

Re: Comments on Agenda Item 8, on the October 17 Agenda

Executive Summary

This submission covers how Assembly Bill 2282 (2014) should have been implemented. It relies first and foremost on sound legal principles: well-established canons of statutory construction. But it also offers a unique perspective, unavailable elsewhere, on the intent and purpose of AB 2282, since the author of this analysis was also the author of the bill. This testimony concludes that Commissioner Santillan's interpretation of the legislation, expressed at the 20 June 2017 meeting, is more correct than the "final express terms" the Commission has issued. The "final express terms" are inconsistent with the plain language and intent of AB 2282, and as such, they must be corrected.

Factual Background

The author introduced AB 2282 in February 2014 at the behest of his wife, a native of Irvine. She suggested to the author that the state should foster water policies, like those in place in Irvine, where local agencies develop centralized recycled-water treatment facilities and infrastructure, taking advantage of economies of scale, and then provide the water to end users. This was the origin of the bill.

The bill had no sponsor, consistent with the author's policy.[1] The bill did receive support from a broad coalition, for example, the Association of California Water Agencies, the California Building Industry Association, the California Municipal Utilities Association, and many others.[2] It passed the Legislature with unanimous, bipartisan support, never receiving a single, "no" vote.[3]

At its 20 June 2017 meeting, the California Building Standards Commission adopted several sets of "final express terms" that purported to interpret AB 2282. However, these actions were inconsistent with the statute. The inconsistencies are explained in detail below.

Analysis

State agencies may craft regulations, but only within the confines of a statute. AB 2282, of course, created and amended various statutes - and as such, it must govern any regulation. The legislation created a statutory scheme with confines: various agencies were tasked with proposing policies that adhere to the guidelines of the statute. Further, AB 2282 created aspirations, but no mandate. The only requirements were that the agencies, while promulgating their rules, follow the clear guidelines set forth by statute.

The "final express terms" adopted by the Commission ignored the structures set forth in AB 2282. The Commission's actions would therefore override the intent of the bill - an impermissible act.

AB 2282 contained the following principles:

1. The proposal must be cost-effective. When forming its regulations, this concept is the most important for the Commission to remember. AB 2282 mentioned "cost" no fewer than six times.

2. The Green Building Code sets aspirational targets, and outdoor irrigation improvements will proceed with technological advances. The legislation did not create a mandate.

3. The building industry, as a whole, should be consulted with, and their suggestions taken to heart. Inclusivity, for the entire industry, and all the men and women who work therein, was a key factor in the drafting and passage of AB 2282.

1 https://www.documerts.dgs.ca.gov/DGS/PIO/Recorde rGreenGovChallengepdf

2 California Senate Committee on Environmental Quality, AB 2282 Bill Analysis (June 23, 2014).

3 See AB 2282 vote history, available at https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=201320140AB2282.

Cost

The Commission's "final express terms" ignore the statutory scheme set forth in AB 2282 and previously enacted measures. Not only did the author include the word "cost" six times, but also, existing statutes provide a manifestly clear guidepost on how cost should be determined. To wit, Water Code section 13550(a) specifically applies to the provision of recycled water to an end user. It makes "reasonable cost" the lodestar of any such program. And it further defines what costs are "reasonable."

The Commission's conception of how recycled water would be provisioned in the future clearly runs afoul of cost-the primary consideration by law. The Commission apparently envisions a regime where the furnishing of recycled water is far more diffuse than the most efficient method. And furthermore (whether intentional or not) the Commission's "final express terms" would create a regime under which the labor costs to provide recycled water fail the reasonableness test.

The Commission's interpretations are therefore inconsistent with the statute. Its focus, for example, on indoor piping, would renders AB 2282's emphasis on cost as surplusage. This violates one of the oldest and primary tenets of statutory construction, one that is itself encoded in California statute.[4]

And in the real world, this concept is best understood by the fact that Irvine cannot make recycled water cost-effective if the Commission's interpretation is implemented. If the largest agency with decades of experience in this space, can't make the new regime work, then the Commission has rendered AB 2282 moot.

Mandate

AB 2282 did not set forth a mandate as the Commission apparently interpreted it. The term "mandate" is a nuanced term, so clarification is necessary. While AB 2282 did require certain state agencies to act, it did not create a mandate for the provision of recycled water in the manner in which the Commission has interpreted it.

To interpret otherwise would turn AB 2282 into a vast, unfunded mandate. This would also be inconsistent with the legislation. The Legislature's own Office of Legislative Counsel, tasked by law and legislative rule with making such determinations, did <u>not</u> interpret AB 2282 this way. The same goes for each house's Appropriations Committees, which are similarly tasked with performing such an analysis. Neither scored AB 2282 as

4 See Cal. Civ. Code § 3541.

creating the mandate the Commission has issued de facto. Clearly, the Legislature did not envision an interpretation like the one that has occurred here. And it should also be clear that the votes would not have been so unanimous if it did.

Broad Perspective

The Commission should take into consideration the perspectives of the building industry as a whole, and the men and women who work in all facets of it. As currently drafted, the final express terms consider these issues only in the context of the plumbing code. This is improper, and not what the author intended. The legislation requires the industry as a whole to be consulted. It would be more consistent with the text and intent of AB 2282 to place the regulatory requirements within CalGreen.

Conclusion

For the above reasons, the commission must reconsider its final express terms and move Agenda Item 8 to an action item, to rescind previously approved Commission actions to include all items relating to the implementation of AB 2282 within the proposed intervening code cycle. With that action, a more inclusive, comprehensive, and transparent process during the next Triennial Code Cycle should provide a more consistent statutory application that accurately reflects the statute, legislative will, and the intent of the bill's author.

M.G.

cc: Hon. Xavier Becerra, California Attorney General
Hon. Alex Padilla, California Secretaryof State