

BUILDING STANDARDS COMMISSION

MEETING MINUTES

August 15, 2017

1. CALL TO ORDER

Chair Batjer called the meeting to order at approximately 9:10 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
James Barthman
Larry Booth
Elley Klausbruckner
Kent Sasaki
Rajesh Patel
Peter Santillan
Juvilyn Alegre
Erick Mikiten

Chair Batjer stated today's agenda items 22 and 23 are closed sessions so that the Commission may confer and receive advice from the Office of the Attorney General. The teleconference line, You Tube video, and captioning were muted during this time.

(Closed sessions)

Chair Batjer advised that the Commission has concluded its closed sessions, and there was no action taken during those sessions.

24. 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.

There were no public comments at this time.

25. BOARD OF STATE AND COMMUNITY CORRECTIONS (BSCC 01/16) Proposed adoption of amendments to the 2016 California Administrative Code, Part 1 and the 2016 California Building Code, Chapter 12, Part 2, Title 24.

Chair Batjer stated the Board of State and Community Corrections (BSCC) is an adopting agency. BSCC's proposal contains amendments to the California Administrative Code and the California Building Code, Parts 1 and 2, respectively. She stated BSCC has authority to develop minimum building standards for design and construction of local detention facilities. As an adopting agency, BSCC approved these regulations at their June 9, 2016 board meeting. California Building Standards law requires the Building Standards Commission review the process by which the Board of State and Community Corrections adopted their building standards for compliance with the Administrative Procedures Act and the Building Standards Law. Today BSCC is requesting the Building Standards Commission approve that they have complied with the process and the regulations are ready for publication into Title 24.

Allison Ganter, Deputy Director, and Ginger Wolfe, Associate Analyst, appeared on behalf of the Board of State and Community Corrections. Ms. Ganter presented an overview of their package. She stated that BSCC is seeking approval for the modifications they have made to their Title 24 regulations. She discussed the changes as follows: (1) requiring spaces for accessibility built around the facility, not just in housing spaces; (2) requiring examination tables and adequate lighting in medical examination areas, which were not in the current Title 24 standards; (3) moving two notes regarding modesty in toilet areas and showers into the body of the regulation so that it is clarified that it is a requirement for modesty in those areas.

Ms. Ganter stated there was some public comment relative to the medical examination rooms stating that there were additional items that needed to be placed into those rooms for accessibility for persons with disabilities and requiring height-adjustable tables. BSCC's response was that their Title 24 regulations are performance based, and in addition to compliance with Title 24, local agencies must also still comply with the ADA requirements, so BSCC's regulations do not need to include another set of regulations inside of them.

Chair Batjer asked if that was because BSCC adheres to ADA.

Ms. Ganter answered because the local agencies are required to adhere to ADA, and BSCC does not do the ADA compliance reviews. That is up to the local agencies.

Questions or Comments from the Commissioners:

Vice Chair Winkel commented on the public comment they received. He stated what he would worry about in terms of local agency approval is while BSCC is only providing guidance and there are other regulations which apply, when you start listing elements, he worries that the local agencies might look at those lists as being inclusive and conclusive, the fact that that is the requirement and that they don't have to look elsewhere. There is the difficulty repeating regulations which might apply, but when you start stating them, people start reading them as all they have to do. He asked her how she would address that.

Ms. Ganter stated she believed the public comment was specific to the medical examination table. She understands the comment about looking for inclusivity inside a regulation. The requirement in their regulation is for the agency to provide a medical examination table, and it doesn't describe exactly what that entails. It does require the agency to go and determine if there

are any other codes related to providing a medical examination table. She stated she believed they got as inclusive as they could. They invite subject matter experts to advise them when those regulations are developed so they know, at a minimum, what needs to be included. The public comment really speaks to what the medical examination table needs to be.

Questions or Comments from the Public:

Eugene Lozano, California Council of the Blind, stated he submitted the public comment for the examination table to be stated as being adjustable. He stated the language leaves it to the local entities to interpret that an adjustable table is needed. From past experience, having worked with access for more than 40 years and being a state employee, there needs to be specificity so that it is not left up for interpretation and assumption that people are going to automatically know they need to go to the ADA or look up specific regulations. He stated he was under the belief that when this agency was coming up with the costs that they had not considered the adjustable table or they would have put it in there. He discussed the possibility of there being fewer injuries to staff and inmates with an adjustable table. He stated it is advisable to state clearly having at least one adjustable examination table in the medical facility or, if necessary, put a cross-reference to the other portions of Title 24 that require that so that somebody on the local level will take the time to look it up, which he doesn't think will happen.

Dawn Anderson, Architect, agreed that the code is not explicit enough on these examination tables. Local jurisdictions do not enforce the ADA, and there should be a reference in Title 24 to the appropriate section to find out further information about the exam table. She stated she thinks the rationale given by staff is incorrect, and any law or regulation put in should be stipulated in the regulations.

Questions or Comments from the Commissioners:

Chair Batjer stated that sounds like a logical, practical solution. She asked if BSCC has any cross-reference or a pointer in their regulations.

Ms. Ganter confirmed there are pointers. She stated there is a requirement that the facility is built with spaces for accessibility throughout the facility. She stated she is not 100 percent sure, but it sounds like the adjustable-height table is an ADA requirement, and she would compare it to requirements for the State Fire Marshal. They are not necessarily incorporated into BSCC's regulation, but the agency still has to go out and design and build that facility according to those other standards. That is typically how the facilities get built. They go out and reference whatever federal, state, or local laws that are applicable to the facility.

Chair Batjer asked whether that would be a difficult thing to do, as suggested by the public.

Ms. Ganter answered that could be something they could incorporate. Ms. Ganter stated she would have to take it back and figure out how it would best fit and bring it back to their board for approval.

Chair Batjer asked for input from the commissioners.

Commissioner Booth suggested since it refers to a specific piece of equipment, that more definition such as the definitive piece of equipment as conforming to whatever is applicable, either ADA or the medical need that it is going to fulfill, would be appropriate. He stated he agrees that local agencies are going to say they complied by putting in a table.

Commissioner Mikiten asked whether the exam table was moveable.

Ms. Ganter stated it is not specific in the regulation. It just says a medical examination table. There are a couple of other pieces of code that the agency will have to use if it is a certain type of correctional medical facility. There are other layers of code that they would have to comply with. Since there are other regulations going into designing and building a detention facility, BSCC is a performance-based basic regulation. You have to have a medical examination table, and it is the responsibility of that local agency to determine what is actually put there and if it is fixed or not. She stated she doesn't know exactly what is required in each layer of regulations.

Vice Chair Winkel stated he thinks Dawn Anderson's comment was appropriate in terms of the obligations of permitted agencies go to what is in the California code. They have an obligation to comply with the ADA, but there is no permit review or obligation on the part of the authorities having jurisdiction or the proponent. The ADA is not enforced through the California Building Code, and to say it is covered under the ADA with no reference to the California code is an oversight or gap. After doing a keyword search, he found there are examination table specifications in Division 8 of 11B, and this would be an 11B project. It is a public accommodation if you're getting a local permit. What he found interesting is looking at the examination table requirements, they are quite specific. There is nothing in Division 2 that says the quantity or timeline. There are technical requirements in 11B-805, but nothing is stated whether you have one or whether it's every exam table. He stated, as written, that this is a gap. He suggested a reference to 11B-805 with a discussion. But to rely on the ADA when you're writing code is not advisable.

Chair Batjer asked Mia Marvelli to explain how to handle this procedurally.

Ms. Marvelli stated BSCC is an adopting agency. Their board has already approved these regulations. The Commission's task is to approve that the process was met. She gave a friendly suggestion that maybe at the next cycle BSCC could look into filling the gaps. She stated BSCC would be able to provide any information that would help BSCC fill that gap.

Chair Batjer confirmed that that is how to handle that procedurally.

Vice Chair Winkel asked what the result of a no vote would be in terms of procedurally.

Chair Batjer advised that would mean that BSCC did not handle the procedure correctly.

Vice Chair Winkel stated it is about procedure, not about content, and said it is a tough choice.

Ms. Marvelli relayed counsel's reminder that if this was disapproved they would not be published in Title 24 during this supplemental cycle.

Chair Batjer asked what the impact would be of not being published in this cycle in Title 24.

Ms. Marvelli stated those regulations would not be effective in Title 24 and the existing regs would remain.

Chair Batjer asked how the existing regs handle the examination table.

Ms. Ganter stated they are not specifically required in examination rooms nor is adequate lighting, so those two things would not be required by Title 24.

Vice Chair Winkel asked what the goal of the proposal is or what the result would be if it didn't go into effect.

Ms. Ganter stated if a local detention facility were being designed with the current Title 24, there would be no requirement for the examination table and providing adequate lighting, so technically BSCC couldn't require them to put that in the design or construction because they are not in their regulation. It would be entirely up to the agency to determine what goes in those rooms.

Vice Chair Winkel clarified it by saying that the current regulations would allow someone to omit the examination table and adequate facilities; whereas if the proposed changes were made, it would clarify the requirements, but it would merely extend them. The current thing is just absence of a requirement, the status quo.

Ms. Ganter confirmed that is correct.

Vice Chair Winkel stated if the Commission passes it, they'll get part of the way to having what should be in the code but much further than what they had today.

Ms. Ganter confirmed that is correct.

Vice Chair Winkel asked if BSCC can take care of this somehow procedurally, at least as a stopgap, suggesting maybe in their guidance documents or when they publish the blue page cover letter.

Ms. Ganter said that they could. She stated when they work with their stakeholders during the design process, BSCC meets with them regularly, does site visits, and provides a lot of technical assistance related to things that aren't necessarily in the regulation, and they do remind them that there are additional requirements, especially related to accessibility.

Vice Chair Winkel directed his question to BSC staff. He wanted confirmation that the Commission is voting on whether the procedures were properly complied with and did BSCC follow the proper channels.

Ms. Barbu confirmed that is correct, because they're an adopting agency and have already adopted these regulations, BSC looks at the process, not the content, of their deliberations in their rulemaking.

Vice Chair Winkel stated that none of the public comments that were discussed went to the process, they were all about content.

Ms. Marvelli stated they did go through the process, and she'll explain why.

Vice Chair Winkel stated no, what he was referring to is the commentary they got from folks opposed to this was about content, not whether BSCC had done anything improper in terms of process.

Ms. Marvelli confirmed that he is correct. She stated BSCC did use the Building Standards Commission process, the Code Advisory Committee and the 45-day comment period process to comply with the entire process.

Vice Chair Winkel stated after that they voted to approve it.

Chair Batjer confirmed that is correct.

MOTION: Chair Batjer entertained a motion to consider the Board of State and Community Corrections' request for approval of their rulemaking proceedings. Commissioner Booth made a motion to approve, and it was seconded by Commissioner Mikiten.

Commissioner Sasaki asked for clarification on the voting process and whether a comment can be made at the time.

Chair Batjer responded that Ms. Ganter previously stated she would ensure that designers understand that there are further checks that need to be made. Chair Batjer commented that BSCC may not even have to do a new rulemaking; that they perhaps will at this point in time, if this is approved, handle it in a much more timely way, and that would not be an underground way.

Commissioner Sasaki stated listening to some of the other commissioners that he didn't believe that that was sufficient.

Commissioner Booth stated it didn't appear to him that they can make a motion contingent on BSCC going back and changing what they presented to the Commission, since they are voting on the procedure, not the content. He stated he thinks BSC understands the message, and it appears to him that the process was followed correctly. He asked Chair Batjer if his understanding is accurate.

Chair Batjer confirmed he is correct. She deferred to counsel and Ms. Marvelli.

Ms. Barbu advised because their agency is an adopting agency, the commissioners wouldn't be able to approve something with an amendment at this stage of the process because it would require it to go back to their board for approval and adoption as amended and then return to BSC with the changed language. She stated the options are to approve or disapprove and make a recommendation that's sort of an aside from the motion to approve or disapprove.

Chair Batjer asked if there was to be a second motion afterwards.

Ms. Barbu clarified it would just be a recommendation that is on the record. It wouldn't be official or binding.

Chair Batjer stated she believes BSCC received the message loud and clear.

Vice Chair Winkel stated he supports the motion and the second but that they also make the recommendation that the explanatory materials that go out with the code change discuss the obligations to comply with specific sections of Chapter 11B, and there are specific sections.

The vote was unanimous to accept the motion.

Chair Batjer asked counsel what the process in terms of notating what Vice Chair Winkel just recommended.

Ms. Barbu stated the recommendation being on the record and the agency being present to hear the commissioners' comments is sufficient, because it has no real binding effect.

Vice Chair Winkel clarified the previously referenced section as 11B-805.4 and the title Examination, Diagnostic, and Treatment Rooms. It does not discuss tables, but it has equipment within that section, which is probably the closest thing to a specific 11B reference.

Ms. Ganter wanted confirmation that the section was 11B-805.4.

Vice Chair Winkel stated that is correct.

Ms. Ganter confirmed that they will bring that forward at their next rulemaking cycle.

Chair Batjer asked whether they will also follow the recommendation relating to their guidance document.

Ms. Ganter confirmed that as well.

Chair Batjer stated staff will be available to them should they need any assistance with this. She suggested she refer today's record to BSCC's board should the need arise.

26. DIVISION OF THE STATE ARCHITECT REPORT

Chair Batjer stated the Division of the State Architect (DSA) will provide an update on its collaboration and outreach with the disability access community relative to the accessibility code creation process. Ida Clair of DSA provided an update to the Commission at their January 27, 2017 meeting

Ida Clair, Principal Architect, Division of the State Architect, stated as part of the Department of General Services 2016 strategic plan, DSA set a goal to increase collaboration and outreach with the disability access community and other access stakeholders. In an effort to implement this goal, DSA committed in 2016 to the following outreach and communication activities: reconvene a regular advisory task force for the disability access community; expand access code training and education programs to the local building departments and other interested parties; include persons with disabilities in the presentation of access code education programs so attendees receive a client's perspective; offer a specialized and exclusive code education class to develop a better understanding of the code regulatory process; expand outreach to the broader audience and use existing organizations and agencies to educate and increase participation of the wider disability community; seek ways to better educate businesses and the public about ADA and California Building Code accessibility standards, that they are not static; dispel mythologies of access requirements for both advocates and businesses; increase earlier engagement of stakeholders in the access code process; and display proposed access code amendments that clearly identify existing code and proposed amendments.

She reported that the first update is on their efforts to convene a consultative body to advise DSA on code development proposals. DSA entered into a contract with University of California Davis Extension, Collaboration Center, in May 2017 to develop the consultative group of stakeholders. To date, an anonymous survey was sent to 4,700 stakeholders on DSA's Listserv to inquire about the formation of this consultative group and garner ideas regarding the consultative group's membership, anticipated goals, and operations. 250 responded to the survey, and 29 stakeholders were selected to participate in hour-long interviews, either individually or in a group with a facilitator from UC Davis. Interviewees consisted of a balance of code beneficiaries and code users and were completed by July 31st. Presently UC Davis is in the process of preparing a summary of both the stakeholder survey and the stakeholder interviews, in addition to the documents for the nomination process and the selection of consultative group members. The goal is to have this information released to the public by August 21, 2017 on a dedicated webpage for this effort and through informing all stakeholders that the page exists so they can receive the nomination materials. Their collective goal is to receive nominations and panel the consultative group by mid-September, which will allow the members six weeks to make travel arrangements and prepare for a two-day training session scheduled for October 30th and 31st. The State Architect, the DSA access team, the Building Standards Commission staff, and the consultative group members will participate in training, which will focus on education on the code development process and learning collaboration and conflict resolution skills. The goal is for the consultative group to have their first working meeting for the 2018 triennial code adoption cycle pre-cycle activities December 12, 2017.

Question or Comments from the Commissioners:

Chair Batjer asked how those that are to be trained are selected.

Ms. Clair stated they are issuing a call for nominations. Many individuals have also been nominated through the interview and survey processes. The goal is to have individuals represent specific stakeholder groups, if at all possible, so that there will be an increase in outreach activities through that member that is on the consultative body. They are proposing that three agencies assist them in developing the slate of nominations. Individuals will turn in their nomination based on the information that is required on the form. The plan is to have the Department of Rehabilitation, the California Commission on Disability Access, and DSA establish a slate in a caucus-type format and then reconcile all three slates' selection of the members.

Chair Batjer asked what the number of trainees will be.

Ms. Clair stated with regard to the makeup of the group, through the interview process and through consultation with UC Davis, it was determined 12 to 15 members would be a good working body. UC Davis is establishing a tentative charter on the makeup of the group. She stated currently they are at the review phase, and from there the tentative charter will be placed on their website for review. Outside of the members that make up the group, which is proposed at 13, BSC staff, DSA access staff, and the State Architect would participate in the training.

Commissioner Mikiten asked what the current thinking is about interfacing with the Commission in terms of that group and/or representation.

Ms. Clair stated she would defer to counsel on that question. She is unclear whether that might be a conflict of interest with their participation in the process and then voting on the regulations at a later time.

Chair Batjer stated that BSC staff has been involved.

Ms. Clair stated that is correct, and they will participate in training so they will know the information. She asked whether her belief is correct that in the actual workings of the advisory body they cannot have representation.

Chair Batjer deferred the question to counsel.

Ms. Barbu stated it could pose a conflict of interest if the Commission has an active role in this body. It could be possible for one or two of the commissioners at different times to attend some of the meetings for observation purposes or to have that type of an individual role, but an official active participation by the Commission, either a subcommittee or the Commission itself, could be interpreted as a conflict of interest. She stated there are some measures that can be taken to ensure that the Commission is engaged, but not in a way that would pose a conflict of interest.

Ms. Clair stated they would welcome that and thanked her for the clarification.

Chair Batjer instructed Ms. Clair to proceed with her update.

Ms. Clair stated the following update is on DSA's education program on the access code provisions. Government Code Section 4451(g) requires DSA to develop and implement an effective training program to ensure compliance with all disability access requirements. Government Code Section 4454 provides a funding mechanism for these activities through the disability access account. Since January 2017, DSA academy has offered four four-day training sessions on the California Building Code in various locations throughout the state to architects, engineers, and building enforcement personnel with two or more four-day sessions being offered during the remainder of this year. In addition to in-person training, DSA is planning to expand accessibility training to online, on demand, and webinar platforms through the implementation of a new learning management system providing an opportunity to offer training to the full complement of stakeholders throughout the state at the location and time of their choosing. In an effort to expand their educational offerings, DSA is partnering with the Department of Housing and Community Development (HCD) on joint training on accessibility requirements for housing scheduled to be offered early in 2018. DSA has been working diligently to provide opportunities for focus training on the new electric vehicle charging station regulations. To date, DSA has offered training to building departments, electric vehicle charging service providers, utility companies, and design professionals throughout the state in collaboration with the California Building Officials organization, the Certified Access Specialist Institute, and the Governor's Office of Business and Economic Development. DSA has also established a dedicated webpage on the DSA website that provides an easy access to the regulations on accessibility to electric vehicle charging stations and supporting federal guidance. To gain a better understanding of how code language translates into use, DSA access code training courses include showing animations of a person with a disability using and navigating an accessible environment to help provide a use perspective to class audiences. The U.S. Access Board develops these videos on a regular basis, and as they are uploaded to the website, they are integrated into DSA's trainings where applicable.

Question or Comments from the Commissioners:

Commissioner Booth asked if DSA has had two training sessions so far.

Ms. Clair stated they have had four 4-day training sessions.

Commissioner Booth asked what the turnout was.

Ms. Clair deferred to Susan Moe, training coordinator, to answer that question

Susan Moe, Senior Architect and Certified Access Specialist at DSA stated they have a series of four one-day training sessions from 9:00 to 4:00. The first day is on the ADA, the standards, the California Building Code, and they also go through what the code updates are. They make it very clear so that the code users understand the differences between the ADA, the standards, and the California Building Code. She stated the second day they go through a series of exercises, and the participants are given a set of plans and do a plan review for access compliance. The third day is a full-day session related to public housing, and they go over the various federal

regulations and how those regs have an impact on the California Building Code. The fourth day is a training session on transient lodging, housing at a place of education and social service center establishments. Typically in a full four-day series of classes, depending on the size and capacity of the venue, they will have approximately 100 to 125 participants. Attendees include people from facilities departments at the universities, building officials, architects, and Certified Access Specialists. Ms. Moe stated there is another four-day series coming up in September, and then another final four-day series in Riverside in October. They offer the classes in Sacramento, Oakland, Riverside, and they recently finished up a class in San Diego.

Chair Batjer asked if there was anyone from the disability community at the training sessions.

Ms. Moe confirmed that from time to time there have been people from the disability community. Accommodations are made available for anyone with special needs for the training sessions. She stated PowerPoint presentations are made available to the attendees prior to the class, and documents that are specific to each class, job aids, are given to the attendees for their future use. At the end of every session, an evaluation form is handed out, and there has been a lot of positive feedback by the attendees on the information they have received. DSA is currently working on the development of a two-day training session that they are working on with HCD because they have heard from the participants that they would like to see some training because of the current housing project activity in the state.

Chair Batjer asked what DSA charges for the training.

Ms. Moe stated the cost is \$250 per day; however, if a person signs up for all four days, then a discount is given and the cost is at a three-day rate. Typically there are 10 or 12 people in the class that sign up for all four days.

Commissioner Sasaki asked if the PowerPoint is available online to anyone or is it only available to class participants.

Ms. Moe stated currently the PowerPoint presentations and the job aids are only available to participants prior to the class. There have been situations where someone asks for a copy of the PowerPoint and job aid, and it has been made available to them.

Commissioner Sasaki asked whether DSA has considered developing a webinar-based program.

Ms. Moe stated they are looking at e-learning and trying to determine whether it will be a webinar and whether it will be led by a facilitator with people participating at the time the webinar is given. She advised that DSA probably will start with the e-learning that is on demand so somebody can log on and participate in a 90-minute session. She stated towards the beginning of next year they will have that capability. In doing the research and understanding what they need to do to put together a viable training program, what they realized is that there are certain topics that work well for a webinar and for the on demand training, but they also have to have the in-person training, especially when it comes to the housing regulations. People want to attend those in person because it is a very intensive area of the code to understand and comprehend.

Ms. Clair wanted to clarify, with regard to moving forward with e-learning, DSA in some ways is very hesitant in making PowerPoints available to everyone because those are aids for instructors as they are currently designed, so they are a complement with dialogue and can be misconstrued if they are released in general. She stated in the future they will have a three-tiered approach of online, on demand, and in-person training.

Ms. Moe stated in their training sessions they stress a great deal of participation using exercises so that the participants really understand how to take these regulations and follow the code path through. She stated what they are finding is that there are portions of the code that people don't look at the definitions or scoping. They might go directly to technical provisions, and then they are misapplying portions of the code.

Ms. Clair commented that they do outreach to individual areas. If building departments request training from DSA, they will provide a customized program; for example, the University of California system. She stated the electric vehicle charging has been extremely extensive throughout the state, and so they have been putting out training upon request.

Ms. Moe gave some examples of the entities receiving customized training, including traveling to Palo Alto, Santa Clara, and Oroville.

Ms. Clair stated the following update is on DSA's effort to conduct code education activities for individuals with disabilities and disability advocates. All the training information is sent to all their stakeholders, and individuals with disabilities can always avail themselves of that training. In addition to that, DSA is working with the Building Standards Commission to develop a specialized education session to explain the regulation development process, DSA's role, BSC's role, and identify when and how the public can participate. The training will be offered initially to the consultative group in October, and then it will be released on DSA's learning management system early next year to the general public. She stated DSA continues to strengthen its relationships with the Department of Rehabilitation and meets quarterly to collaborate with ideas on how to inform and include code beneficiaries into upcoming code development activities. DSA has been charged to develop regulations for adult changing facilities for the 2019 CBC, so earlier this year they reached out to the State Council on Developmental Disabilities (SCDD) and requested participation on DSA's adult changing facility's task force. SCDD provided DSA with a network of individuals that agreed to participate and offer their input as caregivers and users of adult changing facilities. DSA's task force has convened four stakeholder meetings to discuss the needs and concerns from all four of the 2019 California Building Code. They will wrap up this task force involvement this month at their final scheduled meeting. In addition, DSA, in conjunction with California Commission on Disability Access, made a presentation to the SCDD self-advocacy committee to encourage their continued participation in the access code development process and future rulemaking.

She stated the following update is on DSA's activities to educate the public about the ADA and California Building Code accessibility standards. DSA continues to inform the local business community about regulatory compliance by presenting at town hall meetings and at ADA workshops. DSA has developed resources regarding compliance with state and federal disability

standards for business owners, facility owners, design professionals, local agencies, and Certified Access Specialists. All this information is available on their Certified Access Specialist webpage. DSA continues to work with the California Commission on Disability Access in their development of a guide that aims to assist business or facility owners to achieve and maintain compliance with state and federal accessibility access standards. In addition, DSA believes that Certified Access Specialists provide an ideal opportunity to educate the public on state and federal accessibility standards, so they have offered four Certified Access Specialists related classes for CASPs and individuals who are interested in becoming certified this year. They have another three sessions scheduled throughout the state by the end of 2017. DSA also plans to expand the opportunity for online and on demand training for CASPs in 2018 through the learning management system. CASPs are a great resource for providing a comprehensive education, so DSA seeks to educate them on how they can do that.

Ms. Clair stated the following update is on DSA's commitment to encourage earlier engagement of stakeholders in the access code process. In January DSA presented its revised outreach program to the Commission, which highlighted DSA's efforts to expand outreach and communication in the 2016 intervening code development cycle. She stated she would like to emphasize DSA's outreach for the 2016 intervening code cycle was extensive, and their goal was to offer ample opportunity for involvement to all stakeholders, especially to individuals with disabilities. DSA's first outreach session was held exclusively with the disability community in which DSA opened the teleconference lines to listen to code change proposals suggested by individuals with disabilities. It is important to note, however, that although invitations to each of their outreach activities were sent to over 12,000 stakeholder emails, attendance and participation remains low. At the meeting on August 10th that was exclusive to individuals with disabilities, 11 individuals attended. Their most well-attended meeting was on September 1st in which 60 attended and was comprised of all stakeholders. Subsequent to that meeting, attendance waned to 25 individuals on September 21st, 24 individuals on October 20th, 14 individuals on November 2nd, and 12 individuals on November 15th. DSA will continue to accept code change proposals on a continual basis throughout the year. They have also planned the following additional outreach for the 2018 triennial code adoption cycle. DSA will issue a formal call for code change proposals to all stakeholders at the beginning of pre-cycle code activities by requesting stakeholders to inform DSA by email of concerns with the existing regulations and those that need correction or clarity and requesting stakeholders to inform DSA by email of new accessibility concerns that can be addressed through regulation appropriate for the California Building Code. DSA will also request the newly-formed consultative body to reach out to their constituents for suggestions on code amendments and to bring forth the suggestions to DSA. DSA will present code change suggestions to the consultative body prior to developing regulatory language to determine necessity and establish support for the various changes and to develop a priority list. DSA will disseminate information on the priority list through the use of fact sheets that were used during this past intervening code cycle. In addition, DSA is committed to issuing timely meeting information to all stakeholders via Listserv, providing an opportunity for ample review of these fact sheets. DSA plans to put them on their website as they become available and then issue a directive that they are there for review. DSA will request that the consultative body inform their constituents on the priority list of amendments and propose regulatory language and encourage participation in DSA's stakeholder outreach meeting. DSA also expects the consultative body members to be a resource in educating their constituents about

the proposed amendments. She stated it is anticipated, with the input and support of the consultative body early in the code development process, all stakeholders will feel that accessibility concerns that are appropriate for and can be addressed through the code development process will be considered by DSA and scheduled for resolution in the current or future code development cycle

Question or Comments from the Commissioners:

Commissioner Booth stated it would appear that attendance at these consultative body meetings is a challenge.

Ms. Clair clarified that they were the stakeholder meetings; the consultative body has not met yet.

Commissioner Booth asked if she knew the nature of the challenge.

Ms. Clair stated that the nature of their package wasn't very large, and so for some people the changes that occurred through the various meetings were not significant, so the interest maybe wasn't there. Some individuals tuned out of the process completely for one reason or another based on a position or a principle; others might have had a busy schedule during meeting times due to the nature of the current construction climate. She stated DSA discusses technical language during these two-hour meetings, and so it may be a challenge for some individuals to stay committed. DSA will continue with the stakeholder emails, the general invitations, and try to engage the community.

Vice Chair Winkel asked what's the relationship between the consultative body and the Code Advisory Committee.

Ms. Clair stated the consultative body is there to advise DSA and provide their perspectives because they would be a representative group of stakeholders. DSA plans to approach them first with intended changes that they have before there is development of any regulatory language to discuss the reasons why. Because DSA will be consulting with this group and receiving feedback, as well as going forth to the stakeholders when they advance to the Code Advisory Committee, it is DSA's goal to have more support for the proposed changes that have been vetted through two resources, the really technical group that is a representative body and the general public.

Vice Chair Winkel stated that is the way he envisioned how it works. He asked when some of the people have dropped out of the process, is it because they feel like they're not going to prevail, so they withdraw.

Ms. Clair responded that DSA sends out 1,200 emails. It is difficult to assess with each representative group what their participation is and the reasons for participating. She stated that some of the code change suggestions that they put forth are because clarity is needed in the regulations. DSA hears those change proposals from enforcement entities, so DSA brings those forth. Her understanding is if they read their regulations and they approve of the content, they

don't feel the necessity to participate and be supportive. She stated there are many individuals in the disability community who participate. She mentioned that there are people that take a position that if some of their objectives aren't met, they refuse to participate.

Chair Batjer asked whether the stakeholder meetings are always held in Sacramento.

Ms. Clair responded that the first two meetings were held at the Department of Rehabilitation via teleconference. If the attendees were local and wanted to participate, they could do that. Live captioning was also provided. The remaining three meetings were held at the DSA offices in Conference Room B, and multiple platforms were available to the participants: teleconferencing; live captioning; and video conferencing with their regional offices in San Diego, Oakland, and Los Angeles, so an individual could travel there.

Chair Batjer asked how the list of 12,000 is verified.

Ms. Clair stated that DSA will advise people at any of their outreach, trainings, website, stakeholder meetings how to self-subscribe to Listserv. She gave an example of notifying individuals that participated in their adult changing facilities task force. She stated every time they send emails on their Listserv, it generates a report of those that are no longer deliverable and they will be removed. However, to be able to reach out, since it is just email based and not name based, they don't know who those emails belong to in order to reregister them. Once an email has been determined to be undeliverable, there is no way for them to get back on unless they self-subscribe again.

Chair Batjer stated she is very appreciative of the work over the last year that Ms. Clair and her colleagues have done to improve DSA's outreach and educational opportunities.

Questions or Comments from the Public:

Natasha Reyes, attorney with Disability Rights California (DRC), thanked Ms. Clair for the update. She stated DRC supports efforts to improve outreach and education, especially to the disability community, and wants to encourage DSA through this process to be sure to outreach to people with a variety of disabilities; the range includes people with mental health disabilities to physical disabilities and especially to include people with multiple disabilities and make sure they are engaging people with various perspectives on these issues. DRC also wants to encourage that this be an inclusive process, so they appreciate the work being done with the consultants with UC Davis, and expect that this will result in a consultative body that provides a meaningful opportunity for input from the disability community. She commented that over the past two years there have been members of the disability community advocating against changes that would reduce accessibility; yet they have not seen responsiveness to those comments. She urges that specific outcomes from outreach and educational efforts be put on a time frame that would not only follow procedural rules, but also make changes being called for by the disability community within a reasonable time. DRC asked that this consultative body not be limited to Chapter 11B, but to make sure that it includes consideration of places in Chapter 11A that are inconsistent with federal law, especially the Fair Housing Act.

(A brief break was taken.)

Rick Halloran, Senior Building Inspector and Certified Access Specialist with the Department of Building Inspection, City of San Francisco, commented on what a great job DSA is doing on their educational program. He stated he had the opportunity to attend four of their classes and thought their preparation was wonderful, presentations were excellent, and their handouts were a great resource. He is an instructor at the community college level and teaches a 16-week class on accessibility, and he knows the difficulties in presenting such a class. He mentioned DSA is now cooperating with Certified Access Specialist Institute and with CALBO, and that is very much welcomed and they deserve great credit for what they are doing.

Eugene Lozano, California Council of the Blind, stated he was very impressed with the report and very optimistic about the future direction DSA is taking. He stated he concurred with the comments made by the first commenter, Natasha Reyes. He added in addition to the consultant advisory committee giving input on Chapters 11A and B, Chapter 10 should be referenced because there are some things that DSA does jointly with the State Fire Marshal, and he suggested they provide input on that. He stated to the best of his knowledge the State Fire Marshal no longer has an advisory committee to deal with access. Mr. Lozano stated the disability community would like to know whether the consultant advisory committee is going to be permanently institutionalized; in other words, its existence will not be limited to a code cycle or who is the State Architect. There have been several advisory committees in the past. Some of them transitioned beyond code cycles and whoever was the State Architect; others have existed at the pleasure of the State Architect and sometimes they were disbanded. As far as getting more disability community involvement, knowledge that this consultant group will be a permanent part of DSA is important. Mr. Lozano suggested providing a per diem for those people who do not live in the Sacramento area to ensure people can attend. Not all stakeholders have the resources as individuals or for organizations they are representing.

Chair Batjer asked Ms. Clair to respond to the permanency or the permanent nature of the committee.

Ms. Clair stated she knows the present State Architect is committed to this endeavor. She doesn't know the vehicle to establish that permanency. However, this has been a concentrated effort on DSA's part to get this right. She stated DSA is firmly committed to having longevity, but she's not sure of the mechanism, other than coming from the State Architect, for having it permanently institutionalized. She wanted to clarify that DSA has established that their meetings will be in person for this consultative body; most of them, at least, if action is being taken. They have also established that travel will be reimbursed, and if they are out of the area lodging and meals will be reimbursed. DSA is building that into this body so that it will facilitate their in-person appearance. They want to establish the schedule for meetings at the start of each code development cycle so that they can plan out an 18-month activity of commitment.

Chair Batjer reminded participants that there is no action required by the Commission on agenda item 26.

Question or Comments from the Commissioners:

Commissioner Mikiten thanked DSA for their efforts over the last year of incrementing focus and expanding reach of all these different useful elements which have evolved over time and become beneficial to people. He stated he believes all this planning, which coalesced into the advisory group, is going to help not just the disability community, but also enable DSA to do their job more easily and more effectively.

27) 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.

Chair Batjer stated there will be a pause for a few minutes to allow for computer setup.

(Brief pause in proceedings.)

Ida Clair presented DSA's code package for the 2016 intervening code cycle. Ms. Clair stated DSA remains fully committed to the development of accessibility regulations that serve the needs of the disability community. In their prior report, they spoke extensively about their revised outreach program. To ensure that proposed regulations meet those needs, DSA conducted an extensive outreach program in the fall of 2016 with the disability community and other stakeholders, including building officials, building owners, building industry representatives, state agencies, city and county representatives, and other interested parties. Two pre-development outreach meetings were conducted via teleconference with closed captioning services; and four meetings held at DSA headquarters included teleconferencing, closed captioning, and video conferencing services with the three DSA regional office locations. The outreach helped DSA identify potential code changes to the accessibility provisions of the California Building Code, highlighted key aspects of the code development process, and provided an opportunity for DSA to receive suggestions, comments, and issues from the public. In addition, DSA received code change proposals via email throughout the pre-development activities.

Ms. Clair stated the following is a brief description of the pre-development activities which resulted in the regulatory proposal package that is before the Commission today. On August 10th DSA and the California Department of Rehabilitation (DOR) jointly conducted outreach exclusively with the disability community to solicit comments and suggestions for potential amendments to the accessibility provisions of the California Building Code. This meeting was offered as a teleconference so that all persons with disabilities could participate without having to travel, with the option of attending in person. DSA presented suggestions for code change items that had come to DSA's attention, and then DSA opened the phone lines to persons with disabilities, listened while persons with disabilities shared their suggestions for code amendments, and made a list of their suggestions. At their second outreach meeting on September 1st, DSA and DOR jointly conducted a public teleconference open to all stakeholders. DSA and DOR highlighted key aspects of the development, adoption, and implementation of the construction-related standards. DSA presented suggestions for code change items that had come to DSA's attention, and then DSA opened the phone lines to all stakeholders, listened while stakeholders shared their suggestions for code amendments, and made a list of their suggestions.

At their third outreach meeting on September 21st, DSA held a public video conference and teleconference to present an updated list of potential code amendments and solicited public input regarding prioritization of these potential amendments. Their fourth meeting on October 20th provided an opportunity for DSA to present initial drafts of code amendments. DSA presented and held discussion via public video conference and teleconference on each proposed draft and solicited input regarding these items. DSA presented its information in a comprehensive and understandable manner with enhanced explanations of the proposed code changes. The fifth pre-development meeting via public video conference and teleconference on November 2nd provided an additional opportunity for stakeholders to provide input on the initial drafts. For this meeting, there had been no revisions to the proposals or additional amendments. At their last pre-development meeting via public video conference and teleconference on November 15th, DSA discussed proposed code amendments for additional comment and feedback. Revisions to the proposals were identified in the agenda and draft code amendments, and there were no new amendments added to the list. At the end of the pre-cycle activities, DSA sent an email to inform each proposer of the status of their code change proposal, whether the proposed change was moving forward, withheld for further study, or would not move forward and the reason why. Many proposals were held for further study, and DSA has already commenced in addressing these proposals for the 2018 triennial code cycle. The formal code change proposals that DSA would like to propose today were based on necessity and the need for clarity as determined from stakeholder comments and staff analysis.

Ms. Clair stated DSA is prepared to present for discussion and comment the building standards related to accessibility that are proposed in this cycle; however, DSA regrets that they cannot request approval of the Commission of the code change proposals at this meeting today as they are not yet in receipt of the required Form 399 from the Department of Finance. DSA asked the Commission for a continuance on the approval of their code change proposals to the October 17, 2017 Building Standards Commission meeting. She extended DSA's apologies for the delay to individuals in attendance today who were prepared to comment on their code change proposals. She stated they would like to discuss their proposals as a group to facilitate since they will be heard again in October. She advised what they will present today will be two items that there are individuals ready to comment today; thereafter they can open the floor to address other proposals if they need comment, if that is acceptable to the Commission.

Chair Batjer stated that would be acceptable to the Commission and clarified that the Commission will not be taking action on this item today because Form 399 is not in the package, and this entire package will be brought up again at BSC's October meeting and rebriefed. She stated there are potential public commenters in attendance and on the phone, and she wants to give them access today. Chair Batjer stated her preference is that DSA goes forward in briefing the item, and there was no objection from the Commission. She reiterated there will be no action taken on item 27 today.

Ms. Clair thanked the Commission for accommodating their continuance today. Derek Shaw will present the first item, 2.02. Mr. Shaw stated in this item DSA is proposing to amend the definition of "technically infeasible" to strike language which refers to the minimum requirements of new construction and replace it with a reference to minimum requirements of this code. This is being done to maintain consistency with the use of the California Building

Code and provide clear communication to the code users, the designers, the code enforcement officials, and the general public. Currently the definition of technically infeasible is based on existing federal language. He stated the defined term is related to the method of making determinations and processing issues that are technically infeasible. Some of the comments DSA has received have been in opposition to this proposal. Their opposition was based on decreasing access and decreasing the requirements of the accessibility provisions in Chapter 11B. DSA has reviewed the issues to the extent this criticism has been provided; however, DSA is unable to substantiate the argument that has been provided in limited terms. He stated there is a long list of requirements in 11B, and when new buildings are constructed, compliance with those requirements is required. For alterations, there needs to be compliance with the new construction requirements, except in some discrete areas within Chapter 11B which allows a different level of accessibility applied to alterations. In some cases the technical requirements in 11B apply to new requirements only; in some places they apply to new construction and alterations to existing buildings; and other provisions apply exclusively to alterations. Under new construction, that's appropriate; however, the concept of technically infeasible doesn't come into play under new construction because technically infeasible is only applicable to projects that are undergoing alterations. DSA finds the definition of technically infeasible inappropriate to suggest that the requirements of new construction apply to alterations. By changing this language of this code and clarifying that the minimum requirements of this code are the ones that need to be considered, that works harmoniously with the basic technical and scoping provisions in Chapter 11B, because they have the portions of the code that apply to both new construction and alterations and other portions which apply only to alterations. For those portions that apply only to alterations, if DSA was to retain the definition of technically infeasible, which relies on the language for new construction, then they are leaving the designers and building officials in a bind. Their question may be: Is the building official to enforce the code requirements for new construction in all cases, or are they supposed to comply with the applicable requirements of Chapter 11B?

Question or Comments from the Commissioners:

Commissioner Sasaki stated in 11B there is a section under alteration which requires, for example, an accessible path of travel to the area of alteration. He commented that is the reason this definition needs to be changed because alteration means existing facility, and those current requirements in 11B for alteration are clearly not requirements for new construction.

Mr. Shaw confirmed that is correct. He stated the requirements not only for path of travel but for a variety of other requirements, where they apply to alterations the code makes very explicit the language such as "in alterations," and then the balance of the technical requirement is presented. In Section 11B-202.3 the basic scoping requirements for alterations says that where existing elements or spaces are altered, each altered element or space shall comply with the applicable requirements of Division 2, including Section 11B-202.4, and that sections addresses the path of travel requirements that are required under alterations.

Commissioner Mikiten stated isn't the phrase "technically infeasible" invoked in other places in the code that refer specifically to alterations.

Mr. Shaw stated the phrase "technically infeasible" is presented as a general exception, exception number 2, under Section 11B-202.3. In that case there is an exception allowed for those conditions which the building department determines are technically infeasible.

Commissioner Mikiten asked Mr. Shaw whether the context of that section he just cited is alterations.

Mr. Shaw confirmed that is correct. He stated it is an exception to the scoping requirement for alterations.

Commissioner Mikiten stated that clarifies what Mr. Shaw stated earlier, which was that there is a conflict between this current language that says new construction and the fact that this term "technically infeasible" is actually within an alteration section of the code.

Mr. Shaw confirmed that is correct.

Vice Chair Winkel stated he thinks the part that's broken in here is the DSA old definition of alteration. If they had just left alteration the way it is worded in the basic IBC, they wouldn't be having this conversation. His other thought was that this was necessitated by the fact that IBC mistakenly took Chapter 34 out of the building code and put it in the existing building code. He understands what this code means, but when you go back and look at the alteration definition, you still have the same problems with alteration. One of the changes in the DSA definition of alteration is change of use or occupancy, and he gave an example that changing the name on a front door would trigger 202.4. He stated he is undecided whether it is terminally broken right now or it doesn't need to be fixed.

Mr. Shaw stated he wasn't sure if he heard a question.

Vice Chair Winkel stated the difficulty is in the definition of alteration, not in the terminology being changed within technically infeasible. He asked whether they are fixing the problem in the right place.

Commissioner Sasaki stated he thinks the confusion is that when they look at the old Chapter 34, existing structures, and then look at current 2016 California Existing Building Code there is a definition of alteration, and that is different than the definition of alteration in 11B. For example, under the definition of alteration in 11B, a structural repair is considered an alteration; whereas in the California Existing Building Code a repair is a repair, which is a reconstruction, replacement, or repair of an existing structural element. He asked Vice Chair Winkel if the problem he just described was the same problem he was referring to.

Vice Chair Winkel stated he's not certain if the solution lies in what DSA is proposing to fix, but that it lies in the definition of alteration.

Chair Batjer asked him if that is similar to what Commissioner Sasaki just stated.

Vice Chair Winkel stated IBC's definition of alteration is two lines long and defined in terms of what it is not. There is an eight or ten line additional definition from DSA-AC which talks about modification and construction change in occupancy or use which is much more extensive. It is deliberately meant on the part of DSA to trigger access in many more circumstances than you would get in the IBC definition. He stated going back to the IBC definition would be a reduction in access from what is in the current California Building Code. He stated the definition technically infeasible has a very limited application. It has two components, but it usually ends up talking about the structural component. He stated he is unsure it is a problem, but thinks the solution is in the wrong place.

Mr. Shaw wanted to address the commissioners' comments to provide clarity on DSA's definition of alteration as it relates to the old Chapter 34 and the California Existing Building Code. He stated that DSA-AC does not adopt the California Existing Building Code. DSA presents their accessibility requirements for alterations in Chapter 11B primarily. They have utilized the more extensive definition for alteration for decades. It does contain enhancements over the method of code analysis that you would achieve if you utilized the California Existing Building Code or even previously under Chapter 34. This was a policy decision that had been made decades ago, and it is for the benefit of accessibility, to provide a greater level of access for the disabled community in California. When DSA migrated to the provisions in the 2013 California Building Code, Chapter 11B, based on the ADA standards, the State Architect made a commitment to retain those higher levels of accessibility that had previously existed in the code.

Chair Batjer reminded commenters to speak on the item that has just been presented, item 2.02; and that there is one more presentation to be made within item 27.

Questions or Comments from the Public:

Mike Gibbens stated he has a detailed letter explaining the legalities and changes in the law that he will later provide to the Commission, but he wanted to briefly outline some specific points. He stated there are a lot of claims that this law conflicts because the new construction standards are somehow triggered by this, but they're not, just as DSA said. He stated he is 100 percent behind DSA in their analysis and their recommendations to move forward with this change. The law was not this way previously, but it was done in order to try to enhance accessibility, which is something that did not work in this situation. In fact, it has caused a great deal of conflicts. He commented he deals a great deal in his practice with litigation, and this has been a litigation driver because people are trying to say that standards for new construction apply where they don't, where they're specifically relegated to an alteration and path of travel. He stated he has been on the Code Advisory Committee for 20 years for building standards, and his opinion is DSA has never been as good as they are right now. He commended and thanked DSA for their great efforts.

Natasha Reyes prefaced her comments by saying she sees Section 202 in the definitions in conjunction with Section 202.3 of 11B, so while she might reference that second section, she will try to focus on 202. She stated on behalf of DRC, she understands that the Commission won't be taking action on this item today, but they do urge disapproval of the proposals as written for Chapter 2, Section 202, the definition, and Chapter 11B, Section 202.3, alterations. They

understand DSA's goal is to increase clarity, but as they read this change, they actually see it decreasing clarity and leading to inconsistency with federal law. They see this creating confusion as to which accessibility standards are actually applied to each project and when the technical infeasibility exception is allowed to be applied. Without greater specificity about which accessibility standards are applied, DRC recommends the Commission not approve these proposals, as they will actually reduce accessibility by increasing applicability of this technically infeasible standard.

She stated since October 2016, DSA has acknowledged the merit of DRC's recommendations and agreed to do further research; however, DSA has yet to make any changes, and they have continuously cited public notice requirements. This reasoning actually conflates DRC's recommendations. DRC's first recommendation is to make the definition of "technically infeasible" more specific and to provide consistency with the HUD regulations, and that is within the scope of public notice and has been for the past 11 months. DRC's second broader recommendation is that the scoping should apply to all publicly funded buildings. Where that noncompliance exists, the Administrative Procedures Act actually permits DSA to make changes during this rulemaking process without going back to the initial stakeholder outreach stage that was described earlier in DSA's presentation. She urged the Commission, when they do take action on these items, to reject the proposals as written on "technically infeasible" because they lack specificity and will lead to noncompliance with federal standards that developers have to follow. DRC also urges the Commission to address the broader noncompliance issues with federal law as soon as possible.

Ms. Clair wanted to address a comment. She stated DSA has had discussions with DRC and understands their concerns with regard to Section 504 applicability of technical infeasibilities specifically as it relates to public housing. DSA understands that requirements that relate to public housing don't go far enough regarding this change. They have addressed those concerns and have scheduled to address them in the 2018 triennial code cycle. She stated when they received the comments during this past code cycle, the way they read their ability to address the issue without having had an opportunity to be addressed formally, the change was too great. DSA wanted to stress that because they are making broader changes to the public housing regulations and clarifying when technical infeasibility can be applied to public housing in the 2018 triennial cycle, it does not actually obviate this change to technical infeasibility and how it's applied to other projects that fall under Chapter 11B and its application right now. It may not go far enough, but it doesn't actually reduce that access because technical infeasibility, when it's invoked, still has a measure of the enforcement entity to determine what is appropriate. The requirements of saying "for this code" still provide that additional clarity as opposed to the requirements for new construction

Bob Raymer with the California Building Industry Association (CBIA) and also representing the Building Owners and Managers Association (BOMA) stated CBIA and BOMA strongly support the proposed code change to the technically infeasible definition of DSA. As previously discussed by Mr. Shaw and reiterated by Commissioner Sasaki, the code contains accessibility provisions for both new construction and for certain specific instances of additions, alterations, and repairs. If you look specifically at the existing definition, it speaks only to new construction in this context. At best it is confusing; at worst it's inaccurate or inappropriate. He stated when

this was going through the Code Advisory Committee, the thought was to put in both new and existing construction, but that would be confusing. The language that DSA has chosen, requirements of this code, is similar to definitions throughout the code and not just accessibility provisions.

Rick Halloran with the Department of Building Inspection, City of San Francisco, stated he wanted to second Mr. Gibbens' comments regarding the great job DSA is doing, and in his opinion they are very helpful as code officials. He stated he thinks this change is warranted, although he agrees with Natasha Reyes that there needs to be work done statewide on public housing. He has had firsthand experience working on this issue with DSA. He thinks where that change does belong is in 11B-233 and not the definition of technically infeasible. He stated he would like to see this change and thinks it is needed and mandated because it closes the door on the conversation they have mistakenly had with a number of people who think that you can apply a technical infeasibility to new construction when the infeasibility is self-created. He stated it is needed to clarify that this is in alterations and not new construction.

Terry McLean, Architect and a CASP, stated she supports approval on this item.

Michael Mankin stated he recognizes a problem with this section. He stated he worked for DSA for more than 20 years, and he never had a question that this section was a problem. He stated he thinks the wording is intended to be a way of clarifying any perceived lack of understanding; however, it's been in place for about 20 to 30 years. He suggested that the wording is unclear because it refers to this code, which includes existing construction and new construction. It may be just a matter of changing the wording to say as compared to new construction, but not in new construction or something similar. He wrote a letter stating he is in opposition to the language presented. He stated he doesn't think it's a problem, and there are many other more severe problems in this code than something that has been basically unchallenged for 20-some-odd years. He stated there is a tendency for people who are on a project and having difficulty with it to maybe misread it in order to reduce their costs or do something less than the code might require. Other than that, he has never seen a serious challenge to this section. He doesn't think it should be given a lot of time, but he thinks the change forces the situation. It continues to be unclear and possibly worse clear. If the technical infeasibility situation exists because it cannot meet the standards compared to the standards of new construction, which is not applicable here, then follow up with the rest of the language.

Chair Batjer advised him that the commissioners have received his letter.

Chair Batjer stated she will turn back to DSA and have them briefly give an overview of the remaining portion of their regulatory package to allow the commissioners and the public the opportunity to comment or ask more questions and fully review the remaining presentation.

Ms. Clair stated that it is known that there is one more provision where DSA is aware they have individuals that want to comment. They also have the remainder of the package that is open for public comment as well so that they can address those provisions; if not, she assumes it will be tabled until October for discussion on the other items.

Ms. Marvelli advised the entire package is open for discussion. The commissioners and public can ask questions on any of the package, and based on their request for a continuance, this will be done again in October. She stated she does not want to discourage anyone from providing public comment on an item that they haven't given an overview on.

Ms. Clair stated that was her concern as well because it seemed to be posed that DSA had only two items to discuss. She clarified that DSA is presenting two items today; but the whole package is up for discussion, and they can address those issues as they arise.

Mr. Shaw stated the second item that seemed to receive the most number of comments was item 11B.01 in their package. This is DSA's proposal to add a note under exception 2 of Section 11B-202.3. This is the other item related to the previously discussed item, the definition of technically infeasible. Under Section 11B-202.3, alterations, this is a scoping section which requires, where existing elements or spaces are altered, that each altered element or space shall apply with the applicable requirements of Division 2, including Section 11B-202.4 (path of travel requirements). Exception 2 is an existing exception in the code. What DSA is proposing is to add a clarifying note which is sourced from the federal regulations, the ADA, and it is provided for the benefit of the code user to help provide some clarity of a phrase used here, but it is used in a conceptual manner. He stated the phrase "to the maximum extent feasible" is the phrase DSA is addressing. It is the same phrasing that is used in the federal standards, and as part of their transition in the 2013 building code, to utilize the ADA standards as their model code, this language was incorporated. Since the 2013 code was published, they have received a few questions about the phrase "to the maximum extent feasible." Seeing that the U.S. Department of Justice had addressed a similar or the same questions by providing additional clarity on this phrasing, DSA is proposing to include that as well. Commenters in opposition to this item describe it as being simply a guidance or advice that is provided within the ADA standards, and in part that is true. Part of the language we see here is reflected in U.S. Department of Justice notes in the 2010 ADA standards that are interspersed throughout the technical and scoping requirements of the ADA standards. The entirety of the language of this note is actually provided both in Title 2 and Title 3 of the ADA regulations. DSA views that with more gravitas than simply a helpful note within the ADA standards. They are providing this to clarify the conceptual idea that can be useful for the code users, designers, code enforcement officials, as well as the general public so that they get a better understanding of what the phrase "to the maximum extent feasible" is addressing.

Chair Batjer stated this item and any other items in the package are open for discussion by the Commission.

Question or Comments from the Commissioners:

No questions or comments from the Commissioners.

Questions or Comments from the Public:

Connie Arnold stated Michael Mankin asked her to read into the public record a letter sent by Mr. Mankin on August 14th to the Building Standards Commission.

Chair Batjer advised that the Commission has Mr. Mankin's letter and it can be put in the record.

Ms. Arnold stated he wanted it read into the record. She asked if it would be visible in the record if it is not read.

Chair Batjer stated Ms. Arnold may not have been present at the time Mr. Mankin called in to the Commission.

Ms. Arnold stated she just arrived.

Chair Batjer stated she is welcome to read the letter; however, he was on the phone a minute ago, and they advised him that all the commissioners were in receipt of his letter. She reiterated she is welcome to read it into the record, if she so desires.

Ms. Arnold read the letter into the record as follows: "Secretary Batjer and Building Standards Commissioners, I'm opposed to the changes in items 2.02 that will decrease access to remodeled areas and now even apply to new construction. The changes violate California Government Code 4450 as well as Health and Safety Code 19957. The consequences of failure to respect the federal law requiring equal accommodation mean that businesses will be more vulnerable to legal action. People with disabilities may be the minority, but we are entitled to the same protection of life, liberty, and equality under constitutional law. Using the building code as a safe harbor for discrimination (by not including the non-building equivalent performance requirements that exist in state law) does not stand up under scrutiny. The State Architect has no authority to undermine state and federal law. Item 2.02, CBC, Chapter 2, Section 202, definitions, definition of technically infeasible should be disapproved because it is in violation of the following criteria of California Health and Safety Code 18930: (i) The proposed building standard diminishes access and protection for persons with disabilities, in violation of Government Code 4450 and Health and Safety Code 19957. Changes are not within the parameters of enabling legislation; (ii) There is no basis for claiming that it is in the public interest to adopt codes that diminish access and is not required as there is a procedure in place since 1970 to protect owners when construction alterations cannot meet the literal requirements of the codes; (iii) The proposed building standard is unreasonable, arbitrary, unfair, and capricious. There are two different standards used for the same problem. Owners may choose between equivalent facilitation used for a hardship exception under Health and Safety Code 19957 or choose to the maximum extent feasible that does not require usable access with an alternate means or that the protections of the code is secured. This will cause abuse of discretion and will create confusion and make enforcement more difficult and lead to the need for court interpretations and more lawsuits; (iv) The proposed changes diminish enforcement, diminish the protections offered by not requiring usable access, and are not necessary as we have a procedure to protect owners when an unreasonable hardship occurs. The ADAS codes do not provide the protections and access of Cal codes, and there is no need to try and change codes to use only technically infeasible. Signed, Michael Mankin, California licensed architect C24774, CASP 001."

Ms. Arnold asked if there were other commenters on the phone that she missed.

Chair Batjer confirmed that there were.

Ms. Arnold asked if HolLynn D'Lil was on the phone.

Chair Batjer confirmed that she was not.

Ms. Marvelli asked Ms. Arnold if she wanted to be told who the callers were.

Ms. Arnold stated that would be helpful.

Ms. Marvelli listed Rick Halloran, Terry McLean, and Michael Mankin.

Ms. Arnold stated she wanted to read something else into the record. She stated there are 49 or 50 people that commented to oppose access and remodeling construction, and the names of these people are: David Thomas Forderer; Bob Segalman, Ph.D., President, Speech Communication Technologies, Inc.; Jeff Vierra, Center Coordinator, Disability Resource Agency for Independent Living; Randi Bardeaux, Chairperson, Antelope Valley Seniors Network; HolLynn D'Lil; Judith Smith; Ruth Ann Shpiner; Sidney J. Cohen; Susan Chandler, President, Californians for Disability Rights, Inc.; Tara A. Ayres; Naomi Armenta; Nicole Greely Owen; Linda Hunt; Louis Duke; Marilyn Golden, Disability Rights Education & Defense Fund (DREDF); Melissa Shaw; Mark Basquez; and Linda Lin; Janet Munguia; Connie Arnold, Educate, Advocate; Grace Lin; Jill Lessing; Michael J. Mankin, Architect; Fernando Roldan, Employment Program Representative at California Employment Development Department; Stan Kosloski; Steven E. Brown; Mark Fenicle; Marylynn Fatheree; Melissa Crisp-Cooper; Lake Kowell; Lilibeth Navarro; Linda Lin; Ynchun Lin; Helen O'Mara; Howard Chabner; Kathleen Barajas; Robert Reuter; Adrienne Lauby; Blane Beckwith; Carol Wolfington; Catherine Callahan; Cyndi Jones; and Jessica Bernard.

Chair Batjer advised Ms. Arnold that of all of the comments of the people whose names she just read are included in the commissioners' packages.

Ms. Arnold thanked her for advising her of that fact, but she is here in person today, so she read the following: "Dear Commissioners, I'm one of 46 who oppose the proposed code changes in Items 2.02 and 11B.01 in the 45-day comment period. These items are invalid insofar as they permit either equivalent facilitation or compliance to the maximum extent feasible. There is no such choice permitted by statute and case law. Rather, the statutes and case law mandate equivalent facilitation. Therefore, the portion of the proposed exception 2 that states 'or comply with the requirements to the maximum extent feasible' should be deleted from the sentence in exception 2, and the note underneath it should be deleted in its entirety. DSA is misreading the law and appropriates authority to unilaterally change the law. We believe that DSA makes a fundamental error in interpreting California Government Code 4451(f) and literal requirements of the standards and specifications required by this part, California Health and Safety Code Section 19957, to mean the written accessibility provisions of the CBC as promulgated by DSA under its statutory authority. We believe by this part refers not to the building code standards required of DSA and CBSC by the laws, but to the laws themselves, which begins the part of the

Health and Safety Code 19955(a), which requires starting with California Health and Safety Code 199(a). The purpose of this part is to ensure that public accommodations or facilities constructed in this state with private funds adhere to the provisions of Chapter 7 commencing with Section 4450 of Division 5 of Title 1 of the Government Code for the purposes of this part. Public accommodation or facilities means a building, structure, facility, complex, or improved area which is used by the general public and shall include auditoriums, hospitals, theaters, restaurants, hotels, motels, stadiums, and convention centers. In other words, DSA has the authority to promulgate access standards, but not to provide less than is required by Health and Safety Code 19955, et al., and California Government Code 4450, et al. This is an important reading of the law which was clarified in an October 28, 1980 legislative letter by Bynum M. Gregory to Senator James R. Mills, which states: While it is a well-established principle of judicial review that a regulation comes before a court shielded by a presumption of regularity, *Schenley Affiliated Brands Corp. v. Kirby*, 21 Cal.App.3d 177, 182, and that the construction of a statute by the officials charged with its administration shall be given great weight, *Ralphs Grocery Co. v. Reimel*, 69 Cal.2d 172, 176. It is also settled that an administrative officer or body may not make a regulation altering or enlarging terms of a legislative enactment, *Whitcomb Hotel, Inc. v. Cal. Emp. Com.*, 24 Cal.2d 753, 757, and, consequently, that an administrative regulation authorized by a statute is invalid unless it is consistent with and not in conflict with statute, *Desert Environment Conservation Association v. Public Utilities Commission*, B Cal.3d 739, 742-743, see 11342.2 Government Code. 2, DSA misreads the laws about new construction. DSA states in part response to our opposition to striking out the phrase in new construction, DSA has extensively reviewed the text of California Health and Safety Code Section 19957 and is unable to confirm public comments which assert new construction is the standard under state law from which alterations can deviate in cases of practical difficulty, unnecessary hardship, or extreme differences. Rather, California Health and Safety Code Section 19957 indicate that it is the literal requirements of the standards and specifications required by this part. Again, we believe the DSA misinterprets the meaning of the phrase by this part. We believe that the proper interpretation starts with Health and Safety Code 19955 and Government Code 4450(a) enabling legislation giving DSA and CBSC 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 19955 states in part: Any new requirements imposed by the amendments to this section enacted by the legislature at its 1973 to '74 regular session shall only apply to public accommodations or facilities constructed on or after the effective dates of the amendments. California Government Code 4450, 4456 states: 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 facility shall only apply to the area of specific alteration, structural repair, or addition and shall not be construed to mean that the entire structure or facility is subject to this chapter, added by statutes 1971, Chapter 1458. Therefore, it is obvious that the body of law beginning with Health and Safety 1955 and Government Code 4450 apply to new construction with specific amendments to address alterations and Health and Safety 19957, Government Code 4451(f), and Government Code 4456. To base a decrease in access based upon the fact that the laws requiring access for people with disabilities to 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 laws is an insulting belittlement to the disability community. These concerns and our opposition to this reduction in access standards for alterations are not ameliorated by DSA making the new definition for “to the maximum extent feasible” a note. A note will be followed by interpreters of access code as giving the same weight and stature by law as a CBSC certified standard. The note is what will provide a lesser standard by eliminating the legal requirement for equivalent facilitation and replacing it with the note which does not require equivalent facilitation. The code enforcers are able to choose between providing equivalent facilitation and something less that is access to the maximum extent feasible, but not equivalent to the requirements of Health and Safety Code 19957 and Government Code 4450(f). The October 28, 1980 legislative council letter by Bynum M. Gregory addressed this clearly. As discussed previously, subdivision (f) of Section 4451 of the Government Code and Section 19957 of the Health and Safety Code authorize the entities enforcing and administering the handicapped accessibility provisions of the Government Code and Health and Safety Code to make exceptions to accessibility standards, but only when it is clearly evident that equivalent facilitation and protection are thereby secured. While the State Architect has brought authority in fashioning accessibility standards, Section 4450, Government Code, in our opinion the provisions of the proposed regulations set forth in the facts which as a practical matter authorize enforcement authorities in certain instances to waive accessibility standards without ensuring equivalent facilitation are contrary to the statutory provisions which require as a condition of the waiver that equivalent facilitation and protection be secured. 3. DSA is dismissive of people with disabilities’ comments. DSA’s statement that this code change proposal helps to minimize confusion and provide clarity about the code requirements for accessibility when existing buildings are undergoing alteration is dismissive of genuine well-researched concerns and statements from the disability community. What the commenter stated during the 45-day comment period was under CBSC criteria three; the proposed building standard is unreasonable, arbitrary, unfair, and capricious. There are two different standards used for the same problem. Owners may choose between equivalent facilitation, use for a hardship exception under Health and Safety Code 19957, or choose to the maximum extent feasible that does not require usable access with an alternate means or that he protections of the code is secured. This will cause abusive discretion and will be difficult and lead to the need for arbiter interpretation and more lawsuits.”

Chair Batjer advised it is getting close to the time for giving the recorder a break and asked if she could conclude shortly. She asked Ms. Arnold to submit to staff the letter she just read into the record.

Ms. Arnold stated she will submit a four-page letter regarding equivalent facilitation access as mandated under California statutory and case law. It lists a number of cases and code citations regarding the proposed change being a decrease in access and will diminish access as it relates to equivalent facilitation, new construction, and all the relevant proposals before the Commission today. She stated she gets concerned when she sees access reductions. She would have liked the opportunity to be surveyed and participate, but there were recent time constraints that stopped her from participating. She stated she got an email from another advocate stating somebody that used to be in government affairs and opposed to public access was appointed. She stated she felt her participation is pointless even after 30 years of advocacy work; that actual access needs as

end users doesn't matter; that able-body professionals will design codes and consider input but ignore comments about access. She stated she feels that the disability community is dismissed and ignored at this point and, unfortunately, business needs are more important. She stated there are a growing number of people becoming disabled with age who need access. She discussed the struggles that persons with disabilities have every day with things like doors, toilets, and adult changing tables. She stated her frustration that the priority is not ensuring access for people with disabilities; it's how they can reduce access. She stated she will give the Commission the documents she read.

Chair Batjer clarified that the Commission has the other letter she read into the record from Mr. Mankin.

(A brief break was taken.)

Question or Comments from the Commissioners:

Commissioner Barthman asked DSA if they will be able to resolve all the issues brought forward by the commenters or do any more review by the October meeting.

Ms. Clair stated DSA has already received the comments, specifically the comment regarding to the maximum extent feasible. She clarified that the language requirement regarding to the maximum extent feasible is derived from federal language, but it has been in the California Building Code for many years. The request to clarify what "to the maximum extent feasible" means was a request made by the disability community, which initiated their analysis into this. DSA went into federal language and federal regulation and used their definition because they felt it was the most defensible rather than crafting their own definition of this conceptual language, which can be difficult. When they brought this forward to the Code Advisory Committee, DSA heard comments that they did not prefer the language that DSA used. DSA took note of those comments, and instead of providing that as a regulatory requirement, they provided it as a note, which makes it nonregulatory and more of a clarifying purpose. They went out to the 45-day comment period, and the comment that was presented today where they wanted DSA to remove the requirement of to the maximum extent feasible was never provided in that 45-day comment period. She asked Mr. Shaw if her understanding was correct.

Mr. Shaw stated DSA received quite a few comments on this, and some of them were difficult to follow as well as duplicative. As they were researching the points in the comments, DSA did not see substantiation.

Commissioner Barthman stated that he understood from DSA's report that they resolved these issues, but there still seems like there is a lot of people out there that are not satisfied with it.

Ms. Clair clarified DSA went forward with this change because it was a request for a code change to clarify language, so that is the way they proceeded, and today the request has been to remove language, which is not in the scope of what they had put forth in the proposal package. She stated in order to be responsive to that they would have to continue noticing and making that change for October. However, their code cycle is now complete, so she is unclear whether they

can do that. They can consider that for the next code cycle and investigate it as a removal item. But as far as addressing it in this code change proposal, it is not quite responsive to the proposed change.

Chair Batjer deferred to Ms. Marvelli.

Ms. Marvelli advised some of the comments provided today are applicable to the language that was proposed, but some were new comments on items that were not proposed, so they cannot take those into consideration for this rulemaking cycle.

Chair Batjer reiterated DSA has requested a continuance that action be taken at a future meeting so they can receive their completed economic and fiscal impact statement from the Department of Finance.

MOTION: Chair Batjer entertained a motion to consider a continuance so that Division of the State Architect can receive its completed paperwork, and the item will be continued to be heard at the October Commission meeting. Commissioner Barthman made a motion to approve, and it was seconded by Vice Chair Winkel.

Commissioner Mikiten had a minor clarification on one of the other items in the DSA package. He stated on the 11B-703, signage for the dimensions of the ISA, it says that the border may be provided inside or outside of the minimum required international symbol of accessibility dimension, but there's no limit on what that border could be. He wondered why the definition of border was added to be inside that dimension, which would shrink the symbol.

Mr. Shaw responded the reason why the proposal was crafted to allow the border to be inside the dimension is there are quite a number of ISAs that are painted on the ground, such as parking spaces, and there are deviations from the 36-by-36 dimension when crews are using templates and hand painting the border.

Ms. Clair added that this figure is referenced in regulations, which means that this figure then becomes regulatory, and so it is implied that because it is regulatory by its visual properties, that the proportion of the ISA within the field would also meet those regulatory requirements.

The vote was unanimous to accept the motion.

Commissioner Mikiten commented that the new forms by DSA are very easy to follow and more readable by the public as well as a benefit for the Commission as well.

28. FUTURE AGENDA ITEMS

Chair Batjer stated there is a future agenda item that was discussed yesterday. She asked Commissioner Santillan to restate his agenda item to provide clarity so that staff has ample time to work on it.

Ms. Marvelli asked Commissioner Santillan if her understanding of his request was correct, that his request was for staff to look at the terms “amend” and “mandate” used several times within the June meeting that had to do with the AB-2282 regulations.

Commissioner Santillan stated the big portion of the request is to discuss the previously adopted motions as they pertain to the AB-2282, and there were several of them.

Chair Batjer stated staff will work with him on that on bringing that about, so that will be agendaized for the October meeting.

MOTION: Chair Batjer entertained a motion to add an item as just discussed regarding “amendment” versus “mandate” for the October agenda. Commissioner Santillan made a motion to approve, and it was seconded by Commissioner Barthman. The vote was unanimous to accept the motion.

29. ADJOURNMENT

MOTION: Chair Batjer entertained a motion to conclude the California Building Standards Commission meeting. Commissioner Santillan made a motion to approve, and it was seconded by Commissioner Barthman. The vote was unanimous to accept the motion.