

**CALIFORNIA BUILDING STANDARDS COMMISSION
MEETING MINUTES
April 17, 2019 – 10:00 a.m.**

Wednesday, April 17, 2019

Agenda Item 1. CALL TO ORDER

Chair Marybel Batjer called the meeting of the California Building Standards Commission (CBSC) to order at 10:09 a.m. at the California Victim Compensation Board, 400 R Street, First Floor Hearing Room, Sacramento, 95811.

ROLL CALL:

CBSC staff member Pamela Maeda called the roll and stated that a quorum was present.

Commissioners Present:

Secretary Marybel Batjer, Chair
Steven Winkel, Vice-Chair
Juvilyn Alegre
Elley Klausbruckner
Rajesh Patel
Peter Santillan
Kent Sasaki

Commissioners Absent: Larry Booth
 Erick Mikiten

Vice-Chair Winkel led the Commission in the Pledge of Allegiance.

Chair Batjer gave the instructions regarding public comments and teleconferencing.

Agenda Item 2. COMMISSIONER NEWS

Chair Batjer stated that there was no Commission news.

The December and January meeting minutes will be available at the July meeting for review and approval.

Agenda Item 3. CLOSED SESSION

Chair Batjer stated that the Commission was going to confer or receive advice from the Office of the Attorney General.

Teleconference callers could stay on the line during the Closed Session. In addition, the YouTube connection was to be muted and no captioning was to be provided.

Commissioner Santillan recused himself from the Closed Session.

A short recess was taken.

Open session resumed.

Agenda Item 4. Comments from the Public on Issues Not on this Agenda

Chair Batjer advised that the Commission may receive public comments on matters not on the agenda. Matters raised may be briefly discussed by the Commission and/or placed on a subsequent agenda. No action may be taken by the Commission on items raised during this agenda item.

Questions or Comments from the Public:

There were no public comments from the public on issues not on the agenda.

Agenda Item 5. Executive Director Report

Executive Director Marvelli reviewed the status of the triennial code adoption cycle. Today the Commissioners are to take action on the Department of Housing and Community Development's (HCD's) Part 10 rulemaking. It is the last of the 45-plus rulemakings for the 2019 edition of Title 24. During the last few months' staff has been working with the publishers and the state agencies to complete the codification and proofing for all of the other items the Commission has heard over the last few months.

The codes are on schedule for publication on July 1.

The International Code Council is aware that HCD's Part 10 regulations are not final; staff can handle any edits during the proofing.

Executive Director Marvelli reminded the Commission that the CBSC's website URL has changed; an information bulletin has been sent to stakeholders. The new website is functioning quite well. The new link for California is dgs.ca.gov/BSC. Staff has been very careful not to significantly change the commonly used terms or the logic on how items are found on the codes page and the rulemaking page.

CBSC Staff has completed two videos; one is on the website and the other will be loaded by the end of April and is now working on a third video. The first is about the CBSC and the second one is about the rulemaking process. The third video will be about Title 24. The videos are companions to the online guides.

CBSC Staff will work with Stuart Tom and the International Code Council to update a well-used video about the code adoption process for local jurisdictions. It will be released in alignment with the new code edition. The video explains the local ordinance adoption process which jurisdictions are required to complete if they amend Title 24. CBSC is a repository for local ordinances, and receives about 275 local ordinances each cycle.

CBSC will be conducting a Coordinating Council meeting on May 8. Its purpose will be to bring the various state agencies together to discuss and coordinate code amendments for future cycles.

The July commission meeting may have a light agenda. We had previously discussed having a workshop on the format of the rulemaking documents. A number of Commissioners as well as the Code Advisory Committee members and the public have provided comments. The workshop may be held in the afternoon of the morning meeting. Executive Director Marvelli had noted that the Strategic Plan states that the Code Adoption Subcommittee of the Commission assists in this process; we may have a kind of joint meeting where the Commission meets in the morning and the Code Adoption Subcommittee stays. The subcommittee members are Commissioners Klausbruckner, Patel, Santillan, and Winkel.

Executive Director Marvelli reminded the Commissioners and stakeholders that May is Building Safety Month.

Questions or Comments from the Commissioners:

There were no questions or comments from the Commissioners.

Questions or Comments from the Public:

There were no questions or comments from the Public.

Agenda Item 6. Office of Statewide Health Planning and Development (OSHPD EF 01/18)

Chair Batjer stated that Office of Statewide Health Planning and Development (OSHPD) is requesting a re-adoption of their Emergency Building Standards Rulemaking File OSHPD EF 01/18 which the Commission approved January 16, 2019. Pursuant to the Administrative Procedures Act, the emergency regulations are effective for 180 days. A re-adoption will extend the effective date 90 days, allowing OSHPD additional time to complete the certifying rulemaking process. The regulatory language is not open for discussion; however, the regulatory language may be challenged and modifications may be suggested during the certifying rulemaking process which includes a public comment period. We have representative from the Office of Statewide Health Planning and Development.

Diana Scaturro, Supervisor of the OSHPD Building Standards Unit, and with me is Chris Tokas, Division Deputy Chief. Ms. Scaturro stated that AB 2190, effective this year, was to grant an extension for Special Performance Category 1 buildings, as presented and discussed last January. However, the initial application date was April 1. It has been a very successful program. Out of the 67 eligible facilities, 41 have submitted applications.

Concurrent with this OSHPD is pursuing the certifying rulemaking process; on April 15th the 45-day public comment period ended. The problem is that OSHPD cannot have a gap between the end of the emergency provision (July 17) and the ultimate approval date of the

certifying package. Thus OSHPD is requesting an additional 90 days of re-adoption, taking us into October.

Questions or Comments from the Commissioners

Vice-Chair Winkel asked what would the motion be?

Ms. Scaturro replied that it would be re-adoption of the emergency regulations approved in January, in order to carry the approval until October.

Vice-Chair Winkel asked what time period?

Ms. Scaturro stated a 90 day readoption.

Questions or Comments from the Public:

There were no questions or comments from the public.

Motion: Chair Batjer entertained a motion to consider OSHPD’s request to re-adopt emergency administrative building standards for the hospital seismic safety upgrade extensions for the 2016 California Administrative Code, Part 1 of Title 24. Commissioner Sasaki moved approval of the request as presented. Vice-Chair Winkel seconded. Motion carried with 6 yes, 0 no, and 0 abstain, per roll call vote.

The following Commissioners voted “Yes”: Winkel, Klausbruckner, Alegre, Patel, Santillan, and Sasaki.

Agenda Item 7. The Department of Housing and Community Development (HCD 05/18)

Chair Batjer requested the representatives from the Department of Housing and Community Development (HCD) to come forward and present the item: proposed adoption and amendments to the 2019 California Existing Building Code (CEBC), Part 10 of Title 24.

Emily Withers, HCD Codes and Standards Administrator, introduced herself and Stoyan Bumbalov, HCD Codes and Standards Administrator; and Kyle Krause, HCD Assistant Deputy Director.

Ms. Withers stated that the International Building Code Preface notes that the code establishes minimum requirements for existing buildings using prescriptive and performance-related provisions. It is founded on broad-based principles intended to encourage the use and re-use of existing buildings, while requiring reasonable upgrades and improvements. This code is currently adopted in part and with amendments by the California Building Standards Commission (CBSC), HCD, Division of State Architect (DSA), and Office of the State Fire Marshal (SFM).

HCD’s proposed changes for the 2019 CEBC were discussed at an HCD focus group meeting held on April 5, 2018, and at the Structural Design Lateral Forces Code Advisory Committee meeting on August 8, 2018. The committee approved all of HCD’s proposed actions as submitted with the exception of several sections, which were either modified by HCD or withdrawn.

The edited express terms text was made available to the public for a 45-day public comment period from September 14 to October 29, 2018. HCD submitted one comment for purposes of updating the codes to the new statute. There were no other public comments submitted. In accordance with the rulemaking process, HCD considered any concerns identified by stakeholders and at the focus group meeting, which there were none. Recommendations from the code advisory committee meeting as incorporated into the 45-day express terms and comments received during the 45-day comment period, which included one HCD comment, to develop the final express terms. The final express terms were presented at the December 4, 2018 BSC meeting with a formal request from HCD for adoption.

During HCD's presentation, Commissioner Sasaki identified several concerns with HCD's proposals for the 2019 CEBC, primarily focused on provisions related to light construction and in-kind repairs; he submitted a document explaining those concerns.

Due to the lack of time to evaluate and lack of sufficient stakeholder notification, CBSC recommended that HCD request a continuance to the January 2019 commission meeting. In response, HCD evaluated concerns recognizing the content limitations of a 15-day versus a 45-day public comment period, limited opportunity for public comment and modified express terms.

The express terms were published for an additional 15-day comment period: December 19, 2018 to January 3, 2019. Six comments were received, on the revised express terms during the 15-day public comment period. Three were concerned and three recommended approvals of HCD's rulemaking as modified by the 15-day express terms. These are on record with CBSC and summarized in CBSC's staff report. The modified express terms were presented at the January 15, 2019 CBSC meeting with the formal request from HCD for approval of adoption. Because of the timing of the public comment period and the deadline for preparation of materials for the CBSC meeting, CBSC asked HCD not to submit a Final Statement of Reasons; however, HCD did present a draft version. HCD was directed to request formal approval of its complete rulemaking package at the April 2019 CBSC meeting.

On February 8, 2019, HCD conducted a focus group meeting to further explain the rationale for adoptions and amendments to the IEBC, especially as related to HCD's statutory responsibilities, the existing statutes and regulations related to repair of residential buildings and the repair provisions in the IEBC and as proposed for modification by HCD. HCD prepared an analysis for each subsection of section 405, addressing structural repairs and provisions of the Health and Safety Code, seven stakeholders participated in this meeting.

HCD amended its express terms once again and provided an additional 15-day public comment period from February 21 to March 8, 2019. Three public comments were received, two were from stakeholders with continued concerns, one was from the ICC San Diego Chapter representing 20 jurisdictions and expressed support for HCD's adoption of the 2019 CEBC rulemaking package, including the repair provision in chapter 4 without deletions. HCD also received a letter from the California Building Officials (CALBO) expressing support for HCD's adoption of the 2018 IEBC with proposed provisions. These concur with the

assessment that the repair requirements in IEBC section 405 do not conflict with the Health and Safety Code section 17922, subsection (d), related to use of original materials and method of construction. HCD received a letter of support from the California Building Industry Association, which was read into the public comment for this meeting. HCD acknowledged all public comments received prior to the end of the second comment period in the final statement of reasons beyond the scope of the second 15-day public comment period in future rulemaking action.

HCD requested approval of adoption of the final express terms – rulemaking package 05/18 – which includes changes proposed in the 45-day express terms, as modified by two subsequent 15-day express terms documents.

Chair Batjer referred the Commissioners to the handouts provided. There are three of them, one came in this morning and two that were referred to.

Questions or Comments from the Commissioners

Commissioner Sasaki noted that in the past three code cycles – 2010, 2013, and 2016 – HCD specifically did not adopt code upgrade triggers in order to comply with Health and Safety Code 17958.8. This was not referenced in some of the support letters. The law has not changed, so why is HCD now choosing to adopt the upgrade triggers?

Mr. Bumbalov answered that the law is actually Health and Safety Code Section 17922, regarding HCD's authority and responsibility. 17958 local ordinances, the requirement is the same. He explained that in 2010 and 2013 they relied on interpretation by the Code Advisory Committee (CAC). In 2013, HCD received information from CAC that they never had an official position on that. HCD began to work on it and included some CAC members. However, since they were moving from Chapter 34 in the California Building Code (CBC) to the Existing Building Code, they moved forward the existing amendments from Chapter 34. For the next triennial code adoption cycle, they proceeded to adopt code sections that were beneficial for the people of California. They went through the rulemaking procedures and did not hear much opposition. Thus this is the first code adoption cycle in which they worked on the sections and spent additional time.

Commissioner Sasaki responded that now there is a different interpretation of state law. In the last three code cycles, the state law allowed like-kind repairs even to substandard buildings. This code cycle has the opposite interpretation.

Mr. Bumbalov replied that this was HCD's position resulting from the evaluation of the last two years.

Commissioner Sasaki asked a follow-up question: the amendment to this state law was passed in 2003. Its intent was to allow in-kind repairs for substandard buildings because there was a growing number of substandard buildings that needed to be taken care of in an efficient

and cost-effective way. HCD has not provided legislative background that this was not the intent of the amendment. Looking for the legislative fact that confirms HCD's position.

Commissioner Sasaki continued that in reading the plain language of the law, it does not say that you cannot do like-kind repairs to substandard buildings.

Mr. Bumbalov confirmed that the law is clear on the subject: the building does not become or continue to be a substandard building. HCD evaluates section by section, not looking for generalities. HCD allows in-kind replacement and repair; under certain conditions it is not allowed because of the building being substandard. Health and Safety code specifically states that the action shall commence proceedings to abate the filings by repair, rehabilitation or demolition of the building. Mr. Bumbalov pointed out that the Health and Safety Code has more restrictive requirements than what HCD is proposing to adopt in the Existing Building Code. In addition, there are provisions in the government code in Section 65852.25 discusses reconstruction and restoration of a multi-family dwelling units: it must conform to the CBSC in effect at that time. This section became effective in January 2019. The understanding of HCD is that Section 405 provides guidance for designers and builders to follow the state law; it does not conflict with state law. At the last focus group, they had discussed the most important sections, justifying their position.

Commissioner Sasaki responded that the HCD analysis was justifications for the code sections given by the International Code Council (ICC). This is not relevant to whether or not a particular section complies with the state law in question. As he understood the intent of the state law, and read the plane language of the state law, he felt that the code upgrade triggers in fact violate the state law.

Mr. Krause, Assistant Deputy Director of Codes and Standards with Department of Housing and Community Development (HCD) felt that we are in a situation where we are going to agree to disagree. HCD is supported in its opinion that it is not in conflict with state law. Staff has followed this process to the letter of the law and made its opinion very clear. This is perhaps a revised opinion by the Department of Housing on 17922 and what it means. HCD believes strongly that when buildings become damaged, this provision in state law that protects existing buildings is not meant to allow buildings in all cases to be repaired the way they were originally constructed.

Commissioner Klausbruckner asked if during the analysis, you had focus groups with engineers and architects, did HCD at any point seek legal counsel or any type of advice when they made a different decision on 17922.

Mr. Krause answered that HCD had legal counsel present at the last BSC meeting and has consulted with its Legal Affairs Division on this issue.

Commissioner Klausbruckner asked if they agree with your assessment.

Mr. Krause They support HCD's position.

Vice-Chair Winkel could not find a definition of “substandard” in the Existing Building Code. That’s in the final express terms page 12 of 38.

Mr. Bumbalov responded that one is proposed for Chapter 2 in the new code.

Ms. Withers stated that it is a direct reference to the Health and Safety Code definition.

Vice-Chair Winkel asked there was not a definition of substandard in the 2016 code. Correct?

Mr. Bumbalov said that HCD has proposed an amendment with a direct reference to the Health and Safety Code. He confirmed that currently there is no definition in the 2016 code.

Vice-Chair Winkel asked if the language regarding the building code implementation of the legislative intent of local adoption of repair ordinances is the language identical in the 2016 code and the 2019 code, is there any change in text, other than its relocation.

Mr. Bumbalov answered that it is the same.

Vice-Chair Winkel read the language proposed for final express terms on pages 14-15 under Section 302.5 formerly 401.2.2 HCD amendment reads, local ordinances or regulations shall permit the replacement, retention extension and original materials and usual methods of construction for any building or accessory structure provided such building or accessory structure comply with the building code provision in effect at the time of original construction and the building or accessory structure does not become or continued to be a substandard building. For additional information see Health and Safety Code section 17912, 17920.3, 17922 (d) 17922.3, 17958.8 and 17958.9. I believe that language is identical to that in the 2016 code. He sought confirmation that in terms of the ability of local agencies to make amendments and of how the Building Code expressed the legislative intent, that Commissioner Sasaki is questioning, the pointer and explicit language under the old code and the new code are identical.

Mr. Bumbalov confirmed, that’s correct.

Vice-Chair Winkel commented on the triggers contained in Chapter 4: there are substantive differences between the two model code editions that could be in conflict with the intention in the building code for repairs in-kind.

Mr. Bumbalov answered that HCD’s intent is for these triggers to be for buildings that are substandard. Most of the new sections of the document allow in-kind replacement; however, if substandard conditions exist, this is a mitigation guidance.

Commissioner Klausbruckner asked for clarification: This triggers *how* and not *when*?

Mr. Bumbalov answered that most of these sections specify that these are substandard conditions. If it is a substandard condition, state law cannot be used for in-kind replacement because it is a substandard building. The Health and Safety Code will tell the building official that there are four options, repair, vacate, rehabilitate or demolish.

A lunch break was taken.

Chair Batjer stated that the question that we left off on was from Commissioner Klausbruckner asked for clarification: This triggers *how* and not *when*?

Ms. Withers provided an example provision on snow damage from Section 405.2.1.1, part of chapter 4 of repairs and it states structural components where damage was caused by or related to snow load effects shall be repaired, replaced or altered to satisfy the requirements of section 1608 of the IBC. A roof that failed due to inadequate load capacity would not be replaced with the same materials and the same load bearing capacity.

Vice-Chair Winkel asked about the trigger section in Section 405, Structural Provisions, page 17 of 38. Are each of the repairs intended to be incorporated directly from the model code without amendment?

Mr. Bumbalov confirmed Vice-Chair Winkel's question above.

Vice-Chair Winkel asked if one-and two-family dwellings are excepted from the trigger provisions on residential reconstruction.

Mr. Bumbalov said that as a general statement, he would answer yes; however, there are some specific provisions that exempt these dwellings from calculating the seismic loads and other such details. HCD tried to discuss that during the focus group meeting with structural engineers. It is documented in the side-by-side comparison.

Vice-Chair Winkel stated that we are trying to determine whether the exception applies to the subsection or to the general section it's one of the questions I'm sure that's going to be interpretation.

Commissioner Sasaki referred to the upgrade triggers – an exception under Substantial Structural Damage to Vertical Elements of the Lateral Force Resisting System in 405.2.3 – there is a specific exemption for one- and two-family dwellings. The other upgrade triggers, for example, 405.2.2 Disproportional Structural Damage and 405.2.1.1, have no such exception.

Mr. Bumbalov responded that the last two apply to substandard conditions. He explained the Disproportional Structural Damage section: When the building is designed to survive in a specific seismic load, and becomes an issue with 40% of that design load. The building is clearly in violation of Health and Safety Code 17920.3.

Vice-Chair Winkel asked a general policy question related to page 23 of 30 in the Final Statement of Reasons. What is HCD's opinion if CBSC does not adopt the model code provisions for post-disaster repairs and renovations – are we in trouble with Federal Emergency Management Agency (FEMA)?

Mr. Bumbalov answered that it is after a disaster, FEMA tells all victims to follow the same mitigation procedure. FEMA will tell them what they need to do. If the procedure is not done right, then next time FEMA will not pay anything.

Vice-Chair Winkel asked about the relationship between the state and the feds in terms of seismic design elements – do you damage your insurance coverage from FEMA if you do not have the latest version of the model code adopted?

Mr. Bumbalov replied that this is the new procedure FEMA is following. The document was signed and released in 2018. Emily Withers may have that information.

Mr. Krause stated that this question may not be able to be answered here today – it may be outside the scope of what we are here to do.

Vice-Chair Winkel if you have that information that would be good.

Mr. Bumbalov referred to the Public Assistance Required Minimum Standards of the FEMA Recovery Policy Act (FP-10400094), it does not have a date on it and it was not included in HCD's express terms. The other FEMA document titled Understanding Substantial Structural Damage in the international existing building code which relates to the structural damage.

Commissioner Klausbruckner asked for clarification on the first sentence of Section 302.5 on page 15 of 30 states local ordinances or regulations shall permit?

Mr. Bumbalov explained that if HCD adopts something in the California code, local jurisdictions have the power to make amendments and it states local amendments shall allow. It is a mandate.

Commissioner Klausbruckner stated that the language where the user is sent to Section 17920.3 seems to read as if *where* and *when* requirements are dictated by 17920.3 while the rest of the language is *how*.

Mr. Bumbalov responded that the language provides a summary of what is required in the law, and is very important because it names the situations in which a building is considered substandard. So hopefully the local jurisdictions go to 17920.3 when they're making their examination whether the building is substandard or not.

Commissioner Klausbruckner asked if there are any regulations in HCD's section that digress from the definition in the law of *substandard*. Trying to figure out whether we're going back to 17920.3 when somethings are substandard and then this is how you make repairs or alterations.

Mr. Bumbalov answered that Section 17920.3 is not really a definition - it provides the issues that make a building substandard. HCD is now proposing a reference in 2016 to Section 17920.3 for the benefit of the local jurisdictions. Section 405 provides structural seismic provisions and gives guidance for repair. Section 17980 directs the building official to require repair, rehabilitation, vacation, or demolition of the building.

Ms. Withers stated that this actual amendment is not new; it was in the Repairs Section word for word of the 2016 California Existing Building Code. It has been moved to this particular section.

Commissioner Sasaki stated that the amendment under 302.5 that Commissioner Klausbruckner was discussing, that was in the 2016 CEB and also in the 2013 CBC Chapter 34. The language in that amendment is almost restating of the Health and Safety Code 17958.8. He believed that the Legislature's intent with that was to allow repair in-kind of substandard buildings. Towards the end, it states that you can repair in-kind as long as the structure does not become or continue to be substandard. Commissioner Sasaki believed that once you repair the building, it is no longer substandard so it does not *become* substandard and does not *continue to be*.

Mr. Krause restated HCD's position that this statutory protection is guidance to the local enforcement agency that when adopting a local ordinance, it shall permit the replacement, retention and extension. However, it does not include every kind of damage the building may have suffered. In some cases, the building requires structural evaluation.

Mr. Bumbalov stated that HCD intention was to adopt the model code section 302.5, which specifies that like materials shall be permitted for repairs and alterations provided that unsafe conditions are not created. HCD's intent was to add the references to this existing amendment. HCD believes the new model code even in different wording provides the same level of protection for non-substandard building and in kind replacement. HCD would like to discuss for the next code adoption cycle, and wants to meet with stakeholders for real discussion on this issue. The other option is at the ICC level: there are some proposals for the existing model code.

Commissioner Patel felt that after studying 17958.8, there is discretion with the original law. It allows rebuilding in kind, but also allows the discretion that if a building is considered substandard, it may require something more and not be built in-kind. Because the original law had that discretion, he did not believe that HCD's proposal conflicts. They have just been more specific in what you have to do.

Commissioner Sasaki said that he would read from the New Suggested Revisions to the 1970 Edition of the Uniform Building Code, to point out that the prime intent of the legislation was to address the growing number of substandard buildings.

Ms. Barbu gave the reminder that Commissioners cannot take into account anything outside the rulemaking process for commentary purposes.

Commissioner Sasaki read from the document. Its reasoning "...encouraged repair rather than demolition of substandard buildings whenever possible." The reading served to provide context that there are direct dealings with allowing like-kind repairs for substandard buildings.

Ms. Withers stated that the legislation does not specify whether repair should be done to the component that failed or the component that actually made it substandard.

Commissioner Sasaki related the typical example of a fire in the kitchen of an older apartment building. The state law allows you to rebuild with the same 2 x 10 joists that you currently have. What these upgrade triggers may require, though, would be evaluations to ensure that the criteria are met. A primary concern is that this is going to cause a lot of unnecessary costs when buildings are performing fine. Current state law and also the 2016 CEBC allow you to repair in-kind, which was the intent of the legislature. If we change that now by adopting these provisions, we can no longer do that.

Mr. Krause reiterated that HCD disagrees that the statute allows replacement of existing materials no matter what the damage or substandard condition. HCD was not commenting on the legislative intent in the document from 1971 that Commissioner Sasaki had referred to. Mr. Krause did not feel that the code expresses legislative intent.

Questions or Comments from the Public:

Gwenyth Searer, a licensed structural engineer and member of the ICC Structural Committee, stated that last December she had suggested that HCD fix the proposals to comply with state law, and if necessary, to hold a 45-day comment period to correct the problems. HCD chose to hold a 15-day comment period in lieu of fixing the proposals. HCD held an ad hoc working group meeting on February 8, 2019, where Ms. Searer again advised them that their proposals violated state law. Their response was to hold a second 15-day comment period. Their most recent 30-page response did not address Ms. Searer's concerns. She directed the Commission to a document she had distributed; it described what happened when a city adopted a trigger very similar to the disproportionate damage trigger. It showed a massive cost difference between repairing versus repairing and upgrade. Engineers were unable to compute loss of capacity. They gamed the system: if the owner had insurance, they tried to get over the trigger, while if the owner did not have insurance, they tried to get under the trigger so that the owner would not have to upgrade the building.

Ms. Searer provided further details. Sections 17958.8 and 17922 (d) of the Health and Safety Code require that repairs be permitted; it does not say "but only if the damage is not structural, substantial, or disproportionate." HCD has also proposed redefining "substandard" (which is defined by the Legislature) to include the term "unsafe." Ms. Searer explained that the two terms are not the same; conflating them is unwise and incorrect.

Ms. Searer stated that recently CBSC has been receiving a spate of letters of support that seem to have very similar wording. She said that HCD has been soliciting these letters of support, trying to skew the record. She related a conversation Mr. Bumbalov had held with one party in which he requested help. Ms. Searer also referred to partial email exchanges in which HCD solicited comments.

Ms. Searer continued that state law says we must adopt the model code – a general requirement. It also contains a specific requirement to permit in-kind repairs to residential structures. In code writing, the general requirements govern, unless there is a more specific requirement. The two aforementioned sections are those more specific requirements.

Ms. Searer offered the following solution as a compromise. Adopt all of HCD’s proposed changes with the following exceptions:

1. The proposal to add a provision that conflates an “unsafe” building with a “substandard” building.
2. The code update triggers in 302.5.1, 405.2.1, 405.2.1.1, 405.2.2, 405.2.3, 405.2.3.1, 405.2.3.3, 405.2.4, and 405.2.4.1 – those are the snow damage trigger, the disproportionate damage trigger, and the sub-2 substantial structural damage triggers.

Ms. Searer asked the CBSC to send a clear message to HCD that they should not pursue personal agendas and violate state law.

Ms. Barbu again cautioned the CBSC not to take any documents into account that were not part of the rulemaking.

Mr. Bumbalov emphasized that HCD had to ask certain people for support following the CBSC meeting because those people were not aware of comments in opposition.

Commissioner Klausbruckner stated that the HCD Statement of Economic Impact says that the cost impact for this code change is below \$10 million. Did Ms. Searer believe this to be in error, and would this code change trigger a lawsuit if it were to pass? Ms. Searer chose not to speak to the lawsuit question, but she believed that the cost was substantially more than \$10 million.

Vice-Chair Winkel asked about in-kind replacement, the permission for local amendments, versus the triggers.

Ms. Searer answered using an example of a three-story residential structure that sustains substantial structural damage that exceeds the trigger. The trigger will require repair of not only the fire damage but upgrade of the ground floor and the floors above. The triggers that HCD is proposing go beyond what the State Legislature wanted to allow.

Vice-Chair Winkel mentioned that the triggers are adopted in the code today. Ms. Searer responded that actually they are not adopted in the current HCD version of the building code.

A brief recess was taken.

Brad Wungluck, Chief Building Official for the City of Manteca, California Building Officials (CALBO) Board member and member of its State Code Advisory Committee. He stated that he was present of his own volition. As its representative, he expressed CALBO’s support in the adoption of the 2018 IEBC with amendments as proposed by HCD. They had submitted a letter into the record today, and expressed their concurrence with a letter submitted by Bob

Raymer and the California Building Industry Association (CBIA). CALBO and its State Code Committee met multiple times to discuss this item, resulting in unanimous support. They concur with HCD's assessment that International Existing Building Code (IEBC) 405 does not conflict with 17922 of the Health and Safety Code. They also support HCD in their proposal regarding the editorial changes made in the 15-day comment period, and they believe that the repair in-kind provisions should remain. CALBO believes that this is a necessary and important adoption, and they are in support.

Commissioner Klausbruckner asked if CALBO had been contacted by any other agencies before they made their decision.

Mr. Wungluck answered that they had not.

Kelly Cobeen, Structural Engineer, spoke in opposition to moving forward HCD's amendment, unless the additional amendments described by Ms. Searer and others are adopted. In today's discussion we have heard clearly that for this particular adoption of the model code, HCD has specifically decided to reinterpret the California state law. She explained the enormity of the impact that the reinterpretation has on the citizens of California. The citizens of California will have to either buy additional code upgrade coverage, or walk away from their damaged buildings.

David Bonowitz, Structural Engineer, responded to a question asked by Commissioner Sasaki: if the state law has not changed, why should the interpretation and the code change?

Mr. Bonowitz stated that the model code actually has changed. The interpretation of how the model code fits with the state law thus can change. Mr. Bonowitz affirmed what Commissioner Sasaki had pointed out: in 1970 it had been a reasonable position. We did not have an existing building code, targeted triggers, a set of careful exemptions, the use of reduced loads, and a 30-year history of upgrade and retrofit practice in California. Now we do. That is why the current model code is entirely appropriate and why the idea that it only targets substandard buildings does not put it at odds with state law. CALBO shows what California building officials understand, need, and want. The Structural Engineers Association of California (SEAOC) Existing Buildings Committee debated this proposed change recently and acknowledged that continuing the practice of not adopting Section 405 is the wrong way to go. The model code is important to adopt in order to be eligible for FEMA assistance.

Chair Batjer summarized a letter left and distributed to each Commissioner by Bob Raymer, Senior Engineer and Technical Director of the CBIA. It stated that CBIA feels that HCD has responded to the concerns raised at an earlier CBSC meeting. HCD has responded to the few issues raised during development of this package. CBIA does not agree with the argument that the current HCD proposal creates conflict with the Health and Safety Code 17922(d).

Questions or Comments from the Commissioners

Commissioner Klausbruckner noted based on the discussion from Commissioner Sasaki, Commissioner Winkel and Commissioner Patel the discussion involving FEMA; she asked Commissioner Sasaki if he saw a difference in how the residence owners will be forced to pay extra for insurance upgrades in FEMA disasters, versus single-family fires.

Commissioner Sasaki replied that in non-disaster house fires, it comes down to what the insurance policy covers: It may be repair in kind, or it may be code upgrades. If you have the code upgrades in your insurance policy, then they will pay for code upgrades but if you do not then they will not pay for the code upgrades. He noted that many jurisdictions throughout the country work on non-current versions of the IBC or IEBC. The FEMA directive may be out there, but in a practical sense, he was not sure that FEMA enforces that in case of a disaster – they will probably still assist building owners.

Vice-Chair Winkel said that the stated policy of FEMA is to use the latest version of the model codes, but the number of jurisdictions on the current code is actually much smaller than the number of jurisdictions, even going back into the mid or early two thousand, I think politically, FEMA may have a policy prohibitive, probably not going to enforce its policy if the homeowner's coverage is not up to date. He also spoke to Mr. Bonowitz's point that there is a direction about one and two family dwellings, about using either the IEBC or the International Residential Code. That is different than the exceptions for the uses of seismic evaluations.

Commissioner Klausbruckner based on examples given today on the pros and cons on major disasters versus one single fire in an apartment complex. What are the differences in what the residences would be forced to cover in a FEMA disaster versus a single family unit being on fire, what would trigger things and would a homeowner have to pay versus the insurance for incidences that are major disasters verses a single family unit fire? What if it triggers regulations that the residents cannot afford to repair? What is the real cost in a rural parts of the state verses the big cities that have substantial insurance?

Commissioner Sasaki stated that as a structural engineer, when he is asked to evaluate a building anywhere within the state – whether in San Francisco or in a rural area – he has to review it based on the minimum requirements in the building code (in this case the IEBC). If the upgrade triggers are approved, he will have to review the building accordingly. A house may need to be upgraded seismically and the homeowner may not be able to afford it, but the structural engineer assessment must conform to the requirements of the building code.

Chair Batjer called for a Motion.

Commissioner Sasaki stated will propose three motions. The reason I did this, I was talking with staff and rather than making one long motion, thought the more efficient and clear way was to make three motions. Commissioner Sasaki explained how he was making the motions: Motion #1 is to essentially approve most of the HCD package, with the exception of a few sections. The following two motions would be: Motion #2 would be to disapprove certain

sections and then Motion #3 would be to amend one thing, the definition of unsafe. So I will make the 3 Motions.

Chair Batjer stated one at a time.

Motion: Commissioner Sasaki moved to approve HCD 05/18 Part 10, except for the following items, the amendment to the definition of “unsafe” and the adoption of Sections 302.5.1, 405.2.1, 405.2.1.1, 405.2.2, 405.2.3, 405.2.3.1, 405.2.3.2, 405.2.3.3, 405.2.4, and 405.2.4.1. Those are essentially the upgrade triggers under section 405.

Chair Batjer do we have a second to Commissioner Sasaki’s motion?

Commissioner Winkel can we divide it again? Asked if Commissioner Sasaki could briefly state what his other two amendments would be. One of is to Adopt everything you’re not taking out.

Commissioner Sasaki Yes, that was my first motion. The third one is to disapprove the long of list of sections.

Commissioner Winkel what is the second one?

Commissioner Sasaki the second one is to move as amend the definition of unsafe.

Commissioner Winkel stated that’s a separate motion.

Commissioner Sasaki replied, yes, that’s a separate motion because it’s different than disapproving that long list of sections.

Ms. Barbu stated just a word of caution a Motion to Amend must take in account it is not a material amendment, so the commissioners may want to consider, whether this is a material change from HCD’s proposal.

Chair Batjer response to Ms. Barbu, the motion to approve the definition of unsafe, you’re counseling the Commission should be careful because that might be a material change to the definition.

Ms. Barbu Yes.

Commissioner Sasaki stated if he could get counsel’s opinion on whether or not this motion would be to disapprove the HCD amendment to the definition of unsafe.

Ms. Barbu stated to provide the commissioners with the exact section regarding that amendment.

Commissioner Sasaki stated the final express terms page 12 of 38. What you see there is down toward the middle of the page, the lower portion of the middle of the page, underlined it says “HCD 1, HCD 2, in parenthesis, it says an unsafe building as defined in this chapter shall be considered substandard. I would like to not adopt or disapprove. Is that okay?

Ms. Barbu stated it sounds like HCD has proposed this language and has gone out with this language for public comment; is that correct?

Mr. Bumbalov stated that HCD had changed its original proposal after the second 15-day comment period. The language was the reverse: “Substandard buildings shall be considered unsafe buildings.” HCD had taken into account the comments received. So we reversed it. When you glance at it, it seems the same, but it’s different, because if it’s what we’re saying here, it’s unsafe, as defined in the code, it shall be a substandard building for purposes of the existing building code. It has nothing to do with the existing law.

Chair Batjer asked, did you say you did change it after the comment period?

Mr. Bumbalov stated, we proposed it for discussion for the 15-day comment period.

Ms. Barbu stated, it sounds like this line here that says, HCD one and HCD two says an unsafe building etc. was sent out for public comment and you received comments?

Mr. Bumbalov stated, Yes, that is correct.

Ms. Barbu asked, would you consider striking that entire sentence out, and would that be a material change, would the public and jurisdictions interpret it differently without the language?

Mr. Bumbalov stated can you explain

Ms. Barbu stated that Commissioner Sasaki is proposing to strike that entire sentence. If that sentence was struck, would the jurisdictions be interpreting this differently?

Mr. Bumbalov answered that it would be a little confusing. He believed that it would be a material change because we have an unsafe building and substandard buildings at the same time. HCD was trying to clarify if it’s considered unsafe based on the existing building code it should be considered substandard for purposes of existing building code. It may help the local jurisdictions to apply correctly these two different definitions.

Ms. Barbu state from a legal perspective, it sounds like it would be a material change to strike this without going back out to public.

Mr. Bumbalov stated, as a personal opinion, I believe so.

Ms. Barbu stated, other Commissioners may want to comment but it sounds material from a legal perspective.

Chair Batjer asked, Commissioner Patel

Commissioner Patel agreed that it was a key definition that was added and felt that it would be material to interpret “substandard” and “unsafe”.

Mr. Krause clarified that it was proposed during the 45-day public comment period and in the original Code Advisory Committee proposal that was approved. HCD made a slight modification during one of the 15-day comment periods to try to mitigate some concern. Mr. Krause asked that the Commission not disapprove one item that is key to other provisions without HCD being able to consult with stakeholders.

Commissioner Klausbruckner had a question for Counsel and Commissioner Sasaki, if we can't delete something as simple as a definition, how are we supposed to disapprove all these code sections that are also affecting and substantial that will affect the comment period?

Ms. Barbu stated that it sounds like what Commissioner Sasaki is proposing to strike just a portion of an item, of the definition. So the rest of the definition that says unsafe would stay?

Commissioner Sasaki responded and said No, basically what we're talking about is an amendment that HCD provided to the definition of unsafe. The definition of unsafe as it is in the model code. HCD added that new section which adds an amendment to it.

Ms. Barbu stated that if the definition with the amendment went out for public comment, then our only choice would be to unapprove the entire definition as proposed by HCD, or approve it.

Chair Batjer stated that to make sure everybody's really clear. To Commissioner Klausbruckner's point and the Vice-Chair Winkel's point also, if we remove anything from the proposal then that would be a material change to the proposal.

Ms. Barbu stated, Right.

Vice-Chair Winkel stated that since we cannot materially amend any of the internal parts of the proposal, we are left with a single binary choice which is to accept the HCD proposal or disapprove it. Is that correct?

Ms. Barbu stated, I would say so, Yes.

Vice-Chair Winkel stated that we would like to tinker with certain parts of it. But if we tinker with it, we go out for a 15-day comment period and would need to schedule a special meeting and we risk delaying the publication of the code. The other would be if we disapprove the proposal, would the HCD provisions for their changes revert back to the current code.

Mr. Krause stated "Do they?"

Commissioner Winkel stated what are we left with if we turn it down. I'm not talking about the definition. I'm talking about the entire proposal.

Mr. Krause stated I understand, however the question would be, does it really revert to the current code?

Vice-Chair Winkel stated that is what I am asking?

Mr. Krause stated I would say the answer to that question, is no.

Vice-Chair Winkel stated so what goes in the code. Unamended model code language? I don't know the answer.

Chair Batjer stated hang on a second. We've got a couple of discussion going on. Let's get some clarity.

Brief discussion

Chari Batjer asked Executive Director Mia Marvelli to clarify.

Executive Director Marvelli stated that the Commission had begun with a Motion, then talked about the potential amendment to one definition, raising the question that if we cannot propose an amendment to that one definition, are we then by default affecting the whole package? She felt that the answer was no. In the past, CBSC has taken apart state agencies rulemakings. It has approved certain portions and not approved or further studied other portions. In some cases, we have amended portions. What Commissioner Sasaki's motion is simply approving 90 percent of whatever the package is and then talk about these other sections and in doing that and trying to clean this up, we're getting confused with what we can and can't do. To clarify, and correct me if I'm wrong, the one definition of unsafe on page 12, for Commissioner Sasaki to make a motion to amend that would be what we're hearing is the material change. That's the one thing we are recommending not be amended. Is that clear?

Chair Batjer stated that we still have not gotten to the motion yet and we're still discussing, but if the third motion as Commissioner Sasaki talked about was a motion to disapprove the adoption of several sections. So Commissioner Sasaki is breaking apart the HCD proposal and essentially would approve some sections, forget about the definition, and disapprove other sections, and that's allowable.

Ms. Barbu stated that's allowed.

Chair Batjer stated that's not material of what HCD is doing.

Ms. Barbu confirmed: you can parse out individual items, within each item, but you cannot make material changes without going back out for public comment.

Vice-Chair Winkel stated if you highlight an item, and don't want to amend it and simply don't want to adopt it, is that a material change?

Ms. Barbu stated that is not. In that case you either disapprove, not approve the item or approve it. You just can't amend it if it is a material change. The only amendment you can make within an item are corrections, if there's grammatical clarification, position of words, those kind of things.

Vice-Chair Winkel stated we can't subdivide the question into individual items and then say yea or nay on each item as long as we don't change inside the box?

Ms. Barbu stated as long as you don't tinker with the item. Right.

Commissioner Klausbruckner stated from a logical standpoint because that definition affects what we're disapproving, also what we're approving, it has to go back to a 15-day comment period, because it affects sections that we're approving without the 15-day comment period.

Ms. Barbu stated it doesn't have to go back, but if the commissioners may want to consider whether separating items like that would cause confusion, and in that case you might want to reconsider the motion.

Commissioner Klausbruckner stated okay.

Commissioner Sasaki state my first motion still stands.

Chair Batjer stated we don't have a second to the first motion.

Mr. Krause stated what is the first motion?

Chair Batjer restated the motion. The motion is to approve HCD 05/18, Part 10, and the adoption of except for the following items, the adoption of 302.5.1, 405.2.1, 405.2.1.1, 405.2.2, 405.2.3.1, 405.2.3.2, 405.2.3.3, 405.2.4, and 405.2.4.1. That's the motion

Commissioner Sasaki stated that's not quite the motion. The except part.

Chair Batjer stated except for the following items

Commissioner Sasaki and the adoption of the amendment for unsafe.

Chair Batjer stated even though counsel said that would be a material change.

Commissioner Sasaki stated that No. My first motion not a material change.

Brief discussion

Chair Batjer stated does the motion need to be repeated?

Commission Klausbruckner stated Yes.

Chair Batjer asked Commissioner Sasaki go ahead and restate the motion.

Motion: Commissioner Sasaki restated the first Motion: to approve HCD 05/18 Part 10, except for the following items: the amendment to the definition of "unsafe" and the adoption of Sections 302.5.1, 405.2.1, 405.2.1.1, 405.2.2, 405.2.3, 405.2.3.1, 405.2.3.2, 405.2.3.3, 405.2.4, and 405.2.4.1.

Ms. Barbu stated just to clarify, you're saying accept for the entire definition of unsafe as presented by HCD, for now.

Vice-Chair Winkel stated which is the underlined portion.

Commissioner Klausbruckner stated so it reverts back to the old definition?

Ms. Barbu state for now, to accept all those items including the definition of unsafe.

Commissioner Sasaki stated to clarify, it's the amendment to the definition.

Mr. Krause stated that HCD had significant concerns, this potentially sets a precedent. I want to make sure the commission understands that these are model code sections, with the exception of the definition. If the Commission were to disapprove individual model code sections, no California amendments to these sections, we have great concern, this conflicts with the rulemaking procedures. This is a little bit unorthodox.

Vice-Chair Winkel stated with HCD's comment, I don't know how I feel about any of them. Asking Commissioner Sasaki: Would you reconsider the deletion of the amendment separately from the list of section numbers?

Commissioner Sasaki stated Yes. The primary issue is really the upgrade triggers.

Vice-Chair Winkel stated Understood. So could you restate a substitute motion.

Motion: Commissioner Sasaki revised the Motion: to approve HCD 05/18 Part 10, except for the following items: the adoption of Sections 302.5.1, 405.2.1, 405.2.1.1, 405.2.2, 405.2.3, 405.2.3.1, 405.2.3.2, 405.2.3.3, 405.2.4, and 405.2.4.1. Commissioner Klausbruckner seconded.

Vice-Chair Winkel stated Ok, you are taking out the definition, from your first proposal

Chair Batjer stated it has been motion made and seconded to approve HCD 05/18 Part 10, except for the following items: the adoption of Sections 302.5.1, 405.2.1, 405.2.1.1, 405.2.2, 405.2.3, 405.2.3.1, 405.2.3.2, 405.2.3.3, 405.2.4, and 405.2.4.1.

Chair Batjer stated any further discussion by the commissioners on this motion.

Commissioner Sasaki did not see any difference than the three past code cycles, when portions of the model code were not adopted – specifically the upgrade triggers. He added that HCD was proposing to adopt only 40-50 pages of the 300 page IEBC; there are large sections of the model code that we do not adopt. What I'm proposing is, 10 different subsections all on one page.

Chair Batjer stated any further discussion on the motion.

Vice-Chair Winkel stated that He wanted to go back to the comment HCD, basically a question of HCD, and following on to what Commissioner Sasaki was saying if we do not adopt these provisions, it goes back to the non-adoption, which was the case in 2016, of the trigger provisions. He felt that there was no substantive difference between the 2015 IEBC and the 2018 IEBC triggers. They were not adopted in California in 2016 and are proposed for adoption in 2019. Are we saying to revert that section of the code back to the 2016 CBC provisions? He asked HCD, since the triggers and the underlying law did not really change, why are we doing something different this year than what we did in 2016?

Mr. Bumbalov answered that HCD has been avoiding it for a long time. We had to fix it 9 years ago and relied on an organization and in 2016 they didn't have any opinion on that rule, just getting letters from the persons that at the time were part of this organization and they did not have the time to work on this. HCD now had the time to evaluate and research, take some feedback from almost all of the local enforcing agencies, and we provided the rationale in the final statement of reasons. There are issues in the state of California regarding this existing building code. In addition to that, there is a section in the government code regarding reconstruction, restoration and rebuilding, which specifically states that the applicable code is the California Building Standards Code that the code was in effect at that time of

reconstruction, restoration and rebuilding. HCD is trying to clarify and avoid the confusion between different laws and different regulations.

Mr. Bumbalov further explained Mr. Krause's statement: CBSC has disapproved specific proposals in the last 20 years; however, this is the first that does not have any state amendment. HCD is proposing the model code. That makes it a precedent.

Commissioner Klausbruckner expressed concern with the Economic Impact Statement; it says the cost will be below \$10 million. She could not tell where that figure comes from when there is so much discussion on how expensive this can be for residences and building owners.

Mr. Bumbalov responded that there is specific exemption for the fiscal impact for the model code. If there was a request for us within the 30 days, we could have done the fiscal impact of the ISOR. There had been no requests so we're adopting the model code. There is an exemption for the fiscal impact. The law in the model code is a good example; the law requires for buildings for multifamily, which is two dwelling units or more. We can't assume how much exactly, but based on who we were proposing at that time, we can justify that this is way below \$10 million. Without adding the fiscal impact for the section 405, even though we will not have any fiscal impact because what we have in the government code and Health and Safety Code and what we're proposing there shouldn't be much of a difference in the fiscal provisions.

Ms. Withers added that the intent of the existing building code is to keep the housing stock durable and sustainable, so there may be some initial costs and other retrofits if required. However, that should help the unit perform better in the next disaster.

A brief recess was taken.

Chair Batjer stated that there was a question on the floor about the Fiscal Impact Statement (399), and the financial impact. She stated that HCD clarified it but she asked Executive Director Mia Marvelli to clarify it further.

Executive Director Marvelli confirmed that when a state agency adopts a model code, you must complete the 399, but there is a statement that there is an exemption for coming up with any cost benefit analysis. So what HCD provided is accurate. There is a provision if it was challenged within a certain window of time the state agency may produce that information. So a challenge did not occur during that time.

Commissioner Klausbruckner reiterated that her concern was more about the cost to California residences rather than whether we followed the proper procedure or not.

Commissioner Santillan noted that the sections proposed in the Motion for rejection are strictly model code sections. He asked Commissioner Sasaki if this was correct?

Commissioner Sasaki stated that is correct, a few sections of the model code.

Commissioner Klausbruckner made a comment that for now the code change proposal is to accept 90 percent of what is not up for debate, that is the first proposal. Then we're going to move to the second one, where we can discuss and object to those particular items.

Commissioner Santillan stated that this motion you're asking to accept 90 percent and reject a portion of the proposal. He asked HCD are the sections that are being proposed to be rejected are strictly model code sections?

Mr. Bumbalov stated, Yes, that's correct

Commissioner Santillan asked, if there is no model code, what will we have? Further, he did not recall the CBSC rejecting model code.

Ms. Barbu clarifies the motion that was previously stated was just to approve the 90 percent of the sections and leave the other ones on the back burner for a second motion.

Chair Batjer stated that Commissioner Santillan's question is different than that, and that is, have we ever rejected model code before and if we do reject model code what happens, what's the consequence?

Vice-Chair Winkel stated yes and we had done that in the code adoption immediately preceding this one. In the Matrix Adoption Table, the triggering provisions, which are the numbered sections that Commissioner Sasaki is proposing to delete were not proposed for adoption in the 2016 code; they were deleted by omission.

Mr. Bumbalov clarified that the only reason these sections were not discussed and adopted during 2016 was that during the coordination council, the state agency decided to move forward all sections in Chapter 34. This is the only reason these sections were not adopted, we started working on it and we were ready to go forward and adopt the model code, however an agreement with other state agencies we did not.

Ms. Withers stated the agreement was that we not include any additional requirements that were in Chapter 34 of the CBC.

Commissioner Sasaki commented that the vast majority of the 2018 IEBC is not adopted by HCD. But we're basically still adopting the model code, but not certain sections. He was not proposing anything different or new than what HCD is already proposing – they are proposing 40 pages that HCD is adopting.

Mr. Krause stated that if the Commission disapproves model code proposed by HCD, that is different than the state agency not proposing the adoption of model code. We have proposed the adoption.

Commissioner Patel pointed out the three actions in question: the agency is proposing model code language unamended; the agency is deleting model code language; or the agency is adopting model code language with amendments. These are distinct and different because

what we're doing now is basically saying, we are not adopting model code language being proposed by the state agency.

Chair Batjer stated we have a motion on the floor and it's been seconded. Is there any further discussion?

Vice-Chair Winkel stated the motion on the floor is to adopt most of the proposals except for those ones which we'll discuss in subsequent motions, is that correct?

Chair Batjer stated Yes.

Motion was not restated and listed above but will include in the meeting minutes again:

Motion: Commissioner Sasaki revised the Motion: to approve HCD 05/18 Part 10, except for the following items: the adoption of Sections 302.5.1, 405.2.1, 405.2.1.1, 405.2.2, 405.2.3, 405.2.3.1, 405.2.3.2, 405.2.3.3, 405.2.4, and 405.2.4.1. Commissioner Klausbruckner seconded.

Vote on the Motion: Motion carried with 6 yes, 0 no, and 0 abstain, per roll call vote.

The following Commissioners voted "Yes": Winkel, Klausbruckner, Alegre, Patel, Santillan, and Sasaki.

Chair Batjer stated the motion has passed unanimously. Commission Sasaki, I believe you have another motion.

Motion: Commissioner Sasaki moved to disapprove the adoption of the sections noted in the first Motion: Sections 302.5.1, 405.2.1, 405.2.1.1, 405.2.2, 405.2.3, 405.2.3.1, 405.2.3.2, 405.2.3.3, 405.2.4, and 405.2.4.1.

Chair Batjer restated the motion to disapprove the adoption of the following items in HCD 05/18 Part 10, sections 302.5.1, 405.2.1, 405.2.1.1, 405.2.2, 405.2.3, 405.2.3.1, 405.2.3.2, 405.2.3.3, 405.2.4, and 405.2.4.1. Is there a second to the motion; There was no second. The Motion did not move forward.

Ms. Barbu stated the motion does not move forward there needs to be another motion.

Brief discussion regarding the term "unsafe". Clarification needed.

Vice-Chair Winkel sought to make a Motion to delete the additional amendments by HCD to the term "unsafe." The Motion was deemed not possible because the amendment had just been approved in the prior successful Motion.

Motion: Commissioner Santillan moved to approve the remaining items within the HCD proposal: HCD 05/18 Part 10 Sections 302.5.1, 405.2.1, 405.2.1.1, 405.2.2, 405.2.3, 405.2.3.1, 405.2.3.2, 405.2.3.3, 405.2.4, and 405.2.4.1. Commissioner Patel seconded.

Chair Batjer restated the motion to approve the adoption of the following items in HCD 05/18 Part 10, sections 302.5.1, 405.2.1, 405.2.1.1, 405.2.2, 405.2.3, 405.2.3.1, 405.2.3.2, 405.2.3.3,

405.2.4, and 405.2.4.1. A motion was made and seconded. She stated is there any further discussion?

Commissioner Sasaki stated that if we approve those sections, we are approving regulations that are in direct conflict – not only the intent but also the plain language – of state law 17958.8.

Commissioner Klausbruckner suggested separating Section 302.5.1 from the other sections of 405. Commissioner Sasaki was open to that.

Brief discussion they found that it had already been approved.

Vice-Chair Winkel stated that he intended to vote in favor of the Motion because he did not think that it violates the letter of the law. Building standards law puts great weight in the public hearing process and the agency implementation of the Legislature’s intent. Here, the agency was saying that they are implementing the intent of the Legislature. Vice-Chair Winkel was voting for the process, not because he agreed with the agency and he did not think they violated the statute. The question is a deep public policy, that it sailed at the national model code level, dealing with not just seismic, fire, that Commissioner Sasaki deals with, but with wind and flooding. If people keep building in the flood plain, about 99 percent of engineers, discussing profound things, about whether it is made possible for people to move back into their houses or leave things better when it was found after it has been fixed. Those would be public policy questions. There are repercussions that Commissioner Sasaki and Commissioner Klausbruckner talked about, this will lead to lots of discussions. One saving part of this, it is important to not take out 302.5. The legal provisions for local amendments are still in place; the battle needs to be fought jurisdiction by jurisdiction. Vice-Chair Winkel felt that the Motion will have unintended consequences.

Commissioner Sasaki responded that this discussion is not about what model code wants or chooses on how to improve – it is about what the state law says. Currently the state law says that you can repair in-kind in emphatic language. This is to protect building owners and residents for cost-effective repairs. If we pass these upgrade triggers, we will have to require upgrades from people who cannot necessarily afford them. Commissioner Sasaki has asked that if we or HCD want to approve these, we should go to the Legislature and ask them to change the state law. Commissioner Sasaki stated that there is a conflict with what the state law allows.

Chair Batjer asked if there was any further discussion on the motion? Seeing none, time to call the roll.

Vote on the Motion: Per roll call vote, the Motion carried with 3 yes, 3 no, and 0 abstain. The following Commissioners voted “Yes”: Patel, Santillan, and Winkel. The following Commissioners voted “No”: Klausbruckner, Sasaki, and Alegre. To break the tie vote, Chair Batjer voted “No.” 3 yes, 4 no, and 0 abstain. The Motion failed.

Chair Batjer stated that we are getting advice from counsel and some clarification.

Brief discussion.

Ms. Barbu stated in the last motion was to approve and that motion failed. The Commission had to take another action as stated in section 1.15 to take the action in this case would be to either disapprove or send back for further study. A second motion would be necessary to take one of those other actions since approval failed.

Motion: Commissioner Sasaki moved to disapprove the remaining items within the HCD proposal: HCD 05/18 Part 10 Sections 302.5.1, 405.2.1, 405.2.1.1, 405.2.2, 405.2.3, 405.2.3.1, 405.2.3.2, 405.2.3.3, 405.2.4, and 405.2.4.1, because they do not meet criteria #1 of the 9-point criteria because they conflict with state law 17958.8 and 17922. They do not meet criteria #5 of the 9-point criteria because the cost to the public would be very high and may conflict with state policy. Commissioner Klausbruckner seconded.

Commissioner Santillan asked if it would be in order for Counsel to advise on the question of whether it does conflict with state law.

Ms. Barbu answered that the proposing agency and CBSC would need to have findings. It would be attorney/client privilege and would not be discussed in open forum such as this. The Commission would have to explain why it believes that these regulations do not meet one of the 9-point criteria.

Vote on the Motion: Motion carried with 4 yes, 2 no, and 0 abstain. The following Commissioners voted "Yes": Klausbruckner, Sasaki, Alegre, and Winkel. The following Commissioners voted "No": Patel and Santillan. The motion to disapprove passed.

Agenda Item 8. Future Agenda Items

Vice-Chair Winkel supported the notion of the workshop at the end of the next meeting as per the Commission's earlier discussion. He would like to see the Commission and the agencies get together and discuss how we put together code changes – to develop a template.

Commissioner Sasaki commented that these deliberations had been difficult and trying for everyone involved. Everyone wants to do the right thing for the State of California.

Agenda Item 9. Adjourn

Motion: Commissioner Patel moved to adjourn the meeting. A Commissioner seconded. Motion carried with 6 yes, 0 no, and 0 abstain, per roll call vote.

The following Commissioners voted "Yes": Winkel, Klausbruckner, Alegre, Santillan, Patel, and Sasaki.

Chair Batjer adjourned the meeting at approximately 4:09 p.m.