

**FINAL STATEMENT OF REASONS
FOR
PROPOSED BUILDING STANDARDS
OF THE
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
REGARDING THE 2013 CALIFORNIA GREEN BUILDING STANDARDS CODE (CALGREEN)
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 11**

(HCD 05/13)

The Administrative Procedure Act requires that every agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding. The rulemaking file shall include a Final Statement of Reasons. The Final Statement of Reasons shall be available to the public upon request when rulemaking action is being undertaken. The following are the reasons for proposing this particular rulemaking action:

UPDATES TO THE INITIAL STATEMENT OF REASONS

(Government Code Section 11346.9(a)(1) requires an update of the information contained in the Initial Statement of Reasons. If update identifies any data or any technical, theoretical or empirical study, report, or similar document on which the state agency is relying that was not identified in the Initial Statement of Reasons, the state agency shall comply with Government Code Section 11347.1)

No data or any technical, theoretical or empirical study, report, or similar document on which the Department of Housing and Community Development (HCD) is relying has been added to the rulemaking file that was not identified in the Initial Statement of Reasons.

HCD made modifications and/or editorial corrections to the following sections after the first 45-day public comment period that ended on June 9, 2014: Sections 4.106.4, 4.106.4.2 and Appendix A4, Section A4.602 "Residential Occupancies Application Checklist". [See File Approved by CBSC on 7-22-14]

HCD made no further modifications after the subsequent 15-day public comment period that ended on June 26, 2014. [See File Approved by CBSC on 7-22-14]

HCD made no further modifications after the second 45-day public comment period that ended on September 25, 2014.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

(Pursuant to Government Code Section 11346.9(a)(2), if the determination as to whether the proposed action would impose a mandate, the agency shall state whether the mandate is reimbursable pursuant to Part 7 of Division 4. If the agency finds that the mandate is not reimbursable, it shall state the reasons for the finding(s))

HCD has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

OBJECTIONS OR RECOMMENDATIONS MADE REGARDING THE PROPOSED REGULATION(S)

(Government Code Section 11346.9(a)(3) requires a summary of EACH objection or recommendation regarding the specific adoption, amendment, or repeal proposed, and explanation of how the proposed action was changed to accommodate each objection or recommendation, or the reasons for making no change. This requirement applies only to objections or recommendations specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action or reasons for making no change. Irrelevant or repetitive comments may be aggregated and summarized as a group.)

The following is HCD's summary of and response to comments specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the actions or reasons for making no change.

It should be emphasized that the proposed regulations and all HCD responses are based on the assumption that the proposed regulations apply only to (1) privately financed, (2) covered multifamily residential

construction, (3) on private property, (4) in areas for exclusive residential use. HCD takes no position at this time as to the requirements necessary if any of these assumptions change.

In each case, HCD has evaluated the submitted comments and provided the responses below.

COMMENTS RECEIVED DURING THE 45-DAY PUBLIC COMMENT PERIOD ARE LISTED BELOW.

(The text with proposed changes clearly indicated was made available to the public from April 25, 2014 until June 9, 2014.)

[See File Approved by CBSC on 7-22-14]

COMMENTS RECEIVED DURING THE 15-DAY PUBLIC COMMENT PERIOD.

(The text with proposed changes clearly indicated was made available to the public from June 11, 2014 until June 26, 2014.)

[See File Approved by CBSC on 7-22-14]

COMMENTS RECEIVED DURING THE SECOND 45-DAY PUBLIC COMMENT PERIOD ARE LISTED BELOW.

(The text with proposed changes clearly indicated was made available to the public from August 11, 2014 until September 25, 2014.)

NOTE: *The complete text of each comment submitted during the second 45-day public comment period may be viewed at the following internet address:*

<http://www.bsc.ca.gov>

1. COMMENTER: Mark Flatter (**EM-1**)
Building Official
City of Corte Madera
mflatter@ci.corte-madera.ca.us

COMMENT: EM-1. Sections 4.106.4.2.1 and 4.106.4.2.2:

The commenter states that it seems inappropriate to dedicate this size of access aisle for electric vehicles (EVs) and that full-size EV vans are not feasible due to weight and unavailability. The commenter further states that dimensions for disabled access should not be placed in CALGreen, but instead should be located in the California Building Code, Chapter 11A "Housing Accessibility".

HCD RESPONSE:

HCD agrees that currently a full-size electric vehicle (EV) van is not available for the private consumer. EV vans have been labeled as a "niche market" due to the cost of these types of conversion vans, estimated at \$100,000 or more. No EV vans are currently in production by any vehicle manufacturer anywhere in the northern hemisphere. Presently, a few small companies modify gasoline van chassis for commercial use only.

HCD's proposal is suitable for CALGreen to allow for the planning of at least one "universal" electric vehicle charging space available for use by all residents. The HCD proposal is not intended to create accessibility standards in CALGreen. HCD's CALGreen proposal mandates the installation of infrastructure, service capacity and raceway or electrical conduit, but not an EV charger. Plans must indicate where EVCS space will be allocated, including the proposed "universal" charging space. If adequate space is not allocated during initial construction, it may lead to expensive retrofitting when an EV charger is installed.

In consideration of all HCD received comments related to disabled access of EVSE charging stations, HCD notes that the proposed building standards are "minimum standards" only and does not prevent the provision of greater accessibility and usability of EVCS spaces by private developers. These current proposed regulations are to provide a "minimum standard" for the construction of infrastructure used to support EVCS charging stations.

The discussion and decision to have a dedicated EVSE for disabled use only is not timely and will occur in future proposed regulation packages and subsequent public hearing and comment periods. The passage of these proposed regulations will not preclude discussion or decision to have a dedicated EVSE.

No changes to the Final Express Terms were made as a result of these comments.

2. COMMENTER: HolLynn D'Lil (**EM-2**)
P.O. Box 160
Graton, CA 95444
hdilil@comcast.net

COMMENT: EM-2. Sections 4.106.4.2.1 and 4.106.4.2.2:

The commenter asked several questions related to the above proposed sections. HCD responded to the commenter in an email dated September 5, 2014. These responses are reiterated below with minor editorial changes to improve readability under the following "HCD RESPONSE".

Question 1 (Section 4.106.4.2.2):

Why would there be a choice between providing an accessible parking space meeting the requirements of Chapter 11A and Section 4.106.4.2.2 Item 3, or locating such spaces on an accessible route? What is the point of requiring an accessible space per Chapter 11A or the lesser requirements of 4.106.4.2.2 if the spaces are not reachable via an accessible route?

HCD RESPONSE:

HCD's proposed language (Express Terms) offer two design choices or options for the electric vehicle charging stations (EVCS):

1. The first design choice requires the EVCS to be adjacent to a required (per Chapter 11A) accessible parking space where the access aisle may be shared to facilitate both uses (accessible parking and EV charging). In HCD's analysis, this design choice would be the most utilized. Using design choice 1, other than in the largest developments, most EVCS would be located next to a van accessible space. In this case, the EVCS will have the same size, slope, aisle and accessible route as the required accessible parking space. This will allow persons with disabilities to use the EV charger from either space (accessible parking or the EVCS), which is a benefit.
2. The second design choice provides additional flexibility based upon site characteristics and design. For instance, if the electrical service panel is located away from the required accessible parking space(s), the owner/builder may choose to locate the EVCS close to the service panel. This option requires an access aisle and accessible route to the building. There is no difference between the requirements in Section 4.106.4.2.1 Option 1 and Option 2; in either location, whether adjacent to the existing accessible parking space or in another location, the EVCS must be located on an accessible route.

HCD has made no reduction to the existing requirements in the California Building Code, Chapter 11A, for accessible parking spaces.

Question 2 (Section 4.106.4.2.1):

Does HCD mean that if Option 1 is chosen, then the parking requirements of Chapter 11A are not required?

HCD RESPONSE:

No. This proposal only addresses infrastructure for common use areas intended for EV charging. HCD has made no reduction to the mandatory accessible parking space requirements in CBC Chapter 11A. The proposed one (1) in twenty-five (25) EVCS, (but not less than one) is required to have an additional aisle, and is space that is available for use by both persons with or without disabilities. Regardless of the location of this EVCS (adjacent or away from the required accessible parking space), it is required to comply with the requirements for size, slope, aisle and accessible route. (HCD's Final Statement of Reasons and HCD's June 30, 2014, memo addressing review of 2013 CALGreen Code rulemaking regarding accessibility of EV charging stations, which discusses this issue in greater detail, was attached in the response email and also is part of the rulemaking package.)

Question 3 (Section 4.106.4.2.1):

Does HCD mean that if an accessible route is provided as in Option 2, then accessible parking is not required?

HCD RESPONSE:

No. This proposal only addresses infrastructure for common use areas intended for EV charging. HCD has made no reduction to the mandatory accessible parking space requirements in CBC Chapter 11A. The EVCS (if installed) in a common use area is a charging space in which a vehicle may park for short durations for charging. Therefore, when a charger is installed, the EVCS [one (1) in twenty-five (25) (but not less than one)] has appropriate dimensions and slope to make it available and usable by all, including persons with disabilities. An EVCS is a common use area for the purpose of charging electric vehicles only, and is not considered a parking space. (HCD's Final Statement of Reasons and HCD's June 30, 2014, memo addressing review of 2013 CALGreen Code rulemaking regarding accessibility of EV charging stations which discusses this issue in greater detail was attached in the response email and also is part of the rulemaking package.)

In consideration of all HCD received comments related to disabled access of EVSE charging stations, HCD notes that the proposed building standards are "minimum standards" only and does not prevent the provision of greater accessibility and usability of EVCS spaces by private developers. These current proposed regulations are to provide a "minimum standard" for the construction of infrastructure used to support EVCS charging stations.

The discussion and decision to have a dedicated EVSE for disabled use only is not timely and will occur in future proposed regulation packages and subsequent public hearing and comment periods. The passage of these proposed regulations will not preclude discussion or decision to have a dedicated EVSE.

Question 4 (Section 4.106.4.2.2):

Item #8 is moving in the right direction, but still eliminates essential accessible parking features, such as signage, accessible route to the charging station, and necessary accessible features for the charging unit. Is it HCD's intent to require only part of the parking requirements and if so, why? Without proper signage, reach ranges, pounds of operating pressure, sight lines, accessible routes, clear floor space, etc., the parking and the charging unit will not be accessible.

HCD RESPONSE:

The proposed regulations will provide a physical space for electric vehicle charging only, for future installation of charging equipment.

During HCD's first informal Accessibility Focus Group meeting held on September 18, 2013, HCD proposed language that would have referenced Chapter 11A requirements as follows:

[1127A.13 Electric vehicle charging spaces. Where Electric Vehicle Supply Equipment (EVSE) is installed, at least one of the dedicated EV charging spaces shall comply with the applicable requirements for parking, reach ranges and accessible route.

The accessible EV charging space and its access aisle need not be striped or provided with signage as required for an accessible parking space. An information sign shall be posted in a conspicuous place to read: "Parking for EV Charging Only; This Space Designed for Disabled Access; Use Last."]

HCD removed this language from Chapter 11A proposed Express Terms after the first focus group meeting based upon the commenter's strong opposition. This section is now "reserved" in Chapter 11A for the 2015 Triennial Code Adoption Cycle.

HCD will also be a stakeholder and participant in the Division of State Architect's (DSA) meetings that discuss EV chargers and related issues during the upcoming 2015 Triennial Code Adoption Cycle. Based upon HCD's analysis of the Fair Housing Amendments Act (FHAA) and other applicable laws, it was determined that signage is not a requirement for areas serving all residents for the explicit use of charging EVs. (HCD's Final Statement of Reasons and HCD's June 30, 2014, memo addressing review of 2013 CALGreen Code rulemaking regarding accessibility of EV charging stations which discusses this issue in greater detail was attached in the response email and also is part of the rulemaking package.)

Accessibility provisions do not apply to infrastructure when there is no usable service (EV charging) being provided. Only when an EV charger is installed in common use areas, does it become a common use facility, which has to comply with Chapter 11A. The EV provisions of CALGreen were meant as a foundation which provides a guideline for design professionals, enforcing agencies and other code user for future installation of EV chargers. CALGreen is not an accessibility code nor was it intended to be. No changes to the Final Express Terms were made as a result of these comments.

3. COMMENTER: Richard Skaff (**EM-3**)
Executive Director
Designing Accessible Communities
15500 Monte Rosa Avenue
Guerneville, CA 95446
richardskaff@designingaccessiblecommunities.org

COMMENT: EM-3. Sections 4.106.4.2.1 and 4.106.4.2.2:

The commenter notes that the conclusions reached by Richard Weinert, Deputy Director, Division of Codes and Standards, Department of Housing and Community Development, and staff are totally erroneous and bigoted; "...it's clear that H&CD will not communicate with us", and stated that HCD staff sent out 15- and 45-day language for comment without having had any actual face-to-face discussion; and that "If H&CD continues in this direction, we will be forced to take them to court to stop their blatant attack on our civil rights." The commenter also noted that "we now have parking spaces designated specifically and only for persons with disabilities" and provided a copy of the United States Court of Appeals for the Ninth Circuit case Robin Fortyune versus City of Lomita No. 12-56280, D.C. No. 2:11-cv-06644-DDP-JCG OPINION filed September 5, 2014.

HCD RESPONSE:

HCD conducted two CALGreen focus group meetings on November 14, 2013, and January 23, 2014, in which proposed EV language was discussed. HCD solicited engagement of the commenter via an email invitation after HCD staff discovered that some accessibility stakeholders, including the commenter, did not sign up on HCD's CALGreen list-serve. The commenter was not able to attend the second HCD EV charging focus group meeting. Additional opportunities to discuss HCD proposals were afforded through the California Building Standards Commission (CBSC) rulemaking process, including Code Advisory Committee meetings and public comment periods. On September 18, 2014, HCD initiated a conference call in response to a request made by the commenter and Hollynn D'Lil. Again, HCD described the intent of the proposed language and solicited input.

The case law the commenter cited (United States Court of Appeals for the Ninth Circuit case Robin Fortyune vs. City of Lomita No. 12-56280, D.C. No. 2:11-cv-06644-DDP-JCG) is unconnected to HCD's proposal. It addresses on-street public parking and discusses Title II ADA issues that are not germane to the HCD proposal. The ADA does not govern privately owned covered multifamily dwellings. Instead, privately owned covered multifamily dwellings are subject to the Fair Housing Amendments Act (FHAA) and Chapter 11A requirements. Additionally, the primary purpose of EVCS is a common use charging area. Charging times will vary and will be dictated by the market, landlord/tenant agreements, and the capacity of the charging unit (when installed).

As noted earlier, in consideration of all HCD received comments related to disabled access of EVSE charging stations, HCD notes that the proposed building standards are "minimum standards" only and does not prevent the provision of greater accessibility and usability of EVCS spaces by private developers. These current proposed regulations are to provide a "minimum standard" for the construction of infrastructure used to support EVCS charging stations.

The discussion and decision to have a dedicated EVSE for disabled use only is not timely and will occur in future proposed regulation packages and subsequent public hearing and comment periods. The passage of these proposed regulations will not preclude discussion or decision to have a dedicated EVSE.

HCD's proposal does not require the installation of an EV charger nor does it reduce current accessible parking space requirements or establish new accessibility standards. The HCD proposal mandates one EVCS in common use areas to be available for all residents. HCD's proposed language contains

requirements for size, slope, accessible route, and loading-unloading aisle and for EVCS available for use by all residents ONLY when an EV charger is actually installed on the site.

HCD reviewed state, local and federal laws with regard to housing and other nonresidential charging applications. HCD also reviewed implementing regulations (including CBC Chapter 11A), other guidelines, and the DSA Interim Disabled Access Guidelines for Electrical Vehicle Charging (97-03) and found no evidence to substantiate or support the requirement for a dedicated EV service for persons with disabilities in private residential housing. To date, the commenter has not provided any information to the contrary.

If an EV charger is installed, it must be available for use by all residents. HCD's proposed language allows the property owner design choices. An EV charger may be usable from an accessible parking space (as required by CBC Chapter 11A), or from an adjacent charging space having the same size, slope and 8-foot aisle. The other proposed option is to use the EV charger from an EVCS complying with CBC Chapter 11A requirements for size, slope and aisle, and located on an accessible route. HCD does not address the requirements for reach ranges, controls and operating mechanisms, clear floor space, and accessible route to the EV charger. These requirements are contained in Chapter 11A and are triggered when the EV charger is actually installed.

The commenter's issues and concerns with accessibility will be discussed during the upcoming 2015 Triennial Code Adoption Cycle. HCD looks forward to the commenter's input and encourages all accessibility stakeholders to participate in the process.

No changes to the Final Express Terms were made as a result of these comments.

4. COMMENTER: Tim Thimesch (EM-4)
tim@thimeschlaw.com

COMMENT: EM- 4. Sections 4.106.4.2.1 and 4.106.4.2.2:

The commenter submitted five (5) comments, which are addressed below.

Comment 1:

The code should specify that the Electric Vehicle Charging Station (EVCS) must be located at the head of the accessible loading zone and not just adjacent to the accessible parking space.

HCD RESPONSE:

Proposed regulations, Section 202, included a definition for "Electric Vehicle Charging Station" as one or more spaces intended for charging EVs. This definition was approved on July 22, 2014, by the CBSC for inclusion in the 2013 CALGreen Code. This definition covers the space only and not an EV charger. In addition, design standards do not preclude any future discussion of pedestal, podium or other placement options.

Comment 2:

The code needs to ensure that use of the EVCS, e.g., charging cord, does not obstruct the accessible route.

HCD RESPONSE:

As noted in HCD's response to Comment 1, the proposed EVCS requirements relate to size and location of the space. HCD's proposed regulations do not mandate installation of an EV charger. However, once the charger is installed and available for use by persons with disabilities, at least one EVCS and EVSE must meet Chapter 11A requirements for reach ranges, clear floor space, accessible route, and controls and operating mechanisms. The issue of the cord is difficult to address since the location of the charging port on the vehicle varies between vehicle models. The location of the cord when in use will also vary based on the type of charger, type of cord (standard cord, overhead arm, cord management system) and the behavior of the EV user. HCD is a participant in the DSA EV Charging Work Group where further discussion into these issues and others are being vetted. The commenter's will be discussed during the upcoming 2015 Triennial Code Adoption Cycle. HCD looks forward to the commenter's input and encourages all accessibility stakeholders to participate in the process.

Comment 3:

Signage requirements should be modified to make it clear that use of an electric vehicle does not qualify a user to park in the adjacent disabled space.

HCD RESPONSE:

The California Building Code, Chapter 11A, Section 1109A requires identification of individual accessible parking spaces with the International Symbol of Accessibility on a sign and on the surface of the space as specified. Also, an additional sign is required at the entrance of parking facilities noting the requirement of placards or special license plates for parking in designated accessible parking spaces. No additional signage is necessary in conjunction with these infrastructure design standards.

Comment 4:

Option 2 of the proposed regulations would not ensure that the parking space itself is both compliant and useful.

HCD RESPONSE:

Option 2 needs to be interpreted in its entirety. To implement Option 2, the EVCS in question would be at least 18 feet long and 17 feet wide (including aisle). This EVCS would also have maximum 1 unit vertical in 48 units horizontal (2.083 percent slope) in each direction. This EVCS is the same size as a van accessible parking space, including the 8-foot aisle (for 9-foot wide space) and the same slope requirements, and would be required to be on an accessible route. The EVCS would be usable for both persons with or without disabilities.

Comment 5:

The California Building Standards Commission (CBSC) still needs to resolve the noted issues with regard to timing. Access should not be limited by the extended use of EVCS spaces, e.g., while shopping. The current proposal is not adequate to deal with this issue.

HCD RESPONSE:

This comment may be directed to the CBSC. The amount of charging time allowed at EVCS with chargers is not addressed in the CALGreen Code. Charging time will vary, but will be dictated by the market, business plans and the capacity of the charging unit when installed. Technological advances will also be pivotal. Ideally, the charger should be available to EV users unless it is actively being used (charging). Depending on the charger and the length of time needed to charge the vehicle, this could range from 15 minutes to 8 hours at this time. The code requirements set a minimum standard; therefore, demand in certain regions may dictate additional chargers or the need to set time limits for charging. This would not be a building code issue, but more of a builder and building management issue.

No changes to the Final Express Terms were made as a result of these comments.

5. COMMENTER: Sidney J. Cohen (EM-5)
Attorney at Law
427 Grand Avenue
Oakland, CA 94610

COMMENT: EM- 5. Sections 4.106.4.2.1 and 4.106.4.2.2:

The commenter responded to HCD’s memo summarizing issues related to the proposed EV charging regulations.

Comment 1:

Both federal and California statutes and implementing regulations and standards require that a housing provider who installs EVSE/EVCS in a common use area on a building site dedicate a minimum of one compliant parking space for exclusive use by persons with disabilities.

HCD RESPONSE:

EVSE/EVCS is not addressed in either federal or state statutes or regulations. The federal and state regulations mandate a dedicated parking space, but not a dedicated EV charger or dedicated EV charging space (station). The charging space is designed to be used as a charging location into which one temporarily parks the vehicle, charges the vehicle, and then leaves. It is similar to a gasoline pump or

fueling station. Currently, EV charging may require a longer time. Charging times vary depending on the EV and a charger's capacity, but the primary function of the location is for charging and not parking. (See **EM-3** and **EM-4** for additional information.)

In consideration of all HCD received comments related to disabled access of EVSE charging stations, HCD notes that the proposed building standards are "minimum standards" only and does not prevent the provision of greater accessibility and usability of EVCS spaces by private developers. These current proposed regulations are to provide a "minimum standard" for the construction of infrastructure used to support EVCS charging stations.

The discussion and decision to have a dedicated EVSE for disabled use only is not timely and will occur in future proposed regulation packages and subsequent public hearing and comment periods. The passage of these proposed regulations will not preclude discussion or decision to have a dedicated EVSE.

Comment 2:

Contrary to HCD's conclusion that the FHAA, the ADA, the FEHA, and the Unruh Act would not require a housing provider to dedicate an EVSE/EVCS to persons with disabilities nor require signage, the commenter states that the location of the EVCS are parking spaces subject to federal ADA statutes and implementing regulations which require 1 dedicated parking space for every 25 spaces, but not less than 1.

HCD RESPONSE:

Privately funded covered multifamily dwellings are not subject to the ADA. "Covered multifamily dwellings," as defined in the California Building Code are subject to the Federal Housing Amendments Act HCD's authority to promulgate regulations is granted in Health and Safety Code Section 17920 et seq., and Government Code Section 12955.1 et seq. Therefore, in California, covered multifamily dwellings are subject to the California Building Code, Chapter 11A "Housing Accessibility", not Chapter 11B Accessibility. Chapter 11B is applicable to Public Buildings, Public Accommodations, Commercial Buildings and Public Housing. An exception exists when a charging station is open to the general public or the building is owned or operated by a public entity. In many instances, HCD has aligned Chapter 11A with Chapter 11B for consistency between public and common use spaces, and where it is believed to be germane. HCD intends to do the same with regard to EV charging, and is actively engaged with the Division of the State Architect (DSA) on the Electric Vehicle Charging Station (EVCS) Working Group to further explore EV charging requirements.

Comment 3:

HCD's memo notes that when an EV charger is installed, it would provide two charging stations, with one being a dedicated parking space. The commenter notes that this would mean that there are two chargers – one for the dedicated parking space charging station and one for the non-dedicated parking space. A sign restricting the parking space to "charging only" would resolve issues related to dedicated charging spaces.

HCD RESPONSE:

HCD disagrees with the commenter's assertion that HCD is proposing to require two (2) EVCS with one (1) being a dedicated parking space, and two (2) EV chargers. One option HCD proposed was to provide the Universal (1 in 25) EVCS adjacent to an accessible parking space required by Chapter 11A. This option does not reduce accessible parking, but adds additional opportunity (a benefit) for persons with disabilities to charge their vehicle when the Universal EVCS is being utilized. The charger would generally be a single port charger located next to a parking space already required by the current regulations in Chapter 11A. This was perceived as a benefit and not a denial of any right. In no way does either option relieve the design professional from assuring accessibility is provided when a charger is installed. With the current market penetration of EVs, requiring a dedicated accessible EVCS increases electrical capacity and equipment costs without a clear benefit. In many cases of multifamily construction, only one EVCS will be required. The cost for an additional dedicated electric vehicle accessible parking space to be used only by persons with disabilities may discourage proliferation of installation instead of encouraging it.

Comment 4:

"Equal access" requires a dedicated accessible parking space for EVCS/EVCE (*sic*) charging services. All that is needed for "equal access" is for the dedicated space to have its own charging equipment.

HCD RESPONSE:

The referenced requirement is not specified in federal or state statutes, regulations or standards. No federal or state statutes, regulation or standards require a service in common use areas provided for residents or guests to be dedicated for persons with disabilities. For example, swimming pools, fitness rooms, recreational areas, playgrounds, toilet facilities, laundry facilities, etc., are not required to have all or portions dedicated for use only by persons with disabilities.

No changes to the Final Express Terms were made as a result of these comments.

6. COMMENTER: Anne Smart (**EM-6**)
Director, Government Relations
ChargePoint
anne.smart@chargepoint.com

COMMENT: EM-6. Sections 4.106.4.2.1 and 4.106.4.2.2:

The commenter has submitted support for approval of the proposed changes in Sections 4.106.4.2.1 and 4.106.4.2.2 in the California Green Building Standards Code (CALGreen) regarding EV charging stations.

The commenter also appreciates being part of the code language development process, which addresses requirements for charging stations in new construction and also ensures access to EV drivers with disabilities.

HCD RESPONSE:

HCD thanks the commenter for expressing support.

7. COMMENTER: HolLynn D'Lil (**EM-7**)
P.O. Box 160
Graton, CA 95444

Dylan Ryall (**EM-8**)
1709 Drexel Drive
Davis, CA 95616

Peter T. Mendoza (**EM-10**)
thatmendozaguy@gmail.com

Craig Thomas Yates (**EM-11**)
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Walter Park (**EM-13**)
waltsfo@gmail.com

COMMENT: EM-7, EM-8, EM-10, EM-11, and EM-13. Sections 4.106.4.2.1 and 4.106.4.2.2:

The commenters listed above submitted opposition to Items 7 and 8 of the proposed regulations. Specific comments and HCD responses are listed below.

Comment 1:

Based on CBSC Nine-Point Criteria 1, the proposed HCD building standards conflict with existing applicable building standards for accessible parking in Title 24 Chapters 11A and 11B. HCD's proposed section does not require an accessible route to the charging unit and the required clear floor space for use of the charging unit. Other parking requirements, in particular signage, address issues other than space requirements and are not discussed in the proposed code. People who do not need accessible parking spaces will have access to all charging parking spaces; persons with disabilities will have access to less than one.

HCD RESPONSE:

HCD's previous Final Statement of Reasons dated June 2014 responded to similar comments and will be restated, in part. HCD's proposal to adopt Sections 4.106.4.2.1 and 4.106.4.2.2 provides access to both persons with or without disabilities, which fulfills requirements under the fair housing laws. The proposed regulations, Section 4.106.4.2.1 (EVCS locations) and Section 4.106.4.2.2 (EVCS physical requirements), provide for use of an EV charger (when installed) from the larger station locations in common use areas specified in Section 4.106.4.2.2, which are adjacent to an accessible parking space or an accessible route. Either EVCS location would be adjacent to an accessible route and have a 17-foot width (9-foot space plus 8-foot aisle; or 12-foot space plus 5-foot aisle). HCD's intent for these infrastructure only proposals is to provide minimum design requirements, which are intended to prevent costly alterations later, when property owners elect to install EV chargers. As stated to previous commenters, in consideration of all HCD received comments related to disabled access of EVSE charging stations, HCD notes that the proposed building standards are "minimum standards" only and does not prevent the provision of greater accessibility and usability of EVCS spaces by private developers. These current proposed regulations are to provide a "minimum standard" for the construction of infrastructure used to support EVCS charging stations.

The discussion and decision to have a dedicated EVSE for disabled use only is not timely and will occur in future proposed regulation packages and subsequent public hearing and comment periods. The passage of these proposed regulations will not preclude discussion or decision to have a dedicated EVSE.

HCD's proposed regulations are not parking standards, but do share some similarities. The primary purpose for the EVCS is for charging EVs. Parking is an ancillary function of the charging service and adequate space has been provided to ensure all users have access (see additional response to commenters **EM-3** and **EM-4**). Electric vans for private use are not available in the market (see additional response to commenter **EM-1**). Based upon a vote to further study by the CBSC Commissioners on July 22, 2014, HCD proposed an EVCS of 17-foot width consistent with the requirements for van accessible parking in the California Building Code Chapter 11A.

HCD's proposed regulations do not require an EV charger and no physical space needs to be provided at the time of final construction unless an EV charger is installed. Accessibility is required when an EV charger is installed. All provisions regarding reach ranges, accessible route, clear floor space, and controls and operating mechanisms are addressed in Chapter 11A. HCD's proposal also requires an accessible route serving the EVCS.

When provided, EV charging is a service. It is agreed that a reasonable person(s) has the expectation to "park" their vehicle for a limited time for charging, but this service does not correlate into the same expectation that EVSE should provide dedicated spaces. Charging time(s) will be established by the market, charging companies, building management, the size of electric charger installed and technology etc. These issues are not building standards. An EV charger, when installed in common use areas, shall be available for use by all residents. HCD research of local, state, federal law and implementing regulations (including CBC Chapter 11A) does not support requiring a dedicated service for persons with disabilities.

Comment 2:

Based on CBSC Nine-Point Criteria 2, the proposed HCD building standards are outside the parameters established by Section 504 of the 1973 Rehabilitation Act, the Americans with Disabilities Act, California Civil Code Sections 54 and 55, the FHAA, California Government Code Sections 4450 and 4452 and the Health and Safety Code Section 19955 because they do not require a dedicated accessible parking space for only persons with disabilities for EV charging or an accessible parking space with its own charger. The proposed code allows a choice between using an accessible Chapter 11A parking space accompanied by an inaccessible space (Section 4.106.4.2.2 Item 3) or an inaccessible space on an accessible route. The last option is outside the parameters of the laws listed above. The two options are ambiguous and vague as discussed below (excerpts from Sidney Cohen's letter included).

HCD RESPONSE:

HCD's previous Final Statement of Reasons dated June 2014 responded to similar concerns and will be restated, in part. See also response to **EM-5**.

CBSC Nine-Point Criteria 2 in its entirety requires the proposed regulations to be within the parameters established by enabling legislation and is not expressly within the exclusive jurisdiction of another agency. HCD's authority for adoption of regulations related to residential occupancies is specified in Health and Safety Code Section 17921 and Government Code Section 12955.1 et seq. The proposed EV charging regulations for residential occupancies is within the regulatory authority of HCD.

Rehabilitation Act of 1973 Reference Under Section 504 of the Rehabilitation Act of 1973, as amended – No otherwise qualified individual with a disability may be discriminated against in any program or activity receiving federal financial assistance from any Federal Department or Agency. Section 504 does not apply to private multifamily dwellings (constructed with private funds), addressed in the proposed regulations.

Americans with Disabilities Act (ADA) Reference – ADA does not apply to covered multifamily dwellings that are constructed with private funds on private property, are not open to the general public, and are not public accommodations.

Civil Code Reference – Sections 54 and 55 are part of the Unruh Civil Rights Act (Unruh Act). Under the Unruh Act, all persons are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishments, including both private and public entities. The Unruh Act protects all persons against arbitrary and unreasonable discrimination by a business establishment, and the proposed regulations do not impose any arbitrary or unreasonable discriminatory standards.

Section 54 requires that individuals with disabilities or medical conditions have the same right as the general public to the full and free use of public places such as streets, highways, public facilities, etc.

Section 55 provides authority for aggrieved persons to bring action to enjoin the violations of Sections 54 or 54.1. HCD's proposed regulations do not include any prohibitions against appeals or legal action.

Fair Housing Amendments Act (FHAA) – HCD is currently responsible for implementation of the FHAA at the statewide level as it applies to "covered multifamily dwellings." Regulations implementing the FHAA are proposed and adopted by HCD and published in the California Building Code, Chapter 11A. The FHAA is the appropriate body of federal legislation with regard to covered multifamily dwellings and the fundamental federal law applicable in this case. HCD has found no violation of law or denial of civil rights with regard to the infrastructure provisions proposed. The ADA, California Government Code Sections 4450 and 4451, California Health and Safety Code Section 19995 or California Civil Code Sections 54 and 55 are not applicable because the proposed regulations apply to privately financed residential construction.

Government Code Reference – Section 4450 applies to all buildings, structures, sidewalks, curbs, and related facilities constructed in this state by the use of state, county, or municipal funds, or the funds of any political subdivision of the state. This section further requires these facilities to be accessible to and usable by persons with disabilities and mandates the Division of the State Architect (DSA) to develop and propose building standards. HCD's proposal to adopt Section 4.106.4.2.1 applies specifically to multifamily dwellings of 17 or more dwelling units, which are not state or local government buildings. Therefore, Government Code Section 4450 does not apply to the regulations proposed by HCD in this rulemaking.

Health and Safety Code Reference – Section 19955 addresses public accommodations or facilities constructed with private funds and to ensure adherence to the requirements of Government Code Section 4450. HCD's proposed regulations apply only to projects constructed on private property and are not open to the general public, and are not public accommodations.

HCD proposal to adopt Sections 4.106.4.2.1 and 4.106.4.2.2 allocates necessary space to accommodate persons with or without disabilities if a charging unit(s) were to be installed, thus fulfilling requirements under the fair housing laws.

Comment 3:

Based on CBSC Nine-Point Criteria 6, Section 4.106.2.1 ambiguously states that a charging station may be provided next to a parking space described in 4.106.2.2 Item 3 **and** next to a Chapter 11A parking space for use by persons with disabilities without specifying that one or two chargers will be serving the two spaces.

This is unnecessarily vague and will cause interpretation problems by code enforcers and others. The code needs to address the issue of timing – will the accessible parking space be limited on time for use? The code is not clear on whether the inaccessible space would be on an accessible route. The two options in Section 4.106.2.1 are not equivalent. Option 1 allows a fully accessible Chapter 11A parking space to have a nearby charger, and Option 2, which should be equivalent to Option 1, provides a charger next to a parking space that is not fully accessible and usable by persons with disabilities.

HCD RESPONSE:

HCD regulations provide two options for compliance. Hence, “EVCS shall comply with at least one of the following options.” Option 1 locates the larger sized EVCS next to an accessible parking space required by Chapter 11A. Option 2 locates the larger sized EVCS on an accessible route. In either design choice, an accessible route shall be provided and meet the requirements of Chapter 11A when an EV charger is provided. HCD believes this language is sufficiently clear.

HCD’s proposed regulations require, per Section 4.106.4.2, that three (3) percent of the total number of parking spaces provided for all types of parking facilities, but in no case less than one, be provided for an EVCS capable of supporting future EV charging equipment. EVCS location(s) are required to be identified on the submitted plans, but do not require construction of the EVCS on the site of a multifamily development. Additionally, EVCS need not be constructed in vehicle parking areas. HCD’s proposed regulations do not require installation of EV chargers. If chargers are installed, they would need to meet or exceed the quantity specified in Section 4.106.4.2.

Building codes do not address the duration of parking or charging. Similarly, building codes do not regulate maximum time limits for passenger loading zones or use of special services (ATMs, fueling stations, etc.), or parking spaces (2 hours, 10 hours, etc.). (See additional response to **Comment 1** above).

The commenter is correct that the two options are not equivalent. When a comparison is done between the requirements of Option 1 and Option 2, Option 1 would permit the additional benefit allowing a single charger to be used from two locations. Both options require a 17 foot wide EVCS sloped at 2.083 percent or less when a charger is installed. Unless a multiport charger is installed, a single port charger can only be used by one EV at a time regardless of the number of locations having access to the charger.

Comment 4:

Based on CBSC Nine-Point Criteria 7, HCD’s Items 7 and 8 are in conflict with this criterion since they do not incorporate national specifications and published standards for parking. HCD includes a few, but not all, standards to make the space accessible. HCD does not include any spatial requirements to make the parking and charging units usable by person with disabilities (accessible route, clear floor space). Full degree of accessible parking standards readily available federally and in Chapters 11A and 11B of Title 24 are not incorporated by HCD, thereby denying access to parking which is prohibited by federal and state laws.

HCD RESPONSE:

HCD’s previous Final Statement of Reasons dated June 2014 responded to similar concerns and will be restated, in part. HCD performed considerable research looking for dimensions for EVCS and was unable to find specific information. There are no standards for EVCS in the ADA or in the California Building Standards Code, Chapter 11B. HCD proposed an ADA ratio that one (1) in twenty-five (25) EVCS (but not less than 1) include a 17-foot width including aisle, and have a maximum slope of 2.083 percent. The use of the ADA ratio was explained in the Initial Statement of Reasons dated April 17, 2014, for Section 4.106.4.2.1 “Electric vehicle charging station (EVCS) dimensions and slope”

The California Green Building Standards Code (CALGreen), similar to the Energy Code, is not based on a model code. The unavailability of model codes and national standards for residential purposes in CALGreen is explained in the Initial Statement of Reasons under “Statement of Justification for Prescriptive Standards.”

Comment 5:

Mr. Mendoza (**EM-10**) notes that he drives a wheelchair accessible ramp van and states that EVs are the way of the future and are going to become commonplace in our society. It is pivotal that the E.V.S. (*sic*) charging station regulations take into account the accessibility needs of persons with disabilities who will be using these vehicles in their everyday life.

HCD RESPONSE:

HCD's proposed regulations, if approved, will become effective July 1, 2015. HCD proposals during the 2013 intervening Code Cycle will take effect 18 months earlier than the 2015 Triennial Code Adoption Cycle, which will take effect January 1, 2017. It is important that the opportunity to provide infrastructure is not lost at this time. HCD recognizes that EVs will become more commonplace, and that charger usage and technology will be changing in the near future. Perhaps even private use electric vans will be produced. In developing the "infrastructure only" requirements, HCD has considered all users, the current EV market penetration, current technologies and the needs of all consumers. HCD anticipates further updates for the 2016 CALGreen Code and updates to the 2016 California Building Code Chapter 11A to coordinate this emerging and rapidly changing technology.

Comment 6:

Mr. Park (**EM-13**) notes that this is new technology and has an aura of progress and of a "clean energy" future, but is, in fact, very un-modern, regressive, to ignore long-agreed upon accessibility principles and standards. The disability community will not sacrifice accessibility to manufacturer or owner or installer convenience. We will not go backward.

HCD RESPONSE:

See response to **Comment 4** and **Comment 5** above. As noted in HCD responses, there are currently no standards for EV charging and accessibility. Consequently, there are no agreed upon EV charging standards and principles to regress from.

No changes to the Final Express Terms were made as a result of these comments.

8. COMMENTER: Susan Chandler (**EM-9**)
President
CDR – Californians for Disability Rights, Inc.
1193 17th Street
Los Osos, CA 93402

COMMENT: EM-9. Sections 4.106.4.2.1 and 4.106.4.2.2.

The CDR is opposed to proposed regulations Items 7 and 8 because they will keep people with disabilities from being able to use EVs. There are thousands of EV charging stations that have been installed in California that are not accessible and usable by people with disabilities. CDR defers to comments submitted by Sidney Cohen (see **EM-5**) who has outlined the illegalities of the HCD proposed code changes. The commenter also noted that Items 7 and 8 are in conflict with CBSC Nine-Point Criteria 6 and 7 related to ambiguity/vagueness and lack of incorporation of national standards, respectively.

HCD RESPONSE: See responses to **EM-5** and **EM-7 (Comment 4)**.

No changes to the Final Express Terms were made as a result of these comments.

9. COMMENTER: Robert E. Raymer, PE (**EM-12**)
Senior Engineer/Technical Director
California Building Industry Association
1215 K Street, Suite 1200
Sacramento, CA 95814

COMMENT: EM-12. Sections 4.106.4.2.1 and 4.106.4.2.2:

The commenter notes that the CBIA reluctantly supports adoption of the "van accessible" sized EVCS; however, suggests that the California Building Standards Commission (CBSC) consider adopting HCD's revised Express Terms dated August 7, 2014. The commenter also commends the CBSC and HCD for meeting the requirements of Assembly Bill Number 1092, a year and a half ahead of schedule.

The commenter also voiced concerns with additional changes being proposed by interested parties that, if addressed, will seriously disrupt the desired publication and implementation schedule for of the CALGreen Code. Another concern is a proposal for installation of a separate EVCS for "disabled use only" when such

facilities are provided voluntarily for the tenants of an apartment complex. If further change is desired, the commenter suggests that HCD consider withdrawing Item #8 and revisiting the issue in the upcoming 2015 Triennial Code Adoption Cycle.

HCD RESPONSE:

HCD thanks the commenter for expressing support.

DETERMINATION OF ALTERNATIVES CONSIDERED AND EFFECT ON PRIVATE PERSONS

(Government Code Section 11346.9(a)(4) requires a determination with supporting information that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.)

No alternatives were available for HCD to consider. HCD is statutorily required to adopt by reference specific national model building codes, which contain prescriptive standards. Prescriptive standards provide the following: explicit guidance for certain mandated requirements; consistent application and enforcement of building standards while also establishing clear design parameters; and ensure compliance with minimum health, safety and welfare standards for owners, occupants and guests. Performance standards are permitted by state law; however, unlike prescriptive standards, performance standards must demonstrate equivalency to the literal code requirement to the satisfaction of the proper enforcing agency.

In the case of the California Green Building Standards Code (CALGreen), there is no model code applicable to residential occupancies to be adopted. However, Health and Safety Code Section 17928 mandates HCD to review relevant green building guidelines and to propose green building features that are cost effective and feasible as mandatory building standards.

REJECTED PROPOSED ALTERNATIVE THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES:

(Government Code Section 11346.9(a)(5) requires an explanation setting forth the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small businesses, including the benefits of the proposed regulation per Government Code Section 11346.5(a)(3).

There were no alternatives available to HCD. Providing the most recent methods and applying those building standards on a statewide basis, as required by statute, results in uniformity and promotes affordable costs.