



ACCESSIBILITY

THE CASp REPORT

ARE YOU MAKING PROMISES THAT YOU CAN'T KEEP?

Note: Information provided is not intended to be legal advice.

There isn't much in this life that comes with a guarantee. Even those of us who buy an extended warranty on a purchase understand that such warranties come with limitations. So, if you are a Certified Access Specialist (CASp), maybe it's time to ask yourself this question: are you making promises that you can't keep when providing your CASp inspection services?

A CASp is not providing an enhanced level of service by inspecting existing Title III public accommodations to current standards when preparing a CASp Inspection Report according to the Construction-Related Accessibility Standards Compliance Act (CRAS-CA) – California Civil Code Sections 55.51—55.545 (See sidebar, Understanding the Applicable Standards, on page 5). Using current standards for

the inspection, even when they are clearly not the applicable standards, does not provide a client with "more protection" from construction-related accessibility lawsuits, nor does it result in a "more compliant" facility if and when corrections to the "violations" are made. By inspecting to current standards instead of applicable standards, a CASp may be issuing an implied certification to the client, if and when the client corrects the "violations." While a CASp can issue a determination of compliance, he/she is not permitted to certify a facility is compliant.

A CASp may be inspecting to a current but non-applicable standard with good intentions but, doing so may have major negative impacts, such as significant unnecessary expense to a facility or business owner, or delayed correction of actual violations. In addition, a CASp not inspecting to the applicable standards could lead to consumer complaints to the Division of the State Architect (DSA) by a business or facility owner, raising possible practice or certification issues.

The following scenario illustrates the impact of using the applicable standards versus current standards when inspecting an existing Title III public accommodation.

"A CASp provides the best service for the client with an evaluation to the applicable standards."

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CASp Examination Results

JUNE 2014		
EXAM	CANDIDATES	PASSED
Closed Book	120	38 (32%)
Open Book	142	16 (11%)

Total new CASps for June 2014: **15**
Total certified after June 2014: **588**

Next CASp Exam

The first CASp Examination for 2015 is planned for early April. Please check the CASp Web page in January for more information: www.dgs.ca.gov/dsa/Programs/programCert/casp.aspx



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SCENARIO

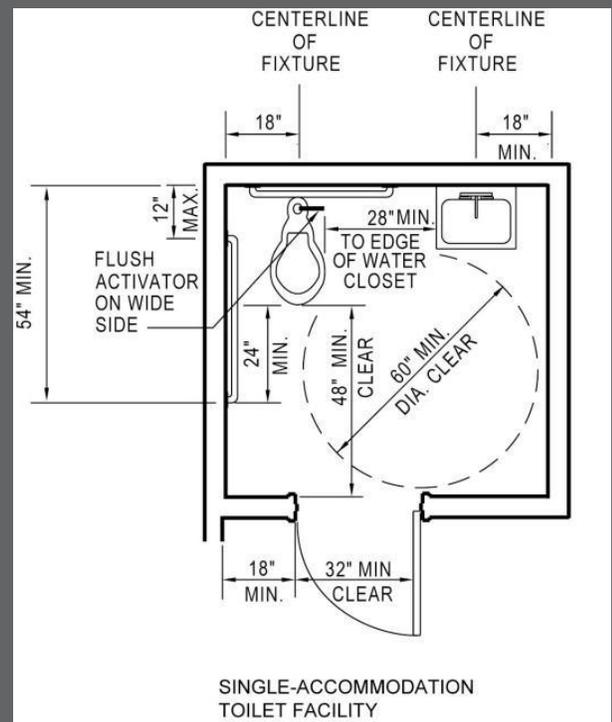
EXISTING CONDITIONS

- The facility is a two-story Title III public accommodation with an elevator, constructed in 1978 with an elevator.
- The owner stated that he completed the *readily achievable barrier removal* per the Americans with Disabilities Act (ADA) using the 1991 Americans with Disabilities Act Accessibility Guidelines (1991 ADAAG) as a reference.
- The owner stated that in September 2007, plans were submitted for permit and improvements were completed for an alteration to the second floor, which included *path-of-travel* improvements to the single accommodation restrooms serving the area of alteration.
- The owner stated that in September 2011, plans were submitted for permit for an alteration to the first floor, which included *path-of-travel* improvements to the multiple accommodation restrooms serving the area of alteration in accordance with the 2010 California Building Code (CBC) and the 1991 ADAAG. Improvements were completed in July 2012.

As a CASp, you are authorized by the owner to perform a facility inspection and provide a report according to CRASCA. During the inspection you find:

1. The sink in the employee break room is not accessible.
2. The elevator has a hall call button at 44 inches above the finish floor.
3. The toilet in the accessible compartment in each of the first floor restrooms has a dimension from the centerline of the toilet to the side wall of 16.5 inches.
4. Single accommodation public restrooms for each gender on the second floor with the layout illustrated in Figure 1.

FIGURE 1



Note: Drawing Not To Scale

The applicable standards for accessibility in this scenario are...

- 1991 ADAAG
- 2010 CBC for the first floor alteration
- 2001 CBC for the second floor alteration



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ANALYZING THE SCENARIO

ITEM 1 The sink in the employee break room is not accessible.

In performing an inspection and providing a report, only an evaluation of the facility's public accommodation areas is relevant in a construction-related accessibility claim. Although the above statement does not specify how the sink is not in compliance, a violation in an employee break room should not be included in the report because employee areas are not part of the public accommodation areas, provided the owner does not have a policy of offering use of the sink to the public. An employee complaint for a reasonable accommodation is handled in the courts as an ADA Title I issue, not a Title III issue, and the legal benefit of *qualified defendant* under CRASCA does not apply to a business owner faced with an employee complaint for discrimination.

ITEM 2 An elevator with a hall call button at 44 inches above the finish floor.

An analysis of the applicable standards would reveal that the hall call button height above the finish floor is in fact a violation of both the 2001 CBC and the 1991 ADAAG, which require the hall call button at an absolute height of 42 inches above finish floor. The current standards of the 2010 Americans with Disabilities Act Stan-

dards (2010 ADAS) and the 2013 CBC allow the hall call button height within the specified reach range. There is no need to correct this violation of the applicable standards, because all corrections to a violation are subject to the current standards. The elevator hall call button height above the finish floor is therefore compliant.

ITEM 3 The toilet in the accessible compartment in each of the first floor restrooms has a dimension from the centerline of the toilet to the side wall of 16.5 inches.

A CASp inspecting to current standards would determine that the dimension from centerline of toilet to the side wall does not comply because the 2013 CBC specifies a compliant dimensional range of 17–18 inches. The 16.5-inch centerline of toilet to side wall dimension is compliant, however, as determined by an analysis to the applicable standards.

First, a bit of history: both the 1991 ADAAG and the 2010 CBC specified an absolute dimension of 18 inches from centerline of toilet to side wall. The 2010 ADAS specified a dimensional range of 16–18 inches from the centerline of the toilet to the side wall when it became effective on March 15, 2012. According to the 2010 ADAS, when a dimensional range is specified, no

Looking for past versions of the code?

1991 ADAAG

- U.S. Access Board
www.access-board.gov

CBC 2007–Present

- California Building Standards Commission
www.bsc.ca.gov
- Law.Resource.org

CBC 1982–2001

- Your local public library (check internet catalog)
- WorldCat (global catalog of library collections)
www.worldcat.org
- Your local building department
- Certified Access Specialist Institute (members only)
www.casinstitute.org
- DSA Headquarters and DSA Regional Offices



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tolerance can be applied outside of the specified range. Jurisdictional agencies, however, permit the application of a construction tolerance to an absolute dimension, and therefore may allow a construction tolerance for the 18-inch centerline of toilet to sidewall measurement. Since such action would be a violation of the 2010 ADAS, the California Building Standards Commission (BSC) approved an emergency code supplement to the 2010 CBC effective August 1, 2012, that adopted the same 16–18 inch range as the 2010 ADAS. Subsequently, when the 2013 CBC became effective January 1, 2014, the specified range became a narrower 17–18 inches.

In the scenario, the 16.5-inch dimension from centerline to side wall for the toilet is:

- A violation of the 1991 ADAAG.
- A violation of the 2010 CBC as originally published.
- A violation of the 2010 CBC intervening code cycle amendments of July 1, 2012.
- Compliant with the 2010 CBC emergency supplement.
- Compliant with the 2010 ADAS upon completion of construction.

The toilet location, however, is compliant to the applicable standards. Even though the improvements to the restroom were complete one month before the effective date of the emergency

supplement, when determining compliance with the CBC as an applicable standard, any amendments approved and published during the respective CBC's effective three-year cycle can be considered.

ITEM 4 There are single accommodation public restrooms for each

gender on the second floor, each with the layout illustrated in Figure 1.

A CASp inspecting to current standards would state in the inspection report that the layout of this restroom does not meet standards, because both the 2010 ADAS and the 2013 CBC require clearance around a water

... continued

Communicate with your client

Section IV: Best Practices of the “Practice Standards and Best Practices Handbook,” available on DSA’s CASp website, recommends listing in the CASp Inspection Report the applicable standards to which the facility was inspected. The applicable standards are based on the construction history of the facility provided by the client, and the CASp should rely on such information to establish the applicable standards. The 1991 ADAAG can usually be established as an applicable standard if the facility was built prior to March 15, 2012. However, in some cases, the client may have no documentation or poor recollection of the facility’s construction history, making it difficult to establish the applicable edition of the CBC.

In this case, the client can authorize the CASp to research the facility’s construction history, or the CASp and client can agree upon standards to which the facility will be evaluated. If current standards are used as the basis for the inspection, the CASp should inform the client that the improvements may be more costly than if the applicable standards were used. The CASp Inspection Report should identify the applicable standards, including the reason why an alternative standard was used. This information sets the basis for the inspection, explains how a violation is determined, establishes the schedule of improvements, and informs all parties should a construction-related accessibility claim arise.



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closet of 60 inches perpendicular from the side wall. But, according to the applicable standards, the layout of this restroom is compliant to the

1991 ADAAG and the 2001 CBC, and no violation exists. The layout of this restroom would not need to meet compliance to a current standard until

an alteration to the bathroom is planned, or the bathroom requires improvement because it is on the *path-of-travel* to a proposed alteration or addition.

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Understanding the Applicable Standards

The requirements of the CBC and the standards promulgated by the U.S. Department of Justice (DOJ) under the ADA are not interchangeable or synonymous. Additionally, the applicability of a specific edition or version of the ADA or CBC hinges on the date it became effective.

At the federal level, the DOJ established benchmark dates for the applicability of each version of the 2010 ADAS for Title III Public Accommodations, dependent upon the date the last application for a building permit, or permit extension for new construction or alteration, was certified to be complete by a state or local government. If this date is prior to March 15, 2012, the applicable standard for compliance is the 1991 ADAAG. For new construction and alterations that completed construction after March 15, 2012, the applicable standard is the 2010 ADAS.

In comparison, California updates the CBC on a three-year cycle to reflect new editions of the model codes. New editions are effective on January 1 of the year following the edition's approval, with mid-cycle amendments issued after 18 months and effective July 1 of the subsequent year. The new provisions in each triennial and mid-cycle adoption are only applicable to work submitted for permit after the effective dates, including new construction, additions, alterations, and *path-of-travel* improvements triggered by an alteration or addition. When determining compliance with the applicable standard, however, any amendments approved and published during the respective CBC's effective three-year cycle can be used as an applicable standard.

Within California, the applicable state standard for a facility is the version of the CBC under

which it was originally submitted for permit. For improvements, alterations, and additions to an existing facility, the applicable state standard is the CBC version under which that subsequent work was submitted for permit. As a result, a Title III public accommodation can have one applicable federal standard and multiple applicable state standards. To accurately present the compliance status of a facility, it is essential for a CASp report to identify the standards to which the facility was evaluated and why the stated standards are applicable.



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As explained, each item listed above has been resolved to the applicable standards. While most compliance issues may be of minimal cost, the potential cost of improvements to the restroom in item 4 can be quite significant, especially if one for each gender exists. In being told by a CASp that a violation exists for the layout of this existing restroom, a small business owner may be left feeling that he/she is vulnerable to an accessibility claim until the issue is corrected. In truth, this is not the case.

Forensic research to the applicable standards takes significant time, and as a result increases the fee for CASp services. The truth is that this cost is borne by the owner in paying a CASp to define and determine compliance to the applicable standards, or in making unnecessary improvements resulting from achieving compliance with current standards that are not applicable. In many cases, as in the restroom example above, it is likely that the cost of unnecessary construc-

tion improvements will exceed the fee for CASp services. The reality is that anyone, including the business/facility owner, can review an existing facility to current standards, which are easily available for download off of the internet. CRASCA recognizes that in order to find, understand, and interpret the applicable standards effectively for an existing facility, the services of a specialist should be considered. Most importantly, a CASp can navigate the complex analysis of determining compliance to the applicable standards. A CASp will likely know more about the applicable standards than those involved in a construction-related accessibility claim, including the judge, attorneys, and litigators. As a specialist, what you state in a report will be given serious consideration in evaluating the merits of any discrimination claim against an owner.

The ADA, a civil rights law, is enforced by the people of the United States. Any individual who claims discrimination by another can file a claim. Even

a business or facility owner who has received a determination of "meets applicable standards" by a CASp may still be confronted with a construction-related accessibility claim and will have the merits of the claim evaluated through the legal process. CRASCA has proven effective in state court; business/facility owners that hired a CASp receive the benefit of reduced statutory damages if the claim is determined to have merit. In addition, while CRASCA is not applicable to a case filed in federal court, applicable standards are still the criteria to which each alleged violation is evaluated. With an understanding of the effect the standards have in establishing the accessibility compliance of a facility, ultimately, a CASp provides the best service for the client with an evaluation to applicable standards. ○



DSA ACADEMY
DIVISION OF THE STATE ARCHITECT

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ON THE REGULATION RADAR

Each issue features information regarding state and/or federal regulations that affect CASp work. We encourage you to read the new or improved regulations so that you are aware of various applicable standards and information affecting your practice.

State of California

On July 22, 2014, the BSC approved changes to Chapter 11B of the 2013 CBC. The amendments, new definitions, and new requirements will be published January 1, 2015 and will become effective for projects issued for permit after July 1, 2015.

Two new sections have been added to the 2013 CBC that are not included in the model code of the 2010 ADAS:

- Section 11B-411 Destination-oriented elevators
- Section 11B-703.8 Variable message signs

The Approved Standards, the Final Express Terms, and the Final Statement of Reasons for the Chapter 11B Accessibility Requirements can be found on the DSA website: www.dgs.ca.gov/dsa/Programs/progAccess/2013rule.aspx.

The Approved Standards, the Final Express Terms, and the Final Statement of Reasons for all amendments to the 2013 CBC, including the accessibility requirements for private housing in Chapter 11A, can be found at the BSC website: www.bsc.ca.gov/Rulemaking/adoptcycle/2013CodeCycle/Appstndrds2013.aspx.

U.S. Access Board Information

Board Releases Guidance on Playground Surfaces

New guidance on selecting and installing playground surfaces is now available from the U.S. Access Board. The guide, "Seven Things Every Playground Owner Should Know About the Accessibility of Their Playground Surfaces," outlines key considerations and steps in selecting, installing, and maintaining playground surfaces to ensure compliance with accessibility standards, including those issued under the ADA. The guide describes the most popular types of playground surfacing materials, such as poured-in-place rubber, rubber tiles, engineered wood fiber, and hybrid surface systems. It compares information on each of these material types, including installation methods, accessibility issues and considerations, maintenance, repair methods, and cost. This guidance is intended to help playground owners and operators make an informed choice in selecting surface materials and ensuring that they are properly installed and maintained for accessibility. The guide can be accessed at the U.S. Access Board website: www.access-board.gov/guidelines-and-standards/recreation-facilities/guides/surfacing-the-accessible-playground.



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FREE CEU SPOTLIGHT

Each issue highlights an offering of free Continuing Education Units (CEU) for CASp certification maintenance.

FREE Fair Housing Act Training

Fair Housing Accessibility FIRST offers resources and guidance to promote compliance with the Fair Housing Act. Worth up to six CEUs, two free training sessions are scheduled in California:

POLICY TRAINING—Fresno
Wednesday, January 14, 2015

- Fair Housing Accessibility Requirements Overview
- Fair Housing Act Enforcement
- Making Housing Accessible Through Accommodations and Modifications

DESIGN & CONSTRUCTION TRAINING—Irvine

Thursday, February 19, 2015

- Design & Construction Requirements of the Fair Housing Act, Technical Overview
- Accessible Routes
- Accessible Public & Common-Use Spaces

For more information and to register, go to www.fairhousingfirst.org/index.asp. Questions may be emailed to gsonnabend@lcmarchitects.com.

DSA ACADEMY PRESENTS...

CASp 101: Certification & Practice

This four-hour seminar will cover DSA's improvements to the CASp Program with information relevant to CASp candidates interested in seeking certification, and individuals who want to find out more about the CASp program.

TOPICS

- California Disability Rights History
- CASp Program Legislation: SB 262, SB 1608, and SB 1186
- DSA CASp Program Regulations and proposed changes
- DSA Examination and Certification Improvements
- CASp Professional Standards for both the independent CASp and the CASp employed by a jurisdictional agency
- Best Practices for CASps
- Guidance on CRASCA and Disability Access Inspection Certificates
- Effectiveness of CASp services
- Exercises on understanding "applicable standards"
- Exercises on approaching and studying for the CASp Examination

PRESENTER

Ida A. Clair AIA, LEED AP, CASp,
Senior Architect at DSA

SEMINAR SCHEDULE

Worth four CEUs (equivalent activity credit), the following training sessions are available:

SOUTHERN CALIFORNIA SESSION—San Diego

Friday, February 20, 2015

NORTHERN CALIFORNIA SESSION—Sacramento

Friday, February 27, 2015

MORE INFORMATION

For more information, visit the DSA Academy Web page at www.DSAacademy.dgs.ca.gov.



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CASp PUBLIC LIBRARY

No card required! OK, well maybe your email... The CASp Public Library features free publications to enhance your access inspection experience and increase your accessibility knowledge.

The U.S. Department of Justice (DOJ) Civil Rights Division website at www.ada.gov provides information and technical assistance on the ADA.

DOJ offers a free email subscription service to receive notifications when changes occur to the DOJ Web pages you select. By signing up, you no longer need to monitor selected pages.

To sign up for email notifications, go to www.ada.gov and click on the box in the lower right corner of the website.

You may unsubscribe from the service at any time.

DSA NEWS

Access 2016 Web Page : Proposed Building Code Amendments

DSA develops and proposes building code regulations related to access for persons with disabilities to public buildings, public accommodations, commercial buildings and public housing. DSA proposes building code regulations in accordance with rulemaking processes administered by the BSC.

DSA recently launched an [Access 2016 Web page](http://www.dgs.ca.gov/dsa) for the 2015 Rulemaking on amendments proposed for inclusion in the 2016 CBC. You can also find the new Web page through the "Quick Links" at www.dgs.ca.gov/dsa.

The DSA–Access Compliance Unit (DSA–AC) began its pre–cycle activities for the 2015 Triennial Code Adoption Cycle in September 2014, and will continue into spring 2015. During this period, DSA–AC will conduct public workshops and other activities to discuss possible amendments to the 2016 California Building Standards Code, scheduled to take effect on January 1, 2017. Public workshops provide an open forum for the public and industry stakeholders to participate in vetting potential modifications to California’s building codes.

During the rulemaking cycle and pre–cycle periods, DSA–AC will post meeting information and rulemaking documentation to the Access 2016 Web page.

If you would like to propose a code change amendment for DSA’s consideration, complete form [DSA 65: DSA Code Amendment Proposal \(PDF – 55 KB\)](#) and submit it via email attachment to DSAAccess2016@dgs.ca.gov.

In addition, the location and organization of the Access 2013 rulemaking documents have changed. The document files for the 2013 Rulemaking Cycle are available by link at the bottom of the Access 2016 Web page, under “Rulemaking Archives.”

To receive updates on DSA’s rulemaking activities, please send an email to DSAAccess2016@dgs.ca.gov. DSA transitioned all individuals subscribed to the Access 2013 notification to the Access 2016 list.

Questions and comments about these activities should be directed to Dennis J. Corelis, Deputy State Architect, at dennis.corelis@dgs.ca.gov or (916) 445–4167.



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CASp NEWS

Proposed CASp Program Regulations Open for Public Comment

The public comment period is now open for proposed regulatory changes to the CASp program. The regulations, proposed by DSA, will implement, interpret, or make specific Government Code Sections 4459.5 through 4459.8 within the CASp program regulations (Title 21, Division 1, Chapter 1, Subchapter 2.5 of the California Code of Regulations).

Proposed Amendments and Additions to the CASp Regulations

- Clarify requirements regarding examination, certification, and disciplinary actions.
- Reference requirements for work products issued by a CASp, as specified in California statute, addressing construction-related accessibility claims.
- Set requirements for Professional Standards for CASps.
- Include non-substantive, grammatical and formatting revisions.

The full text of the proposed regulations is online at www.dgs.ca.gov/dsa/Programs/programCert/casp/CASpReg.aspx.

Any interested person may submit written comments relevant to the proposed regulatory action. Only comments received prior to **5 p.m. on January 5, 2015** will be considered.

For mailed comments:

Division of the State Architect
1102 Q Street, Suite 5100
Sacramento, CA 95811
Attention: Amber Siepmann

Comments may also be faxed to (916) 445-7658, or emailed to Amber Siepmann at amber.siepmann@dgs.ca.gov or Ida Clair at ida.clair@dgs.ca.gov.

Updated Consumer FAQs

DSA has expanded the CASp FAQs for business owners, property owners, and consumers. Visit our Web page at www.dgs.ca.gov/DSA/Programs/programCert/casp.aspx.

CASp Code Discussion Group

DSA offers a **free** monthly code discussion group on CBC Chapter 11B accessibility provisions. Architects, building officials, CASps, and other interested parties can participate via teleconference or in person. CEU credit is offered to CASps who participate for a minimum of one hour.

UPCOMING GROUP DISCUSSIONS

- Wednesday, January 28, 2015
- Wednesday, February 25, 2015
- Wednesday, March 18, 2015

All meetings are scheduled for 11:30 a.m. to 1 p.m.

Please email ida.clair@dgs.ca.gov for teleconference contact information.

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Tell us what you think about DSA's improvements to the CASp Program!

#CaliCASp