

DSA Response to CODAP Concerns – 2016 CBC Accessibility Provisions

DSA would like to acknowledge CODAP’s participation and offer thanks for its members’ contributions to the 2016 California Building Code (CBC) Accessibility Code process and discussions, including those of the Electric Vehicle Charging Station Working Group. Consideration of all stakeholders’ observations, comments and concerns is critical to the development of effective and balanced regulations for this emerging technology.

CODAP member HolLynn D’Lil has submitted comments on a number of proposed 2016 CBC accessibility provisions. While responses to all comments received during the code adoption process will be included in the Final Statement of Reasons that is part of the package submitted to the Building Standards Commission, DSA is responding to Ms. D’Lil’s comments in advance of that time in recognition of her longstanding interest and participation in accessibility codes and standards.

A summary of each comment is provided, followed by DSA’s response to that comment. Copies of the original comments as submitted to the California Building Standards Commission are attached at the end of this document.

1 - ITEM 2.03: Section 202, definition of ACCESSIBLE ROUTE.

Commenter requests proposed code language be denied or returned for further study for clarification of how the term “negotiable” is defined. Commenter suggests original definition, “A continuous unobstructed path that complies with Chapter 11,” should be retained. Commenter suggests the next paragraph be amended to strike “...and can be negotiated by a person with a disability using a wheelchair, and that is also safe for an usable by persons with other disabilities.” Commenter also suggests amending the same paragraph to add, “Where applicable, an accessible route shall not pass behind parking spaces other than to pass behind the parking space in which the use parked.”

- **DSA Response:** The commenter mischaracterizes DSA’s proposal as a code change. In fact, DSA’s proposal strikes the 2012 International Building Code (IBC) model code definition of ACCESSIBLE ROUTE and carries forward (retains) the previously-adopted definition from the 2013 CBC. The essential language in the definition was first adopted in the CBC circa 1992; language indicating nonexclusive list of elements which may be included in interior and exterior accessible routes added to the 2007 CBC. Prior to Ms. D’Lil’s comments submitted on behalf of the Coalition of Disability Access Professionals, DSA was unaware of any concerns with this 30+ year-old definition. Ms. D’Lil’s proposed amendments significantly depart from the existing adopted definition; were DSA to incorporate Ms. D’Lil’s proposed amendments at this point in the current rulemaking cycle, interested parties would not have adequate opportunity for public review and comment. DSA declines to amend its proposal in response to this comment but will retain this comment for consideration during a future rulemaking cycle.

2 - ITEM 2.10: Section 202, definition of TECHNICALLY INFEASIBLE.

Commenter requests proposed code language be sent back for further study and asserts DSA's factual determinations were arbitrary and capricious and the determinations were substantially unsupported by the evidence considered by the adopting agency. Further, commenter asserts the phrase "other existing physical or site constraints" is vague, without clear definitions, and requires subjective interpretation.

- **DSA Response:** The commenter mischaracterizes DSA's proposal as a code change. In fact, DSA's proposal carries forward (retains) the previously-adopted definition from the 2013 CBC. The definition of TECHNICALLY INFEASIBLE was first adopted in the CBC circa 1994 and is substantially identical to the definition of the same term in the 1991 ADA Standards for Accessible Design (ADAS) and the 2010 ADAS. Prior to Ms. D'Lil's comments submitted on behalf of the Coalition of Disability Access Professionals, DSA was unaware of any concerns with this 30+ year-old definition. DSA declines to amend its proposal in response to this comment but will retain this comment for consideration during a future rulemaking cycle.

3 - ITEM 9.01: Section 907.4.2.2 Height (of manual fire alarm boxes). Commenter requests proposed code language be denied and asserts the proposal is a violation of Title III of the ADA which requires barrier removal where it is readily achievable to do so in existing construction and a violation of Title II of the ADA which requires access to programs of local and state governments.

- **DSA Response:** The commenter mischaracterizes DSA's proposal as a code change. In fact, DSA's proposal carries forward (retains) the previously-adopted requirement from the 2013 CBC.

The Code Advisory Committee recommended further short term study of this item to determine if fire alarm pull boxes should comply with the requirements of Section 11B-309.4 only, or with the entirety of Section 11B-309. After discussions with Office of the State Fire Marshal staff, DSA-AC has confirmed fire alarm pull boxes are required to be accessible as required by the provisions of Chapter 11B, including clear floor space, accessible route, and operable parts requirements as Section 907.4.2.6 contains the requirement for fire alarm pull boxes to be accessible. DSA-AC is carrying forward the provisions of the 2013 CBC unchanged, as proposed, and will more extensively study the need for additional amendments during the upcoming code cycle.

4 - ITEM 11B.02: Section 11B-202.4 Exception 10 (Path of travel requirements in seismic mitigation projects). Commenter disagrees with this code change and requests the commission deny this code change proposal. Commenter indicates only alteration projects which exceed the current valuation threshold and where there is a determination of "unreasonable hardship" may the cost for accessibility in the area of remodel or the path of travel requirements be limited to 20% of the construction cost. Commenter also proposes amended language for Section 11B-202.4.

- **DSA Response:** DSA would like to clarify that alteration projects above and below the valuation threshold are not exempted from the cost of providing accessibility in the area of alteration. It is only the cost of path of travel features which may be limited – alterations below the valuation threshold are required to provide upgrades to the path of travel up to a limit of 20 percent of the adjusted construction cost of the alteration; and alterations above the valuation threshold are required to provide upgrades to the path of travel to the greatest extent possible without creating an unreasonable hardship, in no case less than 20 percent of the adjusted construction cost of the alteration.

Building owners and structural engineers are reporting that needed seismic mitigation projects are not proceeding due to the disproportionate costs of path of travel upgrades, especially for projects where the entire building is considered the area of alteration. This perpetuates both seismic life safety hazards and lack of accessibility in existing facilities. The proposed new exception will continue to require path of travel upgrades of 20 percent of the adjusted construction cost for seismic mitigation projects, consistent with the 2010 ADA Standards. DSA believes this approach strikes an appropriate balance between ensuring buildings and facilities are accessible and mitigating potential financial burdens on the owners and operators of existing facilities in need of seismic upgrades. This provision will provide greater accessibility and enable seismic mitigation projects to move forward, reducing the risk of death or injury to all users of existing facilities in need of seismic upgrade. DSA declines to amend this proposal in response to this comment.

5 - ITEM 11B.16: Section 11B-220.2 Point-of-sale devices. Commenter disagrees with this code change and requests it be sent back for further study because it conflicts with other proposed code changes regarding electric vehicle charging stations (EVCS).

- **DSA Response:** DSA agrees Section 11B-220.2 is in conflict with proposed language in Item 11B.51, specifically proposed Section 11B-812.10.3; this conflict was due to an oversight on DSA's part. DSA-AC is proposing to further amend Sections 11B-220.2 and 11B-812.10.3 to be in coordination.

In the existing exception for Section 11B-220.2 DSA is proposing to eliminate "electricity" from the list of applicable types of motor fuel. A new second exception is proposed which directs code users to Section 11B-812.10.3, the applicable section for point-of-sale devices installed for use with electric vehicle charging stations required to comply with 11B-812.

In the newly proposed Section 11B-812.10.3 DSA is amending its proposal to direct code users to the applicable technical requirements for point-of-sale devices installed for use with electric vehicle charging stations complying with Section 11B-812. The applicable code sections include Section 11B-707.2 Clear Floor or Ground Space, Section 11B-707.3 Operable Parts, Section 11B-707.7.2 Characters, and 11B-707.9 Point-of-Sale Devices.

6 - ITEM 11B.51: Section 11B-812.5.4 Exception 2 (Electric vehicle charging stations, accessible routes, arrangement). Commenter is opposed to this code change and requests it be sent back for further study because the phrase “to the maximum extent feasible” is incorporated without specificity.

- **DSA Response:** The term “to the maximum extent feasible” was first used in CBC accessibility requirements adopted by DSA circa 1994 and has been in use continuously since that time; the terms “feasible” and “infeasible” are commonly used terms in, and the term “technically infeasible” has been in use and defined within, recent and current CBC accessibility requirements adopted by DSA.

While the term “to the maximum extent feasible” is not defined in DSA’s proposal, DSA believes the CBC provisions for terms which are not defined may be utilized and is sufficient – CBC Section 201.4 addresses terms not defined as follows: “Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.” In general, ordinary meanings may be acquired in a college level dictionary.

To assure adequate public review and opportunity to comment, DSA is willing to undertake code development of a more substantial definition of “to the maximum extent feasible” in the next rulemaking cycle. This effort would properly consider the definition provided in the ADA Title III regulations which states: “The phrase ‘to the maximum extent feasible,’ as used in this section, applies to the occasional case where the nature of an existing facility makes it virtually impossible to comply fully with applicable accessibility standards through a planned alteration. In these circumstances, the alteration shall provide the maximum physical accessibility feasible. Any altered features of the facility that can be made accessible shall be made accessible. If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would not be feasible, the facility shall be made accessible to persons with other types of disabilities (e.g., those who use crutches, those who have impaired vision or hearing, or those who have other impairments).” (reference Subpart D of 28 CFR Part 36 §36.402(c))

7 - ITEM 11B.51.03: Section 11B-202.4 Exception 11 (Path of travel requirements in electric vehicle charging station projects). Commenter disagrees with this code change and requests the commission deny this code change proposal. Commenter indicates only alteration projects which exceed the current valuation threshold and if there is a determination of “unreasonable hardship” may the cost for accessibility in the area of remodel or the path of travel requirements be limited to 20% of the construction cost. In support, she asserts that turning regular parking spaces into electric vehicle charging station (EVCS) is a change-in-use, and therefore, is not a remodeling project, but a new construction project to which the exceptions for remodeling cannot apply.

- **DSA Response:** DSA would like to clarify that alteration projects above and below the valuation threshold are not exempted from the cost of providing accessibility in the area of alteration. It is only the cost of path of travel features which may be limited – alterations below the valuation threshold are required to provide upgrades to the path of travel up to a limit of 20 percent of the adjusted construction cost of the alteration; and alterations above the valuation threshold are required to

provide upgrades to the path of travel to the greatest extent possible without creating an unreasonable hardship, in no case less than 20 percent of the adjusted construction cost of the alteration.

EVCSs are being installed in California in steadily increasing numbers and DSA has received testimony that many of these installations do not provide features, physical space, or spatial relationships that are usable by persons with disabilities. This lack of accessibility at recently installed EVCS is unsurprising – with the exception of regulations for point-of-sale machines at fuel dispensing facilities (see Section 11B-220.2), Chapter 11B of the CBC does not contain provisions specific to EVCS or which may be generally agreed as applying to EVCS. It necessarily becomes a matter of interpretation for an individual, designer, or code enforcement authority to attempt to apply accessibility regulations for other similar facilities to aspects of EVCS facilities. In its capacity as jurisdictional code enforcement authority, DSA has dealt with this issue for at least 18 years under its Policy 97-03 – Interim Disabled Access Guidelines for Electrical Vehicle Charging Stations.

DSA’s development of new EVCS regulations in the context of two policy goals for the State of California: encourage the use of electric vehicles (EV) and support infrastructure, including EVCS; and 2) make specific accessibility regulations in the CBC. In its proposal DSA utilizes a method for path of travel requirements which reflects the requirements of the 2010 ADA Standards for Accessible Design in its determination of whether, and to what extent, path of travel requirements apply based on whether or not the area of alteration is a primary function area. Alterations to primary function areas are required to provide an accessible path of travel to the area of alteration; path of travel features include: a primary entrance to the building or facility, toilet and bathing facilities serving the area, drinking fountains serving the area, public telephones serving the area, and signs. Alterations to areas other than primary function areas are not required to provide these path of travel features. For example, installation of EVCS in dedicated parking facilities or dedicated EVCS fueling facilities are considered primary function areas while installation of EVCS in parking facilities which support restaurants or shopping centers are ancillary to the primary use (dining or shopping respectively). In either case, CBC Section 11B-812.5.1 in DSA’s proposal requires EVCS to be located on an accessible route to the building’s entrance or, where the EVCS does not serve a particular building, on an accessible pedestrian entrance to the EV charging facility.

The commenter also asserts that turning regular parking spaces into EVCS is a change-in-use, and therefore, a new construction project. DSA disagrees; DSA-AC adopts the definition of *ALTERATION*: “A change, addition or modification in construction, **change in occupancy or use**, or structural repair to an existing building or facility...” (my emphasis) Under the CBC, a change of use is considered an alteration. DSA declines to amend its proposal in response to this comment.

8 - ITEM 11B.51.04: Section 11B-208.1 Parking, general. Commenter disagrees with this code change and requests the commission deny this code change because: 1) it is a diminishment of access standards and 2) it is not in the best interest of the public. The commenter also insinuates that an electric vehicle charging station (EVCS) vehicle space is a parking space.

- **DSA Response:** EVCSs are being installed in California in steadily increasing numbers and DSA has received testimony that many of these installations do not provide features, physical space, or spatial relationships that are usable by persons with disabilities. This lack of accessibility at recently installed EVCS is unsurprising – with the exception of regulations for point-of-sale machines at fuel dispensing facilities (see Section 11B-220.2), Chapter 11B of the CBC does not contain provisions specific to EVCS or which may be generally agreed as applying to EVCS. It necessarily becomes a matter of interpretation for an individual, designer, or code enforcement authority to attempt to apply accessibility regulations for other similar facilities to aspects of EVCS facilities. In its capacity as jurisdictional code enforcement authority, DSA has dealt with this issue for at least 18 years under its Policy 97-03 – Interim Disabled Access Guidelines for Electrical Vehicle Charging Stations.

The commenter encounters the same interpretational need when she recommends alternative language for Section 11B-208 which states: “For the purposes of this section, parking for electric vehicle charging stations shall comply with Sections 812 and Section 11B-228.” DSA disagrees and declines to amend its proposal to incorporate this language.

DSA recognizes that incorporating the commenter’s recommended language would establish EVCS as a sub-class of parking facilities. During development of scoping language for EVCS, DSA researched this issue with the US Access Board, the federal agency that develops accessible construction guidelines for adoption as national standards. The US Access Board indicated that EVCS are not the same as parking and instead, are a service to provide vehicle fueling in areas where vehicles must be accommodated. As such, DSA’s EVCS proposal includes features, physical space, and spatial relationships that are identical to those required for accessible parking while balancing location requirements to accommodate the electric vehicle charging industry’s need for flexibility in siting due to infrastructure concerns. While not required to be closest to a building’s entrance, DSA’s proposal requires EVCS to be located on an accessible route to the building’s entrance or, where the EVCS does not serve a particular building, on an accessible pedestrian entrance to the EV charging facility.

9 - ITEM 11B.46 (misabeled by commenter as ITEM 11B.02.01): Section 11B-608.6 Exception (Shower compartment, shower spray unit and water). Commenter disagrees with this code change and requests it be sent back for further study based on the assertion that persons with disabilities will be forced to sit in unhealthy temperatures or hot or cold water until the water temperature can be adjusted.

- **DSA Response:** DSA’s proposal carries forward (retains) a previously-adopted exception from the 2013 CBC which allows two fixed shower heads to be provided in lieu of a hand-held spray unit within facilities subject to excessive vandalism that are not transient lodging guest rooms. The essential language in this exception was first adopted in the California Plumbing Code (CPC) circa 1994 and was transferred from the CPC to the CBC at a later date.

DSA’s proposal also amends this code section to restore the previously adopted requirement that one

of the fixed shower heads must be mounted at 48 inches maximum above the shower floor. This provision was inadvertently omitted from the 2013 CBC. These first two aspects of this proposal will correct errors and restore to pre-2013 state the CBC provisions regarding fixed shower heads provided in lieu of hand-held spray units within facilities subject to excessive vandalism.

Finally, DSA's proposal adds specific facility types where fixed shower heads are not permitted to be provided in lieu of a hand-held spray unit – medical care facilities, long-term care facilities, and residential dwelling units. DSA proposes to add these facility types to the CBC to be consistent with the limits of the 2010 ADAS. By expanding the list of facility types where fixed shower heads are not permitted to be provided in lieu of hand-held spray units, such fixed shower heads will be permitted to be provided in fewer facility types than are currently allowed by Section 11B-608.6 Exception.

Prior to Ms. D'Lil's comments submitted on behalf of the Coalition of Disability Access Professionals, DSA was unaware of any concerns with this 30+ year-old provision regarding water temperatures. DSA notes CPC requirements for showers in general limits shower water to a maximum temperature of 120 degrees Fahrenheit. Also, the long-established requirement that fixed shower heads (provided in lieu of hand-held spray units) must have vertical and horizontal swivel adjustments provides a level of user-adjustment which addresses, in whole or in part, the commenters concerns that persons with disabilities will be forced to sit in unhealthy temperatures. DSA declines to amend its proposal in response to this comment but will retain this comment for consideration during a future rulemaking cycle.

Additional comments:

10 - Item 51.00: Section: 11B-812.8 Identification signs. Commenter is opposed to this code change and asks that it be sent back for further study because the first four EVCS will not have an International Symbol of Accessibility (ISA) sign; and there are no signs reserving any of the first four EVCS for the exclusive use of persons with an appropriate placard or license plates, with enforcement clearly defined. Commenter predicates these comments on her view that EVCS are parking spaces.

- **DSA Response:** DSA disagrees that EVCS are parking spaces and has addressed this issue in responses to Items 11B.51.03 and 11B.51.04. Though not proposed as parking regulations, DSA nonetheless recognizes that EVCS require many of the same features, physical spaces, and spatial relationships as required for parking.

It is an administrative policy of the State of California to encourage electric vehicle adoption and use, and to facilitate installation of support services, including EVCS. In light of the absence of California Building Code (CBC) accessibility requirements for EVCS in public accommodations or commercial facilities, DSA has undertaken the development of explicit accessibility requirements to apply to EVCS. DSA conducted an extensive public participation process for the development of the proposed ECVS accessibility regulations. A working group of interested stakeholders including

disability advocates, building officials, equipment manufacturers, building owners, business operators, public utilities and state agencies was convened and met 8 times to discuss and review how EVCS should be made accessible. Other state agencies participating included CalTrans, the Department of Motor Vehicles and the Department of Housing and Community Development. Ms. D’Lil was in attendance personally or via teleconference at six of the meetings.

To the first comment, during the public meetings there was unanimity that accessibility was needed at EVCS; DSA also received compelling testimony during the public meetings that where a small number of EVCS are provided, reserving some of the EVCS for the exclusive use of persons with disabilities would be a significant disincentive to their installation. To balance these interests DSA proposes an approach for installations of four or fewer EVCS where the first EVCS provides all of the features, physical space, and spatial relationships necessary for use by persons with disabilities but without an ISA or any other indication this EVCS is reserved for the exclusive use of persons with disabilities. This approach mimics the federal requirements of the ADA Standards for Accessible Design (ADAS) for parking facilities with four or fewer parking spaces.

Where five to 25 EVCS are provided, DSA’s proposal requires the van accessible EVCS to be identified with an ISA and requires an additional standard accessible EVCS that is not identified with an ISA and available to all. This provides twice as many accessible EVCS vehicle spaces as would be required by the ADAS for a similarly sized parking facility.

To the second comment, DSA does not dispute that DSA’s proposal does not require signs reserving any of the first four EVCS for the exclusive use of persons with a special placard or license plates; this is addressed earlier in DSA’s response to this item. Nor does DSA dispute that its proposal does not require signs with enforcement clearly defined. Omitting enforcement signs at accessible EVCS installations is right and appropriate within the context of the CBC.

This relationship can be most easily understood by contrasting the statutory requirements of EVCS with those of parking spaces. In short, it is the California Vehicle Code indicates that accessible parking spaces identified with an ISA are reserved for the exclusive use of persons with special license plates or a distinguishing placard – not the building code. DSA’s authority in law is to adopt building regulations, not to establish civil enforcement schemes for activities other than those which occur during the construction of facilities regulated by the CBC.

The designation of accessible parking spaces for the exclusive use of individuals with disabilities is provided by California Vehicle Code Section 22511.8 and Government Code Section 14679. The accessible parking spaces are reserved by the display of the ISA. Vehicle Code Section 22511.5 also provides that “A disabled person or disabled veteran displaying special license plates...or a distinguishing placard...is allowed to park for unlimited periods in...” a number of restricted parking zones. However, Vehicle Code Section 22511.5 (a) 3. qualifies this by stating “This subdivision does not apply to a zone...which the law or ordinance reserves for special types of vehicles, ...” During the EVCS Working Group discussions, the California Department of Motor

Vehicles advised that EVCS were a zone reserved for special types of vehicles. Other Sections of the Vehicle Code on electric vehicles provide for charging time limits and restrictions on a vehicle occupying an EVCS space if not plugged in and charging, with no mention of vehicles displaying disabled license plates or placards.

It is not within DSA's authority to incorporate provisions into the CBC to reserve EVCS for the exclusive use of people with special license plates or a distinguishing placard. If in the future state or federal law is amended to establish restrictions on the use of EVCS, DSA will propose corresponding building code requirements to reflect lawful requirements for constructed elements at EVCS installations. DSA declines to amend its proposal in response to this comment.

Attachment 1 – H. D’Lil Comments dated September 22, 2015 (via email):

Dear California Building Standard Commissioners: Thank you for this opportunity to comment on proposed code changes from the Division of the State Architect. We appreciate that many of the proposed changes create a better opportunity for enforcement of California's accessibility requirements by providing better and more consistent language. However, we have an over-all concern that the state architect did not consult with members of the disability community before submitting these code changes to the Commission. As we will state repeatedly in our comments below, we are specifically concerned about compliance with Government Codes 4450, 111346.45 and 11346.5. In addition, some of the proposed code changes violate Government Code 4459 in that they decrease state access standards.

Section 202, definition of **ACCESSIBLE ROUTE**. (begin strikeout) ~~A continuous, unobstructed path that complies with Chapter 11.~~ (end strikeout) **[DSA-AC]** *A continuous unobstructed path connecting accessible elements and spaces of an accessible site, building or facility that can be negotiated by a person with a disability using a wheelchair, and that is also safe for and usable by persons with other disabilities. Interior accessible routes may include corridors, hallways, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps and lifts.*

ACTION REQUESTED: We request that this proposed code change be denied or returned for further study for clarification of how the term “negotiable” is defined if, as proposed, it does not require compliance with defined terms for accessibility as codified in Chapter 11B. (“Accessible” is a term of art meaning that it complies with DOJ codes for barrier removal. “Negotiable” is getting in and through by some means possible.

SUGGESTED REVISIONS TO THE TEXT: The original definition, "A continuous, unobstructed path that complies with Chapter 11," should be retained.

In addition, the next paragraph should be amended as follows:

ACCESSIBLE ROUTE. **[DSA-AC & HCD I-AC]** *A continuous unobstructed path connecting accessible elements and spaces of an accessible site, building or facility that is safe and accessible as provided in the provisions of this code. (begin strikeout) ~~and can be~~*

~~negotiated by a person with a disability using a wheelchair, and that is also safe for and usable by persons with other disabilities.~~ (end strikeout) (begin underline) Where applicable, an accessible route shall not pass behind parking spaces other than to pass behind the parking space in which the user parked. (end underline) Interior accessible routes may include corridors, hallways, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps and lifts.

CBSC Criteria 6. The original definition that is in strike-out in the proposed code provided necessary specificity by defining access as compliance with codes, not a subjective term based on what makes a path "negotiable" which requires a subjective decision by enforcement authorities who do not have the knowledge to determine what "negotiable" for the diversity of the population who use wheelchairs and other assistive mobility devices. Without this definition, the proposed code change is **in conflict with BSC Criteria 6** because it creates code that is unnecessarily vague. (See below for further discussion of ambiguity and vagueness.)

CBSC Criteria 4: This proposed code change is also in conflict with BSC Criteria 4 in that it is unreasonable, arbitrary, unfair and capricious. It is unfair to all impacted by the code because enforcement can only be achieved with a subjective interpretation of what is negotiable and usable, without specificity currently provided in Chapter 11 which specifics minimum width, slope, surface conditions, maximum change in level and other conditions. It depends upon a capricious interpretation subject to an arbitrary determination of what is negotiable and usable without specific standards. The unreasonableness of the proposed code change will lead to unnecessary litigation for interpretation and enforcement.

CBSC Criteria 2: This proposed code change is also in conflict with BSC Criteria 2 because it is not within the parameters of the enabling legislation. It is a violation of Government Code 4459, which states, in part, "The State Architect shall develop amendments for building regulations and submit them to the California Building Standards Commission for adoption to ensure that no accessibility requirements of the California Building Standards Code shall be enhanced or diminished except as necessary for (1) retaining existing state regulations that provide greater accessibility and features,

or (2) meeting federal minimum accessibility standards of the federal Americans with Disabilities Act of 1990 as adopted by the United States Department of Justice, the Uniform Federal Accessibility Standards, and the federal Architectural Barriers Act." The change of definition of "accessible" as a path that complies with codes, to an undefined notion of "negotiable" paths reliant upon subjective and ill-informed interpretation by enforcement authorities is a reduction in access and will lead to increased lawsuits. Without specificity and with reliance upon subjective enforcement, the code change appears to be an attempt to relieve owners from full compliance with accessible features of a path, and places the burden on the wheelchair user to define what he or she cannot negotiate in every path of travel in order to have a valid complaint. This definition of negotiable access is precisely what defendants argue to avoid liability for code violations. The purpose of the codes is to provide equality of access, not access by any means possible.

DSA's Statement of reasons says this code change is proposed "to carry forward the adoption of the 2013 CA Building Code definition of "accessible". Any definition which replaces a clear definition of what it means to provide "access" with a vague, subjective, undefined requirement of "negotiable" access does not meet the mandates of the California legislature which requires the State Architect to propose "regulations for making buildings....and related facilities accessible to and usable by persons with disabilities." Cal.Gov. Code 4450(b). The 2013 definition relating "accessible" to "negotiable" access fails to meet this mandate, and also violates the prohibition that "existing state regulations that provide great accessibility and features" not be diminished, especially for lessor ADA standards.

The proposed code is in conflict with BSC Criteria 6 also because it is unnecessarily ambiguous and vague. The proposed definition, which only requires the path to be "negotiable" in a wheelchair, is ambiguous and unworkable. A path that is "negotiable" by one wheelchair user is not necessarily "negotiable" by another wheelchair user. For example, someone using a manual chair might not be able to "negotiate" a sudden change in level, though someone in a power chair might not. "Negotiability" is not defined and must rely upon subjective judgement to be accomplished, whereas Chapter 11 provides great detail and specificity as to how to achieve accessibility.

In addition, the definition should clarify that the route must be “safe” for all disabilities, and not – as currently specified – “all other disabilities” besides wheelchair users. The ambiguity of the proposed code change could lead to an interpretation the accessible route does not have to be safe for persons using wheelchairs, which would be in conflict with BSC Criteria 2 and 6, and GC 4459.

Government Code 11346.45 states, "(a) In order to increase public participation and improve the quality of regulations, state agencies proposing to adopt regulations shall, prior to publication of the notice required by Section 11346.5, involve parties who would be subject to the proposed regulations in public discussions regarding those proposed regulations, when the proposed regulations involve complex proposals or a large number of proposals that cannot easily be reviewed during the comment period."

DSA's failure to involve people with disabilities prior to the publication notice in a code change package that is almost 100 pages long clearly violates CA GC 11346.45. In particular, for a population that 1) has no professional interest in the code changes and therefore are not paid to analyze building code, 2) who have been provided no training in the access codes and relevant civil rights laws that require an accessible built environment - which the state architect is legally required to provide - and 3) therefore, cannot adequately or easily review such complex and lengthy proposals during the comment period, the state architect has created a situation that not only violates CS GC 4450, 4459 and 11346.45, but has placed the disability community in a position of severe disadvantage in their ability to address code changes that impact their daily lives.

CONCLUSION: Because DSA violated Government Codes 4450, 11346.45 and 11346.5 by not providing public consideration of this code change prior to publication, Government 4459 by proposing a code change that decreases accessibility standards in California, , and by not meeting the CBSD Criteria 2, 4 and 6, it should be concluded by the Commission that DSA's factual determinations were arbitrary and capricious and the determinations were substantially unsupported by the evidence considered by the adopting agency, as specified in CA Health and Safety Code 18930(d). CA H&S 18930(d) states, "(a). Any factual determinations of the adopting agency or state agency that proposes the building standards shall be considered conclusive by the commission unless the commission specifically finds, and sets forth its reasoning in writing, that the

factual determination is arbitrary and capricious or substantially unsupported by the evidence considered by the adopting agency or state agency that proposes the building standards."

WHY THE TERM "NEGOTIABLE" WILL LEAD TO LAWSUITS: The definition of "negotiation" is beyond vague and ambiguous. It implies a give and take that relates to the capabilities of an individual user on a particular day and in particular conditions.

In essence it's a defense attorney argument rather than a proper provision for inclusion in a building code. Defense attorney: "Well, even though the ramp was 10% your client has a motorized wheelchair, so they could negotiate it." Alternatively, another common defense argument is that by walking around with a level an expert was able to find a path with compliant slopes though the majority of a surface through which the alleged accessible route was designed was inaccessible.

On some days, a person might be able to "negotiate" a ramp that has a 9% slope. When that ramp has water on it negotiations might fail. Similarly, everybody, regardless of their level of ability, has good days and bad days. On some days they can "negotiate" barriers and on some days they can't. It's extremely hard to imagine how the term "negotiate" or "negotiated" can be seen as anything less than a degradation of the existing standards and in stark contrast to the requirements of the ADAS. No matter how you slice it, the concept of negotiation in connection with the interaction of a person with the built environment is an individualized issue. You can't write that into a building code. It doesn't even make logical sense.

When judges interpret a law they look first to the "black letter meaning" of words. In this case, that black letter reading of the word "negotiation" means that the proposed standard falls below both current code and the ADA as it allows discretion to construct a feature or features that don't meet code and the ADAS. In order to back this up, let's look at a few dictionary definitions.

Merriam-Webster (in its 3rd possible use of the word "negotiate") defines the word thusly:

a : to successfully travel along or over <*negotiate* a turn>

b : [complete](#), [accomplish](#) <*negotiate* the trip in two hours>

Macmillan Dictionary defines the word (listed as the 2nd use) as follows

[transitive] to successfully travel on a road or path that is difficult to travel on or travel through.

“Only 4-wheel-drive vehicles can negotiate the rough roads around the ranch.”

In almost every definition one can find, the term implies the ability to deal with a problem, overcome an obstacle or handle a situation posed by a process involving some degree of skill given the existing conditions. Is the intent to allow each building official to determine what a person (whom he or she has never met) can “negotiate?” Let’s look at it another way. Let’s say that we are dealing with a person with no substantial limits on their abilities. As to that person, assuming the built environment is compliant and conditions are safe the word “negotiate” would only be applied to their interaction with the environment if used in a sarcastic fashion. “Wow, Bob was able to manage to negotiate exiting the parking lot at 3AM without hitting a post.” “Despite those 3 glasses of Pinot, Jane was able to negotiate the width of the whole living room without tripping over the furniture.”

Nobody should have to “negotiate” inaccessible conditions that violate the code. The term should:

- 1. Either be struck in its entirety; or**
- 2. Added as a performance standard to clarify that, in addition to meeting all code requirements, surface conditions as well as other features (such as protruding objects) that are adjacent to or connected with an accessible route must be designed and constructed so that people can easily and intuitively negotiate the built environment and site without having to chart a path looking for an accessible route.**

* * *

We do not agree with SECTION 210

DEFINITIONS (begin underline) **TECHNICALLY INFEASIBLE. [DSA-AC]** *An alteration of a building or a facility, that has little likelihood of being accomplished because the existing structural conditions require the removal or alteration of a load-bearing member that is an essential part of the structural frame, or because other existing physical or site constraints prohibit modification or addition of elements, spaces or features that are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility.* (end underline)

ACTION REQUESTED: We request that you send this section back for further study. DSA's factual determinations were arbitrary and capricious and the determinations were substantially unsupported by the evidence considered by the adopting agency, as specified in CA Health and Safety Code 18930(d).

Reason: The proposed code change is in conflict with BSC Criteria 4 and 6. The phrase, "other existing physical or site constraints" is vague, without clear definitions, and requires subjective interpretation, in conflict with Criteria 6. To further clarify - "existing physical or site constraints" could be interpreted as whatever the building owner does not want to modify. Because of its subjective nature, it is likely to cause "unreasonable, arbitrary, unfair, or capricious" interpretations, in conflict with Criteria 4.

In addition, this code change was proposed without adequate input from the community. Please see Government Code 4450 and 11346.45 as discussed above.

* * * * *

ITEM 9.01

SECTION 907

FIRE ALARM AND DETECTION SYSTEMS

907.4.2 Manual fire alarm boxes.

907.4.2.2 Height. The height of the manual fire alarm boxes shall be not less than 42

inches (1067 mm) and not more than 48 inches (~~1372~~ 1219 mm) measured vertically, from the floor level to the *highest point of the* activating handle or lever of the box. (begin underline) Manual fire alarm boxes shall also comply with Section 11B-309.4. **Exception: [DSA-AC] In existing buildings there is no requirement to retroactively relocate existing manual fire alarm boxes to a minimum of 42 inches (1067 mm) and a maximum of 48 inches (1219 mm) from the floor level to the activating handle or lever of the box.** (end underline)

ACTION REQUESTED: We do not agree with the exception and request that the commission deny this code change proposal. It is a violation of the requirement of Title III of the Americans with Disabilities Act which requires barrier removal where it is readily achievable to do so in existing construction and a violation of Title II of the ADA which required access to programs and local and state governments.

Therefore, the proposed exception is in **conflict with CBSD Criteria 1** which because it conflicts with other standards. It is in **conflict with CBSC Criteria 2** because it conflicts with enabling legislation which requires compliance with the ADA. It is in conflict with **CBSC Criteria 3** because it is not in the public interest to make a safety feature inaccessible to members of the public. It is in conflict with **CBSC Criteria 4** because is a capricious endangerment of the public and an arbitrary requirement that puts enforcement officials and building owners in the position of violating Federal law. It is in conflict with CBSC Criteria 7 because it does not incorporate applicable national standards.

CONCLUSION: Because DSA violated Government Codes 4450 11346.45 and 11346.5 by not providing public consideration of this code change prior to publication, Government 4459 by proposing a code change that decreases accessibility standards in California, , and by not meeting the CBSD Criteria 1, 2, 3, 4 and 7, it should be concluded by the Commission that DSA's factual determinations were arbitrary and capricious and the determinations were substantially unsupported by the evidence considered by the adopting agency, as specified in CA Health and Safety Code 18930(d).

* * * * *

TEM 11B.02

DIVISION 2: SCOPING REQUIREMENTS

11B-202 Existing buildings and facilities

11B-202.4 Path of travel requirements in alterations, additions and structural repairs.

When

alterations or additions are made to existing buildings or facilities, an accessible path of travel to the

specific area of alteration or addition shall be provided. The primary accessible path of travel shall include:

1. A primary entrance to the building or facility,
2. Toilet and bathing facilities serving the area,
3. Drinking fountains serving the area,
4. Public telephones serving the area, and
5. Signs.

Exceptions:

(begin underline) 10. The cost of compliance with Section 11B-202.4 for seismic mitigation projects shall be limited to 20 percent of the adjusted construction cost. For the purposes of this exception the adjusted construction cost of a seismic mitigation project shall not include the cost of alterations to path of travel elements required to comply with Section 11B-202.4. When the path of travel elements for a seismic mitigation project cannot be fully upgraded to comply with 11B-202.4 within the 20 percent cost limitation, the priority list of Exception 8 shall be applied. (end underline)

ACTION REQUESTED: We do not agree with this code change and request that the commission deny this code change because it is a reduction in access which is precluded by Government Code 4459. See the discussion above. Currently, only for those alteration projects which exceed the current value of \$50,000 based upon the 1981 Engineering News Record and if there is a determination of "unreasonable hardship," as defined, may the cost for compliance with accessibility in the area of remodel or the path-of-travel requirements be limited to 20% of construction costs.

This code change is in conflict with **CBSC Criteria 2** because it conflicts with GC 4459. It is in conflict with **CBSC Criteria 3** because it is not in the interest of public, of which the disabled public is part, and because the code change will limit access to the built

environment by the disabled public. It is in conflict **with CBSD Criteria 4** because it is an unreasonable, arbitrary, unfair and capricious reduction in accessibility, giving weight only to the monetary concerns of building owners and violating CA laws protecting people with disabilities against discrimination.

In addition, DSA's failure to provide public participation prior to the notice required by GC 11346.5 is a violation of GC 11346.45.

We recommend that this code change be amended, as follows: ITEM 11B.02

DIVISION 2: SCOPING REQUIREMENTS

11B-202 Existing buildings and facilities

11B-202.4 Path of travel requirements in alterations, additions (begin ~~strikeout~~) ~~and~~ (end ~~strikeout~~), structural repairs (begin underline) and seismic mitigation projects (end underline). When alterations or additions are made to existing buildings or facilities, an accessible path of travel to the specific area of alteration or addition shall be provided. The primary accessible path of travel shall include

CONCLUSION: Because DSA violated Government Codes 4450 11346.45 and 11346.5 by not providing public consideration of this code change prior to publication, Government 4459 by proposing a code change that decreases accessibility standards in California, and by not meeting the CBSD Criteria 2, 3 and 4, it should be concluded by the Commission that DSA's factual determinations were arbitrary and capricious and the determinations were substantially unsupported by the evidence considered by the adopting agency, as specified in CA Health and Safety Code 18930(d).

* * * * *

11B-220.2 Point-of-sale devices. Where point-of-sale devices are provided, all devices at each location shall comply with Sections (begin ~~strikeout~~) ~~11B-309.4~~, (end ~~strikeout~~) 11B-707.3, (begin ~~strikeout~~) ~~and~~ (end ~~strikeout~~) 11B-707.7.2, (begin underline) and 11B-707.9. (end underline) (begin ~~strikeout~~) ~~In addition, point-of-sale systems that include a video touch screen or any other non-tactile keypad shall comply with either Section 11B-707.9.1.1 or 11B-707.9.1.2.~~ (end ~~strikeout~~) Where point-of-sale devices are provided at check stands and sales and service counters (begin underline) required to be accessible, (end underline) they shall comply with (begin ~~strikeout~~) ~~Section~~ (end

strikeout) (begin underline) Sections 11B-707.2, 11B- 707.3, 11B-707.7.2, and 11B-707.9. (end underline) (begin strikeout) ~~11B-707.9.1, and shall also comply with Sections 11B-707.2, 11B-707.3 and 11B-707.4.~~(end strikeout)

Exception: Where a single point-of-sale device is installed for use with any type of motor fuel, it shall comply with Sections (begin strikeout) ~~11B-220.2 and 11B-309~~ (end strikeout) (begin underline) 11B-707.2, 11B-707.3, 11B-707.7.2, and 11B-707.9. (end underline)

Where more than one point-of-sale device is installed for use in a specific type of motor fuel, a minimum of two for that type shall comply with Sections (begin strike-out) ~~11B-220.2 and 11B-309~~ (end strikeout) (begin underline) 11B-707.2 and 11B-702.9 (end underline). Types of motor fuel vehicles include gasoline, diesel, compressed natural gas, methane, ethanol and electricity.

We do not agree with this proposed code change and request that the commission send it back for further study. This section conflicts with other proposed code changes regarding EVCS which require a point of sales device for each accessible EVCS. The requirement for accessible EVCS requires accessibility for point of sales devices regardless of the number of point-of-sale devices provided. This proposed code change is in conflict with BSC Criteria 1 because it conflicts with other proposed code changes for EVCS and Criteria 4, because such a conflict is unreasonable and capricious.

CONCLUSION: Because does not meet the CBSD Criteria 1 and 4, it should be concluded by the Commission that DSA's factual determinations were arbitrary and capricious and the determinations were substantially unsupported by the evidence considered by the adopting agency, as specified in CA Health and Safety Code 18930(d).

* * * * *

(begin underline) 11B-812.5.4 Arrangement. Vehicle spaces and access aisles shall be designed so that persons using them are not required to travel behind vehicle spaces or parking spaces other than the vehicle space in which their vehicle has been left to charge.

Exceptions:

1. Ambulatory EVCS shall not be required to comply with Section 11B-812.5.4.

2. Vehicle spaces installed in existing facilities shall comply with Section 11B-812.5.4 to the maximum extent feasible. (end underline)

We are opposed to this code change and request that the committee send it back for further study. Exception 2 is in conflict with CBSC Criteria 4. Without providing specificity for the determination of the phrase, "to the maximum extent feasible," the code change invites capricious and arbitrary enforcement that can lead to an unreasonable denial of accessibility. It is also a violation of CBSC Criteria 6, in that without such specificity for determining the exception, it is vague and ambiguous.

CONCLUSION: Because DSA violated does not meet the CBSD Criteria 2, 4 and 6, it should be concluded by the Commission that DSA's factual determinations were arbitrary and capricious and the determinations were substantially unsupported by the evidence considered by the adopting agency, as specified in CA Health and Safety Code 18930(d).

* * * * *

11B-202 Existing buildings and facilities

11B-202.4 Path of travel requirements in alterations, additions and structural repairs.

When alterations or additions are made to existing buildings or facilities, an accessible path of travel to the specific area of alteration or addition shall be provided. The primary accessible path of travel shall include:

1.

(begin underline) Exceptions: ...

11. Alterations solely for the purpose of installing electric vehicle charging stations (EVCS) at facilities where vehicle fueling, recharging, parking or storage is a primary function shall comply with Section 11B-202.4 to the maximum extent feasible without exceeding 20 percent of the cost of the work directly associated with the installation of EVCS.

Alterations solely for the purpose of installing EVCS at facilities where vehicle fueling, recharging, parking or storage is not a primary function shall not be required to comply with Section 11B-202.4. (end underline)

We do not agree with this code change and request that the commission deny this code change. It is a reduction in access which is precluded by Government Code 4459. See the discussion above. Currently, only for those alteration projects which exceed the current value of \$50,000 based upon the 1981 Engineering News Record and if there is a determination of "unreasonable hardship," as defined, may the cost for compliance with accessibility in the area of remodel or the path-of-travel requirements be limited to 20% of construction costs.

This proposed code is in conflict with **CBSC Criteria 1** in that it conflicts with other standards. Turning regular parking spaces into EVCS is a change-in-use, and therefore, is not a remodeling project, but a new construction project. The exceptions for remodeling cannot apply.

This code is in conflict with **CBSC Criteria 3** because it is not in the interest of public, of which the disabled public is part, and because the code change will limit access to the built environment by the disabled public. It is in conflict **with CBSD Criteria 4** because it is an unreasonable, arbitrary, unfair and capricious reduction in accessibility, giving weight only to the monetary concerns of building owners and violating Federal and CA laws protecting people with disabilities against discrimination. In fact, code change 11B-208.1 states, "*For the purposes of this section, electric vehicle charging stations are not parking spaces; see Section 11B-228.*" If EVCS are not parking spaces, then it is capricious, arbitrary and unreasonable to provide remodeling exceptions for installing EVCS in parking spaces.

CONCLUSION: Because DSA does not meet the CBSD Criteria 1, 3 and 4, it should be concluded by the Commission that DSA's factual determinations were arbitrary and capricious and the determinations were substantially unsupported by the evidence considered by the adopting agency, as specified in CA Health and Safety Code 18930(d).

* * * * *

ITEM 11B.51.04 – RELATED CODE AMENDMENT
CHAPTER 11B
DIVISION 2: SCOPING

11B-208 Parking spaces

11B-208.1 General. Where parking spaces are provided, parking spaces shall be provided in

accordance with Section 11B-208. (begin underline) For the purposes of this section, electric vehicle charging stations are not parking spaces; see Section 11B-228. (end underline)

Exception: ...

ITEM 11B.

We do not agree with this code change and request that the commission deny this code change because it in conflict with BSC Criteria 2 in that it is a violation of BC 4459, as a diminishment of access standards. It is also in conflict with BSC Criteria 3 in that it is not in the best interest of the public to make such a ridiculous statement in code. It is in violation BSC 4 in that it is "unreasonable, arbitrary, unfair, and capricious." To say that when someone parks a vehicle in a parking lot in a space that is marked for vehicles, locks the vehicle and leaves, that the space where the vehicle is parked is not a parking space is beyond ludicrous. It is a blatant attempt to exempt EVCS parking from parking requirements, and leaves DSA and the BSC open for litigation. Such a case might be accepted by the courts if only for comic relief.

We recommend the following revisions: 11B-208.1 General. Where parking spaces are provided, parking spaces shall be provided in accordance with Section 11B-208. (begin underline) For the purposes of this section, parking for electric vehicle charging stations shall comply with Sections 812 and Section 11B-228. (end underline)

Exception: ...

ITEM 11B.02.01 – RELATED**11B-608 Shower compartment**

11B-608.6 Shower spray unit and water. A shower spray unit with a hose 59 inches (1499 mm) long minimum that can be used both as a fixed-position shower head and as a hand-held shower shall be provided. The shower spray unit shall have an on/off control with a non-positive shut-off. If an adjustable height shower head on a vertical bar is used, the bar shall be installed so as not to obstruct the use of grab bars. Shower spray units shall deliver water that is 120°F (49°C) maximum.

Exception: *Where subject to excessive vandalism, two fixed shower heads shall be (begin strikeout) ~~installed~~ (end strikeout) (begin underline) permitted (end underline) instead of a hand-held spray unit in facilities that are not (begin underline) medical care facilities, long-term care facilities, (end underline) transient lodging guest rooms, (begin underline) or residential dwelling units. (end underline) Each shower head shall be installed so it can be operated independently of the other and shall have swivel angle adjustments, both vertically and horizontally. (begin underline) One shower head shall be located at a height of 48 inches (1219 mm) maximum above the shower finish floor. (end underline)*

ACTION REQUESTED: We do not agree with this code change and request that it be sent back for further study because it is in conflict with BSC Criteria 4 in that it arbitrarily, unreasonably, unfairly and capriciously endangers the disabled public. Persons with disabilities will be forced to sit in unhealthy temperatures or hot or cold water until the water temperature can be adjusted.

Further study should provide standards as to the placement of the lower shower head so that people with disabilities can reach the controls to adjust the water temperature before transferring to the bench in front of the shower head. It cannot be assumed that any existing shower compartment configuration allows people with mobility disabilities to have access to the shower controls without actually having transferred to the shower bench.

Standards for this proposed code change should include placement of controls so that they are within reach of someone sitting or standing outside of the shower area, and should provide a clear floor space and reach range requirements to facilitate this.

Sincerely,

HolLynn D'Lil, on behalf of the Coalition of Disability Access Professionals

Anthony E. Goldsmith. esq.

Barry Atwood

Celia McGuinness, esq.

Gary Waters

Gilda Puentes-Peters
Jonathan Adler
Kevin Jensen
Michael Mankin
Patricia Barbosa, esq.
Paul Church
Peter Margen
Richard Skaff
Sid Cohen, esq.
Tim Thimesch, esq.

Attachment 2 – H. D’Lil Comments dated September 24, 2015 (via email):

Dear California Building Standards Commissioners: Please consider these further comment on the DSA 45-day language submission:

11B-812.8 Identification signs. *EVCS identification signs shall be provided in compliance with Section 11B-812.8.*

11B-812.8.1 Four or fewer. *Where four or fewer total EVCS are provided, identification with an International Symbol of Accessibility (ISA) shall not be required.*

11B-812.8.2 Five to twenty-five. *Where five to twenty-five total EVCS are provided, one van accessible EVCS shall be identified by an ISA complying with Section 11B-703.7.2.1. The required standard accessible EVCS shall not be required to be identified with an ISA.*

11B-812.8.3 Twenty-six or more. *Where twenty-six or more total EVCS are provided, all required van accessible and all required standard accessible EVCS shall be identified by an ISA complying with Section 11B-703.7.2.1.*

ACTION REQUESTED: We strongly oppose these sections because the first four EVCS will not have an International Symbol of Accessibility (ISA) and because there are no signs enforcing that any of the accessible parking spaces (accessible by size, arrangement, etc.) are for the exclusive use of persons using the appropriate placard and license plates, with enforcement clearly defined. We ask that the Commission send these code sections back for further study.

These sections, are supported by the careful work of the state architect to declare that parking a vehicle for charging purposes is not parking. See 11B-208.1 and Section 2 definitions for Electric Vehicle Charging Space and Electric Vehicle Charging Station, which carefully leave out the word "parking" when defining a "vehicle space."

The proposed definition for drive-up charging stations in Section 2 carefully defines "Drive-Up Electric Vehicle Charging Station" where use is limited to 30 minutes maximum. . . ." in order to differentiate a "Drive-Up" space from a space where the vehicle stays in the electric vehicle parking space for more than 30 minutes. So, obviously, the state architect knows that EVCS will require parking the EV in the charging parking space for longer than 30 minutes, which makes those spaces parking

space. The occupants will leave the vehicle "parked" and unattended for the duration of the charging.

Because anyone will be able to use accessible spaces, which have the ISA but no signs that the EVCS parking spaces are for the exclusive use of those with appropriate placards, then the general public will have access to all the spaces available, but people with disabilities will have access to less than one. This is clear discrimination.

To say that a parking space where the occupants lock and leave the vehicle is not parking is an obvious effort by the state architect to discriminate against people with disabilities. The state architect's dance of words will be challenged in court and at great play will be the *Donald v. Sacramento Merchant Bank* decision which held that ATMs had to be accessible even though standards at that time did not address ATMs. The judge ruled "we believe the absence of any express reference to ATM's in the 1961 ASA standards does not render the general standards inapplicable."

The same applies to EV charging stations. There is nothing unique about EV charging station parking spaces that is not already covered by specific access requirements and standards for parking, including accessible routes, reach ranges, clear floor space, operating controls, and signs, including the ISA and signs enforcing that the spaces are for the exclusive use of persons using the appropriate placard and license plates, with enforcement clearly defined.

In fact, the proposed standards for EVCS rely on the extant parking requirements for all but the parking signage requirements. What the state architect has done is use existing parking requirements but eliminated the essential sign elements in order to create standards for EVCS that discriminate against people with disabilities.

Also, the case of *Barden v. City of Sacramento*, 292 F.3d 1073, requires that Sacramento make sidewalks accessible when installing curb ramps. "The ADA's broad language has been construed as bringing within its scope anything a public entity does." The ADA must be construed broadly in order to effectively implement the ADA's fundamental purpose of providing a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.

The fact is that electric vehicle charging stations are public accommodation facilities, which make them subject to, among others, CA Gov Code 4450, 4451, and 4452, H&S code 19955, the Unruh Act, as well as Section 504 of the 1973 Rehabilitation Act and the Americans with Disabilities Act, all of which prohibit discrimination against people with disabilities. To provide standards which require accessible parking spaces for electric vehicle charging, but which allow the general population to use those spaces, while people with disabilities cannot use inaccessible parking spaces is clear discrimination against people with disabilities.

Moreover, the standard of proving a minimum number of accessible parking spaces for the exclusive use by people with disabilities is long-standing and establishes a precedent for accommodation in the public environment that has been upheld by many court decisions. The state architect is inviting not only many court challenges, but is working to establish a precedent to degrade other standards for accessibility.

We can anticipate many technological changes which will be require accessibility standards. The state architect is trying to set the stage so that the state architect's office and other access code writing departments and agencies can justify discriminatory code for any new technology in the built environment. On all accounts, the state architect is acting in clear violation of CA Government Code 4459 which prohibits any decrease in the access standards.

For these reasons, it is clear that these proposed code changes are in conflict with CBSC Criteria 2 as they are in conflict with CA Gov Code 4450, 4451, and 4452, H&S code 19955, the Unruh Act, as well as Section 504 of the 1973 Rehabilitation Act and the Americans with Disabilities Act, all of which prohibit discrimination against people with disabilities. In addition, the proposed codes are in conflict with CBSC Criteria 3, being against the public interest, which includes the interest of persons with disabilities, and Criteria 4, being unreasonably unfair to people with disabilities, arbitrarily discriminatory and creating a new area of discrimination in conflict with Federal and state laws and standards established for the last half century. In addition, the proposed standards are capricious, flying the face of long established standards for "vehicle spaces." with no justification provided to explain the elimination of exclusive use by

people with disabilities of only 4% of total facilities provided. That the proposed standards are unfair to a large segment of the population is clear and has been thoroughly discussed in this commentary.

CONCLUSION: Because DSA is violating Government 4459 by proposing a code change that decreases accessibility standards and creates a discriminatory precedent for new technologies used by the public in California, and by not meeting the CBSD Criteria 2, 3 and 4, it should be concluded by the Commission that DSA's factual determinations were arbitrary and capricious and the determinations were substantially unsupported by the evidence considered by the adopting agency, as specified in CA Health and Safety Code 18930(d). CA H&S 18930(d) states, "(a). Any factual determinations of the adopting agency or state agency that proposes the building standards shall be considered conclusive by the commission unless the commission specifically finds, and sets forth its reasoning in writing, that the factual determination is arbitrary and capricious or substantially unsupported by the evidence considered by the adopting agency or state agency that proposes the building standards."

FURTHER CONCLUSION: We are very concerned that by ignoring the 1.5 years of participation in the development of the EVCS standards, the state architect has betrayed public trust, and made a mockery of the enabling legislation for his office, CA GC 4450, which requires input from the disability community. The result of the 1.5 years of work by volunteers chosen by the disability community to represent them in the study and provision of recommendations to the state architect was a compromise among the parties, and should have been honored by the state architect. That he has failed to honor the work of 1.5 years exposes the access code writing system for a sham that ignores and damages at will the people whose daily lives are directly impacted. We ask that the Commissioners direct the state architect to act with honor and integrity and to stop his discriminatory and abusive practices against the disability population in California.

RECOMMENDATION: We strongly suggest that to be truly forward thinking, given the rising increase in the senior population, the state architect should be directed to develop universal design standards for EVCS. The technology for electric vehicles and

charging systems is developing so rapidly that the state architect's illegal and prejudicial proposed EVCS code will ultimately work against the general population.

Thank you for your consideration.

Sincerely,

Hollynn D'Lil, on behalf of the Coalition of Disability Access Professionals

Anthony E. Goldsmith, esq.

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Gary Waters

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Michael Mankin

Patricia Barbosa, esq.

Paul Church

Peter Margen

Richard Skaff

Sid Cohen, esq.

Tim Thimesch, esq.