STATE OF CALIFORNIA
STATE AND CONSUMER SERVICES AGENCY
CALIFORNIA BUILDING STANDARDS COMMISSION
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Office Use Item No. _____

PARTICIPATION COMMENTS FOR THE NOTICE DATED AUGUST 31, 2012
Written comments are to be sent to the above address.

WRITTEN COMMENT DEADLINE: OCTOBER 15, 2012

Date: 10/15/2012

From:
David Bonowitz, S.E.
Name (Print or type)

(Signature)

Individual
Agency, jurisdiction, chapter, company, association, individual, etc.

605A Baker Street San Francisco CA 94117
Street City State Zip

I/We (do)(do not) agree with:

[**X**] The Agency proposed modifications As Submitted on Section No. 3405.2, 3405.3, and their subsections, and request that this section or reference provision be recommended:

[X] Approved [ ] Disapproved [ ] Held for Further Study [ ] Approved as Amended

Suggested Revisions to the Text of the Regulations:

HCD has proposed to not adopt sections 3405.2 and 3405.3 of the 2012 International Building Code. These sections should be adopted and need no amendment, since section 3405.1 is already proposed to be adopted with the amendment for replacement, retention, and extension of original materials.

Reason: [The reason should be concise if the request is for "Disapproval," "Further Study," or "Approve As Amend" and identify at least one of the 9-point criteria (following) of Health and Safety Code §18930.]

HCD's August 28 ISOR reads, in part, "HCD proposes to not adopt [sections 3405.2 and 3405.3] due to a conflict with the state law. These sections conflict with Health and Safety Code Sections 17912, 17922(d) and 17958.8, which allow the replacement, retention, and extension of original materials and the use of original methods of construction."

This rationale is incorrect, and the statement that these sections "conflict with the state law" is false, as other portions of the HCD ISOR prove.

First, consider the cited sections of the HSC allegedly in conflict with IBC sections 3405.2 and 3405.3:

- *HSC 17912 says that provisions for new construction do not apply retroactively to existing buildings, except for certain cases unrelated to section 3405. The purpose is to ensure that existing buildings are not forced to upgrade simply because the building code changes, which it does every three years. This is fundamental to principles of the CBC and to all regulations for existing buildings, but it does not mean that*

existing buildings cannot be regulated by building code provisions intended specifically for them or based on triggering conditions. Thus, the limitation of 17912 has no relation at all to the triggering provisions in CBC sections 3405.2 and 3405.3. Nothing in CBC sections 3405.2 or 3405.3 requires automatic or retroactive upgrade, so these sections are not in conflict with HSC 17912.

- *HSC 17922(d) and 17958.8 use essentially identical language to say that repairs to existing buildings must be allowed to use "original materials" and "original methods of construction." But this allowance in HSC 17922(d) and 17958.8 explicitly does not apply to "substandard buildings." Indeed, HCD's ISOR for sections 3404.3 and 3404.4, as well as its proposed amendments to sections 3401.4.1, 3404.1.1, and 3405.1.1 make this clear (though the ISOR text for 3404.3 and 3404.4 unfortunately make the mistake of saying "unless" where they should say "provided").*

  Substandard buildings are defined in HSC 17920.3 with a long list of conditions plainly intended to be inclusive, any of which deems a building substandard. The list includes the following conditions directly relevant to CBC sections 3405.2 and 3405.3 (emphasis added):
  (b) Structural hazards shall include, but not be limited to, the following:
  (1) Deteriorated or inadequate foundations.
  (2) Defective or deteriorated flooring or floor supports.
  (3) Flooring or floor supports of insufficient size to carry imposed loads with safety.
  (4) Members of walls, partitions, or other vertical supports that split, lean, list, or buckle due to defective material or deterioration.
  (5) Members of walls, partitions, or other vertical supports that are of insufficient size to carry imposed loads with safety.
  (6) Members of ceilings, roofs, ceilings and roof supports, or other horizontal members which sag, split, or buckle due to defective material or deterioration.
  (7) Members of ceiling, roofs, ceiling and roof supports, or other horizontal members that are of insufficient size to carry imposed loads with safety.
  (o) Inadequate structural resistance to horizontal forces.

Now consider IBC sections 3405.2 and 3405.3. These sections require evaluation and possibly upgrade -- using reduced loads in the case of seismic triggers -- only after the building has already been shown to have sustained substantial damage and where repair to the pre-existing condition has been shown to fall far short of current standards. Clearly any building that would be eligible for upgrade by IBC Section 3405 would be substandard -- by virtue of its damage and its demonstrated inadequacy -- by HSC 17922(d) or 17958.8. Therefore, these sections are not in conflict with state law.

Second, HCD's proposal to not adopt the provisions for potential upgrade in IBC section 3405 is inconsistent with its own proposals to adopt IBC provisions elsewhere in Chapter 34. HCD proposes to allow triggered evaluations and upgrades in flood hazard areas (sections 3404.2 and 3405.7), for major alterations (section 3404.4), for changes of occupancy (section 3408), and for relocated buildings (section 3410). In all these cases, HCD correctly notes that original materials and methods of construction are allowed provided the building is not and does not become substandard as a result of the intended work. For section 3404.4, the HCD ISOR even justifies its adoption by making exactly the point I am making here regarding sections 3405.2 and 3405.3: These sections provide "guidance for the code user in regard to the structural integrity of the building, and clarify when the requirements for new structures shall be triggered."

The same logic and rationale that apply to section 3404 should apply to section 3405. Neither of these model code provisions is in conflict with state law, both are measured responses to substandard conditions, and both continue to allow the use of existing materials and construction.

HEALTH & SAFETY CODE SECTION 18930

SECTION 18930. APPROVAL OR ADOPTION OF BUILDING STANDARDS; ANALYSIS AND CRITERIA; REVIEW CONSIDERATIONS; FACTUAL DETERMINATIONS

(a) Any building standard adopted or proposed by state agencies shall be submitted to, and approved or adopted by, the California Building Standards Commission prior to codification. Prior to submission to the commission, building standards shall be adopted in compliance with the procedures specified in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. Building standards adopted by state agencies and submitted to the commission for approval shall be accompanied by an analysis written by the adopting agency or state agency that proposes the building standards which shall, to the satisfaction of the commission, justify the approval thereof in terms of the following criteria:

(1) The proposed building standards do not conflict with, overlap, or duplicate other building standards.

(2) The proposed building standard is within the parameters established by enabling legislation and is not expressly within the exclusive jurisdiction of another agency.

(3) The public interest requires the adoption of the building standards.

(4) The proposed building standard is not unreasonable, arbitrary, unfair, or capricious, in whole or in part.

(5) The cost to the public is reasonable, based on the overall benefit to be derived from the building standards.

(6) The proposed building standard is not unnecessarily ambiguous or vague, in whole or in part.

(7) The applicable national specifications, published standards, and model codes have been incorporated therein as provided in this part, where appropriate.

(A) If a national specification, published standard, or model code does not adequately address the goals of the state agency, a statement defining the inadequacy shall accompany the proposed building standard when submitted to the commission.

(B) If there is no national specification, published standard, or model code that is relevant to the proposed building standard, the state agency shall prepare a statement informing the commission and submit that statement with the proposed building standard.

(8) The format of the proposed building standards is consistent with that adopted by the commission.

(9) The proposed building standard, if it promotes fire and panic safety as determined by the State Fire Marshal, has the written approval of the State Fire Marshal.