



California's Great America

Children's Fairyland

Disneyland Parks
and Resorts

Funderland

Gilroy Gardens Theme Park

Golfland Entertainment
Centers

Knott's Berry Farm

LEGOLAND California

Pacific Park

Palace Entertainment

Pixieland Amusement Park

Redwood Valley Railway

Santa Cruz Beach
Boardwalk

SeaWorld Parks
and Entertainment

Six Flags Discovery
Kingdom

Six Flags Magic Mountain

Sonoma Train Town

The Wave Water Park

Universal Parks and Resorts

Water World California

Wild Rivers Water Park

*Partial list

December 10, 2012

California Building Standards Commission
Attn: Michael L. Nearman, Deputy Executive Director
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833

Re: Proposed Revisions to Incorporate the 2010 ADA Standards for Accessible Design into the 2013 California Building Code (California Code of Regulations, Title 24, Part 2)

Dear Mr. Nearman and Commission Members:

The California Attractions and Parks Association (CAPA) supports the recommendations proposed by the Division of the State Architect (DSA) regarding the incorporation of the 2010 Americans with Disabilities Act Standards for Accessible Design (hereinafter "2010 ADA Standards") into Chapter 11B of the California Building Code (CBC), codified as California Code of Regulations, Title 24, Part 2. CAPA would like to thank the DSA for its work in merging the 2010 ADA Standards with California's own accessibility requirements. Extensive effort has gone into the DSA's proposal, the impetus of which is essentially to merge the 2010 ADA Standards with Chapter 11B (retaining the more stringent requirements of each) to facilitate certification of Chapter 11B as ADA-equivalent by the U.S. Department of Justice. Accordingly, CAPA strongly encourages the California Building Standards Commission to adopt the DSA's proposal without substantive change.

CAPA is a trade association representing the theme, amusement and water park industry of California. Our members include virtually every park in California, from world-renowned destination resorts to small, family-owned parks throughout the state. CAPA members produce more than \$12 billion in state commerce each year and directly employ more than 125,000 workers with more than 44 locations statewide. Our parks provide the economic foundation for communities statewide and are a vital element of

the state's \$89 billion tourism industry, the largest industry sector in California. CAPA and its membership are dedicated to providing access for all, including our workers and patrons.

CAPA's detailed explanation of its support for the DSA's proposed adoption of the standards for recreational facilities set forth in the 2010 ADA Standards, and the accompanying exceptions to those standards, is set forth in CAPA's previous comment dated October 15, 2012. CAPA is submitting this additional comment in support of the DSA's inclusion of Exception 2 to Section 11B-202.4, regarding path of travel requirements in alterations. Pursuant to Exception 2, elements of a path of travel that already comply with the applicable provisions of the 2010 CBC need not be modified to comply with incremental changes in the requirements of the 2013 version of the CBC merely because the area served by that path of travel is altered.¹ In essence, Exception 2 provides that those path of travel elements which are already accessible (*i.e.*, compliant with the 2010 CBC), need not be further modified just because the area the path of travel serves is altered. "Path of travel" includes 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.

CAPA supports DSA's proposal to incorporate Exception 2 because it appropriately balances providing accessibility against unnecessarily burdening existing facilities. Exception 2 directly correlates to the path of travel provisions for primary function areas set forth in the U.S. Department of Justice's regulations implementing Titles II and III of the ADA.² CAPA notes that the CBC's requirements with respect to making path of travel elements accessible actually exceed the corresponding provision under federal law. The federal path of travel requirements apply only in the context of an alteration to a "primary function area" (which is defined as a major activity for which the facility is intended). California's path of travel requirements (both in the current CBC and in DSA's proposed revision) apply to any alterations involving construction costs above a specified, indexed amount, which as of January 2012 was set at \$136,060.00.³

Adoption of Exception 2 is warranted and a critical provision for existing facilities. The omission of this exception would result in existing facilities incurring additional, and quite possibly substantial, costs retrofitting path of travel elements which are already accessible, while providing only a limited marginal benefit, if any, for individuals with disabilities. As California's accessibility requirements already require a very high degree of accessibility (arguably among the strictest in the country), CAPA respectfully submits that requiring further modifications to currently compliant elements would result in little additional benefit for individuals with disabilities and be an extremely inefficient use of resources. To CAPA's

¹ The remaining exceptions to Section 11B-202.4 incorporate exceptions that already exist in the 2010 CBC. Accordingly, CAPA herein addresses only Exception 2, which has no corresponding counterpart in the 2010 CBC.

² 28 C.F.R. § 35.151(c) and § 36.403(a)(2).

³ See Valuation Threshold for Alterations, Structural Repairs or Additions to Existing Buildings, <http://www.dgs.ca.gov/dsa/Programs/progAccess/threshold.aspx>.

knowledge, neither the DSA nor the Building Standards Commission has undertaken any cost benefit analysis to assess and justify the additional costs that would be imposed on existing facilities having to make further modifications to currently accessible path of travel elements, or even to quantify the marginal benefit to be derived by individuals with disabilities if Exception 2 is omitted.

CAPA wishes to emphasize that Exception 2 is not a wholesale exception for path of travel elements in existing facilities. It encompasses only those path of travel elements that already comply with the accessibility requirements in the 2010 CBC. Those that are noncompliant (*i.e.*, inaccessible) would still have to be brought into compliance with the 2013 CBC in the event the area they serve is altered. Additionally, any path of travel elements that are altered after the effective date of the 2013 CBC would still need to comply with the applicable accessibility provisions of the 2013 CBC, notwithstanding Exception 2.

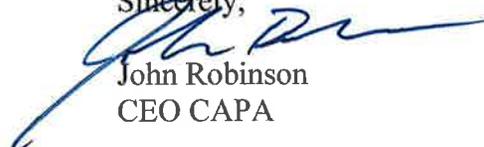
Omission of Exception 2 also will inadvertently penalize those existing facilities that have conscientiously undertaken barrier removal, as required under the readily achievable barrier removal requirements of ADA Title III and the corresponding program accessibility requirements of ADA Title II, as incorporated into California state law pursuant to the Unruh Civil Rights Act, California Civil Code § 51(f).⁴ Those that have already made their path of travel elements accessible would face additional expense in upgrading to the 2013 CBC requirements, essentially having to make and pay for accessibility improvements twice. Those that have not already brought their path of travel elements into compliance would only have to incur costs once.

Accordingly, CAPA respectfully submits that Exception 2 appropriately balances the need to provide accessibility for individuals with disabilities against unnecessarily imposing costs for modifications to elements that are already accessible. The corresponding provisions in the federal ADA regulations were adopted in order to provide access while also mitigating the substantial economic costs would be imposed on existing facilities in the absence of such provisions. For all these reasons, CAPA strongly supports the inclusion of Exception 2.

Conclusion

For all the foregoing reasons, CAPA respectfully requests that the Commission adopt revised Chapter 11B as proposed by the DSA without substantive change. Given the extensive effort that has gone into formulating the revised Chapter 11B – both on the part of the DSA and the industry – CAPA respectfully suggests that further revision is not warranted.

Sincerely,



John Robinson
CEO CAPA

⁴ Section 51(f) establishes that any violation of the ADA also is a violation of the Unruh Civil Rights Act.