

**STATE OF CALIFORNIA  
DIVISION OF THE STATE ARCHITECT  
1102 Q STREET, SUITE 5100  
SACRAMENTO, CA 95811**

**TITLE 21 CALIFORNIA CODE OF REGULATIONS  
AMENDMENTS TO ALL SECTIONS  
ADD NEW ARTICLE 6 AND 7  
ADD NEW SECTIONS 133, 136, 138, 151, 161, 162, 163, 164, 165, AND 171**

**FINAL STATEMENT OF REASONS**

**UPDATED INFORMATIVE DIGEST**

Government Code §4459.5 authorized the State Architect to establish and publicize a program for voluntary certification by the state of any person who meets specified criteria as a certified access specialist. Amendments to the regulations specify additional provisions for CASp scope of work, define work limited exclusively to certification holders, and clarify and add relevant definition of terms applicable to the regulations. Additional amendments address additions and deletions to the list of examination references, and provide additional specificity to the examination references.

Government Code §4459.7 requires the State Architect to annually publish and make available to the public a list of CASps. Amendments to the regulations proposed herein state information that will be disclosed.

Government Code §4459.8 specifies that CASp certification is effective for three years and expires if not renewed; requires each applicant for certification as a Certified Access Specialist to pay fees, including an application fee, examination fee, and certification fee at a level sufficient to meet the operating costs of the program; and authorizes the State Architect, upon consideration of any factual information, may suspend certification or deny renewal of certification. Amendments to the regulations clarify submission requirements and payment of fees throughout the steps of the certification process. Amendments propose a delinquency period in which a \$150 Delinquency Fee is assessed but permits certification renewal within the first year of delinquency after certification expiration. Amendments clarify the requirements for renewal for individuals with expired certification, and the requirements for individuals that allow certification to lapse. Amendments stipulate the grounds for disciplinary action, and clarify the process for suspension of certification, and denial of certification renewal, including how to appeal a decision of suspension or denial of certification renewal, and clarify the provisions for reinstatement.

Subchapter 2.5 of the CCR is the set of rules used for the voluntary Certified Access Specialist (CASp) Program. Proposed amendments add to the regulations additional documents incorporated by reference. In addition, the regulations propose requirements for Professional Standards for CASps, require authorization of CASp services by written agreement, and establish the significance of the requirement for CASp signature and certification number on CASp inspection reports

### **DOCUMENTS RELIED UPON**

*The Americans with Disabilities Act Technical Assistance: Testing Accommodations* is entered into the rulemaking record as a document relied upon. This document is provided as basis for the regulations specifying the requirements for requesting and providing a test accommodation for a candidate with a disability who requests a test accommodation. This document serves as an interpretation by the United States Department of Justice based on the regulations in Title 28 of the Code of Federal Regulations.

### **DOCUMENTS INCORPORATED BY REFERENCE**

The Division of the State Architect has determined that it will be cumbersome, unduly expensive, and impractical to publish the following documents in the California Code of Regulations. The following documents are incorporated by reference into the regulations and were made available upon request, and at any time during the rulemaking action.

Form DSA 600-A: Candidate Eligibility Application (11/01/15)

Form DSA 601: CASp Examination Registration (03/20/16)

ADA Test Accommodation(s) Guidelines for the CASp Examination (03/20/16)

Form DSA 602: CASp Test Accommodation(s) Request (03/20/16)

Form DSA 603: CASp Test Accommodations(s) Request Questionnaire (03/20/16)

Form DSA 650: Disclosure of Social Security Number and/or Federal Taxpayer Identification Number (07/01/15)

Form DSA 600-R: CASp Certification Renewal Application (07/01/15)

CASp Examination, Certification, and Practice Standards Handbook (02/2016)

## **CHANGES MADE TO THE REGULATIONS**

The following were changes made to the regulations after the final 15-day comment period:

### **Section 133. CASp Examination Registration**

- In the introductory paragraph, the text "A candidate is eligible to register for the CASp examination upon confirmation of eligibility by the Program." has been changed to "A candidate may register for the CASp examination upon confirmation of eligibility by the Program." Use of "eligible" and "eligibility" in the same sentence may create confusion and substitute text provides clarity without changing the requirement. Change is non-substantive.
- The date on the following forms was changed from 07/01/15 to 03/20/15 in section 133, as a result of the changes to testing accommodations:  
Form DSA 601: CASp Examination Registration (03/20/16)  
Form DSA 602: CASp Test Accommodation(s) Request (03/20/16)  
Form DSA 603: CASp Test Accommodations(s) Request Questionnaire (03/20/16)  
Change is non-substantive.

## **CHANGES TO THE DOCUMENTS INCORPORATED BY REFERENCE**

The following were changes made to the documents incorporated by reference after the final 15-day comment period:

### **ADA Test Accommodation(s) Guidelines for the CASp Examination (03/20/16)**

Changes were made to this document, and related documents, based on a comment received in the 15-day comment period, which identified provisions in this document that were unlawful under the ADA. DSA has no discretion in making these changes, and revises its requirements to comply with Title 28 of the Code of Federal Regulations.

- The documentation required to be provided to support the need for a testing accommodation has been expanded to align with federal guidelines as established in page 5 of the document relied upon, *The Americans with Disabilities Act Technical Assistance: Testing Accommodations*.
- The candidate is no longer required to provide a report by a healthcare and rehabilitative services professional to substantiate the need for a testing accommodation, but can now provide alternate means to document need.
- Section with the heading "Guidelines for a Report by a Qualified Professional" has incorporated the following changes:
  1. "Healthcare and rehabilitative services," where used, has been changed to "qualified." This change reflects the inclusion of professionals that may be

qualified to assess the need of a test accommodation for the candidate, but may not be a professional that is considered a healthcare and rehabilitative services professional.

2. In the first sentence, "must" has been changed to "may." This change recognizes that providing a report from a qualified professional is one method to document the need for a testing accommodation, instead of the only method.

3. In the remainder of the paragraph, "must" has been changed to "should." This change does not obligate the qualified professional to provide the requested information, but instead establishes a metric, analyzed as to applicability for the candidate, that the qualified professional may use to determine if the information supplied to program administration will be sufficient to substantiate the need for a testing accommodation for a candidate.

- The date of the form has been changed to 03/20/16 to reflect the date these changes were made, and corresponding to the date and changes made on related documents.

#### Form DSA 601: CASp Examination Registration (03/20/16)

Changes were made to this document, and related documents, based on a comment received in the 15-day comment period, which identified issues in DSA's requirements for the documentation of testing accommodations that were unlawful under the ADA. DSA has no discretion in making these changes, and revises its requirements to comply with Title 28 of the Code of Federal Regulations.

- The sentence in the first paragraph under "Request Test Accommodations" has been changed from "Form DSA 603 must be accompanied by a report from an appropriate healthcare or rehabilitative services professional." to "Form DSA 603 must be accompanied by documentation supporting the accommodation request." This change recognizes that requiring a specified singular method to document the need for a testing accommodation is not acceptable under the federal regulations.
- The sentence in the second paragraph under "Request Test Accommodations" has been changed from "If the disability is permanent, and is so indicated on the report by the healthcare professional, a candidate's DSA 603 is valid indefinitely and need not be resubmitted." to "If requesting the same accommodation, and if the disability is permanent, a candidate's DSA 603 is valid indefinitely, and the required documentation need not be resubmitted." The federal regulations prohibit placing undue burden on a candidate to demonstrate the need for a test accommodation, and requiring a candidate with a permanent disability to resubmit documentation substantiating need is considered an undue burden.

- The date of the form has been changed to 03/20/16 to reflect the date these changes were made, and corresponding to the date and changes made on related documents.

#### Form DSA 602: CASp Test Accommodation(s) Request

Changes were made to this document, and related documents, based on a comment received in the 15-day comment period, which identified issues in DSA's requirements for the documentation of testing accommodations that were unlawful under the ADA. DSA has no discretion in making these changes, and revises its requirements to comply with Title 28 of the Code of Federal Regulations.

- The sentence under section B, second checkbox item, has been changed from "I have received test accommodation(s) for a previous CASp examination my healthcare professional has indicated on his/her report that my disability is not anticipated to change over time." to "I have received test accommodation(s) provided over a year ago for a previous CASp examination. My disability was indicated as permanent on my DSA 603. I am requesting the previously provided accommodation(s)." This change recognizes that requiring a specified singular method to document the need for a testing accommodation is not acceptable under the federal regulations. Furthermore, federal regulations prohibit placing undue burden on a candidate to demonstrate the need for a test accommodation, and requiring a candidate with a permanent disability to resubmit documentation substantiating need is considered an undue burden.
- The sentence under section B, third checkbox item has been changed to add the phrase "for my temporary disability." Under the revised guidelines, all documentation that demonstrates need does not expire after one year, only the accommodation requests where a candidate has stated the disability was temporary.
- The sentence that follows under the third checkbox item has been changed from "Form DSA 603 must be accompanied with a note from an appropriate healthcare or rehabilitative services professional." to "Form DSA 603 must be accompanied with documentation that supports the need for the accommodation." This change recognizes that requiring a specified singular method to document the need for a testing accommodation is not acceptable under the federal regulations.
- The date of the form has been changed to 03/20/16 to reflect the date these changes were made, and corresponding to the date and changes made on related documents.

## Form DSA 603: CASp Test Accommodation(s) Request Questionnaire

Changes were made to this document, and related documents, based on a comment received in the 15-day comment period, which identified issues in DSA's requirements for the documentation of testing accommodations that were unlawful under the ADA. DSA has no discretion in making these changes, and revises its requirements to comply with Title 28 of the Code of Federal Regulations.

- Page 2, directions on providing the Personal Statement, the following sentence has been added: "Please indicate if your disability is permanent." If a candidate states in an initial request for a test accommodation that the disability is permanent, then they are not required to re-submit the documentation for a future examination. Federal regulations prohibit placing undue burden on a candidate to demonstrate the need for a test accommodation, and requiring a candidate with a permanent disability to resubmit documentation substantiating need for any future examination is considered an undue burden.
- The date of the form has been changed to 03/20/16 to reflect the date these changes were made, and corresponding to the date and changes made on related documents.

## CASp Examination, Certification, and Practice Standards Handbook

Page i: Contact Information

- Restructuring of DSA's contact information provides clarity. Change is non-substantive.

Page 6: Request for Test Accommodations

- The last sentence in second paragraph under "Requests for Test Accommodation(s)" has been changed from "If the disability is permanent and is so indicated on the report by the healthcare professional, a candidate's DSA 603 is valid indefinitely and need not be resubmitted." to "If the disability is permanent, a candidate's DSA 603 and supporting documentation is valid indefinitely and need not be resubmitted." Changes were made to this document, and related documents, based on a comment received in the 15-day comment period, which identified issues in DSA's requirements for the documentation of testing accommodations that were unlawful under the ADA. DSA has no discretion in making these changes, and revises its requirements to comply with Title 28 of the Code of Federal Regulations. The federal regulations prohibit placing undue burden on a candidate to demonstrate the need for a test accommodation, and requiring a candidate with a permanent disability to resubmit documentation substantiating need is considered an undue burden.

Page 7: Examination Reference List

- The addition of the following text to Sections 504, 508, and 510 of the Federal Rehabilitation Act of 1973 make specific the examination reference: "...which

specifies applicable federal and state statutes and regulations, as well as implementing guidelines, specified as 29 U.S.C. Sec. 701 *et seq.*, including Sec. 794; and implementing regulations such as the regulations at 24 CFR Part 8, especially Sections 8.4, 8.20 *et seq.*, and 8.32." This addition was proposed by a comment to the regulations, and DSA believes that the comment has merit, and therefor has amended the examination reference section in the CASp Examination, Certification, and Practice Standards Handbook. These changes provide specificity to the stipulated reference, and provide clarity as to focus of study, but do not add any new references. Change is non-substantive.

Page 16: Passing Score Information

- The sentence "Therefore, a candidate's pass/fail performance is established independently of the group who sat for the examination." has been revised to: "Therefore, a candidate's pass/fail performance is established independently of others who take the examination on the same day." While the change still recognizes that a candidate's pass/fail performance is not evaluated as compared to others taking the examination, the original language implies that "the group who sat for the examination" could be misconstrued as the group in one location. The CASp examination is offered in two or three locations on the same day, and the change in language reflects that a candidate is not compared to others who take the examination on the same day, regardless if they are at the same location as the candidate. Change is non-substantive.

Page 16: Verification of Individual Results

- The paragraph is a combination of the previous two paragraphs, and clarifies that the \$43 charge for a manual rescore is not applied to each part of the examination. Change is non-substantive.

Page 17: Retaking Part of the Examination

- In the following sentence, the portion in italics was added to provide clarity: "Candidates must pay the applicable examination fee and register within scheduled examination deadlines *when retaking one or both parts of the examination.*" This revision reinforces that a fee is applied to each part of the examination when retesting. Change is non-substantive.

Page 21: Legal "Good Standing" Information

- The requirement to provide a DSA 650 has been removed for certification renewal candidates. A law requiring disclosure of this information to DSA by the CASp became effective two years after DSA began certifying CASps. The CASp's social security number is information that does not change, therefore this information is only required to be submitted once to DSA. All CASps that were certified prior to the implementation of this statute have now disclosed the required information. This information is required to be provided by all CASps at

initial certification, and the Program has confirmed that all CASps have submitted a form DSA-650. Change is non-substantive.

Page 28: Notice to Property Owner/Tenant

- In the introductory paragraph, the sentence "In addition, the CASp shall issue a disability access inspection certificate and the notice to property owner/tenant as deliverables in the scope of services." has been revised to state: "In addition to the inspection report, Civil Code section 55.53 requires the CASp to issue a disability access inspection certificate and the notice to property owner/tenant as deliverables in the scope of services." This change provides clarity, so that the CASp reads the provision as a requirement set forth in statute and not as a requirement as set forth by DSA in program regulations. Change is non-substantive.

Page 29: Disability Access Inspection Certificates

- In the last paragraph, the first sentence: "A CASp will be required to return all unused DAIC to DSA, along with a record of the status of the DAIC issued to the CASp, if CASp certification is suspended or expired." is revised to read: "If CASp certification is suspended or expired, a CASp will be required to return all unused DAIC to the CASp Program, along with a record of the status of the DAIC issued to the CASp during the certification period, including the status of disability access inspection certificates issued during the previous certification period that were indicated as unissued on the prior record." This change provides clarity and consistency with the Program regulations. Change is non-substantive.

#### Justification for the Duplication of Law

A copy of the text for the *Notice to Property Owner Tenant* is provided in the CASp Examination, Certification, and Practice Standards Handbook. This duplication of law provides to the CASp the ease of locating the required statutory text. Furthermore, all documents available on the CASp website are available to the public, therefore, including the statutory text in the Handbook also provides to those hiring CASps an indication of the information required to be provided by the CASp upon the issuance of a CASp report prepared according to Civil Code 55.53. This duplication of law is necessary to satisfy the clarity standard in the APA.

#### **NON-SUBSTANTIVE REVISIONS TO TEXT AND DOCUMENTS DURING OAL REVIEW**

Numerous changes have been made to the text of the regulations and the documents incorporated by reference that are non-substantive and consist of corrections to underline and strikeout, punctuation, grammar, and formatting of reference citations. Other changes made to the regulations that are non-substantive and are identified as:

### Section 131. Candidate Eligibility Application

- In item (a) the words "signed and" have been removed. This change provides clarity, in the recognition that the preferred method of submitting an application form is through the online registration portal, and that the term "signed" makes the regulation difficult to interpret for an online submission. Completing form online requires the candidate to acknowledge the veracity of his/her information under penalty of perjury by checking a box. The candidate cannot complete and submit the application without checking this box. Change is non-substantive.

### Section 133. CASp Examination Registration

- In item (c), the word "postmarked" has been added prior to "by the examination registration deadline." This addition is provided for clarity and is consistent with the requirements as detailed in the CASp Examination, Certification, and Practice Standards Handbook. Change is non-substantive.

### Section 134. CASp Examination

- In item (c), the text in parentheses (NCCA 2006) has been removed. The standard is relevant to the examination but is not an incorporated by reference of the standard. Specifying an edition of the standard is therefore not required. Retaining the 2006 standard may be confusing since a later edition of the standard can be used and will still be relevant. Change is non-substantive.

### Section 136. Continuing Education

- In item (2)(A), the sentence "Attendance can be either in person or online." has been added for clarity and is consistent with the requirements as detailed in the CASp Examination, Certification, and Practice Standards Handbook. Change is non-substantive.
- In item (2)(B), the phrase has been qualified with the words "including but not limited to." This text has been added for clarity and is consistent with the requirements as detailed in the CASp Examination, Certification, and Practice Standards Handbook. In addition, the requirement uses the terminology of "guidelines" to assess the equivalent activity of the continuing education, but is not meant to imply that the specified guidelines are an inclusive list. Change is non-substantive.

### Section 137. Certification Renewal

- In the introductory paragraph, the sentence: "Certification renewal documentation and payment of certification renewal fees must be received prior to the last day of the certification period in order to avoid certification expiration." has been revised to read: "Certification renewal must be completed and confirmed by the Program by the last day of the certification period in order to avoid certification expiration." As written without change, the requirement to submit the documentation and fees prior to the last day of the certification period is not consistent with the requirement as stipulated in statute, which states that certification is for a three-

year period and then expires. This change clarifies that completion of the renewal process, which includes confirmation by the Program of successful certification renewal, by the last day of certification is required so that certification doesn't expire. This change is required for consistency with requirements in other sections of the regulations that establish the delinquency fee, and in the CASp Examination, Certification, and Practice Standards Handbook that describe in further detail the certification renewal process. Change is non-substantive.

- In item (a)(1) the words "signed and" have been removed. This change provides clarity, in the recognition that the preferred method of submitting an application form is through the online registration portal, and that the term "signed" makes the regulation difficult to interpret for an online submission. Completing form online requires the CASp to acknowledge the veracity of his/her information under penalty of perjury by checking a box. The CASp cannot complete and submit the application without checking this box. Change is non-substantive.
- In item (a)(3), the phrase "...including the status of disability access inspection certificates issued during the previous certification period that were indicated as unissued on the prior record." has been revised to read "...and including the status of disability access inspection certificates issued during any previous certification periods that were indicated as unissued on the prior record." This change takes into consideration that an accounting must be continuously maintained of unissued certificates, and an unissued certificate may have been issued to the CASp by DSA in a certification period prior to the immediately prior certification period. Change is non-substantive.

#### Section 138. Certification Expiration

- In item (c), the phrase "...including the status of disability access inspection certificates issued during the previous certification period that were indicated as unissued on the prior record." has been revised to read "...and including the status of disability access inspection certificates issued during any previous certification periods that were indicated as unissued on the prior record." This change takes into consideration that an accounting must be continuously maintained of unissued certificates, and an unissued certificate may have been issued to the CASp by DSA in a certification period prior to the immediately prior certification period. Change is non-substantive.
- In the last sentence of item (c), the words "disability access inspection" have been added before the word "certificates." This change was provided for clarity and consistency, because disability access inspection certificate is a defined term in the regulations. Change is non-substantive.

#### Section 162. Suspension of Certification or Denial of Certification Renewal

- In item (b), the text "in his or her application" has been removed because it is not relevant to the requirement. While DSA prefers a CASp to update information on

line through his/her DSA account, a CASp may choose to update his/her information in writing to DSA or online. Change is non-substantive.

- In item (c)(4), the phrase "...including the status of disability access inspection certificates issued during the previous certification period that were indicated as unissued on the prior record." has been revised to read "...and including the status of disability access inspection certificates issued during any previous certification periods that were indicated as unissued on the prior record." This change takes into consideration that an accounting must be continuously maintained of unissued certificates, and an unissued certificate may have been issued to the CASp by DSA in a certification period prior to the immediately prior certification period. Change is non-substantive.
- In the last sentence of item (c)(4), the words "disability access inspection" have been added before the word "certificates." This change was provided for clarity and consistency, because disability access inspection certificate is a defined term in the regulations. Change is non-substantive.

#### Section 164. Criteria for Rehabilitation

- In item (c), "1203.4a, and 1203.41" have been added to the applicable requirements in the Penal Code. This addition is provided for clarity and consistency with the information in the Form DSA 600A, Form DSA 600R, and the CASp Examination, Certification, and Practice Standards Handbook. Change is non-substantive.

#### Section 171. Public Information Disclosure

- The first sentence which previously read: "The State Architect shall publish....." has been revised to read: "The State Architect is required to publish...." This change is required, because the original language directed the regulation to the State Architect, and not to the CASp. The revised language informs the CASp that the State Architect has a requirement in statute to disclose the required information, and therefore, the CASp must disclose the required information to program administration so that it can be disclosed. Change is non-substantive.
- The last sentence has an added clause: "...on the Update My List of Certified Access Specialists Information form provided by the Program." The program offers a form, Update My List of Certified Access Specialists Information, which reflects the minimum information required to be disclosed by the State Architect to the public on the list of certified access specialists. Since the information required on the form reflects the requirements in the regulation, the form is not required to be incorporated by reference. The addition of this language in the regulation clarifies the requirement and falls under the forms exemption of §11340.9(c).

### Form DSA 600-A. Candidate Eligibility Application

- Under Education and Experience, item (A)(2), the text "if applicable" has been added to the list of license/certification. Candidates are only required to disclose information if they hold a license/certification listed; therefore, providing the information may not be applicable. Change is non-substantive.
- Under Education and Experience, item (B)(2), the text "if applicable" has been added to the list of license/certification. Candidates are only required to disclose information if they hold a license/certification listed; therefore, providing the information may not be applicable. Change is non-substantive.

### Form DSA 600-R. CASp Certification Renewal Application

- Under Contact Information, the heading "Certifications" has been changed to "License/Certification." This change provides clarity and consistency with the information requested, because a contractor's license is not a certification. Change is non-substantive.
- Under Contact Information, item "Certifications," the text "if applicable" has been added to the list of license/certification. Candidates are only required to disclose information if they hold a license/certification listed; therefore, providing the information may not be applicable. Change is non-substantive.

### CASp Examination, Certification, and Practice Standards Handbook

#### Page 16: Passing Score Information

- In the following sentence, the portion in italics was added to provide clarity and consistency with the CASp Program Regulations: "The passing standard for the examination is established based on the standard of competence in the profession, *in accordance with the NCCA Standards for the Accreditation of Certification Programs by the National Commission for Certifying Agencies*, using a criterion-referenced approach called the modified Angoff Method." The change is necessary for clarity and consistency with regulation text in section 134(c). Change is non-substantive.

#### Page 21: Record of Disability Access Inspection Certifications

- The sentence "In addition, the CASp should include in the record the status of DAIC issued during the previous certification period that were indicated as unissued on a prior record." has been revised to read "In addition, the CASp should include in the record the status of DAIC issued during any previous certification periods that were indicated as unissued on the prior record." This change takes into consideration that an accounting must be continuously maintained of unissued certificates, and an unissued certificate may have been issued to the CASp by DSA in a certification period prior to the immediately prior certification period. This change provides clarity and consistency with the change made to the regulations. Change is non-substantive.

- The sentence "The CASp Program reserves the right to request resubmission of the information if the information submitted is not legible and/or in an understandable format." has been revised to: "The CASp Program reserves the right to request resubmission of the record if the information submitted is not legible and/or not in an understandable format." has been revised for clarity. Change is non-substantive.

Page 23: Expired Certification

- In the last paragraph, the phrase "...including the status of DAIC issued during the previous certification period that were indicated as unissued on the prior record." has been revised to read "...and including the status of any DAIC issued during any previous certification periods that were indicated as unissued on the prior record." This change takes into consideration that an accounting must be continuously maintained of unissued certificates, and an unissued certificate may have been issued to the CASp by DSA in a certification period prior to the immediately prior certification period. This change provides clarity and consistency with the change made to the regulations. Change is non-substantive.

Page 26: Standards for the CASp who is Employed By or Under Retainer of a Jurisdictional Agency

- In the last sentence the word "Certificate" is replaced with "DAIC" for clarity. Change is non-substantive.

Page 29: Disability Access Inspection Certificates

- In the last sentence, the phrase "indicating the number of the certificate and the name and address of the facility inspected," was inadvertently omitted. The inclusion of this text is provided for clarity and consistency with the regulations. Change is non-substantive.
- In the last paragraph, the phrase "...including the status of disability access inspection certificates issued during the previous certification period that were indicated as unissued on the prior record." has been revised to read "...and including the status of DAIC issued during any previous certification periods that were indicated as unissued on the prior record." This change takes into consideration that an accounting must be continuously maintained of unissued certificates, and an unissued certificate may have been issued to the CASp by DSA in a certification period prior to the immediately prior certification period. This change provides clarity and consistency with the change made to the regulations. Change is non-substantive.

Page 31: Suspended Certification

- In the last paragraph, the phrase "...including the status of disability access inspection certificates issued during the previous certification period that were indicated as unissued on the prior record." has been revised to read "...and including the status of DAIC issued during any previous certification periods that

were indicated as unissued on the prior record." This change takes into consideration that an accounting must be continuously maintained of unissued certificates, and an unissued certificate may have been issued to the CASp by DSA in a certification period prior to the immediately prior certification period. This change provides clarity and consistency with the change made to the regulations. Change is non-substantive.

Page 31: Reinstatement

- The last sentence has been added: "If after certification expiration an appellant has had certification reinstated through the appeal process, the individual is subject to the requirements for certification renewal and the three-year certification period is established from the day after the original expiration date of the previous certification period." This addition of this text clarifies the requirements for reinstatement and is consistent with the requirements of the program regulations. Change is non-substantive.

### **LOCAL MANDATE DETERMINATION**

The proposed regulations do not impose any mandate on local agencies or school districts.

### **SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL 45-DAY NOTICE PERIOD OF NOVEMBER 21, 2014 TO JANUARY 5, 2015.**

#### Comment # 1 in reference to regulation 132(C)

In item 3 on Exhibit A, Mr. Al Thompson comments: *Individuals not holding a license but with a verification of work experience in ADA should be allowed to test. I submit a project manager has limited knowledge of ADA requirements (meaning not qualified) but an assistant to a CASp inspector would be extremely knowledgeable after a couple years of experience.*

#### Response to Comment #1

An individual not holding a license but with verification of work experience in ADA, such as an assistant to a CASp, is permitted to test for the CASp Examination after demonstrating work experience which includes assessments of facilities to determine compliance with applicable construction-related accessibility standards. This individual would submit an eligibility application under category C. As a result, there is no change proposed to the regulations based on this comment.

Comment #2 in reference to regulation 134(a)(2)

In Exhibit B, Mr. Chris Hansen comments: *Item #6 - I believe the ABA now uses the 2004 ADAAG for its regulations, not UFAS.*

Response to Comment # 2

The regulation has been revised to read only the Architectural Barriers Act of 1968 (ABA) with no specific standard addressed. The ABA is listed as an examination reference based on knowledge of the law. The *Uniform Federal Accessibility Standards* (UFAS), which is a standard used by U.S. Housing and Community Development (HUD) under the ABA, is covered in the examination references as a standard promulgated by the Department of Justice as stated in Section 134(a)(2).

Comment #3 in reference to regulation 134(a)(6)

In Exhibit B, Mr. Chris Hansen comments: *Item #2 - should it say something about "when adopted by a federal agency" or something?*

Response to Comment #3

The regulations address "accessibility guidelines and standards as promulgated by the United States Access Board." A collegiate dictionary defines the word "promulgate" as "put into effect by official proclamation" which is equivalent to adoption by a federal agency. The regulation has been revised to correct terminology and now the regulation states: "the accessibility guidelines and standards as developed by the United States Access Board and as promulgated by the United States Department of Justice." While the language has been revised, the references tested in examination have not changed due to this correction in terminology.

Comment #4 in reference to regulation 136(a)(3)(b)

In item 5 of Exhibit D, Mr. Bruce Monighan comments: *In the language of SUBCHAPTER 2.5. VOLUNTARY CERTIFIED ACCESS SPECIALIST PROGRAM, it says that continuing education can be "Participation in formal discussion groups with CASps sponsored by the Certified Access Specialist Institute (CASI) addressing the accessibility provisions of the California Building Code". However in the Certification Handbook dated May 2014 it says. "DSA does not pre-approve providers of continuing education". Is that a conflict in language?*

Response to Comment #4

DSA does not consider this a conflict in language. The Certified Access Specialist Institute (CASI) is not providing training at the regional discussion groups, only notification, administration in documenting attendance, and delivery of participation information to DSA. The discussion groups encourage interaction among CASps on

topics introduced by CASps that relate to the application and interpretation of the accessibility provisions of the California Building Code, and CASI does not provide any formalized training as part of the discussion groups.

Comment #5 in reference to regulation 137(a)(2)

In item 1 of Exhibit D, Mr. Bruce Monighan comments: *Your INITIAL STATEMENT OF REASONS states on this item that “requiring all CASps to submit proof of participation were alternatives considered, however, the audit system was the best balance of accountability for both the State Architect and the CASp.” If it is on an audit basis, which I think it should be, then the word “demonstrated” may be incorrect and might be something to the effect of “available to be demonstrated” or “certified by the certificate holder”.*

Response to Comment #5

DSA requires a CASp to request and retain proof of continuing education. "Demonstrated" completion means listing on the application for renewal the continuing education completed by the CASp for credit. While DSA does not require the submission of documentation to demonstrate completion of continuing education, it does require the CASp to demonstrate completion by explaining the continuing education completed on form DSA 600-R, in order to facilitate an audit of continuing education if randomly selected. DSA proposes no change to the regulations as a result of this comment.

Comment #6 in reference to regulation 137(a)(3)

In item 1 of Exhibit C, Mr. Tim McCormick comments: *Recommend you do not require the submission of logs for certificate use with renewals and leave the need of information to performance audits only such as proposed for continuing education.*

In item 2 of Exhibit D, Mr. Bruce Monighan comments: *Your INITIAL STATEMENT OF REASONS states “The State Architect believes it imperative to account for DAIC so that DAIC are not copied or deceitfully used by the CASp and the public.” Is there proof that this is or has happened? Absent statistics or facts that it is an actual problem you are adding complexity, costs and delay in the process of certification renewal. Additionally I am not sure it is appropriate or legal under privacy laws, to put in to public records the names and addresses of clients who have retained my services. If continuing education is on an audit basis, I see no reason why DIAC documentation should not also be on an audit basis.*

### Response to Comment #6

Statute requires a Disability Access Inspection Certificate (DAIC) to be issued to a business and facility owner as a record of the completion of an accessibility inspection and issuance of a report with a schedule. Statute also requires a DAIC log to be maintained by the CASp. DSA is required by statute to issue such certificates only to CASps. Certificates are watermarked and bear a unique number; therefore, the certificates must be accountable by both the CASps and DSA.

DSA has had complaints of a CASp with expired certification seeking purchase of DAIC from another CASp; CASps selling DAIC to other CASps with no reporting of the DAIC sold to DSA; and individuals with expired certifications providing accessibility inspection services and issuing DAIC. We have also encountered sign companies offering for sale "permanent" DAIC. There is also confusion in statute as to whom DAIC can be issued; therefore having the names and addresses of the individuals to whom the DAIC have been issued assists DSA in determining if the CASp understands the purpose of the DAIC and if the DAIC are being issued only to ADA Title III public accommodations. Having accountability of DAIC helps the public by assisting DSA in determining which CASps misuse or misunderstand the DAIC, and protecting the CASp from misuse of DAIC by the public.

In addition, DSA reports to the Legislature on the effectiveness of the statute. CASps can purchase DAIC in any quantity; therefore the selling of DAIC to CASps by DSA does not provide a measure in which to correctly evaluate the effectiveness of statute. Reconciling the number of DAIC issued to business and facility owners by the CASp, the number of DAIC not yet issued by the CASp, and the number of DAIC voided by the CASp against the number of DAIC purchased by a CASp from DSA assists DSA in evaluating if the public is availing itself of the services and benefits set in place by California Civil Code § 55.51-55.545.

We disagree with Mr. Monighan's comment that the names and addresses of clients who have retained Mr. Monighan's CASp services are confidential. Statute permits and encourages individuals who receive a CASp report to post the DAIC for public viewing. We have revised, however, the requirement for the CASp to submit to DSA the DAIC log required by California Civil Code § 55.53(e)(1), because included in this information is the determination of the report, which should remain private between the client and the CASp, and offers DSA no valuable information in which to reconcile its records. Our revised regulation now states: "Submission of a record that indicates the status of all Disability Access Inspection Certificates issued in the name of the CASp, and includes the number of the certificate and the name and address of the recipient, if applicable, to the State Architect or Designee." With the regulation indicating the status of all DAIC

issued to the CASp, it is our intent that this record shall include the status of DAIC not yet issued by the CASp and DAIC voided by the CASp.

Comment #7 in reference to regulation 141(a)(1)

In item 1 of Exhibit A, Mr. Al Thompson comments: *I find it unnecessarily discriminatory the fee to apply for eligibility for CASp, a contractor is charged more than an architect or building official. Whether a contractor is qualified or not can be determined by simply checking the CSLB website in fewer than 100 keystrokes on a computer. Allowing for all time of checking \$500 seems a very excessive price and definitely not equal treatment compared to the others.*

Response to Comment #7

While a contractor may hold a Class A or B license, possession of this license may not demonstrate that a contractor can apply the scoping and technical accessibility provisions of the California Building Code and the 2010 Americans with Disabilities Act Standards. For the parties who typically participate in a project, this is usually determined by the architect or engineer through the design process. In addition, in the Content of the Examination as published by the Contractors State License Board (CSLB), testing on accessibility provisions is not specifically stated; and therefore, a licensed contractor must demonstrate applicable knowledge with education and experience as is required in the regulations. In addition, references listed by the CSLB for the examination indicate the California Disabled Accessibility Guidebook (CalDAG) as a reference specific to accessibility standards. The CalDAG is not a recognized or adopted standard or guideline by any jurisdictional entity in California or in the United States; it is an independently published interpretive manual. For these reasons, additional information must be submitted by a licensed contractor to establish experience with application of the accessibility provisions in state and federal standards and guidelines. Furthermore, the reduction in the application fee for architects, landscape architects, civil engineers, and structural engineers is mandated by California statute. DSA proposes no change to the regulations as a result of this comment.

Comment #8 in reference to regulation 141(b)(1) and 141(b)(2)

In item 3 of Exhibit D, Mr. Bruce Monighan comments: *Your INITIAL STATEMENT OF REASONS states “requiring all CASps to submit proof of participation were alternatives considered, however, the audit system was the best balance of accountability for both the State Architect and the CASp.” So you are not assessing CE compliance except for audits which leads me to question why you have this fee. I would also argue that the “reassessment of qualifications” should be covered under the \$300 certification fee as detailed below.*

In Exhibit E, Ms. Janis Kent comments: *What is the difference between these two?* (Referencing certification renewal fees)

#### Response to Comment #8

The \$200 Reassessment of Eligibility Fee is assessed to cover accounting functions, and review and confirmation of submitted documentation by the CASp. Such documentation includes review of continuing education for appropriateness in meeting the specified requirements and for clarity in the event the CASp is selected for the random audit; a review with other state agencies that the CASp is not on any certified lists of obligators who have not provided child support payments or appears on a certified list of tax delinquencies; a review of information submitted regarding criminal convictions; a confirmation that professional licenses are still active with the respective licensing boards; a reconciliation of the required DAIC log information with the DSA DAIC database; an update to the CASp contact information; the printing of official CASp certificates; and the ability to cover postage and delivery fees.

The \$300 Certification Fee covers audit and disciplinary functions through the certification period; DSA management of DAIC, addressing consumer complaints; development and communication of applicable publications and handbooks; upkeep of the published CASp list on the DSA website; performing the random continuing education audit functions; and general administrative and IT costs associated with data maintenance.

DSA proposes no change to the regulations as a result of these comments.

#### Comment #9 in reference to regulation 161(d)

In item 4 on Exhibit D, Mr. Bruce Monighan comments: *Have you considered the implications of Proposition 47 in the reduction of some crimes to misdemeanors?*

#### Response to Comment #9

The provisions for disqualification of eligibility are not addressed in terms of felony crimes versus misdemeanor crimes, they are addressed in terms of how the act is considered to be substantially related to the qualifications, functions, or duties of a CASp or prohibit performance in a manner necessary to ensure public health, safety, and welfare. Provisions for reconsideration upon expungement and/or rehabilitation are included in the regulations so that a candidate can request a reassessment of qualifications at any time. In addition, such terminology is in California statute, and its provisions apply to the regulatory requirements of certification and licensing boards for candidates seeking licenses and certifications issued by the state of California. DSA proposes no change to the regulations as a result of this comment.

Exhibit F is a comment in acknowledgement of DSA's rulemaking effort.

Exhibit G.1, Exhibit G.2, and Exhibit H are not relevant to the regulations in the proposed rulemaking and therefore warrant no comment.

Item 2 on Exhibit A is not relevant to the regulations in the proposed rulemaking and therefore warrants no comment.

### **SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY NOTICE PERIOD OF JANUARY 26, 2015 TO FEBRUARY 10, 2015.**

Comment #10 in reference to regulation 137(a)(3) and 138(c).

In Exhibit I.1, Mr. Neal Casper comments: *The requirement to identify the client name and address for which a certificate is issued will typically violate the confidentiality clause within most CASp/Client contracts. Not all client's choose to display the inspection certificates or disclose to the public that a CASp inspection has taken place. I urge DSA to reconsider this requirement. At the very least, it should be revised to address how DSA will use this information and should include a prohibition that DSA will not disclose the information to other parties.*

Subsequently, in Exhibit I.2, Mr. Neal Casper comments: *If DSA moves forward with this revision, please be aware that existing contracts CASp's have with Clients very likely prohibit the release of this information without a subpoena. I would encourage DSA to add/modify the requirement to disclose DAIC client name and addresses only to projects contracted after the effective date of the revision. This will allow CASp's to modify their future contracts to disclose this disclosure requirement to Client's.(sic)*

#### Response to Comment #10

Statute requires a Disability Access Inspection Certificate (DAIC) to be issued to a business and facility owner as a record of the completion of an accessibility inspection and issuance of a report with a schedule. Statute also requires a DAIC log to be maintained by the CASp. DSA is required by statute to issue such certificates only to CASps. Certificates are watermarked and bear a unique number; therefore, the certificates must be accountable by both the CASps and DSA.

DSA has had complaints of a CASp with expired certification seeking purchase of DAIC from another CASp; CASps selling DAIC to other CASps with no reporting of the DAIC sold to DSA; and individuals with expired certifications providing accessibility inspection

services and issuing DAIC. We have also encountered sign companies offering for sale "permanent" DAIC. There is also confusion in statute as to whom DAIC can be issued, therefore having the names and addresses of the individuals to whom the DAIC have been issued assists DSA in determining if the CASp is understanding the purpose of the DAIC and if the DAIC are being issued only to ADA Title III public accommodations. Having accountability of DAIC helps the public by assisting DSA in determining if CASps are issuing DAIC according to the requirements of statute, protecting the CASp's clients by examining if the CASp is operating within the requirements of statute, and protecting the CASp from misuse of DAIC by the public.

In addition, DSA reports to the Legislature on the effectiveness of the statute. CASps can purchase DAIC in any quantity, therefore the selling of DAIC to CASps by DSA does not provide a measure in which to correctly evaluate the effectiveness of statute. Reconciling the number of DAIC issued to business and facility owners by the CASp, the number of DAIC not yet issued by the CASp, and the number of DAIC voided by the CASp with the number of DAIC purchased by a CASp from DSA assists DSA in evaluating if the services and benefits set in place by California Civil Code § 55.51-55.545 are being exercised by the public.

We disagree with Mr. Casper's comment that the names and addresses of clients who have retained Mr. Casper's CASp services are confidential. Statute permits and encourages individuals who receive a CASp report to post the DAIC for public viewing, because its intent is to discourage those seeking to bring an accessibility discrimination claim against a place of public accommodation. In addition, the State of California is not subject to the terms of the agreement that Mr. Casper has with his clients. DSA's responsibility is to monitor for effectiveness and compliance of the program. We cannot effectively determine the effectiveness of statute by having the CASp submit only a partial list of the status of DAIC issued in the name of the CASp. The record requested for DSA's intended use as explained. Our policy is to reconcile such data within 30 days of receipt and then destroy the record received from the CASp according to DSA's retention schedule of documents.

DSA proposes no change to the regulations as a result of these comments.

Comment #11 in reference to regulation 137(a)(3) and 138(c).

In Exhibit J, Mr. Scott Woody comments:

1. *Suggestion - DSA should have a Simple Certificate Log (excel) that can be downloaded from the DSA site – so that all the information is consistent going back into for review during renewal period.*

2. *Please Clarify – Will there be categories on the Certificate Log: Issued – Inspected/Pending, Issued – Meets Applicable Standards, Void, Not-Used? In the statement of reason – it looks like just a simple log – Number and address ONLY. However, I have certificates that have been voided and some not currently used. So if DSA needs to track the certificates, would it not make sense to have a status of the Certificate and Date of issuance? If all CASp's need to create and send in a log – let's turn-in the proper information that makes sense....if not, why turn-in a log at all?*
3. *Please Clarify - What is the Term Period of the log to be submitted for renewal? Will the Log be any and all prior certificates that were issued and in possession, since 2008 (Start of the CASp Program)? Or is it only a log, that is for the past current three year period of prior term or from the year that the modifications/amendment is passed to the Program?*

#### Response to Comment #11

In response to comment 11.1, DSA will take into consideration Mr. Woody's suggestion, and will establish a procedure for the submission of the record.

In response to comment 11.2, DSA is requiring in regulation the following: "Submission of a record that indicates the status of all Disability Access Inspection Certificates issued in the name of the CASp, and includes the number of the certificate and the name and address of the recipient, if applicable, to the State Architect or Designee." The requirement is to include the status of all DAIC issued in the name of the CASp. DSA procedure will indicate that for those issued as a result of an inspection, the CASp will submit the number of the DAIC and the name and address of the recipient. If a DAIC has been voided by the CASp, then the CASp will indicate "VOID" and the DAIC number. If a DAIC is still in the possession of the CASp and is unissued and not void, then the CASp will indicate "NOT YET ISSUED" and the DAIC number.

In response to comment 11.3, DSA policy will be to reconcile the certificate log data within 30 days of receipt and then destroy the record received from the CASp. For a subsequent certification period, the CASp will only need to report the status of all certificates issued in the name of the CASp since the last certification renewal cycle, with the exception of the DAIC that were indicated as unissued in the previous renewal cycle and were subsequently issued or voided, or have an unchanged status of "unissued".

DSA proposes no change to the regulations as a result of these comments.

Comment #12 in reference to regulation 113(d).

In Exhibit K, Mr. Bryan Liebig comments: *Does the following mean that as An Architect...I cannot review a person's property and find compliance, or non-compliance to a facility in need of Design Improvements?*

Response to Comment #12:

As an architect, Mr. Liebig can provide accessibility inspection services. The Construction - Related Accessibility Standards Compliance Act (Civil Code § 55.51-55.545) offers a legal benefit to a business owner (court stay, early evaluation conference, and reduced statutory damages) if a CASp performs the inspection. This legal benefit is not extended to a business owner that does not hire a CASp, but instead chooses to hire an architect or other professional to provide an accessibility inspection.

This provision is further clarified in Section 114 of the regulations. DSA proposes no change to the regulations as a result of this comment.

Comment #13 in reference to regulation 134(d).

In Exhibit L, Mr. Richard Halloran comments: *I would suggest that for those candidates that have already passed one portion of the exam, the limit be three years from the adoption of the changes. If I read this section correctly, as written this would require a candidate who took the exam and passed one part some time ago to complete the second part within three years from when they took the exam. This could give some candidates a very short notice and a small window to comply.*

Response to Comment #13:

When the examination format changed in October 2013 from a one-part examination to a two-part examination, policy was established that the candidate had three years to pass both parts, with the three-year period commencing upon passage of the first part. All candidates are aware of this policy, and this policy has not changed. DSA disagrees with Mr. Halloran's comment that those in the examination process would be treated unfairly, since extending the three-year period for those that have already passed one part would give them an unfair advantage, as compared to those who have not yet started the examination process. DSA proposes no change to the regulations as a result of this comment.

**SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY NOTICE PERIOD OF JULY 10, 2015 TO JULY 27, 2015.**

Comment #14 in reference to regulation 136(a).

In Exhibit M, Mr. Tim McCormick comments: *Revised provisions do not give sufficient credit for maintenance training on the accessibility provisions in the current edition of the California Building Code. Also need to emphasize importance of regulatory update training.*

*Of the 15 CEU units:*

- 1. 5 must be on regulatory updates or DSA sponsored discussions. Regulatory update classes are critical. This section is better if regulatory updates only and credit given for discussions elsewhere.*
- 2. Does not specifically include enough credit for attending California Building Code classes on Chapters 11A and 11B, which are critical to CASp duties unless the CASp is teaching the class.*

*Recommend language be revised as follows to address these concerns:*

*136(a)4(B) 2(B)6 Active participation in the CASp Discussion Group offered by the State Architect, addressing the accessibility provisions of the California Building Code. One CEU equals one hour of participation and only one CEU is granted per session.*

*136(a)2(A) Coursework that increases knowledge and understanding of state and federal accessibility regulations, standards, and guidelines. One CEU equals one hour of instructional time.*

Response to Comment #14:

Item #1: DSA-sponsored Discussion Groups include a format where DSA presents a topic for discussion and then the issue is discussed by the specialists. After the topic is addressed, time is set aside for individuals to present topics for discussion to garner interpretive opinions from the group, which includes how CBC provisions relate to the federal requirements. This offers an opportunity for a group of specialists to analyze in depth the CBC, relating to a particular topic, with DSA moderating the discussion. This provides DSA an opportunity to comment on interpretations from the perspective of DSA, the agency that actually conducts the accessibility building standards rulemaking for the CBC. DSA does not review of private classes offered by others on updates to the CBC, and cannot comment on the accuracy or veracity of the interpretive information presented by others. DSA believes, and feedback from the CASps who regularly attend the discussion groups supports, that this discussion is invaluable to understanding the CBC.

Item #2: A CASp is required to demonstrate sufficient knowledge of state and federal accessibility standards. Revised provisions require a minimum of five CEUs in the state standards of the California Building Code (CBC). With the exception of the introduction of new sections which address regulations that are not addressed on the federal level, other changes to the CBC usually provide clarification on the existing regulations. DSA insists that a minimum of 5 CEUs, which translates to a minimum of five hours of instruction, is sufficient to address regulatory updates to the CBC which may occur on an 18-month rulemaking cycle. The CASp can always elect to take more, and establishing a minimum on the state standards ensures some training is provided.

With regard to Mr. McCormick's proposed amendments to the regulations, the regulation states that the balance of the credits, after the minimum of five on the CBC, may be in coursework on federal accessibility updates. This provision only addresses coursework, and the word "may" is included which indicates election by the CASp to consider coursework on the federal standards, but does not require such coursework should the CASp pursue additional training on the state requirements. The equivalent activity credit provided in section 2(B) addresses equivalent activity in both the CBC and federal standards, which further demonstrates that the balance of the ten credits can be in either state or federal standards.

Comment #15 in reference to the regulatory process.

In Item 1 of Exhibit O, Mr. Mankin comments: *The proposed code change fails to comply with 4459.6: The State Architect shall appoint an ad hoc advisory committee to assist in developing the requirements for certification as access specialists pursuant to Section 4459.5. This committee shall include individuals with disabilities, and a representative from each of the following:*

- (a) *The Governor.*
- (b) *The Secretary of Health and Human Services.*
- (c) *The Attorney General.*
- (d) *Local government.*
- (e) *Architects.*
- (f) *Building inspectors.*
- (g) *Business.*

Response to Comment #15:

In Government Code § 4459.5, the charge provided to the ad hoc committee was to establish the criteria for certification in terms of the minimum required knowledge, skills, and abilities, (KSAs) and DSA was charged to administer the program. In establishing the CASp program in 2003, the State Architect appointed the required ad hoc advisory committee to establish the criteria for certification. Documentation from this ad hoc

committee supports DSA's interpretation that "developing the requirements" is consistent with establishing the criteria of the knowledge, skills, and abilities (KSAs) to become a CASp through examination and to be a CASp in practice. DSA declares that this present regulatory action is administrative, and that the KSAs have not been amended.

Government Code § 4459.6 did not require the ad hoc committee to be reconvened for subsequent administrative rulemakings. Administrative regulations pertain to CASp and those seeking to become CASp, in establishing how to become certified, how to maintain certification, and the fees associated with the application, examination, certification, and certification renewal process, none of which address the KSAs required of a CASp.

Two specific amendments in the rulemaking include requirements that were expressed by the original ad hoc committee that required CASp to be familiar with state and federal standards. Amendments addressed by this rulemaking permit DSA to test for knowledge of new and revised state and federal standards as they become effective. This allows DSA to include these new requirements as examination content in a timely manner without having to pursue additional rulemaking. DSA believes testing on the standards as they are updated is consistent with the intent of the original ad hoc committee requirements as established through the KSAs. Professional standards, which were stated or implied in the KSAs but not included in the original rulemaking, are included in this rulemaking because of subsequent statutory changes regarding the work of a CASp. These changes necessitated that DSA establish such requirements in regulation in order to protect public health, safety, and welfare. The comments presented in the letter by Mr. Mankin support the inclusion of these professional standards in the rulemaking.

DSA will not reconvene the ad hoc committee for administrative rulemaking for the reasons stated.

Comment #16 in reference to regulation 111.

In Item 2 of Exhibit O, Mr. Mankin states: *Proposed DSA language is vague about what and where the CASp has a role. "accessibility" and is too vague. (sic) Change to: "evaluate access compliance for persons with disabilities at public accommodations & commercial facilities."*

Response to Comment #16:

Based on this comment, DSA has decided to withdraw the amendment of "evaluate accessibility" and retain the language "promote access". DSA will perform further study to evaluate if amended language should be included in future rulemaking.

Comment #17 in reference to regulation 112.

In Item 3 of Exhibit O, Mr. Mankin states: *No delegation or authority in Gov. Code 4453 to designate Certification\*/ to others. (sic) Delete "Designee".*

Response to Comment #17:

DSA concurs that as used in the proposed amendment, "Designee" may be an inappropriate addition. While the State Architect designates that the individuals within DSA administering the certification program are the "Designee," the inclusion in this regulation may create confusion, and therefore, DSA proposes to delete the amendment and retain existing regulation language.

Comment #18 in reference to regulation 113(d).

In Item 4 of Exhibit O, Mr. Mankin states: *This change fails to comply with the original intent of the CASp program, to provide business owners with some level of assurance that the services included in Section 113 where performed by Certified Access Specialist which have demonstrated a high level of knowledge and competency as an Access Specialist and have gone through the certification process passing the CASp examination. See Civil Code § 55.53 (c) which is a requirement of CASp duties:*

*"(c) Every CASp who conducts an inspection of a place of public accommodation shall, upon completing the inspection of the site, provide the building owner or tenant who requested the inspection with the following notice, which the State Architect shall make available as a form on the State Architect's Internet Web site:*

*'NOTICE TO PRIVATE PROPERTY OWNER/TENANT: YOU ARE ADVISED TO KEEP IN YOUR RECORDS ANY WRITTEN INSPECTION REPORT AND. . . .'*

*Change: CASp certification is required to perform the services stipulated in Section 113(a)-(d).*

Response to Comment #18:

Mr. Mankin is correct that Civil Code § 55.53(c) requires the CASp to issue this notice as part of the inspection report. DSA proposes to amend the regulation to state "Issue inspection reports and Disability Access Inspection Certificates in accordance with the requirements of Civil Code § 55.53."

Comment #19 in reference to regulation 132(a)(2).

In Item #5 of Exhibit O, Mr. Mankin states: *"A consultant" is too broad! The CASp exam is designed to determine entry level specialists' KSA's, not test people with no access employment practice experience. Add: "access compliance consulting entity, and/or."*

Response to Comment #19:

Mr. Mankin proposes to amend existing language that is to remain unchanged in regulation. DSA proposes no change to the regulation as a result of this comment.

Comment #20 in reference to regulation 132(a)(2)(E).

In Item #6 of Exhibit O, Mr. Mankin states: *DSA Project Inspector certified by the State Architect program has no access education, training, or licensing requirement in their profession. Also, DSA Inspector Program does not meet recognized testing standards -- less than 1 hour training every 2 years is all they get. Delete!*

Response to Comment #20:

DSA has withdrawn all amendments to the eligibility criteria, with the exception of formatting. DSA will perform further study to evaluate if amended language should be included in future rulemaking.

Comment #21 in reference to regulation 132(b)(2).

In Item #7 of Exhibit O, Mr. Mankin states: *"A consultant" is too broad! The CASp exam is designed to determine entry level specialists' KSA's, not test people with no access employment practice experience. Add: "access compliance consulting entity, and/or."*

Response to Comment #21:

Mr. Mankin proposes to amend existing language that is to remain unchanged in regulation. DSA proposes no change to the regulation as a result of this comment.

Comment #22 in reference to regulation 132(b)(2)(E).

In Item #8 of Exhibit O, Mr. Mankin states: *DSA Project Inspector certified by the State Architect program has no access education, training, or licensing requirement in their profession. Also, DSA Inspector Program does not meet recognized testing standards -- less than 1 hour training every 2 years is all they get. Delete!*

Response to Comment #22:

DSA has withdrawn all amendments to the eligibility criteria, with the exception of formatting. DSA will perform further study to evaluate if amended language should be included in future rulemaking

Comment #23 in reference to regulation 134(b).

In Item #9 of Exhibit O, Mr. Mankin states: *This component for meeting nationally recognized testing standards must be mandatory to protect the CASp program, rather than an announcement or statement in (c). Add: "...administered solely in accordance with 134 (c). by ..."*

Response to Comment #23:

Certifying agencies do not administer examinations, they identify a standard by which examination administrators can set a fair and recognized passing standard for the examination. Item 134(c) addresses that DSA, as the examination administrator, establishes the passing standard in accordance with this recognized method. DSA proposes no change to the regulations as a result of this comment.

Comment #24 in reference to regulation 141(a)(1)(A).

In Item #10 of Exhibit O, Mr. Mankin states: *Fees do not reflect limited personnel training budgets of local building departments & disproportionate for typical employees of an agency having jurisdiction. The Advisory Committee found that the total affordable fees should be less than \$200. Fees were originally based on inclusion of "an estimated \$100,000 administrative judge's fees the CASp Program would need if someone's certification was removed. This reason has never been used as a basis for setting fees for program viability. It is perhaps a "red herring" to stunt the growth of the CASp Certification program -- which it does. \$1,700.00 for a certification! Delete (A), re-letter (B) to (A) so only one category.*

Response to Comment #24:

This rulemaking process did not address a change to the established fees for certification. Mr. Mankin's comments are outside the scope of the proposed rulemaking.

Comment #25 in reference to regulation 151(d).

In Item #11 of Exhibit O, Mr. Mankin states: *YES, ABSOLUTELY! This code language prevents blindly signing off on projects never seen by a CASp, and prevents delegation to non-certified others. It matters what is NOT in a survey inspection if items required a not there at the site. (sic) None.*

Response to Comment #25:

This comment is in support of the proposed rule.

Comment #26 in reference to the proposed rulemaking.

In paragraph #1 of Exhibit P, Ms. Barbosa states: *I am a civil rights attorney specializing in disability litigations working with disability advocates to respond to the*

*15-Day Notice of Proposed CASp program. We have serious concerns with the consistent eroding of the civil rights of persons with disabilities, through the lack of opportunity for the public to participate in the creation of these regulations that adversely affect disabled persons in the built environment. The concerns with the currently proposed regulations for CASp is based on the lack of participation by the disability community, and the content of many of the regulations whose purpose is in conflict with the mandates requiring the State Architect to be in the forefront of developing standards to make public facilities “accessible to and usable by” persons with disability. The following comments, respond to both areas of concern.*

Response to Comment #26:

DSA states that the rulemaking file provides evidence of the involvement of the public in the rulemaking process. DSA is required by the APA to provide an opportunity for the public to comment on the proposed regulations. The APA requires DSA to seek stakeholder involvement in the development of the regulations if the regulations involve complex proposals or constitute a large number. DSA states that the proposed regulations are clarifying amendments to existing regulations and that few new regulations have been introduced; therefore DSA considers the proposed rulemaking neither complex nor numerous.

DSA CASp Program Regulations are administrative and apply only to individuals who are certified as CASp and individuals seeking certification. The DSA CASp Program Regulations are not building standards that affect disabled persons in the built environment. Individuals with disabilities are on our stakeholder mailing lists, have been invited to comment on the proposed rulemaking as a stakeholder, and have done so as is evidenced in the rulemaking package.

Comment #27 in reference to the proposed rulemaking.

In paragraph #2 of Exhibit P, Ms. Barbosa states: *We request that DSA take back the proposed regulations, set up an ad hoc committee as required for CASp regulations, and start the process for working on meaningful and valid revisions to CASp program. If the State Architect does not take back the proposed regulations, we ask for a public hearing to have public participation to evaluate these proposed regulations.*

Response to Comment #27:

The requirement for the ad hoc committee is in statute, Government Code § 4459.6. The authority of DSA as provided in statute was to convene the ad hoc committee to establish the criteria (KSAs) and for DSA to administer the program, and to have done so by January 1, 2005. DSA did not and will not reconvene the ad hoc committee for administrative rulemaking for the following reasons:

- In any collegiate dictionary, the definition of ad hoc states "for the particular end or case at hand without consideration of wider application." With a specific date of January 1, 2005, it can be reasonably determined that the purpose of the ad hoc committee ceased with the establishment of the criteria for the program.
- In establishing the CASp program in 2003, the State Architect did appoint an ad hoc advisory committee to establish the criteria for certification. Documentation of the deliberations of this ad hoc committee supports DSA's interpretation that "developing the requirements" is consistent with establishing the minimum criteria of the knowledge, skills, and abilities (KSAs) to both become a CASp through examination and to be a CASp in practice. DSA declares that this present regulatory action is administrative, and that the criteria for the KSAs have not been amended.
- Government Code § 4459.6 did not require the ad hoc committee to be reconvened for subsequent administrative rulemakings, and the documentation of the ad hoc committee's proceedings clearly state that the ad hoc committee was temporary, and not required for administrative regulations. Administrative regulations pertain to CASp and those seeking to become CASp, in establishing how to become certified, how to maintain certification, and the fees associated with the application, examination, certification, and certification renewal process, none of which address the KSAs required of a CASp. The CASp Program has been established for seven years, therefore, it is reasonable to consider that both DSA, our Subject Matter Experts who are CASp, and the individuals certified can evaluate and determine if proposed amendments to the regulations are appropriate for the individuals that are required to abide by them.

Two specific amendments in the rulemaking include requirements that were expressed by the original ad hoc committee that required CASp to be familiar with state and federal standards. Amendments to the examination content addressed by the rulemaking reflects verbiage that permits DSA to test standards that are declared as in effect by state and federal government in a timely manner without having to undertake additional rulemaking to include them as examination content. DSA believes testing on the standards as they are updated is consistent with the intent of the original ad hoc committee requirements as established through the KSAs. Professional standards, which were stated and/or implied in the KSAs but not included in the original rulemaking, are included in this rulemaking because subsequent statute regarding the work of a CASp necessitated that DSA establish such requirements in regulation in order to protect public health, safety, and welfare. The comments presented in the letter by the group represented by Ms. Barbosa supports the inclusion of these professional standards in the rulemaking.

In regard to Ms. Barbosa's request for a public hearing on the regulations, according to the APA a request for a public hearing must be submitted during the 45-day comment period, as such a request is required to be submitted a minimum of 15 days before the end of the 45-day comment period. In the APA, 15-day comment periods recognize that significant changes from the 45-day comment period have not been proposed, and the length of duration of the 15-day comment period does not provide the requisite 15-day notice before the end of the comment period to request a public hearing. To further clarify, the purpose of a public hearing is to receive comments on the proposed rulemaking by the public, but not to debate or address the comments raised in the public hearing. Ms. Barbosa has addressed her specific concerns and the concerns of the group in writing in this letter. Responses to comments by DSA are required to be addressed in writing in the rulemaking file. DSA did grant, however, a public hearing on the regulations on November 10, 2015, as requested, even if it was not required.

Comment #28 in reference to the proposed rulemaking.

In paragraph #3 of Exhibit P, Ms. Barbosa states her qualifications of a career in access litigation as the basis for the comments addressed in the letter. At the end of the paragraph, Ms. Barbosa states: *I am well-versed on how the proposed standards and regulations are used in the public and their abuse as well. We have witnessed the CASp program used to deter enforcement of meritorious lawsuits by back-dating reports and by the sale of certificates without any inspections. We have not been able to determine that any CASp has been disciplined or that any certificates have been deemed invalid by DSA.*

Response to Comment #28:

Ms. Barbosa provides her participation on the ad hoc committee of the Certified Access Specialist program and her history with access litigation as basis to establish with some knowledgeable authority her opposition to the rulemaking process undertaken by DSA. Such history may influence the method in which comments made by Ms. Barbosa and responses to comments made by DSA are perceived. To clarify, Ms. Barbosa attended only the first of seven in-depth meetings of the ad hoc committee, and in that meeting was insistent that the tenure of the ad hoc committee was temporary, and not intended to reconvene in the future for any additional meetings relating to regulatory action or evolution of the program.

It is clear by this comment that Ms. Barbosa is confusing CASp Program Regulations, which are administrative and pertain only to CASps and those seeking to become certified, and the requirements of Civil Code § 55.51-55.545, which offers legal protections to business owners that hire CASps. The public cannot abuse the CASp regulations, because the CASp Program regulations do not apply to the public. Civil

Code § 55.51-55.545 requires that a CASp issues the Disability Access Inspection Certificate (DAIC), which is a record of inspection and not a certificate of compliance, to a business owner who hires a CASp. Therefore, "the sale of certificates without any inspections" provides no legal benefits to the owner; it is only the inspection report that offers this benefit, and for this reason, there is no need to invalidate DAIC.

While DSA does pursue disciplinary action against any CASp who engages in misconduct, such actions would have to be reported to DSA. At this time, we have not had any such reported misconduct, and if Ms. Barbosa has "witnessed" misconduct, it is incumbent of her to submit a CASp Complaint Form to DSA, available on our website, so that DSA can initiate an investigation.

Comment #29 in response to the proposed rulemaking.

*In paragraph #4, #5, and #6 of Exhibit P, Ms. Barbosa states: It is clear from my work with DSA over the past 20 years, that the protections contemplated by the Legislature in granting DSA the initial authority to propose regulations to implement Gov. Code §4450 has been unduly influenced by business interests who are the subject of enforcement under California civil rights laws. More disturbing is the extreme difficulty for the public to understand and make sensible comments to regulations that are so complex and require access to building codes and regulations that are not readily available to the general public. Citations to the statutes are incomplete and do not provide the public sufficient notice of the authority, or lack of authority, for the regulations proposed by DSA. Title 24 is on the DSA website, but the Government Codes, the Health & Safety Codes and Title 21, are not all available.*

*The business lobbyists have the resources to pay attorneys and others to provide revisions favorable to their business positions, but the public is uniquely disadvantaged in the process. I have access to Westlaw research, but this is an expensive service not available to the public. I pay more than \$700 a month for this research service. The disability community, with very high unemployment cannot be expected to do the research to respond to the proposed regulations in a short time and without discussion prior to the notices being sent. This is why participation by the disability community prior to the issuance of proposed regulations is so necessary.*

*These comments will set forth the history and requirements of under the Administrative Procedures Act (APA") that must be followed in order to propose and adopt valid regulations under the existing civil rights statutes for the CASp program. Thank you for your consideration of these comments.*

Response to Comment #29:

Ms. Barbosa's preface "It is clear from my work with DSA over the past 20 years" should be correctly noted as to her most recent work with DSA with the ad hoc committee, with the exception of comments raised as a member of the general public commenting on proposed building standards through the building standards rulemaking process.

All California statutes cited in the CASp Program regulations are readily available to the public for free on the internet, as well as the California Building Code and the CASp Program Regulations. California makes available all state laws and legislative history on the [California Legislature's Website](#), therefore, an expensive subscription to Westlaw research is not necessary to access California statutes. The California Building Code, or Title 24 as referenced by Ms. Barbosa, is available on the [California Building Standards Commission](#) website as a free reference. The CASp Program Regulations, or Title 21, are continuously available on the [DSA CASp Program](#) website.

Paragraphs #7, #8, and #9 are not relevant to the proposed regulations and therefore warrant no comment.

Comment #30 in reference to the proposed rulemaking.

In paragraph #10 of Exhibit P, Ms. Barbosa states: *It is this authority, under Gov. Code §4450 that gives the State Architect the authority and the obligation to propose regulations to "assure access and usability for persons with disabilities." Gov. Code §4455.9 provides the authority for the specific CASp program, but does not relieve the State Architect from his/her responsibility to assure "full and equal access" for persons with disabilities in all of the proposed regulations submitted by the State Architect.* Include related comment as footnoted in previous paragraph: *We are citing portions of the pertinent regulations, because DSA has failed to make the codes and regulations available to the general public. Without reviewing the codes and regulations, the public is at a great disadvantage and must rely on DSA to correctly cite and interpret regulations.*

Response to Comment #30:

The requirements of Government Code § 4450 apply only to building standards rulemaking and do not apply to the administrative rulemaking of the CASp program, because CASp program rulemaking does not affect building standards, or directly affect individuals with disabilities.

DSA's rulemaking process to establish building standards is based upon DSA authority under Government Code § 4450. Such building standards affect the built environment, which directly affects how individuals with disabilities interface with the built

environment; and their development requires the participation of individuals with disabilities prior to submitting regulations for the 45-day comment process. DSA does seek and encourage involvement prior to the submission of regulations to the California Building Standards Commission when proposing regulations that affect building standards.

The rulemaking process to establish regulations for the CASp Program is administrative, and applies only to those certified and to those seeking to become certified. As administrative regulations, they cannot "assure access and usability for persons with disabilities" nor can they provide "full and equal access" for persons with disabilities. DSA administrative regulations are submitted to the Office of Administrative Law, not the California Building Standards Commission.

As previously stated, all California statutes, codes, and regulations are readily available for free on the internet.

Comment #31 in reference to the proposed rulemaking.

*In paragraph #11 of Exhibit P, Ms. Barbosa states: Gov. Code §4450 also requires the State Architect to consult with "at least one private organization representing and comprised of persons with disabilities." Additionally, the regulations for adopting regulations proposed by the State Architect require specific consultation of proposed regulations before the 45- day comment period, so that persons with disabilities are not disadvantaged by simply fighting regulations that DSA has already decided to propose to the Office of Administrative Law ("AOL"). We know that disabled persons have repeatedly requested the State Architect allow the disability community meaningful participation in the process to propose regulations that will adversely affect them. Currently, the disability community is left with the only of opposing CASp regulations that have already been approved by DSA. Include related comment as footnoted: We will be submitting a Public Records Request to see what organizations DSA consulted with prior to the giving notice of the proposed CASp regulations.*

Response to Comment #31:

Please refer to the DSA response to Comment #29. DSA states that consulting with individuals with disabilities prior to the 45-day comment process is only a requirement for regulations pertaining to building standards, and not a requirement for administrative regulations, and therefore, Government Code § 4450 does not apply. In addition, Ms. Barbosa has not clarified how the proposed administrative regulatory amendments pertaining to CASp adversely affect individuals with disabilities, and therefore, DSA cannot address this portion of the comment.

Comment #32 in reference to the proposed rulemaking.

In paragraph #12 and #13 of Exhibit P, Ms. Barbosa states: *The APA directs DSA to actively involve the public, including persons with disabilities, before issuing any notices for public comment. Gov't 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.*

*The proposed regulations are complex, confusing and cite references that are not easily available to the public. The State Architect has failed to comply with this important requirement for public participation by persons with disabilities. More importantly, Gov. Code §4459.5, the authority cited in the proposed regulations, includes section 4459.6, which states:*

*The State Architect shall appoint an ad hoc advisory committee to assist in developing the requirements for certification as access specialists pursuant to Section 4459.5. This committee shall include individuals with disabilities, and a representative from," the Governor, the Secretary of Health and Human Services, the Attorney General, local government, and architects. (sic)*

Response to Comment #32:

DSA reiterates that the CASps and those seeking certification are the only groups subject to the proposed regulations. Ms. Barbosa has not explained which, if any, of the proposed regulations are complex or confusing so that DSA can respond with specifics. DSA also states that a majority of the amendments provide clarity to existing regulations, and very few new regulations are proposed. As previously stated, references cited in the regulations are available to the public without charge for viewing at any time. As previously stated, the ad hoc committee is not required to be convened for administrative rulemaking.

DSA did perform outreach to CASps in two separate meetings in conjunction with the Certified Access Specialist Institute to discuss some of the proposed amendments being considered, although this was not required because DSA did not feel that the regulations were "*complex proposals or a large number of proposals that cannot easily be reviewed during the comment period.*" The relatively few comments received from CASps in the first two comments periods supports this argument.

Comment #33 in reference to the proposed rulemaking.

In paragraph #14 of Exhibit P, Ms. Barbosa states: *DSA has failed to comply with the required process for preparing and noticing the proposed CASp regulations, DSA has also failed to provide persons with disabilities the reasonable opportunity to*

*meaningfully participate in the formation of the proposed regulations that will adversely affect their right to full and equal access. It is not “meaningful” participation to limit the disability community with objecting to proposed regulation that have been approved by DSA. The notice to the public regarding these proposed regulations was also woefully inadequate. Many of us who have been actively participating in proposed rule-making were shut out, because we never received the 45-day notice. As the result the disability community is left with 3 minutes of public comment that are ignored, or insufficient to discuss the complex problems with the proposed regulations. Some of us who have made Request for Special Notice for DSA rule-making and 45-day notices are no longer on the list of interested parties. We will be submitting a new Request for Special Notice with a list of disabled persons to ensure future notices.*

Response to Comment #33:

The notice of the regulations was sent out to the email addresses in the DSA database, which includes all individuals that have registered with DSA to receive information on proposed rulemaking for building standards. Additionally, all information was posted in the Notice Register and has been posted and remains posted on the DSA CASp website since November 21, 2014, the start of the initial 45-day comment period. DSA has verified that our list includes the email for individuals with disabilities that have been involved historically with rulemaking for building standard accessibility. Email addresses remain on the list until an email is undeliverable, or no longer valid, as determined by the recipient's email service provider. DSA is not required to contact individuals whose email addresses are undeliverable, and in fact has no method of doing so as the only information required for individuals to register is a valid email address. An individual that changes his/her email address or service provider would need to re-register with DSA to receive direct communication on access-related issues.

In addition, the APA does not permit DSA to ignore any comment, nor does it require discussion on the proposed regulations. The APA requires that comments are received either written within the advertised comment periods, or orally through a public hearing requested during the 45-day comment period, and then requires DSA to answer each comment with a written response. With regard to the comments, DSA can either amend the regulations, or DSA can respond to the comment as to why the regulation is necessary and requires no further amendment in the Final Statement of Reasons.

Comment #34 in reference to the proposed rulemaking.

In paragraph #15 of Exhibit P, Ms. Barbosa states: *The APA directs DSA to actively involve the public, including persons with disabilities, before issuing any notices for public comment. Gov't Code § 11346.45, states:*

*A major purpose of the APA is to provide a procedure for persons or entities affected by a regulation to be heard on the merits in its creation, and to have notice of the law's*

*requirements so they can conform their conduct accordingly. (Morales v. California Dep't of Corr. & Rehab., (2008) 168 Cal. App. 4th 729, 736-37)*

Response to Comment #34:

While the activities of an individual CASp can, after certification, influence accessibility in the built environment, individuals with disabilities as a protected class are not affected by the regulation, which apply only to CASps and individuals in the CASp certification process. This is reinforced by the cited excerpt from the Morales decision, which makes clear that notice of the regulations is required so that "...persons or entities affected by the regulations can conform their conduct accordingly." There are no provisions in the proposed amendments that address the conduct or activities of individuals with disabilities.

Comment #35 in reference to the proposed rulemaking.

In paragraph #16, and #17 of Exhibit P, Ms. Barbosa states: *DSA's proposed regulations clearly demonstrate that business owners and their lobbyist have been involved in the creation, but the disability community has been excluded from giving their perspective on regulations that directly affect their ability to enforce their civil rights. We will object to the adoption of the proposed regulations for failure to comply with APA requirements for participation by the disability community pursuant to Gov. Code §55.59.6.*

Response to Comment #35:

DSA has not had any participation from business owners and their lobbyists in the creation of the regulations, and Ms. Barbosa has not specifically addressed how the proposed regulations "benefit business owners and their lobbyists to the detriment of individuals with disabilities," and how the proposed regulations adversely "affect the ability of the disability community to enforce their civil rights." Federal law identifies individuals with disabilities and the U.S. Department of Justice as enforcers of their civil rights through the legal process. DSA has no authority to influence a change to that enforcement mechanism, and cannot do so through the rulemaking process for the CASp Program regulations. In addition, the reference cited to Government Code § 55.59.6 is not a valid citation, and therefore DSA can provide no response to this comment. Furthermore, Ms. Barbosa has not demonstrated how DSA has failed to comply with the APA, since the APA places no specific requirements for a higher degree of participation by the disability community in the creation of the regulations directed to CASp. Only building standards rulemaking requires such involvement prior to the 45-day comment period, because building standards directly affect individuals with disabilities.

Comment #36 in reference to the proposed rulemaking.

In paragraph #18 of Exhibit P, Ms. Barbosa states: *Government Code §4459. The Legislature amended section 4459 to include a specific mandate that the State Architect “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...” As is clear from many of the regulations related to the CASp program, the State Architect has not complied with this obligation in seeking to protect business interests. Proposed amendments and regulations that diminish access must be “necessary” to retain greater “accessibility and features” or they are in conflict with Gov. Code §4459. Nothing in the purported claims for proposing the revisions cite authority for, or justify, the revisions as “necessary” to maintain the greater protection of current laws. Violations of Gov. Code §4459 renders the action invalid.*

Response to Comment #36:

DSA CASp program regulations do not seek to protect business interests because only CASps and those in the certification process are subject to the regulations. Ms. Barbosa fails to specify which of the proposed regulations or amendments to the regulations diminish access or protect business. According to the APA, authority and necessity must be addressed, which DSA has cited and provided. The proposed CASp regulations do not change California statute; therefore it is unclear how the regulations compromise the greater protection of "current laws." As previously stated, there has been no violation of Government Code § 4459 because this statute addresses regulations to the California Building Standards Code and not the CASp Regulations.

Comment #37 in reference to the proposed rulemaking.

In paragraph #19, #20, and #21 of Exhibit P, Ms. Barbosa states: *NECESSITY FOR REVISION OF THE REGULATIONS.*

*DSA’s purported reason for revision and implementing new regulations is to reduce the risk of discrimination “lawsuits,” and to “extend legal benefits to business and facility owners who hire a CASp.” Necessity, transparency and clarity are also touted as the reasons for the revisions and amendments.*

*The State Architects stated purpose of extending “legal benefits to business” owners who hire a CASp can be better accomplished by complying with his obligations to promote access and ensure that public facilities that receive a CASp certificate are “readily accessible to and usable by,” persons with disabilities. However, what DSA cannot do is propose regulations without a balance of interests between businesses and the disability community to ensure that the CASp program is not simply a roadblock to*

*enforcement of accessibility standards. DSA is itself diminishing the accessibility standards it proposed and implemented in Title 24 to ensure accessibility for persons with disabilities in public facilities.*

*For example, “transparency and clarity” are also stated as the reasons for the renovations and amendments. DSA must explain what the “necessity,” “transparency,” or “clarity” is that requires the proposed renovations and amendments.*

Response to Comment #37:

DSA did not state in its statement of reasons that the purpose of the regulations is to "reduce the risk of discrimination lawsuits and to extend legal benefits to business and facility owners who hire a CASp." It stated that the amendments to the regulations were in response to new requirements in the Civil Code that reduce the risk of discrimination lawsuits and extend legal benefits to facility owners who hire a CASp. Ms. Barbosa's comments ignore the fact that the legal benefits provided to facility owners were explicitly granted by the legislature through statute, and that DSA has no ability to amend the Civil Code through the CASp Program Regulations. It should be clear that the CASp Program Regulations are administrative and do not provide any such relief or benefits to business and facility owners.

With respect to the necessity for the proposed amendments, DSA has clearly stated in its Update of Initial Statement of Reasons that as a result of the enactment of Civil Code 55.51-55.545 public awareness and scrutiny of the CASp Program and the conduct of CASps has increased. This establishes the necessity for amending the regulations to

- 1) Clarify the responsibilities of a CASp in providing his/her services,
- 2) Establish regulations addressing professional standards, and
- 3) Provide clear and specific discipline and audit procedures.

In response to Ms. Barbosa's claim that DSA is diminishing the accessibility standards of Title 24 (CBC), Ms. Barbosa has not explained with any specificity how any of the proposed CASp regulations diminish the building standards of Title 24 (CBC) related to accessibility, and therefore DSA is unable to respond to this comment.

DSA demonstrates the necessity for each proposed amendment to the regulations, or each new regulation in the Initial Statement of Reasons and in the Updated Initial Statement of Reasons as is required according to the APA. The rulemaking process provides transparency, and the necessity statement for each regulation addresses if the regulation is required for consistency or clarity.

Comment #38 in reference to the proposed rulemaking.

In paragraph #22 of Exhibit P, Ms. Barbosa states: *DSA's "Necessity For The Revisions To The Regulations" fails to provide "evidence" to demonstrate that the regulations are based on more than an effort to deter enforcement of civil rights laws. DSA must provide substantive evidence of the need to revise current CASp regulations that may diminish enforcement and access. For example, the proposed regulations delete the specific citation to the definition for "Access Requirement," in section 121. The term "access" is a legal term of art that means the facility or feature complies with applicable building standards. The use of accessibility standards is the basis to determine whether or not a facility is "accessible to and usable by" persons with disabilities. This deletion, seemingly innocuous, is the precursor for the proposed amendment that allow CASp to make a finding that no "discrimination" has occurred as part of their inspection report. This is in direct conflict with the purpose of Gov. Code §4450, and the Unruh Act and the Disabled Persons Act. In describing why the regulations and statutes must harmonize to implement the intent of the statutes, the Court of Appeal stated: The structural access standards promulgated in connection with Health and Safety Code section 19955 et seq. and Government Code section 4450 et seq. [Title 24] " 'give meaning to the public accommodation law prohibiting discrimination against the handicapped....' " (Hankins v. El Torito Restaurants, Inc. (1998) 63 Cal.App.4th 510, 520). (sic)*

Response to Comment #38:

DSA has demonstrated necessity for each regulation in the *Initial Statement of Reasons* and in the *Updated Initial Statement of Reasons* as is required according to the APA. The proposed rulemaking cannot deter the enforcement of civil rights laws because the rulemaking is administrative and applies only to CASps and those in the certification process. Definitions in regulations are defined as they are used in the text of the regulations, and do not amend any statute, law, or regulation outside of the proposed regulations. The term "Access Requirement" is not referenced in the existing regulations, nor is it referenced in the proposed amendments to the regulations, and therefore it is deleted because it is not used. The deletion of this term is not a precursor for the proposed amendment that allows CASp to make a finding that no "discrimination" has occurred as part of their inspection report, because there is no such amendment in existing regulations or in the proposed regulations.

Comment #39 in reference to the proposed rulemaking.

In paragraph #23, #24, and #25 of Exhibit P, Ms. Barbosa states: *CASp regulations proposed by DSA cannot be in conflict with the purpose of the authorizing statutes found in civil rights laws, to eliminate discrimination against persons with disabilities, as this is contrary to the mandate to the State Architect. Gov. Code §4459.5 authorizes the*

*State Architect to establish “criteria” for the CASp specialists, which may include knowledge sufficient to “review, inspect, or advocate universal design requirements.” The State Architect has authority to propose regulations, with the caveat that “no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.” Gov. Code § 11342.2.*

*The proposed regulations do not effectuate the anti-discriminatory purpose of California’s civil rights codes. The proposed regulations, when reviewed as a whole, are not consistent with, and do not carry out the State Architect’s obligation to “develop other regulations for making buildings, structures, sidewalks, curbs, and related facilities accessible to and usable by persons with disabilities.” They are also not “necessary to assure access and usability for persons with disabilities.” (Gov. Code § 4450 (b).*

*DSA has failed to provide any reasonable or verifiable evidence for the proposed amendments and renovations of the CASp regulations, other than to extend legal benefits for businesses—meaning deterring lawsuits to enforce the ADA or Unruh Act. This substantial deficiency, along with the failure to provide an opportunity for the disability community to participate in the “creation” of the proposed regulations renders the proposed regulations ineligible for adoption by AOL, and vulnerable to legal attack. In the event the State Architect does not take back these proposed CASp regulations, we are providing a section by section comment to object to the proposed regulations. (sic)*

Response to Comment #39:

Ms. Barbosa has not provided specificity as to how any of the proposed amendments to the regulations is in conflict with California statute pertaining to civil rights, therefore DSA cannot respond to this comment. The proposed regulations are not intended to effectuate the anti-discriminatory purpose of California's civil rights statutes, nor can they do so as administrative regulations. Administrative regulations are not building standards, and therefore, cannot "carry out the State Architect's obligation to develop other regulations for making buildings, structures, sidewalks, curbs, and related facilities accessible to and usable by persons with disabilities." The regulations are not “necessary to assure access and usability for persons with disabilities”, because as administrative regulations for CASps and those seeking to become certified, the regulations do not and cannot change civil rights laws.

DSA has stated in its *Initial Statement of Reasons* and in the *Updated Initial Statement of Reasons* the necessity for the proposed regulations. Ms. Barbosa has not provided any evidence that the proposed amendments to the regulations extend legal benefits for

businesses or deter lawsuits to enforce the ADA or Unruh Act. As previously stated, the APA does not require a higher level of participation by the disability community in the creation of the regulations. The Office of Administrative Law (OAL) verifies that the regulatory requirements of the APA have been adhered in the regulatory process, but does not adopt the regulations. DSA, as the agency proposing the regulations, adopts the regulations at the conclusion of the process as stipulated in the APA.

Comment #40 in reference to the rulemaking process.

In Comment #1 of Exhibit P, Ms. Barbosa states: *Challenge: This entire process to renovate or amend CASp regulations violates Gov. Code 4459.6, requiring that the State Architect to establish an “ad hoc advisory committee” to work on proposed CASp regulations, with representatives of the disability community. These proposed regulations also violate Gov't Code § 11346.45, requiring the State Architect to include persons with disabilities in the discussion of proposed regulations prior to the 45-day notice for public comment. The State Architect has failed to provide an equal opportunity for disabled persons affected by these regulations input into the proposed regulations. It is clear that business owners seeking to “extend legal benefits” deterring disabled persons from enforcing their civil rights are the driving force of these regulations, and the reason disabled persons have been excluded from DSA regulations process.*

Response to Comment #40:

DSA responses to Ms. Barbosa's introductory paragraphs of Exhibit P sufficiently address Comment #1. Ms. Barbosa's comment is unclear: *"It is clear that business owners seeking to “extend legal benefits” deterring disabled persons from enforcing their civil rights are the driving force of these regulations, and the reason disabled persons have been excluded from DSA regulations process."* DSA cannot extend legal benefits to deter disabled persons from enforcing their civil rights, only the California legislature can through the establishment of law; therefore this reason cannot be the "driving force" of the regulations. Individuals with disabilities have been included in the DSA regulations process along with all stakeholders, through the notification process as required by the APA.

Comment #41 in reference to Section 111.

In Comment #2 of Exhibit P, Ms. Barbosa states: *There is no definition for "evaluate accessibility" unless it is connected with the legal term for access, which is full compliance with accessibility standards. Since the definition for “Access Requirements” has also been deleted, the proposed DSA language is vague, confusing and unnecessary. The proposed language also conflicts with the State Architect’s obligations to propose regulations to ensure that public accommodations are*

*“accessible to and usable by” persons with disabilities. The actual purpose of the Gov. Code §4450 is to “promote” access implementing regulations to carry out the public purposes of eliminating discrimination. Since 1983, before the ADA, the Legislative intent for civil rights codes and regulations has been to “require affirmative conduct so as to guarantee access to the physically handicapped upon construction of new facilities or with the repair and alteration of existing facilities.” (People ex rel. Deukmejian v. CHE, Inc., (1983) 150 Cal. App. 3d 123, 133.)*

*The conflict between the proposed regulations and the purpose of the civil rights statutes, make this propose amendment invalid as the APA state that “no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.” Gov. Code § 11342.2. Additionally, there is no explanation for the “necessity” for the proposed change with evidence of the “need for a regulation to effectuate the purpose of the statute.” Gov. Code §11349. This proposed change must be rejected as unnecessary and in conflict with the purpose of Gov. Code §4450 and the Unruh Act and Disabled Persons Act. The obvious reason is to set up other regulations to “extend legal benefits” for business owners who hire CASp inspectors, who do not promote access.*

*Action: Reject the revision. The existing intent to “promote access” rather than “evaluate” access does not comply with the State Architects’ obligations and the goal of promoting compliance with access standards.*

Response to Comment #41:

As previously stated, Government Code § 4450 applies to DSA's authority to establish building standards for accessibility, and is not related to its administrative authority in GOV 4459.5 to establish the CASp Program. The "affirmative conduct," cited as legal precedent by Ms. Barbosa in the specified 1983 legal case can only be relevant to the requirement for building standards in GOV 4450, a statute passed in 1968. It cannot be relevant as legal precedent to the "affirmative conduct" of a CASp in Government Code § 4459.5 established in 2003, twenty years later. In addition, Government Code § 4450 and Government Code § 4459.5 are not civil rights laws, and neither are the CASp Program regulations.

As a state agency, DSA cannot "extend legal benefits for business owners who hire CASp inspectors" through the CASp Program regulations, because DSA has no statutory authority to do so. Ms. Barbosa's comments relate to Civil Code § 55.51-55.545 (CRASCA) which extends legal benefits to business owners who hire a CASp.

At the public hearing this change in language concerned individuals with disabilities, and therefore DSA has decided to remove the amendment of "evaluate accessibility" and retains the original language of "promote access". DSA will reevaluate language after further study and reconsider the amendment in future rulemaking.

Comment #42 in reference to Section 112:

In Comment #3 of Exhibit P, Ms. Barbosa states: *The proposed regulations deletes citation to the DSA responsibility to operate all aspects of CASp and instead authorizes a "Designee" outside of DSA authority for granting CASp certification to individuals.*

*There is no authority under Gov. Code 4459.5 for the State Architect to delegate authority to a "Designee" not part of DSA. If the term "Designee" is not deleted, the State Architect would be able to designate certification to a group that does not have the obligation to run the CASp program consistent with the purposes of civil rights laws.*

*This is not a proper designation of authority, and would be invalid. There is also no reason given for the "necessity" of this proposed delegation of authority.*

*Action: Delete "Designee".*

Response to Comment #42.

DSA concurs that as used in the proposed amendment, "Designee" may be an inappropriate addition. While the State Architect designates that the individuals within DSA administering the certification program are the "Designee," the amendment in this specific regulation may create confusion, and therefore, DSA proposes to delete the amendment and retain existing regulation language.

Comment #43 in reference to Section 113(d).

In Comment #4 of Exhibit P, Ms. Barbosa states: *By proposing this limit to what is required for issuance of certification, the main purpose of hiring a CASp inspector will be lost. The CASp program was proposed as a means of providing businesses with knowledge to comply with access standards and thereby reduce the risk of lawsuit for construction-related violations. Subsection (c) requires a certified CASp inspector to inspect the facilities and issue the certification that the facility "meets all applicable construction-related accessibility standards." Section 113 citing the scope of work to be performed must specify that a Certified Access Specialist has conducted the inspection in order to assure the business owner of a high level of knowledge and competency.*

*Additionally, the deletion of §55.53 (d), conflicts with the definition of "meets all applicable construction-related accessibility standards," which requires that a "CASp" inspect the facility and make the determination. (Civil Code. § 55.52 (a) (4) and (5).) By ignoring the requirement that a CASp conduct the inspections, CASp businesses may send out unqualified people to make the inspection, and then have the certified CASp*

*make a determination of full compliance. Reliability and expertise of the applicable access standards, and competency in the inspection by a qualified and certified individual is necessary to protect the interests of both businesses and persons with disabilities.*

*Action: Change: "CASp certification is required to comply with the obligations in compliance with Civil Code. Codes and regulations implemented for the CASp program.*

Response to Comment #43:

Civil Code § 55.51-55.545 (CRASCA) does not require a CASp to issue "certification" that a facility meets all applicable construction-related accessibility standards. CRASCA requires a CASp to issue an inspection report with a determination of "meets applicable standards" or "inspected by a CASp," a Disability Access Inspection Certificate as a record of inspection, and the *Notice to Property Owner/Tenant*. A CASp cannot and does not "certify" anything. Through the CASp Program, the only thing that is certified is the CASp.

In the text of the proposed regulations, DSA inadvertently omitted the inclusion of the requirement by statute for a CASp to issue the required *Notice To Property Owner/Tenant*. The omission of this requirement in the regulations does not limit what is required by statute, as the CASp Program regulations can only clarify and make specific a statute.. Ms. Barbosa is correct that Civil Code § 55.53(c) requires the CASp to issue this notice as part of the inspection report. DSA proposes to amend the regulation to state "Issue inspection reports and Disability Access Inspection Certificates in accordance with the requirements of Civil Code § 55.53."

Comment #44 in reference to Section 132(a)(2):

In Comment #5 of Exhibit P, Ms. Barbosa states: *Challenge: The new regulation allows for two years "cumulative employment" as eligibility, without any reference to how long ago the cumulative employment lasted. A building inspector that worked over a long period of time that "cumulatively" added up to two years, has not demonstrate competency with current accessibility standards. The term "consulting entity" is also too broad and undefined to demonstrate any competency to show eligibility to sit for a CASp exam.*

*Action: Delete "cumulative employment" and replace with "employment within five (5) years of candidacy for CASp examination." Delete "consulting entity" and replace with "consulting entity that performs building inspection, or plan reviewer for accessibility standards." The eligibility should demonstrate employment in the field of accessibility standards within a reasonable time, not just any employment with a consulting entity.*

Response to Comment #44:

DSA has withdrawn the amended language relating to eligibility based on comments received by the disability community at the public hearing. DSA will reevaluate language after further study and reconsider the amendment in future rulemaking.

Comment #45 in reference to Section 132(a)(2)(C)and(D):

*In Comment #6 of Exhibit P, Ms. Barbosa states: A large part of the competency for CASp examination is knowledge of California standards because California standards that provide more protections are applied in place of ADA standards. Many states, do not have state accessibility codes and use ADAS as their model codes. (Hawaii and Texas are just two states without access codes) Other states have access codes that are not comparable to California's Title 24, and for which their state experience is not useful in determining that a facility "meets all applicable construction-related accessibility standards." Additionally, the classification for contractors with an A or B license is specific to California. There is no information that other states use the same classification, and if not, then this is a useless amendment. The construction-related standards used by CASp are California codes and not general access codes from other states. If simply passing the CASp examination was evidence of competency, then no employment criteria would be necessary, as long as an applicant passed the examination. The CASp certificate deters enforcement and assures businesses that their facilities are "accessible to and usable by" persons with disabilities. There are good reasons to limit the work experience eligibility to contractors licensed in California, where they have already demonstrated competency with California standards, and have implemented relevant accessibility codes in public accommodations.*

Response to Comment #45:

The CASp certificate cannot "deter enforcement" and cannot "assure businesses that their facilities are "accessible to and usable by" persons with disabilities." The certification of a CASp demonstrates to a business owner that a CASp has demonstrated, through passing an examination, the required knowledge to inspect facilities for compliance to the applicable standards. The certificate issued by CASp to a business owner is not a certification at all, and such certificate is not the same as the certification held by a CASp.

DSA has withdrawn the amended language relating to eligibility based on comments received by the disability community at the public hearing. DSA will reevaluate language after further study and reconsider the amendment in future rulemaking.

Comment #46 in reference to 132(a)(2)(E)

In comment #7 of Exhibit P, Ms. Barbosa states: *The DSA Project Inspector certification issued by the State Architect program does not include access education or training to demonstrate competency in accessibility standards. Not discussed in this amendment, is the fact that DSA Inspector Program participants receive less than 1 hour training every 2 years. The DSA Project Inspector certification does not provide the required qualifications to be eligible for the CASp examination.*

*Action: Delete this section.*

Response to Comment #46:

DSA has withdrawn the amended language relating to eligibility based on comments received by the disability community at the public hearing. DSA will reevaluate language after further study and reconsider the amendment in future rulemaking.

Comment #47 in reference to Section 134.

In Comment #8 of Exhibit P, Ms. Barbosa states: *The changes and amendments in this section indicate a genuine lack of knowledge on the use of and expertise of CASp individuals to assist business owners or persons with disabilities. The amendment deletes “accessibility” and replaces it with a legal determination of “discrimination against and access for” disabled persons. When “discrimination” has occurred, or when sufficient “access” has been provided is not within the scope of a CASp’s expertise. Experts, CASp or not, cannot make a determination of “discrimination,” which is a legal conclusion made by a judge or jury. More importantly, the purpose of CASp is to determine the compliance of public facilities to the applicable access standards for the facility, not to determine whether discrimination has occurred or access has not been provided. It is irrelevant that a CASp person believes “discrimination against” occurred, and even less relevant that he/she believes there is sufficient “access” for persons with disabilities in an inspected facility. To determine whether “discrimination” has occurred the Court will make a determination based upon compliance with accessibility standards, not the opinion of a CASp. The Ninth Circuit has clearly held that violation of accessibility standards equals discrimination. (sic)*

*The standards for the ADA also apply to California civil rights codes, and failure to comply also is “discrimination.” The only reason to delete reference to accessibility standards is to allow a CASp certificate making a determination that “access” for disabled has been provided, notwithstanding a failure to comply with accessibility standards.*

*Action: Delete reference to “discrimination against and access for” persons with disabilities. If there are specific state or federal codes and regulations relating to “accessibility” codes and standards these should be specifically stated. A general reference that CASp will be responsible for statutes or regulations that address both discrimination against and access for individuals with disabilities” is vague, unenforceable, and does not allow a CASp candidate to understand the scope of required knowledge.*

Response to Comment #47:

DSA has withdrawn the amended language based on comments received by the disability community at the public hearing. DSA will reevaluate language after further study and reconsider the amendment in future rulemaking.

Comment #48 in reference to 134(a)(1):

*In Comment #9 of Exhibit P, Ms. Barbosa states: ADA Titles 1 The amendment states that the reference materials for the CASp examination are based on all titles of the ADA. A reference to all of the ADA Titles is vague, confusing and outside the scope of the CASp program. Title I of the ADA applies only to employment. Civil Code §51 and 54.1 and the related Government Codes and Health & Safety Codes do not apply to an employment situation. The standard for Title I is not full compliance with ADAS, but a reasonable accommodation for a specific individual. A CASp is not qualified to determine what a “reasonable accommodation” is for an employee. The accommodation for a disabled CASp candidate would not be under Title I standards, but Title II, for the programs, services and activities offered by DSA, including the testing procedures. Title I has no application to the CASp exam. (sic)*

Response to Comment #48:

Knowledge of all Titles of the ADA are relevant to the CASp Examination, because all Titles of the ADA are federal standards that relate to discrimination against and access for individuals with disabilities. This comment is not addressing a proposed change to the regulations, and all Titles of the ADA were determined as relevant to CASp knowledge base as determined by the ad hoc committee. Section 113 lists the scope of work of a CASp which does not indicate that a CASp has the ability to determine a reasonable accommodation for an employee.

Comment #49 in reference to 134(a)(4):

*In Comment #10 of Exhibit P, Ms. Barbosa states: California law related to “discrimination against and access for” persons with disabilities in the Government Code, Health & Safety Code, Civil Code, and Code of Civil Procedures. This amendment is vague, ambiguous, confusing and far outside the scope of CASp*

*expertise or application of accessibility standards. The same argument applies that CASp certifications cannot give an opinion of whether discrimination has occurred, or access is sufficiently provided. What Code of Civil Procedures contain accessibility standards to determine compliance? How does the Unruh Act, and the Disabled Persons Act apply to a CASp examination based on accessibility standards?*

Response to Comment #49:

DSA has withdrawn the amended language relating to eligibility based on comments received by the disability community at the public hearing. DSA will reevaluate language after further study and reconsider the amendment in future rulemaking.

Comment #50 in reference to 134(a)(7):

*In Comment #11 of Exhibit P, Ms. Barbosa states: Rehabilitation Act of 1973 sections 504, 508, and 510. This amendment is vague, ambiguous, confusing and far outside the scope of CASp expertise or application of accessibility standards. The Department of Rehabilitation applies to programs and services which are funded in part by federal funds. Not all government programs are related to public accommodations, and CASp certificates for facilities would not apply to policies, or services, but to public facilities in which accessibility standards apply. The attempt to include any basis for liability within a CASp certificate will not give the broad shield from liability that the amendment implies by the references for the CASp examination. There is no "necessity" for this expansion of the CASp program other than to try and "expand legal benefits to businesses," expanding the scope of the program.*

Response to Comment #50.

The Rehabilitation Act of 1973 is a federal statute, and therefore is a federal law related to discrimination against and access for individuals with disabilities. The Rehabilitation Act of 1973 indicates which federal agencies apply which federal accessibility standard. Ms. Barbosa's statement: *"The attempt to include any basis for liability within a CASp certificate will not give the broad shield from liability that the amendment implies by the references for the CASp examination."* is unclear. Ms. Barbosa provides no specificity how the inclusion of the Rehabilitation Act of 1973, a federal statute, as a reference for the examination is able to "expand legal benefits to businesses" and therefore DSA cannot comment.

Comment #51 in reference to 134(c):

*In Comment #12 of Exhibit P, Ms. Barbosa states: The amendment states that the testing is based in accordance with NCCA standards. This is not a mandate to administer the examination according to these standards.*

*Action: Add: "...administered solely in accordance with 134 c). by ..."*

Response to Comment #51.

Certifying agencies do not administer examinations, they identify a standard by which examination administrators can set a fair and recognized passing standard for the examination. Item 134(c) addresses that DSA, as the examination administrator, establishes the passing standard in accordance with this recognized method. DSA proposes no change to the regulations as a result of this comment.

Comment #52 in reference to 141:

In Comment #13 of Exhibit P, Ms. Barbosa states: Challenge: *The extraordinary high fees paid by candidates and for renewal do not reflect limited personnel training budgets of local building departments and are disproportionate for the employee certification and training budgets of most jurisdictions that are required to have at least one CASp person in its building department. The costs of \$1,700 for certification may also deter disabled persons who are not part of a large organization or building department. The Advisory Committee that worked on the establishment of the CASp program, found that the reasonable total fees for certification should be less than \$200. Fees were originally based on inclusion of "an estimated \$100,000" for the enforcement and administrative judge's fees the CASp Program would need if DSA sought to remove certifications as disciplinary matters. There are no facts or evidence to support the fees requested for this program. As part of this evaluation, DSA should have included the actual costs of operating the CASp program, including any costs for discipline. Part of the public records act we intend to serve DSA is the budget and costs for operation of the CASp program since its establishment, to justify these exorbitant fees.*

*Action: Take no action on the fees provisions until DSA can justify the amount of the fees requested with verifiable evidence that the high fees are justified to operate this program, or how to provide grants or set different fees for public enforcement agency, and/or disabled candidates with limited resources. We ask for a hearing on these fees.*

Response to Comment #52:

DSA is not proposing to amend the established fees required for certification with this rulemaking, with the exception of the reduced fee for Eligibility Category D, as provided in legislation, and the division of the \$800 CASp Examination Fee into two equal parts for the Open Book and Closed Book portions of the Examination. Ms. Barbosa is incorrect in stating that certification costs are \$1700. Fees add to \$1200 for an individual that applies under Eligibility Category D and \$1600 for all others. Our documentation indicates that the ad hoc committee, in establishing the knowledge, skills, and abilities (KSA) for certification, did not address fees. Ms. Barbosa cannot state how fees for the CASp program were established because we have no record of her involvement in the establishment of fees for the CASp program. DSA's ability to administer the program's

application, administration, and certification processes, which includes disciplinary actions, providing education, and developing technical standards, support each established fee, because the operation of the certification program is funded entirely by the fees generated in administering the program. In addition, statute already provides a mechanism for receiving funds to lower the costs for local jurisdictions to certify and train individuals in their employ to become CASp through Government Code § 4467.

Comment #53 in reference to Section 151(a):

In Comment #14 of Exhibit P, Ms. Barbosa states: *The authorizing regulations do not permit the State Architect to delegate his responsibilities to a “Designee” that is outside of DSA. Any delegation of authority to a designee within DSA is proper, and there is no need to confuse the issue by raising the possibility for the State Architect to delegate his authority to a party outside of DSA.*

*Action: Delete the “Designee” from the section.*

Response to Comment #53

The addition of "Designee" indicates that such an action implies delegation of authority to a designee within DSA. The State Architect has no authority to contradict statute by granting authority to an individual outside of DSA when statute specifically grants the authority for the program to the State Architect. DSA proposes no change to the regulations as a result of this comment.

Comment #54 in reference to Section 151(b):

In Comment #15 of Exhibit P, Ms. Barbosa states: *the “issuance of a Disability Access Inspection Certificate in accordance with Civil Code Section 55.53 (a) and (e)” Certificate reports must comply with more than 55.53 (a) and (e) to meet all CASp requirements.*

*Action: delete, “...accordance with Civil Code Section 55.53 (a) and (e),” and leave in the original language. The certificate requires a CASP to certify that the facility inspected “meets all applicable construction-related accessibility standards.” Limiting the requirements to subsection (a) and (e) is not correct and improperly attempts to limit the scope of the inspection.*

Response to Comment #54:

The certification held by a CASp indicates that the CASp has passed an examination. CASp certification does not mean that a CASp can "certify" facilities as compliant. The Disability Access Inspection Certificate (DAIC), as part of Civil Code § 55.53 is a record of inspection, and as stated on the DAIC, does not represent a certificate that the

facility is in compliance with the applicable accessibility standards. Therefore, the inclusion of this provision does not limit the scope of the inspection. DSA proposes no change to the regulations as a result of this comment.

Comment #55 in reference to Section 151(d):

In Comment #16 of Exhibit P, Ms. Barbosa states: *Subsection (d) requires a signature of the CASp report, but does not provide sufficient responsibility for the CASp person who has responsibility for inspecting the facility and issues a certificate. Action: insert the following language, “shall signify that the CASp has participated in the inspection of the subject site, and can confirm....” The remaining language is acceptable. Add, “the CASp report must also include the date of the inspection, the date of barrier removal if re-inspection occurs and a compliance certificate is issued, and if a previous CASp report had been issued for the same subject property.” Add, “If there is a determination by the CASp that specific barrier removal is “not readily achievable,” the CASp report shall include, which factors set forth in 42 U.S.C. § 12181(9) were evaluated in making the determination.” In the experience of many attorneys reviewing CASp reports, many CASp reports list barrier removal as “not readily achievable” with no information regarding the basis for this determination, other than stating barrier removal is not “cheap or easy,” without evaluating any of the factors for such a determination.*

Response to Comment #55.

Section 151(d) establishes the significance of the signature where it is required. Civil Code § 55.53 requires signature on the CASp Report; the CASp Program Regulations do not require signature on a report because reports in general are not addressed in the regulations. DSA believes the responsibility of the CASp is defined by establishing the significance of signature. DSA has not introduced requirements for inspection reports in either this or the former rulemaking. Ms. Barbosa is encouraged to file a CASp Complaint Form and submit it to DSA for investigation if she has witnessed CASp misconduct. The remaining comments in this section do not address the proposed regulatory action. DSA proposes no change to the regulations as a result of this comment.

Comment #56 in reference to Section 161(h) and (i):

In Comment #17 of Exhibit P, Ms. Barbosa states: *(h) and (i): The use of “Designee” is not authorized under the law. The State Architect has the authority to designate employee of DSA, but does not have the right to designate his obligations to a person or entity outside of DSA.*

*Action: Delete the term “Designee.”*

Response to Comment #56.

The addition of "Designee" indicates that such an action implies delegation of authority to a designee within DSA. The State Architect has no authority to contradict statute by granting authority to an individual outside of DSA when statute specifically grants the authority for the program to the State Architect. DSA proposes no change to the regulations as a result of this comment.

Comment #57 in reference to Section 162:

In Comment #18 of Exhibit P, Ms. Barbosa states: *The use of "Designee" is not authorized under the law. The State Architect has the authority to designate employee of DSA, but does not have the right to designate his obligations to a person or entity outside of DSA.*

*Action: Delete the term "Designee."*

Response to Comment #57.

The addition of "Designee" indicates that such an action implies delegation of authority to a designee within DSA. The State Architect has no authority to contradict statute by granting authority to an individual outside of DSA when statute specifically grants the authority for the program to the State Architect. DSA proposes no change to the regulations as a result of this comment.

Comment #58 in reference to Section 163:

In Comment #19 of Exhibit P, Ms. Barbosa states: *The use of "Designee" is not authorized under the law. The State Architect has the authority to designate employee of DSA, but does not have the right to designate his obligations to a person or entity outside of DSA.*

*Action: Delete the term "Designee."*

Response to Comment #58.

The addition of "Designee" indicates that such an action implies delegation of authority to a designee within DSA. The State Architect has no authority to contradict statute by granting authority to an individual outside of DSA when statute specifically grants the authority for the program to the State Architect. DSA proposes no change to the regulations as a result of this comment.

Comment #59 in reference to Section 164:

In Comment #20 of Exhibit P, Ms. Barbosa states: *The use of "Designee" is not authorized under the law. The State Architect has the authority to designate employee of DSA, but does not have the right to designate his obligations to a person or entity outside of DSA.*

*Action: Delete the term “Designee.”*

Response to Comment #59.

The addition of "Designee" indicates that such an action implies delegation of authority to a designee within DSA. The State Architect has no authority to contradict statute by granting authority to an individual outside of DSA when statute specifically grants the authority for the program to the State Architect. DSA proposes no change to the regulations as a result of this comment.

Comment #60 in reference to Section 165:

In Comment #21 of Exhibit P, Ms. Barbosa states: *The use of “Designee” is not authorized under the law. The State Architect has the authority to designate employee of DSA, but does not have the right to designate his obligations to a person or entity outside of DSA.*

*Action: Delete the term “Designee.”*

Response to Comment #60.

The addition of "Designee" indicates that such an action implies delegation of authority to a designee within DSA. The State Architect has no authority to contradict statute by granting authority to an individual outside of DSA when statute specifically grants the authority for the program to the State Architect. DSA proposes no change to the regulations as a result of this comment.

Comment #61 in reference to Section 171:

In Comment #22 of Exhibit P, Ms. Barbosa states: *The use of “Designee” is not authorized under the law. The State Architect has the authority to designate employee of DSA, but does not have the right to designate his obligations to a person or entity outside of DSA.*

*Action: Delete the term “Designee.”*

Response to Comment #61.

The addition of "Designee" indicates that such an action implies delegation of authority to a designee within DSA. The State Architect has no authority to contradict statute by granting authority to an individual outside of DSA when statute specifically grants the authority for the program to the State Architect. DSA proposes no change to the regulations as a result of this comment.

Comment #23 of Exhibit P is not relevant to the proposed regulations and therefore warrants no comment. Ms. Barbosa is encouraged to file a CASp Complaint Form and submit it to DSA for investigation if she has witnessed CASp misconduct.

Exhibit N is not relevant to the regulations in the proposed rulemaking and therefore warrants no comment.

No Public Hearing was requested during the initial 45-day public comment period. DSA granted a Public Hearing on the CASp Program Regulations on November, 10, 2015 at the request of a stakeholder group.

## **SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE PUBLIC HEARING HELD NOVEMBER 10, 2015**

### Comment #62 from Peter Margen

My name is Peter Margen and I'm here today representing the coalition of disability professionals and I'm also representing myself as a practicing disability professional for the past 33 years and one of the founders of the CASp Program and one of the original SMEs who created the original questions for the CASp Program. I'm also representing today several members of our organization who are not able to attend including Jonathan Adler CASp #003, Gary Atwood, and Celia McGinnis who is on the California Commission on Disability Access, CCDA. I would like to say that we do support the comments that were submitted by Patricia Barbosa who is one of the members of our organization, and I believe she will testify today so I won't get into that particularly. We also are very concerned about the process followed in developing the regulations in that we believe that the administrative -- the specific enable leaning legislation under the CASp program was not followed because these regulations were not developed in association with referenced ad hoc committee. We object of the change from promote to evaluate. We also don't believe that the state architect should have an undefined designee, the language for designee has been added.

### Response to Comment #62

We have responded to this comment by removing the amended language, retaining the original language, and will perform further study to evaluate if language should be included in a future rulemaking package.

### Comment #63 from Bill Zellmer

My name is Bill Zellmer, President of Certified Access Specialist Institute. My comment really is requesting a little clarity from DSA. The CASp is certified to perform certain services relative to the professional services of an architect and I want to get a little clarity on what the limitations will be, that we won't have. And my concern is do we have -- are we giving a green light to CASps to perform what amounts to be architectural services?

### Response to Comment #63

The certification takes from the understanding that the design professional can perform such services, the certification is voluntary. Even design professionals can avail themselves to the certification process and voluntarily seek certification. The clarification of the CASp scope of work says only CASp can do item D but design professionals can do the other three, A, B and C under the CASp scope of work. We have clarification further in the Examination, Certification, and Practice Standards handbook, and in that handbook it is very clear that the services of the design professional are limited to a design professional and that a CASp cannot perform those services unless they hold an design professional's license which would be to provide solutions and document drawings.

### Comment #64 from Peter Margen

So going back to Section 112, we object to the language of the word designee. Designee is not spelled out in the enabling legislation. I believe says State Architect specifically. We do not like the inclusion of the language of "laws" because laws are specifically interpreted by legal professionals, CASps are not legal professionals. That has no business being in the regulations at all and that goes for that whole paragraph.

### Response to Comment #64

We have responded to this comment by removing the amended language relating to the addition of "Designee", retaining the original language where "Designee" is already in the regulations, and will perform further study to evaluate if language should be included in a future rulemaking package. On the addition of "laws" in the text, DSA insists that "laws" is an appropriate inclusion, as there are compliance requirements written into California statutes.

### Comment #65 from Patricia Barbosa

This is Patricia Barbosa. I'm a civil rights attorney. I was also a person working originally with the CASp regulation. I was also counsel for the decision of state architect as well as the building standards commission. I would like to say first of all that I strongly object to the manner in which this hearing is being done, and in the timing that it was done. Mr. Widom believes he made a mistake in not doing it earlier. I think that is correct. I think it is a mistake to do it in a manner that is being done today. For the comments I have written the comments on behalf of myself and other persons signed on to my letter dated July 27, 2015 I asked that it be made part of this record so that we may have it as part of the record if we want to challenge this. I would first start that in order to do the regulations. The state architect has failed to comply with the main purpose of the state architect which is to provide regulations for related facilities accessible to.....Cutting

people off after one minute. That is what I'm saying about this process. This is what I'm saying about the process being genuinely.....

#### Response to Comment #65

This comment is not within the scope of the rulemaking.

#### Comment #66 from HolLynn D'Lil

This is outrageous. This is just proof right here why by imposing this one minute to discuss these regulations, which we are being excluded from. We received no notice. You said in your response to me that you only notified the specialists because they are the only ones that you thought were affected which, of course, is nonsense. Our daily lives are directly affected by the CASp program. For you to give us only one minute is just further proof that you intend to exclude, that you intend to continue to discriminate against people with disabilities in this program. I have a lot to say, so does Peter, so does Patricia, and they are experts in this, and I want them to be heard. We need for them to be heard. I have five seconds to tell you you're in trouble. This is outrageous, and we're going to raise as much hell as we can.

#### Response to Comment #66

DSA has complied with noticing requirements to all stakeholders for the Notice of Proposed Action and subsequent comment periods.

#### Comment #67 from Richard Skaff

I would like to know who decided how the -- my name is Richard Skaff, the director of designing communities, and a member of CODAP and want to know who made the decision, the last name is S, like Sam, KAFF. Not XAF. It is S like Sam, KAFF. I would like to know who made the decision about the one minute ability for us to comment? This is absolutely outrageous, and as Ms. D'Lil just indicated, is an indication of what DSA has done in this whole process. And the statement made by DSA about why we were not included in this process originally is outrageous in the sense that DSA didn't believe that the decisions about how a CASp does his work, his or her work doesn't affect us. Speaks directly to the problem with this whole package.

#### Response to Comment #67

DSA has complied with noticing requirements to all stakeholders for the Notice of Proposed Action and subsequent comment periods.

#### Comment #68 from Richard Skaff

Well, then I guess I'm not part of the 11,200 e-mail list. I didn't get it and the number of other people in the disability community that would have been people that would have

been interested in responding didn't get it. Otherwise we would have responded. And we have an e-mail from Dennis Corelis saying that the reason we didn't get it is because we are not considered people that would have been affected by these proposed regulatory changes.

#### Response to Comment #68

DSA has complied with noticing requirements to all stakeholders for the Notice of Proposed Action and subsequent comment periods.

#### Comment #69 from Peter Margen

Relating to Section 121, we object to the term designee because it is undefined. We do not support the change to facility, because it has eliminated roads, walks, passageways or parking lots. And is therefore limited, also limited to the site and the site is not defined, because the site could also include a public rights way. Under -- sorry. I have to flip through pages here. Okay. For the category 132, we don't support the term cumulative. It should be consecutive over the last five-year period because there is a too large a gap. Consulting entity is not defined and it is very broad term and we object to the change under the category for individuals with disabilities "from disability rights" because it excludes even yet more persons with disabilities to get into the program. But, again, the executive is really important from the standpoint that cumulatively somebody may have worked 20 years ago and is not necessarily up to date with current requirements. But really from the get-go, my comments from the get-go was the program was really there to encourage people with disabilities to get on board with the program, and the category that deals with people working in disability rights was specifically left fairly open to allow people to have that opportunity. Here it has been much more narrowed in terms of who would actually qualify, and I think part of the big problem with the program is the lack of involvement by people with disabilities in the program. I don't know what percentage of the CASp actually qualifies individual to disabilities. My guess would be that it is fairly low.

#### Response to Comment #69

The definition of "facility" as amended is identical to the language provided in state and federal standards. DSA states that the addition of "site improvements" is a term that includes "roads, walks, passageways, and parking lots." We have responded to the comment related to "cumulative experience" by removing the amended language, retaining the original language, and will perform further study to evaluate if language should be included in a future rulemaking package. We have responded to the comment related to the strikeout of "rights" by removing the amended language, retaining the original language, and will perform further study to evaluate if language

should be included in a future rulemaking package. Additional comments made are outside the scope of the rulemaking.

Comment #70 from Bill Zellmer

I would like to understand a little bit better the requirements relative to physical building in terms of qualifications to take the exam. It sounds like and looks like when reading that you have to have experience dealing with the building as opposed to an ADA coordinator's experience which may not be so much about the building. Can you speak to that?

Response to Comment #70

Sure. Experience evaluated in category C actually does allow someone who is an ADA coordinator to qualify. It is pretty much a catchall category. Our intent with this was that having an understanding that in the criteria of knowledge skills and abilities of a CASp the ability to read plans, to apply codes and standards, and inspect facilities, in other words be able to look at the codes and standards in physical element and be able to determine that compliance is met and that different ways that individuals can have that capacity in order to do that. Whether it be as a design professional, as a working for a jurisdictional agency as an ADA coordinator, as many do, that's the understanding.

Comment #71 from Terelle Terry

In trying to read this, I believe it says that the person who works with the disability group in order to apply must then work with other disability groups, which seems wrong to me. If you're working with one group, you can't just shift over to another one and it mentioned you have to keep going to different groups. That doesn't make any sense. If you have expertise with one group, I don't understand why that is in the regulation. And I think it is wrong.

Response to Comment #71

That is a requirement for submitting credit for continuing education once you're a CASp. A CASp can earn continuing education credit by spending time with a disability advocacy group and understanding the specific disability; if the CASp were to submit credit for continuing education at a later date it would have to be for spending time with a different disability group. These requirements are in a different Section, it is not an eligibility requirement to take the exam.

Comment #72 from Richard Skaff

Richard Skaff, Designing Accessible Communities. I am very concerned, and I'm not blaming the captioner, but there are important words that are being missed. Under the paragraph where Ida Clair was speaking, whether it be as a professional? No. It was a

design professional. We're missing words because people that are speaking, including everyone, including myself, probably, are speaking so fast that it is impossible for the captioner to caption what we're saying. And, so, this is the record of this meeting, and it's an incomplete record, as such, because of the failure of the captioner to be able to catch -- capture all of the statements being made correctly and completely. And that is a great concern. If I were deaf, all I would see is the captioning. I wouldn't have heard Ida's voice. And those that read this text after this meeting will be reading the captioner's writing complete.

#### Response to Comment #72

This comment is not within the scope of the rulemaking.

#### Comment #73 from Patricia Barbosa

I understand that this hearing took place because a variety of us wrote a letter to Chet with him asking for it, raising the problems of the CASp regulations that we were told had already been basically determined. I do not know the purpose for this hearing, any longer, since there isn't really an opportunity to speak to the issues. I will indicate to you that I have written 17 pages of citations that are to the correct legal, both the codes and regulation laws that have not been addressed and will not be addressed in this. I, therefore, thank you for the opportunity to speak, but I don't believe that this hearing will do anything to provide any better understanding and is simply one more way to pass a disability (Indiscernible) so it will go away. So I will take that cue and I am now getting off the line. Thank you very much.

#### Response to Comment #73

This comment is not within the scope of the rulemaking.

#### Comment #74 from Susan Chandler

Hi. This is Susan Chandler and I agree with Peter Margen. He has worked hard on this, as has HolLynn. You have to say the site, not just the facility. I think all of this that you're doing is total bogus. We do not need to rewrite all these things. As new things come up, that's true we do need to change those, but we do not need to change the basic access standard. The people that need these access things are people with mobility impairments. They are the major people that, you know, get benefit from these changes. And when you make changes that are more ambiguous and not clear, then it gives wiggle room. We do not want wiggle room. We want no thresholds. We want no curbs. We want no stairs. We want clear paths of travel. We don't want windy paths. We want straight shots. We do not want things that have been set --

#### Response to Comment #74

This comment is not within the scope of the rulemaking.

#### Comment #75 from Peter Margen

We object to on 133, paragraph B, the open book exam. We don't believe there should be an open book exam. It was never intended to be from the inception of the standard it was only became open book because people complained because they couldn't pass the minimum requirements for the test. So we don't believe that practicing accessibility services for CASp can function if they don't have this information at their fingertips.

We also object to the language in Section 134 which has relating to discrimination against individuals with disabilities. We think this is opening a huge can of worms because it is not the function of a CASp to assess whether or not there is a discriminatory situation occurring or what is or is not discrimination. That is purely the courts and purely up to legal professionals, and adds a whole additional layer that is not contemplated in the program. And going on to 134 -- okay. In terms of the reference standards, we don't believe that reference standard such as uniform federal accessibility standards should be eliminated because in the course of work as a CASp you need to be familiar with all standards going all the way back to ANSI 117.1, ASA 61. So you don't start deleting these things because you have to use them.

#### Response to Comment #75

UFAS has not been removed because it is included through amendment as a standard developed by the access board and promulgated by the Department of Justice. We have responded to the comment relating to "discrimination against individuals with disabilities" by removing the amended language, retaining the original language, and will perform further study to evaluate if language should be included in a future rulemaking package. Additional comments made are outside the scope of the rulemaking.

#### Comment #76 from Connie Arnold

My name is Connie Arnold and I feel like this process is absolutely unbelievable. It makes living with a disability more difficult. Things like being treated unequal is becoming more acceptable every day. In relation to this, I want to say disabled lives matter. Nothing about it is without us, and I am opposed to the proposed changes to the Certified Access Specialist program enhances business paid professional ability to interpret our federal and state disability self rights, laws and whether discrimination against an individual has occurred or not. It cannot be left a monetary decision between paid individuals that are hired by a business deciding whether I've been discriminated against. The expansion of the program is ridiculous. This hearing process is ridiculous. I

wanted to speak the last two times, it's made difficult the way you've broken this down to make comments on and I know I'll be cut off by your rude interruption of people, and I think Chet Widom the state architect has frustrated this process and caused a decrease in diminishment in our access code for years now and we're sick and tired of it. And I'm really frustrated when I go places and I need accessible seat anything a restaurant and I can't get it and some of the interpretations offered by the state architect's office has denied me access and the interpretation becomes less relevant.

#### Response to Comment #76

This comment is not within the scope of the rulemaking.

#### Comment #77 from an Unidentified Individual

I would like to comment on the basis of (indiscernible) uncertainty principal. What the CASp program is a closed box. The cat inside is definitely dead. For those of you who don't know any physics, I apologize, guys. There is no list of people with CASp certifications. You cannot find out if a person is a CASp or not. You cannot find out whether they have certified a building or not. There are no signs. There is no indication that an access program has been carried out. There is no appeal for the process. So therefore, it is perfectly hermetically sealed, I as a disabled person may not question the judgment of these august persons, there is no board to certify the CASp people. They are appointed. They pass the test. They have no accountability and I object to this, and all disabled persons involved in this do object to it because you have a closed system.

#### Response to Comment #77

This comment is not within the scope of the rulemaking.

#### Comment #78 from Richard Skaff

My name is Richard Skaff, and I'm going to say again that the comments made by Ida Clair were not correctly noted in the captioning. Having it on tape, unless that tape is going to be transcribed into a written document, will it be transcribed into a written document? Then we -- if it is not going to be transcribed in a written document, we don't have an accurate record for people with hearing impairments for those that have not or anybody who has not participated in this meeting. I also agree with Mr. Morgan on each of the points he's made. The process has clearly not been one that has included people with disabilities, not only in this hearing, but in the process of the -- in the CASp program. I have turned in over 12, close to 12 CASp reports and have not had a response, as complaints, asking that DSA investigate the complaints. I have been told by Ms. Clair that that would not happen because DSA has no authority to discuss and CASp reports with people with disabilities unless they are the building or property owner that has purchased the service from the CASp. I have not heard anything to date or in

the documents that I have received that indicate to me that that has changed. Therefore, we are being, when I say we, the disability community, is being completely disincluded from inclusion in having an effect on how CASp does their work.

#### Response to Comment #78

This comment is not within the scope of the rulemaking.

#### Comment #79 from HolLynn D'Lil

Last time I tried to speak I couldn't get through. Your system is not functional. They're having a hard time captioning because people are speaking so fast. People have to speak fast because we only have one minute to address these complex issues and try to be heard. Your credibility is about zero or maybe minus that right now for the State Architect. I think that's probably okay with you, but --I totally agree with what Peter said and, you know, it is really funny. You limit us to one minute and then you say keep your comments to the issues, but we can't discuss what is in the issues in one minute.

So, you could have made the meeting longer. You're -- this process is designed to disenfranchise us. I have a technical question for you. Is there any possibility at all that you will be incorporating any changes to your proposed regulations per the comments you receive today?

#### Response to Comment #79

This is Dennis Corelis. HolLynn, we are going to consider all the comments that we receive today. And a decision has not been made to go forward or not, but we want to get comments on the technical details so we can evaluate them. And we need to get the comments and we thank everybody who is giving us technical comments on what has been proposed for changes.

#### Comment #80 from Susan Chandler

You know, I've been listening and it is really disturbing. The process seems to be designed to discriminate against who you're supposed to be protecting. You have given one minute to people who have mobility problems and hearing impaired problems, and the captions are not correct, you set it up so that you're discriminating against who you're supposed to be protecting. It is very clear to other people that are listening and your rudeness and the quickness with what you're dealing with people who are disabled and handicapped is just alarming. I'm disappointed in what you're doing. Thank you.

#### Response to Comment #80

This comment is not within the scope of the rulemaking.

### Comment #81 from Peter Margen

Peter Morgan, relating to Section 136. How are you going to verify active participation in the CASp discussion group offered by the State Architect in terms of specific time? Will you be timing that? That is a question. My other comment is I'm concerned that is a closed loop. We have people talking to other people versus necessarily interacting with other types of outside agencies or other organizations that provided educational opportunities on universal design and accessibility. Instruct -- item 3 under A instructing a course with technical content, that does not verify continuing education in my opinion, because I've seen many courses where people put out misinformation it is not vetted or verified by anybody, and who knows what is happening on that end.

### Response to Comment #81

Yes I do want to respond. We do have a format for the CASp Code Discussion Group. It is moderated by DSA. It is a monthly discussion group in which individuals, usually they are building officials, and other individuals employed through enforcement agencies, CASps, and design professionals. They call in, DSA presents a topic and we discuss a certain specific Section of the code in depth. People give their opinions on how those elements have been interpreted. It has been extremely well received. It's basically a collaboration and understanding to a deeper extent of how the code works for individuals with disabilities and we also do get into the Americans with Disabilities Act and the requirements therein because it's a CASp and code discussion group. It is publicized. All are welcome to call in and participate. We do take attendance at the first hour. We take attendance again at the end of one hour. The CASp has to report attendance on a specific date and then it is verified with our records. So we do have a method for accountability. But we do believe this is a great way other than being in a class to really gain a deeper knowledge of the applicability of standards, especially the California Building Code.

### Comment #82 from Peter Margen

I would like to follow up on a couple of comments which IDA CLAIR made. The statement was made in the room that CASp have, quote, no enforcement authority. That enforcement authority is -- rests with the local authority departments on local level. While is it true in practice it really doesn't work that way. I've seen many instances that I've been involved myself where I've done consulting work where a local agency says I don't want to look at I want CASp to go out and look at it and I will accept whatever the CASp writes, because that particular building official or enforcement agency doesn't necessarily know what they're doing. Secondly, how many people in this room have ever filed a complaint with the building department relating to disability access? I have, and many other people have. They don't follow up. And the first line of defense here should really be the CASp program and there needs to be a mechanism by way that

DSA understands and knows what is their duty out there because they are not meeting the minimum standard. I brought with me today some examples of reports with this misinformation and so on and so forth. I wanted to get them into the record. Hopefully I will have a chance to do that. Thank you.

#### Response to Comment #82

This comment is not within the scope of the rulemaking.

#### Comment #83 from Peter Margen

I don't really have that much to add to your response, but just what I would like to state is that it is my professional opinion that the program is not working as was originally intended. The original intention of the program was to provide a certification where by people could demonstrate a minimum understanding for a level of understanding of application to the California Building Code standards as they relate to accessibility. Certifying buildings was not in the cards. That came later on. And what we actually have out here is to close the loop where by people are getting CASp reports, there is no way to audit those reports, building owners are relying on that information, disabled people don't have access to that information unless a suit is filed or a complaint is filed in some way to access that information. So we really have no way of knowing what is really happening out there. And from what I've seen from my perspective, because I've had a chance to vet other reports and other conditions, and, you know, if you're being paid, there's a conflict of interest. There are of course, many CASp's out there and I'm not saying this as an insult to every CASp, there are CASp out there that are totally honorable and I respect them a great deal in terms of their knowledge but there are also bad apples out there and this the bad apples are not being reigned if and that is the program with the program.

#### Response to Comment #83

This comment is not within the scope of the rulemaking.

#### Comment #84 from Richard Skaff

First, I wholeheartedly agree with Mr. Margen's comments about the conflict of interest and the bad apples and the fact that there is presently and you have stated that, Ms. Clair, there is presently no DSA oversight of the reports done where CASps, Certified Access Specialists, are putting into their reports that an item is not readily achievable. When we all understand what that means, and what is required to make that determination. And we also are clear on the fact that no Certified Access Specialist that I know of, at least, and I've been doing this since that program has been started, I have yet to see one that is a certified accountant that can do both the analysis of the building and the accounts of the business that they are reviewing to be able to make that

determination, yet over and over again in reports that I've sent to DSA many of the reports indicate that an item or many items, in the report that the CASp found were not readily achievable to make them accessible. I find that amazing. You have also clearly received complaints from businesses like the Half Moon Bay restaurant that I sent you. You received a letter. That was never responded to.

#### Response to Comment #84

This comment is not within the scope of the rulemaking.

#### Comment #85 from HolLynn D'Lil

You know, the response every time, and I appreciate your loyalty to where you work, but the response every time is just to deny what has been said. And what Mr. Skaff just said is he filed a complaint and it was never responded to. That is a reality. And just to say that is not true and we respond to complaints, that doesn't answer our concerns. The protocol you've set up of this one minute is something that you created to keep us restricted in our ability to express our concern, and this is a great effort on our part and most people, they're probably, you know, we're a tiny percent, 1% of the entire population. I know you're going to cut me off in a minute -- that even understands even to be able to participate in even a small way in this process. So you created a process that is so difficult that even people with expertise, attorneys, accessibility consultants are saying this is not fair, we need to discuss these issues, and you cut us off and then you respond that no, everything we said is not right.

#### Response to Comment #85

This comment is not within the scope of the rulemaking.

#### Comment #86 from Susan Chandler

But why don't -- why can't you put something in the law that says you can oversee these people? This is ridiculous. You set it up, you've got the regulations, you are working on the regulations for it, why can't you oversee these people and have some kind of consequences that they do it wrong? It seems ludicrous to me. They're giving you the charge to set up the program and do the exams and then you can't do anything about them. What's wrong with this picture? Is anybody working on legislation for this? Why can't you go after them and say we need this authority. We need more authority? That is ridiculous. I think you need to go out there what you can do. That is what you need to do. You can't just sit around and say oh well.

#### Response to Comment #86

This comment is not within the scope of the rulemaking.

#### Comment #87 from Peter Margen

My comments relate to the fees. The fee structure is significantly higher than when the program was originally envisioned and the numbers that were tipped around were much, much lower with the idea being that that program would be more accessible to both local jurisdictions who are on very limited budget but also individuals with disabilities. The original budget for the program for the CASp program also included a budget of over \$100,000 for auditing by the State Architects office of complaints, and that had envisioned doing field verification and so on and so forth. So I don't see here a justification for the fees, and I know you have not changed the fees, but I don't see a justification for the fees. Thank you.

#### Response to Comment #87

This comment is not within the scope of the rulemaking.

#### Comment #88 from Bill Zellmer

I am a CASp. I do surveys, inspections. And I guess the comment I want to make is there needs to be a better understanding of what these reports are. There have been suggestions that these should be made, what amounts to being made public, or the DSA should take the information and control them more, and that concerns me because it's essential that these reports remain confidential. It's just a stack of paper. It's a report from somebody who is an expert in this field, somebody hires you, you do a report based on your professional capabilities, it's to advise your client that of they've got all these things wrong with the building and they should fix them. It doesn't come with the authority to make them fix it. All it is a stack of papers that gives them something to think about and that's all --I think it is important that we keep in mind it is just a stack of paper, it is just a report, and it didn't come with any more authority with that, and that's all.

#### Response to Comment #88

This comment is not within the scope of the rulemaking.

#### Comment #89 from Connie Arnold

Well, my name is Connie Arnold, and I was the last speaker. I kind of partly disagree with that, because the reports, there is no transparency of the reports. Business has hired these experts to tell them what is wrong with their buildings and then I can never see a report unless I'm in a court of law and then suddenly the businesses says oh, we have a report and they get a stay in the court from proceeding for a period of time because of the existence of the report. I would like to just yield my time to Peter if he has anything else to say.

#### Response to Comment #89

This comment is not within the scope of the rulemaking.

#### Comment #90 from Peter Margen

So I disagree with one of the comments from the audience that this is, quote, just a stack of paper. Indeed many of these reports specifically comments on whether or not barrier removable is readily achievable. I've seen many instances where building histories are not done for cost saving purposes so a thorough investigation of the building from accessibility compliance does not take place.

#### Response to Comment #90

This comment is not within the scope of the rulemaking.

#### Comment #91 from Richard Skaff

As Peter Margen just stated, these are not just -- and Ms. Arnold just stated, these are not just a stack of papers. These are used for legal purposes to slow a process of correction and violations in a building. And typically ones I've seen do not have any permit history within them. They, again, talk about readily achievable without any documentation, and Ms. Clair, I'm sorry, but there have been each of the reports that I've sent to DSA I've never heard back from, and they've been filed with DSA, Mr. Corelis knows about those, and one specifically from Half Moon Bay, even the owner wrote to DSA and said what's this all about. You know when I went through about this, I want to know is there a correct report or not. These reports in many cases are incomplete, incorrect, and they directly affect my ability of a person with disability to function in those buildings where they -- facilities where they have been created and the owner believes that they are correct and follows them. Putting both myself and the owner and then the building department, which either has to agree with them or not agree with them, and building department CASps that do the same thing and I had....

#### Response to Comment #91

This comment is not within the scope of the rulemaking.

#### Comment #92 from Susan Chandler

It is like, okay, yeah, so you get a pile of paper and then you ignore it. And some of those things are major. Probably some are minor, but, you know, if it is something that you complain about and then they just decide to sit on it, I've heard many times people say we'll just wait till they sue us. Businesses say this. That is not the point. The point is to try to fix things so people can get in and partake of your business and give them money. Isn't that what business is about? They want money. They don't care. They want -- they just don't want to pay the money that it would take to get it fixed.

### Response to Comment #92

This comment is not within the scope of the rulemaking.

### Comment #93 from Dawn Anderson

A couple comments directed to Ida. First of all I want to thank you for all your hard work and effort. The program does seem improved over the years that you've been involved and I just want to thank you for all your time and energy, and I also have a question from folks that are trying to get their CASp certification through funding by governmental forces, like recertification services, I was wondering if you are accepting fees by third parties for CASp? There are a couple of people that are trying to get their CASp certification through the redevelopment funds. Is there a way to take a third-party check down to pay for a CASp application and recertification?

### Response to Comment #93

This comment is not within the scope of the rulemaking.

### Comment #94 from Peter Margen

Section 161, requirements of this Subchapter have not been satisfied. I'm not clear what that means. My other comment relates to Section h, the State Architect for has received a verified factual complaint. There is no definition of what a verified factual complaint is and that needs to be defined in some way. For filing appeal Section 163 it is unclear on who will be hearing the appeal. Are you appealing to the same individual or is there a different individual involved? Thank you.

### Response to Comment #94

The Subchapter is the entirety of the CASp Program Regulations. So if you don't have a written agreement, we can say you're required to have one. If you're in the application process and you don't submit your fee or you don't meet eligibility, are you basically disqualified in eligibility and you can't test, so it stipulates in here that if you are recertifying and you don't pay your fee, basically you can't get renewed. So it sets the grounds for eligibility. The concept is eligibility is required to be maintained in order to be certified and the items listed are just the individual things that can disqualify you from eligibility. Second, a verified factual complaint is when we receive the complaint process and we investigate. We ask for proof and requirements to substantiate the complaint. The third item is with the appeal. The appeals process is first to DSA because that is the requirement as established in statute. They can first appeal to DSA and send additional information. If DSA still says no then there is a formal appeals process through the Office of Administrative Hearings.

#### Comment #95 from Bill Zellmer

I don't want to incur the wrath of the disabled community. That is the last thing I want to be able to do here today. I want to be clear when I was referring to a stack of papers as a report, please don't misunderstand me. I understand how important these reports are, there is a lot of good information in them. My point I was trying to make is that they don't carry with them legal authority. In the context of a building department that can force you to tear out a ramp and repour it, I don't have that authority as a CASp. My report could be used by somebody to do that. Finally, the issue of the report's confidentiality is crucial. I know how things go. If you say that the report will be made public in one fashion or another, that will be the last time anybody ever hires a CASp to do a report voluntarily. My clients, the building owners, will say if you're going to make the report public, I'm not going to get one, then. So that would be the end of it.

#### Response to Comment #95

DSA states that the work of the ad hoc committee was completed with the establishment for the criteria for the program.

#### Comment #96 from Connie Arnold

I want to clarify that whether a report is transparent or not, the fact of the matter is until you're in a court of law you don't know that a report on a business even exists. And that is a problem. You don't even know that business has bothered to get a report. You don't know the quality of that report. You've heard all the problems that we've already experienced that somebody may not look at the full building history record. Somebody may not say something is readily achievable. Somebody may say, you know, hey, this is discrimination against person with disability. So we don't want to see expansion of this CASp Program and have a role in interpreting our state and federal civil rights laws rather than just interpreting disabled access building codes. We don't need anyone in their professional judgment to say whether or not we were discriminated against or not based on our personal experiences that we have with a particular building or business owner or whatever we've experienced in trying to get to an accommodation.

#### Response to Comment #96

This comment is not within the scope of the rulemaking.

#### Comment #97 from Richard Skaff

I've now had a minute, at least two people, this Richard Skaff, Peter Mendoza and Craig Yates both have tried to get on to make comments during this whole event and both have been unable to do that. I'm not sure why, but I know at least those two have had difficulty getting on. There may be others that are having similar difficulty. I understand that there are almost 20 people on the line, and they're haven't been 20 people

speaking on the telephone during telephone comment when we're allowed to speak. I've got to say on this Section, as with the rest of it, the process still is unacceptable. The CASp program is not functioning correctly. There is such a wide variation on the capability of the 700 some odd certified CASp inspectors as to be outrageous. There is no oversight. There is no auditing. When Ms. Clair, you say there is auditing, what type of auditing is there? There should be regular auditing on all Certified Access Specialists to determine whether there are problems that need to be dealt with either through DSA or through the legislature. I am amazed that nobody at DSA today has said anything about their ability to go back to the legislature with a report saying that the controls that DSA has presently are inadequate. Nobody has said a word about the ability to do that. Mr. Widom, you have the ability to talk to the Governor. Do you do that? Do you do that about the CASp Program?

#### Response to Comment #97

This comment is not within the scope of the rulemaking.

#### Comment #98 from Michael Mankin

I'm calling in because I'm concerned that this program has been badly damaged by the first rulemaking done by the former State Architect. It was really only half done and a lot of the calls we have today have to do with the fact that this program did not receive according to tell the ad hoc advisory committee that proposed it, so I'm wondering if you're entertaining the ad hoc committee to get back on track and make this program work the way it was intended to work.

#### Response to Comment #98

DSA states that the work of the ad hoc committee was completed with the establishment for the criteria for the program.

#### Comment #99 from HolLynn D'Lil

Twice I've tried to make comments and I haven't been allowed in, so I know I was properly connected because I was told I would be notified, and then I was never notified. So, you know it is just part of the inequitable process the disenfranchisement you set up for this meeting today. So I suppose I should just -- I just want to note it. I know that you don't care. I just want to say that, you know, as Connie said, we only get access to these reports if there is a lawsuit. The problem is most people with disabilities do not understand what they're entitled to. If they go to a place of business that has received a report and it has an access symbol on it and there is a step to get in or they can't use the restroom because the sink is right next to the toilet, or there are no grab bars, they don't know that they have a right to those facilities. Is there any remedy at all? They think when they see that access symbol and the owner tells them I've done a

report and I'm fine, that's the end of it. That's the problem with how this process, this program, disenfranchises people with disabilities to a great extent. That is what we're trying to bring your attention to understand the particular aspects of this particular program. And it would be really lovely if you could show in any way that you care, but your process that you set up today shows that you can --

Response to Comment #99

This comment is not within the scope of the rulemaking.

Comment #100 from Connie Arnold

I oppose the expansion of CASp regs to decide what is and is not discrimination as it pertains to all federal and state disability civil rights laws.

Response to Comment #100

This comment is not within the scope of the rulemaking.

Comment #101 from Terelle Terry

The inspection record is given only to the client. There is no public sign, or record like the restaurant (pass/fail). The disabled public has no information. If the facility is not accessible, there is no appeal. This system is not transparent, in fact it is secret and closed. It is ripe for corruption, fraud, and graft. A closed system which the disabled remains disenfranchised. There must be a public display of the certification. There must be an appeal process, by the State Architect. The secrecy of the program and its operation is a denial of access to and use of facilities.

Response to Comment #101

This comment is not within the scope of the rulemaking.

**SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY NOTICE PERIOD OF FEBRUARY 29, 2016 TO MARCH 15, 2016.**

Comment #102 from in reference to Section 121

In Exhibit Q, Ms. Schur states: We recommend that the definition for "facility" be further modified to make it explicit that housing is covered in addition to other building types. In working on housing accessibility issues, it has come to our attention that there is a great deal of confusion as to whether CASPs are trained and certified on housing accessibility in addition to other types of housing. Clarification would be helpful.

### Response to Comment #102

The definition for "facility" is taken directly from Chapter 11B of the California Building Code and from the federal standards. As written, the definition for facility includes housing, because it meets the definition criteria of "any building located on a site." Candidates are tested on accessibility requirements for housing in the examination, and the examination reference list indicates the housing-related references upon which candidates for certification are tested. DSA proposes no change to the regulations as a result of this comment.

### Comment #103 from in reference to Section 133

In Exhibit Q, Ms. Schur states: Proposed and existing provisions for requesting and receiving accommodations violate the ADA. In particular, it is unlawful to create unreasonable burdens in applications such as required certification under penalty of perjury for an accommodation request. This must be stricken. Similarly, the ADA allows verification of disabilities by a wide range of individuals, and provisions limiting the types of individuals who can document a disability is unlawful. See the very DOJ guidelines you've included in your materials:

"Examples of types of documentation include:

- Recommendations of qualified professionals;
- Proof of past testing accommodations;
- Observations by educators;
- Results of psycho-educational or other professional evaluations;
- An applicant's history of diagnosis; and
- An applicant's statement of his or her history regarding testing accommodations."

Please modify the provisions that restrict verifications to certain categories of professionals.

### Response to Comment #103

Agency does not believe that a certification under a penalty of perjury is an unreasonable burden for an accommodation request, and the document relied upon does not stipulate that it is prohibited. All candidates must sign a penalty of perjury certification statement in the application process attesting to the veracity of the information submitted in the candidate application and related documentation. DSA proposes no change to the regulations as a result of this comment.

Agency has made amendments to the documents incorporated by reference to include the additional types of documentation that support the need for a testing accommodation, and related amendments based on the document relied upon.

#### Comment #104 from in reference to Section 134

In Exhibit Q, Ms. Schur states: We believe further clarification is appropriate here for these references. The more detailed list of statutes and regulations included in the Examination, Certification, and Practices Standards Handbook should be included in the regulations, as the scope of the legal requirements is an important component of the certification. In the absence of more detail, it is uncertain whether the CASP trainings and certifications are compliant with the CASP statute. Certainly, they do not provide the public, applicants, or CASPs with sufficient certainty as to the scope of their expected expertise.

#### Response to Comment #104

The CASp Examination, Certification, and Practice Standards Handbook is incorporated into the regulations by reference. DSA proposes no change to the regulations as a result of this comment.

#### Comment #105 from in reference to Section 134

In Exhibit Q, Ms. Schur states: We oppose deleting the reference to the Uniform Federal Accessibility Standards (UFAS) in this section. Its deletion has the potential to be extremely confusing, as it remains the primary accessibility code for publicly funded housing, including all housing covered by Section 504. See 24 CFR 8.32. It should be explicitly listed in this section.

An increasing number of government agencies are requiring CASP certification in connection with subsidized housing (City of LA, California Tax Credit Allocation Committee, certain programs of the Department of Housing and Community Development.) It is critical that access specialists understand that these types of housing require compliance with Section 504 and UFAS, and that they understand how to determine when housing is covered by this section. In our experience, and in the experience of some of our government collaborators, many certified CASP inspectors are not familiar with these obligations.

#### Response to Comment #105

UFAS has not been eliminated as an examination reference. It is included as a standard under 134(a)(2) as a standard that is promulgated by the United States Department of Justice. It is listed in the detailed reference list in the examination reference section of the CASp Examination, Certification, and Practice Standards Handbook, a document incorporated by reference. DSA proposes no change to the regulations as a result of this comment.

#### Comment #106 from in reference to Section 134

In Exhibit Q, Ms. Schur states: We think it is important to specifically identify, either in the examination reference list or Section 134 of the regulations, the exact cites to applicable federal and state statutes and regulations, as well as implementing guidelines. See, i.e., reference in Section 134 to “Sections 504, 508, and 510 of the Rehabilitation Act of 1973, which should be cited as 29 U.S.C. Sec. 701 *et seq.*, including Sec. 794; and implementing regulations such as the regulations at 24 CFR Part 8, especially Sections 8.4, 8.20 *et seq.*, and 8.32, which set out accessibility requirements in buildings and housing covered by the Rehabilitation Act and which specifically adopt UFAS standards.

#### Response to Comment #106

Agency believes that Ms. Schur's comments have merit, and have amended the examination reference section in the CASp Examination, Certification, and Practice Standards Handbook to reflect these amendments. These changes provide specificity to the stipulated reference, and provide clarity as to focus of study, but do not add any new references.

#### Comment #107 from in reference to Section 134

In Exhibit Q, Ms. Schur states: We strongly recommend including in the referenced materials the HUD Instructions for Use of Alternative Accessibility Standard, regarding the intersection between UFAS and 2010 ADAG, in order for CASPs to be fully informed on applicable accessibility guidelines for facilities covered by the Rehabilitation Act. The Rule was adopted and published in the Federal Register at Federal Register /Vol. 79, No. 100 / Friday, May 23, 2014.

#### Response to Comment #107

DSA is aware of the HUD Alternative Accessibility Standard, and believes this comment to have merit, but has not added it as an examination reference in this rulemaking cycle. This does not mean that a CASp does not need to know this alternative standard, solely that a CASp will not be tested on it. Examination demonstrates minimum competence as a CASp, and as a result, practice, continuing education, and collaboration with other access professionals further the CASp's knowledge. DSA will consider including this alternative standard in the examination reference list in a future rulemaking cycle, if it is still in effect. DSA proposes no change to the regulations as a result of this comment.

#### Comment #108 from in reference to Section 134

In Exhibit Q, Ms. Schur states: We strongly recommend inclusion in the Handbook of actual links to the specific statutes and regulations and guidance on federal and state

government web sites. General web links to do not provide sufficient guidance, although the problem is somewhat alleviated if the regulations are made more specific.

#### Response to Comment #108

On page 10 of the handbook, DSA offers a link to the California legislature's website where the text of California statutes can be obtained. DSA proposes no change to the regulations as a result of this comment.

#### Comment #109 from in reference to Section 134

In Exhibit Q, Ms. Schur states: We oppose deletion of the reference to the ANSI standards. They remain applicable and viable law, and CASPs need to be aware of them. While revisions in the standards may be periodically changed, that is true for all laws, regulations and standards cited. It is best handled by 1) noting in the regulations that these laws and standards are periodically updated and that applicants and CASPs should check and use the most current standards; 2) providing and updating weblinks in the manual and on the State Architect Website, and 3) regularly updating training materials. Potential changes is not sufficient grounds for omitting a highly relevant and current legal requirement.

#### Response to Comment #109

DSA is aware that specific editions of the ANSI A117.1 standards are used as a safe harbor to the FHA guidelines, but has at this time elects to not include the ANSI A117.1 standard in the examination references. This does not mean that a CASp need not know this information, but instead specifies that a candidate will not be tested on this information. Examination demonstrates minimum competence as a CASp, and as a result, practice, continuing education, and collaboration with other access professionals further the CASp's knowledge. Due to limited examination time, DSA elects to test comprehensively to the FHA guidelines and Chapter 11A of the CBC, since they are the standards used in the state of California.

#### Comment #110 from in reference to Section 134

In Exhibit Q, Ms. Schur states: Section 134(a)(5) refers generally to California laws for accessibility in the Government Code, the Health and Safety Code, and the Civil Code. This reference needs to more specifically reference the appropriate legal obligations. These laws cover volumes of materials, and additional guidance is needed for this reference to be meaningful in any way. We are happy to work with the State Architect to come up with a list of the most significant laws, which could include a caveat that there may be additional laws. At a minimum, it should reference the following laws, which are identified in the CASP statute: Section 51, 54, 54.1, or 55 of the Civil Code,

Section 19955.5 of the Health and Safety Code. See Government Code Section 65946(a)(2).

Response to Comment #110

Page 7 of the CASp Examination, Certification, and Practice Standards Handbook, a document incorporated by reference, lists the California statutes covered by the CASp Examination. DSA proposes no change to the regulations as a result of this comment.

Comment #110 from in reference to Section 134

In Exhibit Q, Ms. Schur states: It may be particularly helpful to reference the following HUD/DOJ guidelines: JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE - ACCESSIBILITY (DESIGN AND CONSTRUCTION) REQUIREMENTS FOR COVERED MULTIFAMILY DWELLINGS UNDER THE FAIR HOUSING ACT, April 30, 2013, as well as all HUD accessibility requirements cited therein.

Response to Comment #111

DSA tests to the Fair Housing Act and the promulgated technical guidance in the Fair Housing Accessibility Guidelines as is stated on Page 7 of the CASp Examination, Certification, and Practice Standards Handbook. DSA proposes no change to the regulations as a result of this comment.

Comment #112 from in reference to Section 161

In Exhibit Q, Ms. Schur states: Using prior convictions as a bar to applications is likely to create a disparate impact on protected classes and constitute unlawful discrimination. See recent rules adopted by DFEH and the EEOC. In particular, requiring applicants to divulge old infractions and misdemeanors and/or expunged criminal records may violate the law. Rule 164, given its discretionary nature, does not solve the problem.

Response to Comment #112

The rules adopted by DFEH and EEOC address employment hiring policies. DSA does not offer an examination to employ CASps, but instead administers a certification program to certify CASps. California Penal Code 1203.4 states that an individual with a criminal conviction is not relieved of the obligation to disclose the conviction in response to any direct question contained in any application for licensure by any state or local agency. DSA proposes no change to the regulations as a result of this comment.

## **ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS.**

No alternatives were proposed to DSA that would lessen any adverse economic impact on small business.

## **ALTERNATIVES DETERMINATION**

DSA has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action was proposed; would be as effective and less burdensome to affected private persons than the proposed action; or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The amendments adopted by DSA are the only regulatory provisions identified by DSA that accomplish the goal of protecting consumers of CASp services by ensuring that certified access specialists remain competent in their practice. Except as set forth and discussed in the summary and responses to comments, no other alternatives have been proposed or otherwise brought to DSA's attention.