FINAL STATEMENT OF REASONS
FOR
PROPOSED BUILDING STANDARDS
OF THE
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
REGARDING THE 2013 CALIFORNIA BUILDING CODE (NON-ACCESS)
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 2

(HCD 06/12)

The Administrative Procedure Act requires that every agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding. The rulemaking file shall include a Final Statement of Reasons. The Final Statement of Reasons shall be available to the public upon request when rulemaking action is being undertaken. The following are the reasons for proposing this particular rulemaking action:

UPDATES TO THE INITIAL STATEMENT OF REASONS

(Government Code Section 11346.9(a)(1) requires an update of the information contained in the initial statement of reasons. If update identifies any data or any technical, theoretical or empirical study, report, or similar document on which the state agency is relying that was not identified in the initial statement of reasons, the state agency shall comply with Government Code Section 11347.1.)

No data or any technical, theoretical or empirical study, report, or similar document on which the Department of Housing and Community Development (HCD) is relying has been added to the rulemaking file that was not identified in the Initial Statement of Reasons.

HCD has made no substantive modifications to the Express Terms as originally proposed. However, due to formatting changes made in the 2012 International Building Code (IBC), in which all definitions have been moved into Chapter 2, and the proposal by the Division of the State Architect (DSA) to relocate Chapter 11B accessibility definitions into Chapter 2 of the 2013 California Building Code (CBC), HCD has chosen to move select accessibility-related definitions from the 2012 CBC "Non-Access" Final Express Terms into Chapter 2 of the 2013 CBC Chapter 11A "Housing Accessibility" Express Terms in coordination with the DSA and for purposes of clarity and consistency.

Since both the "Non-Access" Express Terms and the Chapter 11A "Housing Accessibility" Express Terms are located in the CBC (Title 24, Part 2), HCD believes the decision to move the "accessibility-related" definitions into the Chapter 11A Express Terms is an appropriate action that will also make it easier for stakeholders to follow the changes. There is no change in regulatory effect.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

(Pursuant to Government Code Section 11346.9(a)(2), if the determination as to whether the proposed action would impose a mandate, the agency shall state whether the mandate is reimbursable pursuant to Part 7 of Division 4. If the agency finds that the mandate is not reimbursable, it shall state the reasons for the finding(s).)

HCD has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

OBJECTIONS OR RECOMMENDATIONS MADE REGARDING THE PROPOSED REGULATION(S)

(Government Code Section 11346.9(a)(3) requires a summary of EACH objection or recommendation regarding the specific adoption, amendment, or repeal proposed, and explanation of how the proposed action was changed to accommodate each objection or recommendation, or the reasons for making no change. This requirement applies only to objections or recommendations specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action or reasons for making no change. Irrelevant or repetitive comments may be aggregated and summarized as a group.)

The following is HCD's summary of and response to comments specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the actions or reasons for making no change.

COMMENTS RECEIVED DURING THE 45-DAY PUBLIC COMMENT PERIOD ARE LISTED BELOW.
(The text with proposed changes clearly indicated was made available to the public from August 31, 2012, until October 15, 2012.)

1. COMMENTER: David Bonowitz S.E. **(EM-1)**
605A Baker Street
San Francisco, CA 94117

COMMENT: EM-1. Section 3401.6:
The commenter requests that HCD adopt International Building Code (IBC) Section 3401.6, with or without amendment, into the 2013 California Building Code (CBC). The commenter believes HCD's proposed non-adoption of Section 3401.6 (formerly Section 3401.8, which was not adopted by HCD in the 2010 CBC) will make it more difficult for engineers to use alternate provisions in the International Existing Building Code (IEBC). The commenter further suggests that by HCD's non-adoption, it "gives the incorrect impression to engineers, owners, and code officials that these alternative seismic provisions are not acceptable for HCD-regulated occupancies."

HCD RESPONSE:
HCD acknowledges the commenter's point of view and analysis. Mr. Bonowitz presented HCD with similar written suggestions before HCD's 2013 CBC focus group meeting, which was prior to the Building Fire and Other Code Advisory Committee Meeting held on August 14, 2012. HCD evaluated the proposals and made them available to all participants who attended HCD's focus group meeting.

HCD appreciates the commenter's position, but does not agree with his conclusions. California Health and Safety Code Section 19160(m) specifically acknowledges IEBC Appendix A4, concerning retrofit of existing soft-story type dwellings as an appropriate standard. Although Health and Safety Code Section 19160(m) references Appendix A4 regarding retrofit for use in soft-story residential buildings, it is imperative to recognize that statute also specified that it was not the intent of the Legislature to preclude other model codes relating to retrofit of existing buildings, if developed. This logic would apply to Appendix Chapter A2 or Appendix Chapter A5 which we believe is the heart of the commenter's argument. Prior to the 2007 Building Standards Code, the California Existing Building Code (CEBC) adopted and printed only IEBC Appendix A1 for unreinforced masonry. HCD made an emergency finding and completed an emergency rulemaking package adopting IEBC Appendix A3 with California amendments into the 2007 CEBC. The modified Appendix Chapter A3 was simultaneously proposed and adopted into the 2010 CBC. IEBC Appendix Chapter A2 or Chapter A5 have not been evaluated for adoption nor vetted during any HCD stakeholder process. HCD staff are not aware of any agency in California that has adopted another provision in the IEBC.

The commenter also advocates use of ASCE 31 and ASCE 41. Nothing precludes the commenter from proposing to use those standards. The ASCE standards appeared to be specific to IEBC Appendix A5, which is not adopted by HCD. However, appendices and standards not adopted by HCD are available to be proposed as an alternate method of compliance. Local enforcing agency approval is required.

The commenter omitted companion sections to Health and Safety Code Section 19160 in his analysis. Eight sections follow Health and Safety Code Section 19160 in Article 4 "Earthquake Hazardous Building Reconstruction," and those statutory sections specifically authorize local governments to evaluate and adopt retrofit standards through local ordinance. The topography, geography and climactic conditions vary design of California's housing stock statewide, giving credibility to local evaluation and adoption of earthquake standards meeting local needs. Adoption of the model code sections the commenter suggests would usurp local authority and contradict statute. Nothing precludes the commenter and/or design professionals from proposing IEBC Appendix Chapter A2, Chapter A5, ASCE 31 or ASCE 41 standards to a local enforcing agency for alternate approval unless the local jurisdiction has already adopted prescriptive seismic retrofit building standards or prohibits IEBC standards not adopted in California as an alternative.

HCD has made no revisions to the initial proposed Express Terms based upon this comment. Similar to the 2010 CBC, HCD proposes to continue the non-adoption of this model code section.

2. COMMENTER: David Bonowitz S.E. **(EM-2)**
605A Baker Street
San Francisco, CA 94117

COMMENT: EM-2. Sections 3405.2 and 3405.3:
The commenter requests that HCD adopt International Building Code (IBC) Sections 3405.2 and 3405.3 into the 2013 California Building Code (CBC). The commenter further contends that in his opinion, HCD rationale specifying non-adoption of those sections is incorrect or false. The commenter presented HCD with similar written suggestions before HCD's 2013 CBC focus group meeting, which was prior to the Building Fire and Other Code Advisory Committee Meeting held on August 14, 2012. HCD evaluated the proposals and made them available to all participants who attended HCD's focus group meeting.

HCD RESPONSE:
HCD appreciates the commenter's point of view and analysis, but does not entirely agree with his conclusions. HCD believes the commenter is incorrect when he suggests that Health and Safety Code Section 17912 has "no relation at all" to the triggering mechanisms in CBC Section 3405.2 and Section 3405.3. The commenter has selectively utilized text from Health and Safety Code Section 17912 to conclude his analysis. IBC Section 3405.2.1 requires engineering analysis to establish whether the damaged building, if repaired to its pre-damaged state, would comply with the provisions of this code (2012 IBC) for wind and earth quake loads. Buildings in seismic design categories A, B, and C and one-and-two family dwellings are exempt from evaluation of load combinations that include earthquake effects. This exceeds the scope of Health and Safety Code Section 17912. California Building and Professions Code does not prohibit any person from preparing plans, drawings, or specifications for multiple dwellings containing no more than four dwelling units of wood frame construction not more than two stories and basement in height. Therefore, a structure can be designed in California without a registered professional by utilizing conventional light-frame construction provisions that have been in building codes for decades. IBC provisions requiring engineering analysis for a non-engineered conventional light-frame residential structure in compliance with the current building code exceeds the scope of Health and Safety Code Section 17912. Additional regulatory burden and costs are contrary to HCD's mission established under the State Housing Law Program. HCD staff believes that to adopt IBC Sections 3405.2 and 3405.3 per the commenter's recommendation would exceed HCD's statutory authority.

The Health and Safety Code states in part: repair of existing buildings shall permit the replacement, retention, and extension of original materials and the use of original methods of construction for any building or accessory structure as long as the portion of the building and structure subject to the replacement, retention, or extension of original materials and the use of original methods of construction complies with the building code provisions governing that portion of the building or accessory structure at the time of construction, and the other rules and regulations of the department or alternative local standards governing that portion at the time of its construction and adopted pursuant to Health and Safety Code Section 13143.2 and the building or accessory structure does not become or continue to be a substandard building. Statute is not explicit that if or when a structural element has become substandard, whether the condition is based upon a seismic episode or unnatural event or other mitigating factors such as inclement weather, termites, etc. When considered substandard, it is a function of the local enforcing agency to determine that the same structural element or materials cannot be replaced in kind with element, material or system. The commenter further asserts that Health and Safety Code Sections 17922 and 17958.8 "explicitly do not apply to Health and Safety Code Section 17920.3" – Substandard building. HCD has not made the same connection as the commenter because the language in Health and Safety Code Section 17920.3 does not support the commenter's conclusion. There is no past precedence or indication that the commenter's position has ever been addressed, confirmed or supported by HCD.

HCD has made no additional modifications to the Express Terms based upon this comment. Similar to the 2010 CBC, HCD proposes to continue the non-adoption of this model code section.

3. COMMENTER: Matthew L. Mlakar Comment **(EM-3)**
Structural Engineers Association of California, Building Code Committee
3001 E Street
Sacramento, CA 95816

COMMENT: EM-3. Section 1905.1.9:
The commenter agrees with HCD's item 21, modification to CBC Section 1905.1.9, but also requests approved as amended and proposes "… the change as written by HCD should extend to all State and Local agencies."

HCD appreciates the commenter's point of view; however, HCD has statutory authority only for residential occupancies. HCD proposes no additional modifications to the Express Terms based upon this comment.

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4. COMMENTER: Joseph H. Cain, P.E. **(EM-4)**
Solar City Corporation
3055 Clearview Way
San Mateo, CA 94402

COMMENT: EM-4. Section 1509.7.1:
The commenter agrees with HCD's proposed modification to IBC Section 1509.7.1, but suggests HCD's proposed exception should "apply to all occupancies."

HCD appreciates the commenter's point of view; however, HCD has statutory authority only for residential occupancies. HCD proposes no additional modifications to the Express Terms based upon this comment.

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5. COMMENTER: Joseph H. Cain, P.E. **(EM-5)**
Solar City Corporation
3055 Clearview Way
San Mateo, CA 94402

COMMENT: EM-5. Section 13.4.7:
The commenter agrees with HCD's proposed modification to ASCE Section 13.4 regarding ballasted photovoltaic systems. The commenter also proposes amendment of Section 13.4.7 suggesting that "partially attached" ballasted systems should not be limited to the same 1 inch per foot or less roof pitch as they can be designed to resist sliding by their anchorage system, summarizing that application by roof pitch should be based upon engineering justification.

HCD appreciates the commenter's point of view and analysis. The HCD modifications to this section were a result of the collaboration and dialogue between many stakeholders from the Solar Photovoltaic Work Group established by the Office of Planning and Research (OPR). Based upon the findings of this work group, HCD, BSC, DSA, and OSHPD went forward with the same proposal. This proposal was further vetted by stakeholders, including the general public, industry representatives, state agencies and committee members during the Structural Design and Lateral Forces Code Advisory Committee meeting held on July 17, 2012. Based upon those discussions, HCD, BSC and the other proposing state agencies agreed to further modify this section for clarity and specificity. Discussion of "partially attached" ballasted systems and alternative roof slope requirements were never discussed during the Code Advisory Committee meeting or previously through the OPR work group. The commenter's suggestion, while commendable, warrants further evaluation and analysis.

HCD believes the commenter's proposal for "engineering justification" is already addressed in the California Building Standards Code and by State Law, which permits alternate methods and materials of compliance where not explicitly covered in the code. The code cannot account for every variation in its prescriptive requirements. Therefore, the local enforcing agency is tasked with the responsibility, and may permit the aforementioned partially attached ballasted system based upon "engineering justification" as proposed by the commenter. This is exactly why state regulation and state law recognizes alternate methods of

compliance. The state licensed engineer or design professional is responsible for demonstrating to the local enforcing agency equivalency to the literal code requirements.

HCD proposes no additional modifications to the Express Terms based upon the comment.

DETERMINATION OF ALTERNATIVES CONSIDERED AND EFFECT ON PRIVATE PERSONS

(Government Code Section 11346.9(a)(4) requires a determination with supporting information that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.)

No alternatives were available for HCD to consider. HCD is statutorily required to adopt by reference specific national model building codes, which contain prescriptive standards. Prescriptive standards provide the following: explicit guidance for certain mandated requirements; consistent application and enforcement of building standards while also establishing clear design parameters; and ensure compliance with minimum health, safety and welfare standards for owners, occupants and guests. Performance standards are permitted by state law; however, unlike prescriptive standards, performance standards must demonstrate equivalency to the literal code requirement to the satisfaction of the proper enforcing agency.

Adoption of the most recent building standards on a statewide basis, as required by statute, results in uniformity and promotes affordable costs.

REJECTED PROPOSED ALTERNATIVE THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

(Government Code Section 11346.9(a)(5) requires an explanation setting forth the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small businesses, including the benefits of the proposed regulation pursuant to Government Code Section 11346.5(a)(3).)

There were no alternatives available to HCD. HCD is required by statute to adopt this model code by reference. Providing the most recent methods and applying those building standards on a statewide basis, as required by statute, results in uniformity and promotes affordable costs.