

Contra Costa County Response to Civil Grand Jury Report No. 2403, entitled “Construction-Related Accessibility Standards and the Department of Conservation and Development”

The Following are Responses to the Findings and Recommendations of the Contra Costa County Civil Grand Jury report entitled “Construction-Related Accessibility Standards and the Department of Conservation and Development” (Report 2403), dated June 6, 2024.

Findings:

1. Civil Code Section 55.53(d)(1) requires public agencies to employ or retain at least one building inspector who is a CASp.

Response: *The respondent agrees with the finding.*

2. Contra Costa County is a public agency covered by this Civil Code Section.

Response: *The respondent agrees with the finding.*

3. DCD Did not comply with Civil Code Section 55.53 (d)(1) between 6/8/2013 and 6/21/2021 or between 9/21/2021 and 12/31/2023

Response: *The respondent agrees with the finding.*

4. Civil Code Section 55.53 (d)(2) requires public agencies to employ or retain a sufficient number of CASps to conduct permitting and plan check services, effective 1/1/2014

Response: *The respondent agrees with the finding.*

5. CASps currently retained by DCD are available for consultation on accessibility requirements.

Response: *The respondent agrees with the finding.*

6. DCD does not have a procedure for any CASps to conduct permitting and plan check services in the building permit approval process.

Response: *The respondent disagrees with the finding. Managers in the Department of Conservation and Development (DCD) who supervise staff involved in the building permitting and plan check process may obtain*

consultation from a Certified Access Specialist (CAsp) retained by the department by making a request to the Chief Building Official, Building Division, who will review the request and direct the CAsp retained by the department to provide such consultation as needed.

7. Government Code Section 4469.5 requires public agencies to provide an informational notice about accessibility laws to applicants for building permits for additions, alterations, and structural repairs to commercial property, or building permits for new construction of commercial property. This notice encourages business permit applicants to consult CAsps.

Response: *The respondent agrees with the finding.*

8. DCD was not providing the informational notice required by Government Code Section 4469.5 as of 12/31/2023

Response: *The respondent agrees with the finding.*

9. The law requires that moneys in the Accessibility Compliance Fund shall be used for increased certified access specialist (CAsp) training and certification within that local jurisdiction and to facilitate compliance with construction-related accessibility requirements.

Response: *The respondent agrees with the finding.*

10. DCD, as of 2022, had used less than 28% of the Accessibility Compliance Fund. The expenditure was for training.

Response: *The respondent agrees with the finding.*

11. The staff being trained for CAsp certification are primarily senior staff and may not be involved in most construction-related accessibility reviews.

Response: *The respondent disagrees with the finding. DCD currently has 5 employees participating in an intensive training program with a CAsp retained by the department to prepare these employees to take and pass the CAsp exam, which is the main requirement for CAsp certification. The 5 employees participating in this training program are at the Senior or Principal level within their job series. All 5 of these individuals directly participate in the plan check or inspection of construction projects having accessibility requirements and part of their role is to ensure compliance with the construction-related accessibility requirements enforced by DCD.*

12. The Grand Jury has not been able to independently verify that DCD staff have been adequately trained to review building plans and building inspections for compliance

with the accessibility requirements in the Building Code as none have been certified by DSA.

Response: *The respondent can neither agree nor disagree with the finding. The County cannot evaluate if the Civil Grand Jury has been able to make the independent verification stated in the finding. DCD staff are adequately trained to fulfill their job responsibilities. DCD staff possess numerous professional certifications and licenses demonstrating their preparedness to perform their job duties. These certifications typically include ongoing continuing education requirements to ensure skills and knowledge are maintained. However, it is not required in law nor in the County's job specifications that DCD staff possess a CASp certification from the Division of the State Architect (DSA) to review and inspect construction projects for compliance with the accessibility requirements in the Building Code.*

13. Building permit fees and the Accessibility Compliance Fund are both allowable sources of funding for review of the effective use of CASps in the building department.

Response: *The respondent partially disagrees with the finding. It is not clear that building permit fees are an allowable source of funds for the stated use. Building permit fees are intended to be used to recover the County's cost of providing services associated with building permits, such as plan check and inspection services.*

Recommendations:

1. By December 31, 2024, the Board of Supervisors should consider commissioning an independent CASp review of how DCD is ensuring that the building permit process enforces federal and state accessibility requirements.

Response: *The recommendation will not be implemented because it is not warranted. There is no evidence or indication that such an independent review is needed. The County's resources would be better utilized providing services to the public.*

2. By December 31, 2024, the Board of Supervisors should consider commissioning an independent CASp review to determine how many CASps is a sufficient number to conduct permitting and plan check services at DCD.

Response: *The recommendation will not be implemented because it is not warranted. DCD is charged with and capable of determining how many CASps is sufficient and has determined that one CASp is sufficient and two CASps is the ideal number (for time off coverage). This determination is based on the department's historic need for CASp services, which has been minimal.*

3. By March 31, 2025, the Board of Supervisors should consider directing DCD to employ or retain the sufficient number of CASps to conduct permitting and plan check services.

Response: *The recommendation will not be implemented because it is not warranted. DCD has retained a CASp to provide consultation on accessibility issues related to permitting, plan checking and inspection as needed. The department has retained a second CASp to train a group of 5 experienced employees in an intensive training program to prepare them to obtain their CASp certification. DCD will continue investing in training for its employees until a sufficient number of department employees are CASp-certified, as described in response to recommendation 2 above.*

4. By September 30, 2024, the Board of Supervisors should consider directing DCD to report to the County Administrator periodically to confirm the number of CASps employed or retained.

Response: *The recommendation will not be implemented because it is not warranted. DCD will continue to retain a CASp until a sufficient number of DCD employees are CASp-certified and will periodically commission additional trainings to ensure the department maintains a sufficient number of employees who are CASp-certified .*

5. By December 31, 2024, the Board of Supervisors should consider directing DCD to have a procedure in the building permit approval process that identifies those situations where a CASp review is required.

Response: *The recommendation has been implemented. DCD has such a procedure. Any time a manager in the Building Division is uncertain as to how to interpret or apply the laws and regulations related to construction accessibility enforced by the department, that manager may request the Chief Building Official authorize the CASp retained by the department to provide consultation.*

6. By September 30, 2024, the Board of Supervisors should direct DCD to develop the informational notice required by California Code 4469.5 for current and new commercial building permit applications.

Response: *The recommendation has been implemented. When this requirement was brought to the department's attention through the Grand Jury's inquiry, the department immediately took action to comply with the requirement.*

7. By September 30, 2024, the Board of Supervisors should direct DCD to provide the informational notice required by California Code 4469.5 to current and new commercial building permit applications.

Response: *The recommendation has been implemented. When this requirement was brought to the department's attention through the Grand Jury's inquiry, the department immediately took action to comply with the requirement.*

Comments:

The Board and DCD thank the Grand Jury for its research into construction-related accessibility standards. In the course of responding to the Grand Jury's information requests, DCD became aware of its responsibility to provide an informational notice to certain building permit applicants concerning accessibility requirements as mandated by Government Code Section 4469.5. DCD is now providing such notice to building permit applicants.

DCD also acknowledges its responsibility to determine and employ or retain a sufficient number of CASps. The CASp exam is very difficult to pass, and as a result CASp-certified individuals are in high demand. Over the past 15 years, DCD has provided training to department employees desiring to become CASp-certified, and two department employees achieved the certification only to have left soon afterward to pursue other opportunities. Currently, DCD retains a CASp to provide consultation to the department on construction-related accessibility requirements. DCD also remains committed to employing CASp-certified staff and continues to train employees to assist them in obtaining their CASp certification.