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## **PROCEDURE: REQUEST FOR FINDING OF UNREASONABLE HARDSHIP PER CBC 11B-202.4 EXCEPTION 8**

Division of the State Architect (DSA) documents referenced within this publication are available on the [DSA Forms](#) or [DSA Publications](#) webpages.

### **DISCIPLINE(S)**

Access Compliance (ACS)

### **PURPOSE**

The purpose of path of travel improvements is to provide accessibility to the area of alteration from the facility entrance if accessibility has not previously been provided, and to restrooms, drinking fountains, public telephones, and signs supporting the altered area if such elements are not accessible. If such elements have previously been provided as accessible, path of travel improvements required as part of an alteration provide an opportunity to review the accessibility of these elements to ensure that the elements have been maintained in compliance with the applicable standard if there has been no regulatory change or have the accessibility of the element(s) improved to current requirements as required by the CBC.

This procedure clarifies the process for an *owner* to request a finding of unreasonable hardship from DSA when the cost of path of travel improvements is disproportionate to the adjusted construction cost, as permitted by CBC section 11B-202.4 exception 8. The purpose of this procedure is to promote consistency in the submittal and review of requests for unreasonable hardship for path of travel improvements for the project. This procedure does not apply to projects where a design professional requests a finding of technical infeasibility.

This procedure also is used to provide instructions on appropriate use of the required form *DSA 1-RUH: Request for Finding of Unreasonable Hardship*. References to areas and fillable locations on the forms are coordinated for ease of reference.

### **BACKGROUND**

When alterations, structural repairs or additions to an existing facility are made, CBC section 11B-202.4 requires improvements to the path of travel that serves the specific area of alteration.

Section 11B-202.4 exception 8 provides two separate conditions which may permit an exemption from full compliance with path of travel improvements and additionally provides recommended priorities when choosing which path of travel elements to improve if full compliance with 11B-202.4 is deemed disproportionate to the adjusted construction cost, thereby creating an unreasonable hardship.

The first condition of CBC Section 11B-202.4, exception 8 limits the total cost of path of travel improvements to 20 percent of the adjusted construction cost of alterations, structural repairs or additions if the adjusted construction cost is less than the valuation threshold as published by DSA.

The second condition of CBC Section 11B-202.4, exception 8 permits a finding of an unreasonable hardship if the cost of path of travel improvements is disproportionate to the adjusted construction cost of the project, and the Owner requests a finding of unreasonable hardship by DSA, as defined in CBC Chapter 2. If full compliance is determined to be an unreasonable hardship, compliance must be provided either by equivalent facilitation or to the greatest extent possible but not less than 20 percent of the adjusted construction cost without

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creating an unreasonable hardship. The adjusted construction costs of alterations to the same area or a different area on the same path of travel during the preceding three-year period are to be considered when evaluating the request for an unreasonable hardship. In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access in the order listed in CBC section 11B-202.4 exception 8.

### 1. TERMS AND DEFINITIONS

#### 1.1 TERMS

**Owner:** As used in this procedure, “Owner” applies to a district or state agency, or their legal agent.

#### 1.2 Definitions

The following definitions are critical to understanding the considerations that will be given to requests for unreasonable hardship. These definitions and other related defined terms can be found in CBC Chapter 2. Additional information on certain terms can be found below.

- **Accessible Route**
- **Alteration**
- **Addition**
- **Adjusted Construction Cost**
- **Entrance**
- **Equivalent Facilitation**
- **Facility**
- **Path of Travel**
- **Unreasonable Hardship**
- **Valuation Threshold**

##### 1.2.1 Path of Travel

On an existing campus, new buildings, structures, or elements are an addition to the facility (campus). Per CBC section 11B-202.2, additions must comply with the requirements for new construction and CBC section 11B-202.4. Exceptions under CBC 11B202.4 may apply. Per CBC section 11B-202.3, when existing elements and spaces are altered on the campus, each altered element or space shall comply with the applicable requirements of CBC Chapter 11B, Division 2, and section 11B-202.4. The addition or area of alteration must be connected to the rest of the campus by an accessible route. If this connection is newly constructed, it shall be part of the project scope included in the adjusted construction cost for the project and is not part of path of travel improvements. If this connection is existing and not compliant, it must be brought into compliance as part of path of travel improvements.

For additional information about path of travel improvements refer to Interpretation of Regulation (IR) 11B-10: *Scoping and Path of Travel Upgrade Requirements for Facility Alteration, Addition and Structural Repair Projects: 2016 CBC*. For information regarding how projects must document the path of travel on documents submitted to DSA refer to Procedure (PR) 15-01: *Required Information for Path of Travel Upgrades on Construction Documents*.

##### 1.2.2 Adjusted Construction Cost

The form DSA 1-RUH submitted to request an unreasonable hardship must include all costs as identified in the definition of “**Adjusted Construction Cost**” in CBC Chapter 2. Costs associated with path of travel improvements required by CBC section 11B-202.4, are in addition to the scope of work for the project and shall not be included in the adjusted construction cost. Refer to Section 2 for more information.

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In determining applicable alterations (scope) to be included in the total adjusted construction cost for the request for unreasonable hardship (DSA 1-RUH boxes A-C), the definition of “**Alteration**” provided in CBC Chapter 2 shall apply. All altered elements shall be included in the adjusted construction cost, including elements such as primary entrance, drinking fountains, signs and public telephones if in the area of alteration. Additionally, if a path (route) to the area of alteration does not exist (i.e. has not been previously constructed), then an accessible route must be provided as part of the scope for the alteration per 11B-206.1, and thus be included in the adjusted construction cost (DSA 1-RUH, Box A).

### 1.2.3 Valuation Threshold

Alterations which have an adjusted construction cost less than the valuation threshold are not eligible for a request for unreasonable hardship. The valuation threshold is published on DSA’s Access Compliance Reference Materials webpage and is updated annually. Projects under the valuation threshold shall provide path of travel improvements to the greatest extent possible without exceeding 20 percent of the adjusted construction cost.

If an alteration is over the valuation threshold, and the Owner proposes that full compliance of path of travel improvements is unreasonable as compared to the adjusted construction cost, the Owner may request from DSA a finding for unreasonable hardship pursuant to this procedure.

### 1.2.4 Equivalent Facilitation

A request for unreasonable hardship will require an Owner to demonstrate compliance of each element on the priority list indicated in CBC 11B-202.4 exception 8, either to the greatest extent possible without creating an unreasonable hardship and/or by equivalent facilitation.

In proposing equivalent facilitation, the Owner shall demonstrate that the proposal provides for substantially equivalent or greater accessibility and usability when compared to applicable CBC Chapter 11B requirements. In the proposal, the Owner may consider additional factors to test “greater accessibility and usability,” such as if the alternative is as reliable and convenient for persons with disabilities. Additionally, the proposal shall provide for the maximum independence of persons with disabilities while presenting the least risk of harm, injury, or another hazard to all persons.

## 2. PROCEDURE

To request a finding of unreasonable hardship, submit the DSA 1-RUH to the appropriate DSA regional office in accordance with this procedure.

An Owner who requests a finding of unreasonable hardship from DSA is ineligible to receive an “over the counter review” for the project.

### 2.1 Timely Submittal of Request

**2.1.1** The design professional shall provide early evaluation to identify the path of travel improvements and the associated costs necessary for compliance of the project. Ideally, a request for a finding of unreasonable hardship is made prior to project submittal to DSA.

**2.1.2** DSA strongly advises that if the Owner intends to request a finding of unreasonable hardship by DSA, that the Owner request a pre-application meeting to initiate the request. A pre-application meeting request may be scheduled by submitting a DSA form 91 (Oakland), 92 (Sacramento), 93 (Los Angeles), or 94 (San Diego), to the DSA regional office in which the project is located.

**2.1.2.1** If the documents are sufficiently developed at the time of the pre-application meeting, an initial evaluation of the request can be conducted; however, a final decision by DSA will not be made during the pre-application meeting. DSA will advise if additional information is needed.

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**2.1.3** A request for a finding of unreasonable hardship may be made at project submittal; however, a review of the finding may necessitate additional time for plan review and approval.

**2.1.4** Unreasonable hardship requests during construction should be avoided. Delayed requests may increase costs, will require construction change documentation submission to DSA, and may delay construction. A request for finding of unreasonable hardship by the Owner submitted during construction is addressed in section 4 below.

### 2.2 DSA 1-RUH Form Completion

**2.2.1** When submitting for a finding of unreasonable hardship, form DSA 1-RUH is required. The DSA 1-RUH shall be fully completed, signed by both the design professional in general responsible control and the Owner and provided with supporting documentation as indicated in this procedure.

**2.2.2** The DSA 1-RUH, shall describe the elements of the path of travel required to be provided or improved and shall fully describe why bringing the element(s) into full compliance is unreasonable, and a description of how accessibility is provided either to the greatest extent possible without causing an unreasonable hardship or by equivalent facilitation. An incomplete form or insufficient response may be returned for completion prior to initiating review or approval.

**2.2.3** All costs as indicated on the DSA 1-RUH; Statement of Costs section shall be included on the form.

**2.2.3.1** In determining applicable alterations to be included in the total adjusted construction cost (box A), the definition of “**Alteration**” provided in CBC Chapter 2 shall apply. All altered elements shall be included in the adjusted construction cost, including elements such as primary entrance, drinking fountains, signs and public telephones if in the area of alteration. Additionally, if a path (route) to the area of alteration does not exist (i.e. has not been previously constructed), then an accessible route must be provided as part of the scope for the alteration per 11B-206.1, and thus included in the adjusted construction cost (box A) and not in the Path of Travel Improvement Costs Section (items B1 through B7).

If a path (route) exists but is not compliant with the current or immediately preceding code and is required to be improved to be fully accessible (i.e. an accessible route), the cost for those improvements may be included in the Path of Travel Improvement Costs section (items B1 through B7) and not required to be added to the in the Adjusted Construction Cost section (box A).

**2.2.3.2** All path of travel costs related to improving existing path of travel elements serving the area of alteration must be indicated on the DSA 1-RUH Statement of Costs Worksheet, items B1 through B7, as applicable. Parking shall be reported separately from the rest of the accessible route (item B6). Enter “0” if an element is compliant with the current or immediately preceding code and does not require improvement. An incomplete form or insufficient response may be returned for completion prior to initiating review. If requesting an element not be made fully compliant (i.e. compliant to the greatest extent feasible without creating an unreasonable hardship), describe the nature of the request in detail in the Description of Request for Unreasonable Hardship and in the Justifications and Equivalent Facilitations Section of the DSA 1-RUH with all supporting documentation.

**2.2.3.3** Per CBC section 11B-202.4 exception 8, if the project area of alteration or addition, or a different area of alteration or addition to the campus utilizing the same elements for path of travel improvements in the preceding three years, did not result in full compliance of path of travel improvements due to a finding of unreasonable hardship, the cost for the previous alteration(s) or addition(s) shall be considered in the request for unreasonable hardship, in

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determining whether the cost of making the path of travel improvements for the current project is disproportionate.

Information relating to the previous projects shall be entered into the Previous Alteration Information section of DSA 1-RUH including the previous alteration worksheet. The date those alterations or addition projects were submitted to DSA will be used to determine if such projects occurred within the preceding three years of the project. Previous projects which provided a minimum of 20 percent of the adjusted construction cost for path of travel improvements and which were under the valuation threshold are not required to be entered into the previous alterations worksheet.

**2.2.3.4** Similar to section 2.2.3.3 above, if previous alteration project(s) exempt from DSA review (see *IR A-22: Construction Projects and Items Exempt from DSA Review*) and completed in the previous three years, utilizes the same elements for path of travel improvements as the current project, and the previous alteration project(s) did not result in full compliance of the path of travel requirements of CBC section 11B-202.4, the cost for the previous alteration(s) or addition(s) shall be considered in the request for unreasonable hardship, in determining whether the cost of making the path of travel improvements for the current project is disproportionate.

**2.2.3.5** If previous alterations occurred where scope of work is limited as defined in CBC section 11B-202.4 exceptions 2, 3, 4, 5, 6, 7 and 10, they are not to be considered in the request for unreasonable hardship. Exception 9 is applicable to privately funded facilities and is not applicable to district owned facilities. See section 5 below for more information.

### 2.3 Documentation of Request

**2.3.1** In addition to a completed DSA 1-RUH, path of travel improvements as required per Procedure (PR) 15-01: *Required Information for Path of Travel Upgrades on Construction Documents* shall be documented, and include the following:

**2.3.1.1** Project plans which clearly demonstrate the following information:

**2.3.1.1.1** The DSA 1-RUH, Description of Request for Unreasonable Hardship and the Statement of Costs Worksheet placed on the cover sheet.

**2.3.1.1.2** A description of the scope of the alteration including a description of the use of the area(s) or facility.

**2.3.1.1.3** Identification of path of travel elements serving the area of alteration. For each element, provide a description of the status of compliance of the element, the proposed improvement needed for compliance with current Chapter 11B requirements, indication if the element will be made fully compliant, partially compliant to the greatest extent possible, not be improved or provided, and if equivalent facilitation is proposed.

**2.3.1.1.4** If indicating compliance pursuant to CBC 11B-202.4 exception 2, the description of status should include the edition of the code under which the element was last improved.

**2.3.1.2** Supporting documentation which must include the following:

**2.3.1.3** Completed DSA 1-RUH

**2.3.1.4** Evidence that the path of travel element complies with the current or immediately preceding edition of CBC Chapter 11B, with verification if the path of travel element is proposed to not be improved.

**2.3.1.5** Compliance may be demonstrated with photographs showing the element and appropriate measuring devices indicating the full range of the measurement. For example, a ramp may be photographed, and images of a digital level readout included, or a water closet can be photographed with a tape measure showing the measurement from the adjacent wall to

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the centerline of the water closet. Photos must be clear with dimensions legible and include a date stamp.

**2.3.1.6** Compliance of the element may also be demonstrated with a drawing detail and supporting photographs to indicate compliance.

**2.3.1.7** Evidence of cost estimate of adjusted construction cost (see section 1.2.3 above of this procedure) and cost estimate per path of travel element.

**2.3.1.7.1** Cost estimates must be prepared by the architect or structural engineer in general responsible control and include estimated costs with reasonable back up data from recognizable sources; or prepared by a licensed contractor as part of the project bid; or prepared by a professional construction estimator or similar professional.

**2.3.1.7.2** Organized per element and identified as being provided as part of the scope of work or identified as a path of travel improvement.

**2.3.1.7.3** Cost estimate for providing equivalent facilitation if construction related. Do not include costs associated to a programmatic solution for equivalent facilitation.

**2.3.1.7.4** Cost Estimates must be of sufficient detail to accurately estimate actual projected costs.

**2.3.2** Supporting documentation necessary to determine a finding of unreasonable hardship but inappropriate for inclusion in the construction documents will be retained in the project files. DSA may indicate if any of the information submitted will need to be included in the construction documents.

**2.3.3** The Owner must retain a copy of all information submitted to DSA to substantiate the request.

### 2.4 Review of Request

**2.4.1** Upon submission of the DSA 1-RUH with all necessary documentation, an initial readiness check will be undertaken by the plan reviewer. If the request is incomplete, the design professional in general responsible control and/or the Owner will be notified that more information is needed for review. If the request is identified as complete, the DSA 1-RUH and all supporting documentation will be forwarded to the Access Compliance Supervisor or designee for review.

**2.4.2** If the Access Compliance Supervisor's review finds the request acceptable, a finding for unreasonable hardship will be granted. The Access Compliance Supervisor will provide the Owner with a signed DSA 1-RUH and return supporting documentation DSA deems is not necessary to retain in the DSA project files.

**2.4.3** If the Access Compliance Supervisor's review finds the request not acceptable, they will return the DSA 1-RUH to the design professional in general responsible control and/or the Owner indicating the basis of the denial. At the request of either the Owner or Access Compliance Supervisor, a meeting with the design team may be scheduled to provide additional feedback as appropriate.

## 3. PROJECT DOCUMENTATION OF APPROVED UNREASONABLE HARDSHIP

**3.1** Submission of a draft request for finding of unreasonable hardship made prior to project submittal is encouraged to avoid delays during review, however the formal request and submission of all necessary documentation required to evaluate the request must be made at project submission.

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**3.2** The Owner shall submit the DSA 1-RUH along with the required project submittal forms at the time the project is submitted for review. The Owner's demonstrated compliance of the elements to the maximum extent feasible or by equivalent facilitation shall be reflected in the construction documents at project submission. Any required revisions to the DSA 1-RUH and supplementary information shall be submitted to DSA with the project application. Any changes to the request made as a result of reviews shall be included in the project documents as required by this procedure prior to approval.

**3.3** Revisions to the request and associated documentation may be necessary as the project continues through review. If changes to the DSA 1-RUH are required, page one of the DSA 1-RUH must reflect the revised date.

**3.4** Once an unreasonable hardship is granted, the required information from the DSA 1-RUH that is the basis of the finding of unreasonable hardship shall be included in the approved drawings. The construction documents submitted shall reflect the Owner's demonstrated compliance of the elements to the maximum extent feasible or by equivalent facilitation as documented in the confirmed finding of unreasonable hardship. Any change or increase in scope to the project will invalidate the finding of unreasonable hardship.

**3.5** Supporting documentation that informs the basis of the finding of unreasonable hardship and necessary to construct the project must be added to the plans prior to plan approval.

**3.6** It is recommended that a separate site plan and/or floor plan(s) be provided which focus on path of travel improvements and reflect the finding of unreasonable hardship. This will aid project inspectors and avoid unnecessary comments/questions during construction. Refer to PR 15-01 for more information.

### 4. POST APPROVAL UNREASONABLE HARDSHIP REQUESTS

**4.1** A request for unreasonable hardship that is submitted after receiving approval of the construction documents by DSA must be submitted as a change in scope to the project and will require documentation to process the change as a revision. Refer to *IR A-6: Construction Change Document Submittal and Approval Process*.

**4.2** Complexity, scope, and scale of the request as well as plan review workload will affect the review of a request for a finding of an unreasonable hardship submitted post approval.

**4.3** Per DSA PR 15-01, DSA may require additional evidence or documentation substantiating compliance or documenting non-compliance of path of travel elements, as such a request may be evidence that the path of travel was not fully verified prior to project submittal. Refer to section 3 above for additional information.

**4.4** For a finding of unreasonable hardship by DSA after approval of construction documents, the design professional in responsible charge shall update the project drawings for with the required information from the DSA 1-RUH that is the basis of the finding of unreasonable hardship. Refer to section 2.3 above.

### 5. INFORMATION RETAINED IN PROJECT FILES

**5.1** A finding of unreasonable hardship by DSA will be retained in DSA's files for the project, in addition to supporting documentation that informed the basis of the finding.

**5.2** A finding of unreasonable hardship will be recorded in Etracker.

**5.3** A project whose adjusted construction cost is under the valuation threshold will not have compliance with 11B-202.4 exception 8 recorded in Etracker.

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### 6. ADDITIONAL INFORMATION, CONSIDERATIONS AND EXAMPLES

**6.1** Elements listed in CBC Section 11B-202.4 that are included or altered as part of the scope of work for the project are to be included in the adjusted construction cost and are not to be included as part of the cost of path of travel improvements.

**6.2 Example 1:** The project consists of a new classroom building for the campus but does not include new restrooms as part of the scope of work. The cost for the accessible route connecting the addition to the campus is newly constructed is part of the adjusted construction cost. Because the addition does not include new restrooms as part of the scope of work, the existing restrooms serving the area of alteration and one existing path from the addition to the restrooms must be evaluated for path of travel improvements. Evaluation determines that the accessible toilet compartments in the existing restrooms, constructed in 2009, are not compliant to current CBC Chapter 11B requirements, and the existing path has been damaged by tree roots, thereby rendering the path noncompliant. The improvements of the existing restrooms to current Chapter 11B requirements, including the improvements to make the existing path once again accessible, are to be included in the costs for path of travel improvements.

**6.3 Example 2:** The project consists of a new classroom building for the campus and includes new restrooms, drinking fountains, signs, and a newly constructed route connecting the addition to the campus as part of the scope of work. These costs are included in the adjusted construction cost. Additional restrooms and drinking fountains are not required to be provided as part of path of travel improvements; however, other elements indicated in CBC 11B-202.4 must be evaluated for compliance, which includes a path from the new classroom building to the entrance of the facility and to the public way, to public telephones serving the area, and to accessible parking, including evaluating the compliance of on-site bus stops or drop off and loading zones where provided. Costs for improving these elements to current CBC Chapter 11B requirements are to be included in the costs for path of travel improvements.

**6.4 Example 3:** The project consists of an alteration of only an existing classroom. Elements evaluated for compliance include the path to the area of alteration from the entrance, the path to restrooms, public telephones, and drinking fountains serving the area of alteration, and the path to the public way and to accessible parking. Evaluation includes the compliance of restrooms, drinking fountains, and public telephones serving the area of alteration, signs and accessible parking. Costs for improving these elements to current CBC Chapter 11B requirements are to be included in the costs for path of travel improvements.

**6.5** In determining the overall accessibility of the project for the purposes of evaluating a request for unreasonable hardship, elements of the path of travel in compliance with the federal Department of Justice (DOJ) adopted Americans with Disabilities Act Guidelines (ADAAG) but not in compliance with the current or immediately preceding edition of the California Building Code (CBC) must be identified and may be considered accessible to the greatest extent possible by DSA in its finding of unreasonable hardship according to the priority list established by CBC 11B-202.4 exception 8, permitting improvement costs for accessibility to be allocated to other elements lower in the list of priority that do not meet current CBC or ADA requirements.

**6.6 Example 4:** A toilet room serving the area of alteration complies with the 1991 ADAAG but does not comply with the current edition of the CBC. Other path of travel elements such as drinking fountains and signs are not compliant. The project may be allowed to improve the drinking fountains and signs before improving the toilet room to meet current CBC requirements. A toilet room which was never constructed in compliance with any federal and/or California accessibility standard provides much less accessibility as compared to a restroom which was



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constructed in accordance with an adopted federal and/or California accessible standard/regulation adopted prior to current requirements. Supporting documentation to document compliance to each standard should be provided with the DSA 1-RUH per section 2.3 above.

### ADDITIONAL RESOURCES:

- DSA 1: Application for Approval of Plans and Specifications
- DSA 3: Project Submittal Checklist
- DSA 1-RUH: Request for Finding of Unreasonable Hardship

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### REFERENCES:

California Code of Regulations (CCR) Title 24

Part 1: California Administrative Code (CAC), Sections 4-301, 4-435, 5-101 5-102

A DSA Procedure documents a process or series of steps that DSA staff and/or external stakeholders must complete in order to fulfill one or more administrative requirements of DSA's review and approval of plans and specifications and construction oversight programs.