

July 4, 2016

Attorney General Kamala D. Harris
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814-2919

Ms. Mia Marvelli
Executive Director
California Building Standards Commission
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833

Mr. Ric Moore (Executive Officer)
Board for Professional Engineers, Land Surveyors, and Geologists
2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833-2944

Dear Attorney General Harris, Ms. Marvelli and Mr. Moore:

Our goal with this letter is to address professional engineering evaluations and Californian (CA) Building Official's (CABOs) acceptance of professional engineering work, by any [CA licensed professional or specialty engineer](#), in the context of the California laws that we are aware of.

Requests of Companies to Provide Proprietary Intellectual Property/Test Data

Our membership has been asked to provide IP¹ and proprietary test data and analysis on a frequent enough basis that it is cause for concern. Generally, all testing, engineering analysis and design work performed by professional engineers or others on the staffs of SBCA members typically use proprietary IP. Hence by being asked to divulge test reports, engineering analysis, software or any IP under the duress of not gaining code approval, SBCA members are forced to potentially violate;

- a. Responsibilities under contracts with customers.
- b. Non-disclosure agreements.
- c. [CA professional engineer or specialty engineer](#) responsibilities under [California professional engineering law](#).

Additionally, CA has a very liberal [open meetings and public records act](#) where all CA citizens have the "[right to any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics](#)". This appears to be a straightforward path for a competitor to gain access to key proprietary IP through a CA "freedom of information act" request(s).

SBCA would appreciate the opinion of the CA Attorney General's office about the importance of protecting proprietary knowledge and intellectual property in the context of providing competitive advantages in the market. It is assumed that the California Attorney General's office will be an advocate of professional engineering and product innovation through enforcement of the [CA concept of a free, fair, vigorous and competitive marketplace](#). This

¹ IP = intellectual property

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certainly is intended to advance CA consumer's best interest. Any clarification contrary to our reading of the law would be appreciated.

One of the functions of a [research report \(1703.4.2\)](#)², as defined in Chapter 17 of the CA Building Code (CBC), is founded on the premise of protecting proprietary knowledge/IP and not divulging it to competitors. Any testing, engineering analysis, software development, etc. undertaken is proprietary IP. To protect this work it is reviewed and affirmed by an [ANSI ISO/IEC 17065](#) report, which is then [Section 1703 compliant](#).

This approach is intended to certify compliance with the relevant CBC, CA Residential Code (CRC) or building specifications adopted by the local jurisdiction.

Given this, there are over 80 organizations that provide certified product evaluation reports under the [ANSI accreditation](#) process for given scopes of certification.

[Research or technical evaluation report](#) work performed under an [ANSI accreditation](#) or as a [CA professional engineer or specialty engineer](#) is intended to protect the intellectual property rights of companies as they comply with the concept of using "alternative materials, designs or methods of construction to that found in the building code" as found in the [California Code](#)³.

Professional engineering and the building code are intended to encourage innovation and IP creation which promotes the [California concept of a free, fair, vigorous and competitive marketplace](#).

The business logic path then suggests that, in all cases where an [ANSI accredited firm](#) or a [CA licensed professional or specialty engineer](#) is involved:

1. An [ANSI accredited firm](#) or a [CA licensed professional or specialty engineer](#) shall gain immediate CABO or RDP approval of an "alternative material, design or method of construction to that found in the building code" via an [ANSI ISO/IEC 17065 product certification](#), which is then [CBC Section 1703 compliant and CRC compliant](#)⁴.
2. One of the functions of a [research report \(1703.4.2\)](#)⁵, as defined in Chapter 17 of the CBC, is founded on the premise of protecting proprietary knowledge/IP and not divulging it to competitors. Any testing undertaken is proprietary IP. To protect this work it is reviewed and affirmed by an [ANSI ISO/IEC 17065](#) report, which is then [Section 1703 compliant](#).
3. This approach is intended to certify compliance with the relevant CA building code or building specifications adopted by the local jurisdiction.
4. To amplify:
 - a. The work of an [ANSI accredited firm](#) or a [CA licensed professional or specialty engineer](#) shall be approved by a CABO or the registered design professional (RDP); unless a CABO or RDP, upon denial of a [technical evaluation](#) or engineering work, provides in writing the key provisions of the administrative law, building code, and/or professional engineering law that have not been complied with.
 - i. This includes all specific citations along with commentary on what specifically is non-compliant.
 - ii. Appropriate evidence supporting non-compliance shall be provided as well.

² [Technical evaluations = 1703.4.2 Research reports](#). Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this code, shall consist of valid research reports from approved sources.

³ The CA law that is germane to implementation of the typical building code provision called alternative materials, designs or methods of construction generally follows the [standard language of IBC Section 104.11](#). The specific CA Residential and Building Code language can be found in its entirety in Appendix A.

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http://codes.iccsafe.org/app/book/content/2015_CALIFORNIA/2013%20CALIFORNIA%20BUILDING%20CODE%20VOL%202,%20SUPPLEMENT%20JULY%202015/Chapter%2017%20-%20Structural%20Tests%20and%20Special%20Inspections.pdf

⁵ [Technical evaluations = 1703.4.2 Research reports](#). Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this code, shall consist of valid research reports from approved sources.

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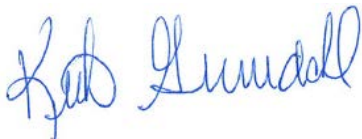
- b. The building code and any administrative law is a legal contract. Given this a CABO or RDP shall also provide the specific path to cure any deficiency so that the [ANSI accredited firm](#) or a [CA licensed professional or specialty engineer](#) can take specific actions to cure.
 - i. Failure to approve without providing specific actions to cure can be a denial of an ANSI accredited firm's or a [professional or specialty engineer's](#) license to work in their area of expertise, which restrains trade.
- c. When each deficient element is fully cured, approval shall be granted. If not fully cured, approval will remain denied until cured.

This is a review of the CBC, CRC, California Administrative law and California Engineering law. Given this review, implementing an "alternative material, design or method of construction to that found in the building code" shall be evaluated and approved by a CABO or RDP via a technical evaluation through any group listed on the [ANSI Accredited Product Certification Body website](#) or by any [CA licensed professional or specialty engineer](#) using the process defined above. The goal is to ensure that all [ANSI 17065 accredited organizations](#) or [CA licensed professional or specialty engineer](#) are treated consistently and in the spirit of [California's concept of a free, fair, vigorous and competitive marketplace](#).

Please let me know if any of the above information is incorrect. Otherwise SBCA will encourage our members to expect that this recap is accurate, will take action accordingly and will expect outcomes accordingly as well.

Thank you very much for your consideration of these concepts, your timely feedback if anything presented is incorrect and any further insight/counsel that can be provided so that SBCA members assuredly comply with California laws.

Respectfully yours,



Kirk Grundahl, P.E.
Executive Director