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STATE ALLOCATION BOARD
SUBCOMMITTEE ON
SEISMIC MITIGATION PROGRAM

STATE CAPITOL, ROOM 4202
SACRAMENTO, CALIFORNIA 95814

DATE: JUNE 9, 2011
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Reported By: Mary Clark Transcribing
4919 H Parkway
Sacramento, CA 95823-3413
(916) 428-6439
marycclark13@comcast.net

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APPEARANCES

Committee Members:

SCOTT HARVEY, Chair, Chief Deputy Director, Department of General Services, designated representative for Fred Klass, Director, Department of General Services

ASSEMBLY MEMBER JOAN BUCHANAN

KATHLEEN MOORE, Director, School Facilities Planning Division, California Department of Education, designated representative for Jack O'Connell, Superintendent of Public Instruction; Member State Allocation Board

Office of Public School Construction Staff:

LISA SILVERMAN, Acting Executive Officer

JUAN MIRELES, Policy Manager, Program Services

DAVE ZIAN, Chief of Program Services, OPSC

P R O C E E D I N G S

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MR. HARVEY: Good afternoon. I'd like to call the Subcommittee on Seismic Mitigation to order with a roll call so we can establish a quorum.

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MS. GENERA: Assembly Member Buchanan.

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ASSEMBLY MEMBER BUCHANAN: Here.

8

MS. GENERA: Kathleen Moore.

9

MS. MOORE: Present.

10

MS. GENERA: Scott Harvey.

11

MR. HARVEY: Present.

12

MS. GENERA: We have a quorum.

13

MR. HARVEY: All accounted for. This is our fourth meeting and it is one that culminates in the work not only of the Committee but direction and guidance provided by the Allocation Board at its last meeting.

17

We've taken lots of testimony, heard lots of reasons to improve on the program we had and the force, our regulations, which do that. It alters the way in which we look at buildings. Rather than looking at a handful, we're going to look at all of the Type 2 buildings and rather than having a shake zone standard, we are going to rely on a structural engineer's report that is conformed in and validated by DSA and only if there is a presence of faulting, liquefaction, or landslide hazards will that be documented

25

1 by a geological hazards report prepared by an engineering
2 geologist.

3 We'll get into the regulations themselves very
4 quickly, but I kind of wanted to set the framework. I want
5 to thank the Committee members for their diligence and work
6 on this very important issue, and unless either one of you
7 have a comment, we're going to talk about an amended report.
8 I want to make sure members of audience have the most current
9 version of the regulations.

10 We had to delete one sentence -- at least staff is
11 recommending the deletion of one sentence. It gets to
12 concerns that we feared could be raised by the Office of
13 Administrative Hearings. Remember, they've got to approve
14 these regulations and we'll get to that I assume when staff
15 makes their report.

16 So again if you have something you would like to
17 add, Assembly Member Buchanan or Ms. Moore, now would be the
18 time and otherwise we'll hear from staff.

19 ASSEMBLY MEMBER BUCHANAN: Perfect.

20 MS. MOORE: I think you covered it.

21 MR. HARVEY: David, are you taking lead on this?

22 MR. ZIAN: Yes, sir. Good afternoon, Mr. Harvey,
23 members of the Seismic Subcommittee. So in accordance with
24 the May 25th State Allocation Board meeting, we have looked
25 at the defining regulations governing the Seismic Mitigation

1 Program and endeavored to make appropriate changes to those
2 regulations.

3 I'd like to direct your attention first of all to
4 page 2 of the agenda that you have in front of you. Note
5 there are no changes to this page, so this -- if you have the
6 old one, you can still follow along and I'll highlight for
7 you the changes.

8 So in the definitions, this is the section that
9 deals with defining formally the most vulnerable Category 2
10 buildings. You'll notice we're striking out most vulnerable
11 and some language related to DSA and the reason for that is,
12 is formerly we had only the, quote/unquote, most vulnerable,
13 the buildings that were more at risk within the Category 2
14 buildings.

15 There are a total of 14 buildings in that
16 Category 2 and formerly we only had 8 of them in the
17 regulations. So you'll notice we've added an additional six
18 building types, so this now includes all Category 2. So
19 that's the primary reason for the most vulnerable striking.

20 You'll also notice the main change here with the
21 strikeout is that the short period spectral acceleration
22 language, et cetera, is all deleted and that's as a result
23 again of the Board direction that we not use the spectral
24 acceleration as one of the defining most vulnerable criteria.

25 So then if I can direct your attention to

1 Section 1859.82(a)(1), you'll notice that the language down
2 towards the bottom of that (a)(1) paragraph is struck out.
3 It isn't all completely gone. It's moved over into a new big
4 subsection (C).

5 And this language was originally put here when the
6 program was first set up. It was subsumed into the larger
7 facility hardship and for the sake of clarity, for the sake
8 of, you know, the direction we're going, to provide real
9 clear direction on the Seismic Mitigation Program, we felt we
10 should create a new section and just deal specifically with
11 the Seismic Mitigation Program and the criteria for that.

12 MR. HARVEY: David, if I may for clarity --

13 MR. ZIAN: Yes, sir.

14 MR. HARVEY: -- ask you a question because I think
15 I know what you've done and I want to make sure it's covered
16 because while you've struck the term most vulnerable and you
17 explained why in that very first paragraph under 85 -- I mean
18 1859.2 [sic] because we now have the whole of the Category 2,
19 throughout the rest of this document, that phrase is used.

20 MR. ZIAN: Yes.

21 MR. HARVEY: It is used in that facility hardship
22 that you just referred to. It's the seismic mitigation of
23 the most vulnerable Category 2. So I'm assuming we don't
24 have to define it per se because now all of those building
25 types are considered most vulnerable.

1 MR. ZIAN: Yes.

2 MR. HARVEY: Is that the reason we don't need to
3 define it somewhere?

4 MR. ZIAN: That's correct. And you'll notice that
5 whenever we uppercase something, that means it's a definition
6 in our subgroup 5.5 regulations for the School Facility.
7 You'll see most vulnerable now when there's -- when it's
8 mentioned in here, it's lower case now. Okay. So it's
9 not --

10 MR. HARVEY: Did everyone know that? How many of
11 you -- can you raise your hands if you knew that uppercase
12 meant it was a definition, lower case meant it's just the
13 term. All right. I see three hands. Very impressive.
14 Four, five, oh, my goodness, the count goes up.

15 MR. ZIAN: I think Bruce Hancock back there knows
16 about that.

17 MR. HARVEY: Ms. Buchanan, you have a follow-up?

18 ASSEMBLY MEMBER BUCHANAN: Yeah, I do because I had
19 the exact same question. Whether it's capitalized where it's
20 a definition or lower case where it's descriptive, isn't
21 there still implications in there that some are more
22 vulnerable than others? I mean how are you intending it to
23 be used with the lower descriptive?

24 MR. ZIAN: Well, I think if you take it in a sum
25 total, if I can direct your attention to page 3 in the large

1 (C) section, most vulnerable, Category 2 is going to be one
2 of the criteria. You have to be Category 2.

3 ASSEMBLY MEMBER BUCHANAN: Right. Um-hmm.

4 MR. ZIAN: You have to have DSA concurrence of a
5 local structural engineer report. The building has to be
6 designed for occupancy by students and staff and if there's a
7 geohazards condition such as landslide, liquefaction, those
8 things listed in the regulation, then that has to also be
9 documented by a geohazards report --

10 ASSEMBLY MEMBER BUCHANAN: Right.

11 MR. ZIAN: -- and have concurrence by the
12 California Geological Survey. Those criteria take in the sum
13 total after approval by those two agencies that those things
14 are an issue -- well, always in DSA's case -- would
15 constitute a most vulnerable building --

16 MR. HARVEY: So you got to read the --

17 MR. ZIAN: -- in that context. Does that help?

18 MR. HARVEY: -- totality of the regulation to say
19 it's the Category 2 type buildings and then this gauntlet of
20 1 through 4 under subsection (C). That gives you the
21 definition of most vulnerable.

22 ASSEMBLY MEMBER BUCHANAN: But we're not using it
23 as a definition. I mean I'm just wondering --

24 MR. HARVEY: Correct.

25 ASSEMBLY MEMBER BUCHANAN: -- if somewhere there

1 should be a descriptive in terms of -- we were trying to get
2 away -- I mean I don't know if there's anything open to
3 discussion later on in terms of we're saying most vulnerable
4 Category 2, but if we don't somewhere say what we mean by
5 that because when we dealt with it at the Board meeting, we
6 talked about buildings in imminent danger of collapse.

7 And so we're not defining most vulnerable
8 Category 2. We're talking about Category 2 buildings that
9 are in danger of collapse. So I just want to be sure there's
10 common understanding in terms of what we mean there because
11 I'm not sure there is, but --

12 MR. HARVEY: Well, you and I read -- saw it the
13 same way.

14 ASSEMBLY MEMBER BUCHANAN: Right. Yeah, the same.

15 MR. HARVEY: And I think it's worth --

16 ASSEMBLY MEMBER BUCHANAN: Yeah.

17 MR. HARVEY: -- discussing. We'll get to that
18 perhaps after you go through your report and since we're
19 adding things to talk about --

20 ASSEMBLY MEMBER BUCHANAN: Right.

21 MR. HARVEY: -- the other one I wanted to was, you
22 know, this term. I've heard it -- imminent threat of
23 collapse.

24 ASSEMBLY MEMBER BUCHANAN: Right.

25 MR. HARVEY: We don't use that here.

1 ASSEMBLY MEMBER BUCHANAN: Right.

2 MR. HARVEY: It is potential for catastrophic
3 collapse in a seismic event and I wanted to make sure I
4 understood if that phrase --

5 ASSEMBLY MEMBER BUCHANAN: Right.

6 MR. HARVEY: -- was the proper phrase because we've
7 heard I don't know how many times you've got to have some
8 objective --

9 ASSEMBLY MEMBER BUCHANAN: Right.

10 MR. HARVEY: -- standards.

11 ASSEMBLY MEMBER BUCHANAN: Right.

12 MR. HARVEY: You can't just throw it open and --

13 ASSEMBLY MEMBER BUCHANAN: Right. And I'm actually
14 comfortable with that. I just want to be sure that most
15 vulnerable ties to that and we're not in danger of
16 interpreting the two of them differently.

17 MR. HARVEY: Fair enough. In a moment --
18 Mr. Smoot, in a moment. David, I'm sorry we cut you off.
19 Why don't you go through your staff report. We'll have
20 member questions and then we will go to members of the
21 audience.

22 MR. ZIAN: Okay. So if I can then direct you to --
23 unless there are any questions on page 2. Maybe I should ask
24 that. Any further questions before I move on to page 3?

25 MR. HARVEY: Seeing none, we'll go to page 3.

1 MR. ZIAN: So on page 3, I briefly went through
2 real quickly, but I'll highlight for you -- dissect this a
3 little bit more for you, if I can beg indulgence for a
4 minute.

5 So in big (C) now, that's added all the underlined
6 here in bold for you. It starts off with the total available
7 seismic mitigation related and ancillary costs for most
8 vulnerable Category 2 buildings. We talked about the
9 connotation of the lowercase most vulnerable -- is
10 199.5 million for projects that meet all the following
11 requirements.

12 That language was essentially parsed out from
13 page 2, the struck-out area, you'll notice, and if you look
14 at (C)1, that also was parsed out -- taken out from and
15 recategorized in here in this new (C). It was just language
16 that was carried forward.

17 Any question about (C)1? That date May 20, 2006,
18 is just the effective date of the language for the Prop. 1D
19 bond bill. That's when it was approved and -- you know, that
20 was for the bond that was approved in November of 2006, but
21 that was the effective date of the enabling legislation.

22 So -- and again that was just language we carried
23 over from the former strikeout.

24 And then -- so if you get into (C) -- embedded in
25 (C), just the lead-in is it has to be a Category 2 building,

1 criteria number 1. Then as you get to (C)2, the project is
2 funded and shall be the minimum work necessary to obtain DSA
3 approval, where did that come from? It's over on the other
4 page, struck out. It's just recalibrated here.

5 (C)3, the building is designed for occupancy by
6 students and staff. That's a criteria now and that's a
7 carryover from the old program -- the other Seismic
8 Mitigation Program.

9 Now (C)4 -- and this is the change hopefully that
10 everybody has. The language is changed a little bit from
11 what was posted on the Web and I can just read it into the
12 record, if that will help. It's been streamlined a little
13 bit, but it says the --

14 MR. HARVEY: Please do.

15 MR. ZIAN: Okay. So the new language that has just
16 been passed out is the DSA concurs with a report by a
17 structural engineer which identifies structural deficiencies
18 that result in a high potential for catastrophic collapse in
19 a seismic event.

20 And there was another sentence in here, but that's
21 now gone and this last sentence then that I'll read is -- was
22 formerly here and is still here. The presence of faulting
23 liquefaction or landslide hazards must be documented by a
24 geologic hazards report prepared by an engineering geologist
25 in accordance with the California Building Code Section 1803A

1 and has to have -- and with the concurrence of the California
2 Geological Survey. So if a site -- I'm sorry.

3 MR. HARVEY: Go ahead. I didn't mean to cut you
4 off. I'm very anxious.

5 MR. ZIAN: Okay. So I just want to make sure that
6 it's clear here. A geohazards report would have to document
7 if you have one of these situations. Only in those
8 situations where there's a liquefaction, a landslide,
9 faulting issues, those issues would need to be documented in
10 a geohazards report and have concurrence by the California
11 Geological Survey Statewide Office in order for that to be,
12 you know, a concurrence as a part of it.

13 So it's like a fourth criteria in those kinds of
14 situations where there's faulting, landside, liquefaction.

15 ASSEMBLY MEMBER BUCHANAN: I agree with the intent
16 in that, but could you elaborate for me because, you know, it
17 makes sense to me if I'm saying the hazard occurs from the
18 fact that based on the type of soil and, you know, if you
19 have an earthquake of 6.0, we may have liquification which
20 will cause the building to collapse.

21 So certainly if that's what you're basing your
22 justification on, you should have to have the soils engineers
23 or others that can -- that documented that in fact is true.

24 Is there a possibility that that situation will not
25 show up on a map? I mean what -- some of the testimony we've

1 heard over time was that these maps continually -- continue
2 to be upgraded and improved and based on technology and
3 knowledge and everything.

4 MR. ZIAN: I don't feel qualified to answer that.
5 Perhaps maybe -- we have a representative from the California
6 Geological Survey here. Jennifer Thornberg (ph). Or DSA
7 maybe could speak to that better than I could.

8 MR. HARVEY: Thank you, Jennifer, for being here.
9 If you will come forward and state your name for the record.

10 MS. THORNBERG: Thank you. I'm Jennifer Thornberg
11 with the California Geological Survey and the answer to that
12 question is where the State has done the mapping, that is
13 fairly well defined, but there's a large portion of the State
14 where we have not mapped yet. For instance, all of Solano
15 County, Contra Costa County, we have not mapped yet.

16 ASSEMBLY MEMBER BUCHANAN: So I was just relating
17 that to the situation with the gym at San Ramon High. If you
18 hadn't mapped that and that was the reason we granted it,
19 then would you not grant it because there's no mapping that's
20 been done even though you had a geological -- even though you
21 had the engineers and the drillings and everything else. I
22 mean how would you deal with that -- how would you deal with
23 the request from Contra Costa or Sonoma, one of the counties
24 where the mapping's not done.

25 MS. THORNBERG: If I can, it would also require a

1 site specific analysis.

2 ASSEMBLY MEMBER BUCHANAN: Right.

3 MS. THORNBERG: The map zone areas just show where
4 there could be a hazard.

5 ASSEMBLY MEMBER BUCHANAN: Right.

6 MS. THORNBERG: That does not mean that there's
7 such a large hazard that it would --

8 ASSEMBLY MEMBER BUCHANAN: Right.

9 MS. THORNBERG: -- it would end up in collapsing
10 the structure.

11 ASSEMBLY MEMBER BUCHANAN: Right. And that's why
12 we actually were changing to these requirements because we
13 realized that it was more than just being on a broad map, but
14 we had to deal with it site specific, but my question to
15 staff then is, you want it verified by a map, but if we don't
16 have a map, what do we do in terms of qualifying a school.

17 MS. SILVERMAN: I think we have to defer to DSA to
18 answer that question.

19 ASSEMBLY MEMBER BUCHANAN: Yeah.

20 MR. HARVEY: Jennifer, if you would please stay
21 here on the off chance that there will be other follow-up
22 questions, I would appreciate it.

23 MR. SMITH: Good afternoon. Chip Smith, Acting
24 State Architect. I believe the school project in question --
25 it wouldn't necessarily have to be in a mapped zone. It

1 simply has to have a site specific study that's concurred
2 with by the CGS and if the site specific study identifies and
3 quantifies the hazard, whether it's faulting, liquefaction,
4 or a landslide hazard, and it was concurred with by the CGS,
5 then that's an -- then they've met that criteria.

6 ASSEMBLY MEMBER BUCHANAN: The language says and
7 with the concurrence of the California Geological Survey.

8 MR. SMITH: Um-hmm.

9 ASSEMBLY MEMBER BUCHANAN: If we haven't done a
10 survey and you have the soils engineers and others that say
11 this is a problem, are we talking about the agency? Are we
12 talking about the survey? What happens to that project?

13 MS. THORNBERG: This is Jennifer again. That would
14 be with the agency's occurrence [sic].

15 ASSEMBLY MEMBER BUCHANAN: Okay.

16 MS. THORNBERG: Concurrence. We would review that
17 report and ensure that it was done correctly.

18 ASSEMBLY MEMBER BUCHANAN: Okay.

19 MS. MOORE: Can I ask a question a little
20 differently. Are we saying that you must have a geological
21 hazard report concerning the presence of faulting,
22 liquefaction, or landslide hazards in order to qualify?

23 MR. SMITH: Yes.

24 MS. MOORE: And so if you had an engineer's
25 report -- the first sentence is a structural engineer which

1 identifies structural deficiencies that would result in a
2 high potential for catastrophic collapse. The only way that
3 you can have catastrophic collapse is if there's one of those
4 three --

5 MR. SMITH: No.

6 MS. MOORE: -- issues occurring?

7 MR. SMITH: No. Ground shaking is the dominant
8 hazard in the State and for ground shaking, we have standards
9 to work from. That's -- the Building Code's based on ground
10 shaking.

11 So in the -- for the hazard of ground shaking, we
12 would not require the geologic hazards report. For the other
13 hazards --

14 MS. MOORE: You would.

15 MR. SMITH: -- we would because --

16 MS. MOORE: Do you think it would be better to have
17 the language say if there are faulting, liquefaction, or
18 landslide hazards, they must be documented by a geological
19 hazard report and that way it's clear that you could be
20 meeting the first sentence with a ground shaking problem and
21 not have liquefaction, a fault, or another hazard, that --
22 correct? That you wouldn't need -- it's only -- you only
23 need the survey if you have those issues that are evidencing
24 your request.

25 MR. SMITH: Correct.

1 MR. HARVEY: And that's a very good clarifying
2 suggestion. I will rely on staff to add that.

3 ASSEMBLY MEMBER BUCHANAN: Well, someone -- yeah. I
4 had suggested to me that additional factors including but not
5 limited to faulting, liquefaction, or landslide hazards may
6 be considered but must be documented by a geologic hazards
7 report.

8 MS. MOORE: That's the same -- different --

9 ASSEMBLY MEMBER BUCHANAN: Same idea, yeah.

10 MS. MOORE: Different angle, same --

11 MR. HARVEY: But you're adding things that have to
12 have the geological hazards report --

13 ASSEMBLY MEMBER BUCHANAN: Right.

14 MR. HARVEY: -- by saying additional factors.

15 ASSEMBLY MEMBER BUCHANAN: Right.

16 MR. HARVEY: So you're adding to the number of
17 things that have to have the report and that --

18 ASSEMBLY MEMBER BUCHANAN: Well, if it's not --

19 MR. HARVEY: -- may make sense, it may not.

20 ASSEMBLY MEMBER BUCHANAN: If it's not the shaking,
21 but you're saying the problem is liquefaction, then clearly
22 you should have documentation that supports the fact that you
23 could have liquefaction and that's what's causing the
24 problem.

25 MR. HARVEY: Has staff seen this? If you'll come

1 get this. I kind of like this. Are you more comfortable
2 with this or do you like the if?

3 ASSEMBLY MEMBER BUCHANAN: And I'm okay with
4 Ms. Moore's suggestion as well. I mean and I'm okay with you
5 could potentially come back with something, you know, when
6 they come to the full Board, but --

7 MS. MOORE: Yeah. I think it just needs to be clear
8 because the question came from a school district do I have to
9 have those --

10 ASSEMBLY MEMBER BUCHANAN: Right.

11 MS. MOORE: -- and I said I didn't believe --

12 ASSEMBLY MEMBER BUCHANAN: No.

13 MS. MOORE: -- that was our intent, but that's part
14 of why we were meeting today.

15 ASSEMBLY MEMBER BUCHANAN: Right.

16 MS. MOORE: So I think it should be clear for
17 school districts.

18 ASSEMBLY MEMBER BUCHANAN: Right.

19 MR. HARVEY: Well, we'll ask staff then to think --

20 MS. SILVERMAN: Okay.

21 MR. HARVEY: -- in terms of what Assembly Member
22 Buchanan has offered and what Member Moore has offered and
23 before we see it -- as we see it at the Board, that change
24 will be included.

25 Any other questions of the Geological Survey or DSA

1 at this point?

2 Let me ask one. This is a really nitpicky, but I'm
3 looking at the very first sentence under large sub (C) and
4 technically we don't have 199.5 million. We've got less than
5 that.

6 MR. ZIAN: 194.8 million to be precise right now.

7 MR. HARVEY: And let me also add for perhaps
8 discussion, we've got 21 projects in the pipeline based on
9 the old standards.

10 ASSEMBLY MEMBER BUCHANAN: No, we don't.

11 MR. HARVEY: I thought we did.

12 ASSEMBLY MEMBER BUCHANAN: We have 21 that have
13 said they want to look further into the safety of their
14 schools, but they actually haven't.

15 MR. HARVEY: Okay. Is that what it is? It's
16 not -- they're just --

17 ASSEMBLY MEMBER BUCHANAN: Right.

18 MR. HARVEY: -- they haven't yet --

19 MR. ZIAN: 21 have been preapproved by the former
20 Seismic Mitigation Program standards, but they still need to
21 have plans drafted up, through DSA approved, and an actual
22 Seismic Mitigation Program facility hardship request filed
23 and we don't have any of those yet.

24 ASSEMBLY MEMBER BUCHANAN: But those 21 have --
25 they haven't --

1 MS. MOORE: They weren't preapproved. They were
2 surveyed.

3 ASSEMBLY MEMBER BUCHANAN: No, they're not -- no.

4 MR. ZIAN: It as a prescreening --

5 ASSEMBLY MEMBER BUCHANAN: They were --

6 MR. ZIAN: -- prescreening of the criteria.

7 ASSEMBLY MEMBER BUCHANAN: And they -- my
8 understanding is there are 21 that are potentially eligible.
9 They still have to do their own engineering reports --

10 MR. ZIAN: Yes.

11 ASSEMBLY MEMBER BUCHANAN: -- to determine that,
12 yes, there is a problem.

13 MR. ZIAN: That is correct.

14 ASSEMBLY MEMBER BUCHANAN: So --

15 MR. HARVEY: Thank you for that clarification.

16 ASSEMBLY MEMBER BUCHANAN: Yeah.

17 MR. HARVEY: I knew there was another number out
18 there.

19 ASSEMBLY MEMBER BUCHANAN: Yeah.

20 MR. HARVEY: But the point is I feel more
21 comfortable if you accurately reflect what's left. Small
22 point.

23 MS. MOORE: I'm wondering though if we should
24 because this regulation has --

25 ASSEMBLY MEMBER BUCHANAN: It deals with the total

1 amount.

2 MS. MOORE: It deals with the total amount --

3 MR. HARVEY: Does it?

4 MS. MOORE: -- the whole regulation.

5 ASSEMBLY MEMBER BUCHANAN: Yeah. I had the same
6 thought you did and then came to Kathleen's conclusion.
7 Yeah.

8 MS. MOORE: I'm --

9 MR. HARVEY: Okay. I -- once again I love to be
10 corrected, as Mr. Duffy knows. We'll leave it at 199.5.

11 ASSEMBLY MEMBER BUCHANAN: I mean you --

12 MR. ZIAN: Can I -- I should probably also add that
13 let's not forget there was a fourth seismic mitigation
14 project approved for conceptual. It wasn't an unfunded
15 approval, but it's -- you know, that's West Contra Costa
16 County. So it's really -- we really have about 180 million
17 if you throw that into the mix too, but that's not an actual
18 dollar amount yet because it's only a conceptual approval.

19 MR. HARVEY: Okay.

20 MR. ZIAN: Okay.

21 MR. HARVEY: Any other questions on this? And let
22 me, if I may, find out -- Dave, why don't you go through the
23 rest of (D), (E), and then we will take public testimony.

24 MR. ZIAN: Okay. So then moving on, the
25 regulations then go on after (C)1, 2, 3, 4, it lists that the

1 structural engineer's report shall conform to guidelines
2 provided by DSA for preparation and submittal of such
3 reports. And then if the DSA determines that the information
4 contained in the reports is inaccurate, then they shall
5 reject the submitted reports.

6 So the guidelines will be provided by DSA on that.

7 MR. HARVEY: And before I go too far, I want to
8 make sure for the record we have the staff recommendation for
9 why that one sentence in subparagraph (C) was deleted.

10 I think the issue was making certain that we didn't
11 create a potential obstacle at the Office of Administrative
12 Hearings that has to approve all regulations and that
13 sentence could have given them angst as I understand. It
14 doesn't fatally change the dynamics of this as a public
15 policy statement.

16 We still have the engineer's report conforming to
17 guidelines, which DSA will develop and publish. So we've
18 covered all the criteria, but it's -- we're not including a
19 national standard reference in the regulations. Is that why
20 we took that sentence out?

21 MR. ZIAN: That's essentially it, Mr. Harvey.

22 MR. HARVEY: Thank you. (D), (E), et cet.

23 Anything more to say about the rest of this?

24 MR. ZIAN: Well, on (D), if I could just preface,
25 the purpose of that is just to deal with the funding order

1 that future seismic mitigation projects will be funded in
2 order of receipt until 194.8 million is approved by the Board
3 either through an -- you know, unapproved apportionment --
4 unfunded apportionment or an actual funding apportionment.

5 And then (E) deals with when we get to the -- let's
6 say we get to the last dribble of money in the program and
7 the last project and let's say there's less money in that
8 amount left in authority for the Seismic Mitigation Program
9 to fund the last request, the latest one that's come in, this
10 regulation (E) provides clarity that the district will have a
11 choice of accepting a reduced apportionment or a haircut if I
12 can use that terminology or they can wave off and say no, I
13 don't want to accept that, I'll wait for, you know, something
14 else in the future possibly.

15 So that's what that deals with and then the last
16 paragraph, the second paragraph under big section (E), just
17 deals with we will return any applications after all the
18 money is subscribed for the program. Any applications we
19 have in-house or that come in will just be returned.

20 MR. HARVEY: Thank you. And sub (E) is something
21 we have done in other programs? I know Mr. Smoot took a
22 haircut recently. Took less money and deferred a project
23 next in line. So this is not new is all I'm suggesting.
24 This language is not new.

25 MR. ZIAN: And if I could add one other thing, I

1 don't believe we have this out here, but we have just a
2 little technical minor change, if I can again ask for your
3 patience on this.

4 In the 50-04 cover sheet, directions to our
5 application for funding in the program, these are
6 incorporated by reference, so there also carry the weight of
7 regulations also, if you're not aware of that.

8 But on page 2 of 9 up at the top of the page, we
9 have a section here again that deals with the most vulnerable
10 Category 2 and it's all uppercase because that was formerly
11 in the regulations, you know, a defined definition. So we
12 are going to need to make a conforming change there and make
13 the most vulnerable lowercase. So we'll do that also just to
14 make sure everything coincides and, you know, is in -- you
15 know, correctly worded. So I just want to add that. Sorry
16 about that last minute change.

17 MS. MOORE: I have a couple of comments on that.
18 So I think it's a continuation of what we talked about
19 earlier, but haven't we defined most vulnerable Category 2 to
20 be Category 2 with a structural engineer report; so can't we
21 just move that definition to definitions.

22 I mean previously we defined most vulnerable
23 Category 2 to be ground shaking and -- correct?

24 MR. ZIAN: And certain buildings, yeah.

25 MS. MOORE: And certain buildings. So now we have

1 Category 2 -- we have most vulnerable Category 2 buildings
2 that are -- that carry a structural engineer report. That's
3 the most vulnerable Category 2 building that we are defining.
4 Why wouldn't we define that?

5 MR. MIRELES: If I could just clarify, Ms. Moore.
6 So basically move Section (C) under the definitions?

7 MS. MOORE: Or you could reference Section (C)
8 because that's what we're defining now --

9 MR. MIRELES: Right.

10 MS. MOORE: -- and that's what we're
11 regulatorily -- that's our regulatory action; isn't it?

12 MR. MIRELES: Yes. And aside from formatting, I
13 don't see any immediate concern, but it's something we can
14 definitely take a look at.

15 MR. HARVEY: I think all three of us expressed an
16 interest -- a little discomfort by not having it defined and
17 striking what had been defined. This I think would address
18 that.

19 MS. MOORE: Or even if you, you know, refer to it.

20 MR. MIRELES: We could take a look at that.

21 MR. HARVEY: Again staff will bring back that
22 before the Board.

23 MS. MOORE: And then I -- I do have another -- just
24 a little exploration on (E) for the return of applications.

25 What other programs do we return applications in

1 when we reach the total amount?

2 MR. ZIAN: Career tech, COS, and -- there's
3 probably other programs here off the top of my head here, but
4 career tech, COS -- there's a third one.

5 MS. SILVERMAN: Joint use.

6 MR. ZIAN: Joint use. So we tried to follow -- we
7 went into those sections and looked at how we deal with those
8 kinds of situations when money is all subscribed in those
9 programs and -- so we tried to follow that.

10 MS. MOORE: So then we don't do it for
11 modernization, new construction, high performance.

12 MR. ZIAN: That's correct because --

13 MS. MOORE: So we're inconsistent on that issue,
14 which is a big issue across our -- I didn't realize that -- I
15 was concerned of returning of applications. That's a very
16 big issue when someone has submitted an application and
17 we've -- we're a schizophrenic in it because historically
18 we've created a line I'm aware of in new construction and
19 modernization and also it appears historically in this last
20 bond measure, we've ceased a line for things like career
21 technical education and critically overcrowded schools.

22 Have we reached -- have we sent back critically
23 overcrowded school applications?

24 MR. ZIAN: Not to my knowledge. I -- do you --

25 MS. MOORE: Have we reached that --

1 MR. MIRELES: From the initial preliminary
2 apportionment -- when we talk about the initial preliminary
3 apportionment versus funding, they got the reservation of
4 funds. I believe the first round we were oversubscribed.
5 The second round we weren't, but if we didn't enough under
6 the preliminary apportionment stage, we would send them back.

7 And just -- if I could just further comment on this
8 section, this is also consistent with our Board discussions
9 about the creation of an unfunded list. Now whether the
10 Committee or the Board wants to have the discussion -- and I
11 don't know if this is where you're heading, Ms. Moore --

12 MS. MOORE: It is.

13 MR. MIRELES: -- then it's up to the Committee and
14 the Board to have that discussion, but it's consistent with
15 prior discussions that the Board had in dealing with seismic,
16 the 199.5- in this program.

17 MS. MOORE: Well, we didn't have it in the previous
18 seismic regulation; correct?

19 MR. MIRELES: Correct.

20 MS. MOORE: So it is a change that we're saying now
21 we're going to -- we will return applications. So it is a
22 change from our previous and we still had 199- --

23 MR. MIRELES: Yes.

24 MS. MOORE: -- so there's no difference there and I
25 think it's part of a larger discussion about whether we had

1 truly an unfunded list. Not the one that we currently
2 operate because of cash flow, but a true unfunded list and I
3 for one would want to consider that at the time that it
4 happens as opposed to lock in we're just going to return apps
5 which to me is a much more concrete action now that we will
6 not have an unfunded list because that makes that
7 determination now.

8 But I'm open to what other Board members think
9 about that as well.

10 MR. HARVEY: Before we comment, Lisa, did you want
11 to add something?

12 MS. SILVERMAN: Yeah. May I? I know this was
13 actually a discussion item that the Board did grapple with
14 back in August of '09 as far as whether or not you want to go
15 beyond the limits and at that time, that Board did recommend
16 not to go beyond the 199.5- as subscribed at that point in
17 time.

18 So obviously it's up to this Committee to --

19 MS. MOORE: But it wasn't -- it's not reflected in
20 regulation.

21 MS. SILVERMAN: No, it's not reflected in
22 regulation.

23 MS. MOORE: So --

24 MR. HARVEY: This codifies that preference.

25 MS. SILVERMAN: Right. Exactly.

1 MR. HARVEY: I for one am comfortable with it by
2 virtue of what direction we had received before. That
3 doesn't a new Board can't undirect, but based on that -- and
4 I recall the comments pro and con -- I am comfortable leaving
5 it in at this point.

6 ASSEMBLY MEMBER BUCHANAN: I don't have a strong
7 opinion because it really gets to the question -- well, you
8 have more history than I do -- of how do you transition from
9 one bond program to another and that probably takes -- is
10 going to involve a much longer conversation because once
11 we've spent all the 200 million, clearly the seismic money is
12 gone and --

13 MR. HARVEY: Right.

14 ASSEMBLY MEMBER BUCHANAN: -- applications for a
15 seismic program that you may have in the next bond or you may
16 not, I mean I -- I'm not sure it makes sense except that I
17 understand Ms. Moore's concern there.

18 MS. MOORE: Well, I -- couple of thoughts. By
19 recommending that we cut it off today, that makes that
20 decision now and I believe that the Board on a more general
21 basis, perhaps for the programs of new construction and
22 modernization, indicated we will make that decision at the
23 time that the action happens, that when we truly run out of
24 funds, let's decide what we're going to do with an unfunded
25 list.

1 So for me that creates an option for the Board to
2 consider at the time that the action is needed as opposed to
3 anticipate the action and I'm more comfortable there.
4 Mr. Harvey and I might disagree on that, but I'm more
5 comfortable there.

6 And then secondly, we've had an unfunded list
7 historically in this program to demonstrate need and that has
8 been an important component I think in terms of demonstrating
9 to the people that we asked to approve bonds statewide that
10 indeed we have needs and we are trying to meet them.

11 It has a double-edge sword of have needs. So you
12 know that you have a problem that you're going to have to
13 deal with. But it's been -- I know in many of the previous
14 bond measures, it's been a very valuable tool to demonstrate
15 need and I don't think it's one we want to -- I for one
16 wouldn't want to act on right now.

17 But there may -- as we transition down in this bond
18 measure, I think the Board should look at this across all
19 programs.

20 MR. HARVEY: See, for me the AB300 report, which is
21 evolving and changing, sets out a very graphic statement of
22 need rather than a handful of applications that may or may
23 not be pending at OPSC. To me that says statewide, here is
24 the need.

25 But this is a subject that obviously we can

1 certainly discuss at the full Board. Again did you wish to
2 add something to this relevant issue?

3 MR. MIRELES: Just -- yeah and just briefly.
4 Mr. Chair, the biggest distinction that I know was made
5 previously was the fact that unlike new construction and
6 modernization, we're talking about health and safety issues
7 in the seismic program and this was the first program that
8 was created under Proposition 1D for these types of projects
9 that demonstrated this type of issue and there was some
10 sensitivity with the liability -- potential liability that
11 was discussed previously. So just wanted to clarify that.

12 MR. HARVEY: Well, why don't we highlight this in
13 the staff report that goes to the Board that there were
14 questions raised on the merits of this and you can talk in
15 terms of the August '09 action and the justifications thereof
16 and make some of the other counter arguments that Ms. Moore
17 has made about holding off and the advantages of doing that
18 closer to the time at which the money's actually gone -- we
19 discuss at the full Board, I am sure.

20 Do either one of you have any other questions
21 before we turn to public comment?

22 ASSEMBLY MEMBER BUCHANAN: I do have one other
23 question and it's on the paragraph immediately following the
24 (C)1, 2, 3, 4 where we say that the structural engineer's
25 report shall conform to the guidelines provided by DSA for

1 preparation and submittal of such reports. If DSA determines
2 the information contained in the report is inaccurate or
3 incomplete, it shall reject the submitted report.

4 Do we -- if we need additional information -- if we
5 get the information from the school district and we say,
6 well, this, you know, seems reasonable, but I need more
7 justification, whatever, is it standard practice to reject a
8 report or do we -- clearly if the information is found
9 inaccurate and you -- it doesn't qualify, I would think you
10 would reject, but if there's a situation where we need
11 additional information, is it our practice to reject or to
12 request additional information from the district?

13 MR. SMITH: It would be to request additional
14 information.

15 ASSEMBLY MEMBER BUCHANAN: So could we then also do
16 something with this wording here so that we're not -- if all
17 a district needs to do is provide additional information, so
18 we're not completely rejecting their application?

19 MR. HARVEY: There has to be some reference to what
20 this due diligence is back and forth and at some point, if
21 they can't do what you ask, you're going to have to reject
22 it, but I think what Ms. Buchanan is looking for is a
23 statement that reflects what you actually do in practice
24 which is request and hopefully they then complete the
25 application.

1 MS. MOORE: Is it more, Chip, that you have two
2 choices when these come forward -- not choices, but two
3 responsibilities, either to concur or to not concur.

4 MR. SMITH: Yes.

5 MS. MOORE: So is there some type of -- I mean we
6 have the if DSA concurs with the report in that 4 language.
7 This seems to be handling the case that you don't concur or
8 it's either you think the report is inaccurate or it's not
9 complete.

10 You really don't concur with their findings, I'm
11 assuming.

12 MR. SMITH: We --

13 MS. MOORE: Or is it more -- or is there one that
14 you might not concur with their findings, but in this case,
15 it's only you're not -- you don't think it's complete.

16 MR. SMITH: I think -- well, first of all, we could
17 handle minor concerns through our procedure --

18 MS. MOORE: Um-hmm.

19 MR. SMITH: -- our template that we're using now. I
20 don't know what the template actually says in this regard,
21 but in practice, when we find minor errors or missing
22 information that we feel if they can provide it may render
23 the report acceptable for concurrence, we would contact the
24 client and do so.

25 In the case that we identified significant

1 omissions or errors, we would still probably contact the
2 client to confirm that that's the case, but then we would,
3 probably based on their reaction, reject the report. It is
4 possible they may be able to respond so that we could
5 continue the process and complete and concur with the report.

6 It -- probably can't cook up language right on the
7 spot here for this, but --

8 MS. MOORE: Do you think --

9 MR. HARVEY: But do we need it? I think -- your
10 point, do we need it.

11 MS. MOORE: Do you think you need this language?

12 MR. SMITH: We don't.

13 MR. HARVEY: Do you need it?

14 MS. MOORE: Are you -- I mean your responsibility
15 is to concur or not and if someone --

16 MR. SMITH: Right.

17 MS. MOORE: -- gives you something incomplete, that
18 will be a possibility for inconcurrence because unless they
19 complete it and then you agree with it or someone might give
20 a report and your structural people say we don't agree with
21 these findings and we don't think that this, you know, is in
22 imminent danger or whatever our language is here.

23 ASSEMBLY MEMBER BUCHANAN: So let me try and probe
24 a little bit farther. I mean you're either, one, not going
25 to concur with the findings and recommendation; right? In

1 which case --

2 MR. SMITH: Correct.

3 ASSEMBLY MEMBER BUCHANAN: -- you reject it. Under
4 normal circumstances, what you're telling me if the report --
5 if the request is incomplete, you send notice back to the
6 district so the district can fill in the missing information
7 or provide you with additional information.

8 If you have a situation where based on the
9 district's report, it looks like it might qualify, but they
10 can't provide you with the engineering reports you need to
11 substantiate the report, you're obviously going to reject it.
12 So is it where they can't provide additional information? Is
13 that what you're trying to say here? Or just when it's
14 missing information because it's -- if I read this literally,
15 it's saying that if I submit an application that's
16 incomplete, you're going to reject it.

17 I assume I'd always have the option of resubmitting
18 it, but what you're telling me in practice is if it's
19 incomplete, you'd work with me to get it complete. But if
20 they can't -- if you can't -- if they can't provide the
21 supporting documentation, then I would think that would be a
22 different situation.

23 MR. SMITH: Right. If the submitted report was
24 egregiously incomplete, we would reject the report.

25 ASSEMBLY MEMBER BUCHANAN: Okay.

1 MR. SMITH: But if it was missing some information
2 but not significantly incomplete, we would contact them and
3 request clarification. So I think it depends on the degree
4 of error or incompleteness.

5 MR. HARVEY: Well, again this -- I wonder -- go
6 ahead.

7 ASSEMBLY MEMBER BUCHANAN: I would just piggyback
8 then on what Ms. Moore says because somehow I think the
9 language should reflect what we actually do in practice.

10 MR. HARVEY: Either that or let's talk about
11 whether we need it --

12 ASSEMBLY MEMBER BUCHANAN: Right.

13 MR. HARVEY: -- because if we're really only
14 concurring or not concurring and you --

15 ASSEMBLY MEMBER BUCHANAN: Right.

16 MR. HARVEY: -- have that as your directive --

17 ASSEMBLY MEMBER BUCHANAN: Right.

18 MR. HARVEY: -- in this regulation, maybe that
19 sentence isn't necessary. And, Chip, you indicated you
20 didn't think you needed it and if that's the case, we I think
21 here would be more comfortable rather than trying to find a
22 way of defining the practice particularly about
23 incompleteness. I think inaccuracy we can kind of get, but
24 at this point, why don't we drop it and if there is a
25 compelling reason that you think of between now and the Board

1 meeting to have something like this in here, you could bring
2 it to the Board. But at this point, let's drop that
3 sentence.

4 ASSEMBLY MEMBER BUCHANAN: Well, this sentence --
5 but we have to do -- this sentence talks about conforms to
6 the guidelines by DSA for preparation and submittal. So
7 that's talking about having that what you're submitting is
8 complete.

9 Then separately you've got to concur with the
10 evaluation; right? They're two different --

11 MR. SMITH: And that goes back to Item 4 up above,
12 DSA concurs.

13 MR. HARVEY: (C)4?

14 MR. SMITH: Yeah.

15 ASSEMBLY MEMBER BUCHANAN: Um-hmm.

16 MR. SMITH: (C)4.

17 ASSEMBLY MEMBER BUCHANAN: You know, I think one's
18 referring to whether or not the information was filled out
19 correctly. The other is concurring with the findings in the
20 report.

21 MR. HARVEY: She's drawing a very interesting line
22 which is, is it filled out properly and -- you look at that
23 and make a determination, and then you concur or not concur.
24 So it's --

25 ASSEMBLY MEMBER BUCHANAN: Well, then this says for

1 preparation and submittal. It's not talking about concurring
2 with findings. I don't -- whether we leave it in or not, I
3 just want to -- my only concern is it follows what we're
4 doing in practice.

5 MR. HARVEY: Well, again why don't we leave it
6 off --

7 ASSEMBLY MEMBER BUCHANAN: Okay.

8 MR. HARVEY: -- and then if staff feels that there
9 needs to be that light shown on the preparation and submittal
10 as a separate activity from the act of concurring, they'll
11 bring us something which reflects practice.

12 And if you think there is a need between now and
13 the Board meeting --

14 ASSEMBLY MEMBER BUCHANAN: I just want it to
15 conform with what we do in practice.

16 MR. HARVEY: Okay.

17 MS. MOORE: If I may just following up on that.
18 Because I think it is -- will be very important for school
19 districts to you know, are you in the process, Chip and
20 Masha, of developing the guidelines or what's -- what do you
21 see for that?

22 MR. SMITH: We would actually be modifying the
23 current procedure, DSA Procedure 0803 --

24 MS. MOORE: Okay.

25 MR. SMITH: -- to incorporate these changes. The

1 procedure's currently based on the current regulations and so
2 with the new regulations, we would simply modify the
3 procedure accordingly and then the template that has been
4 used for the projects to date, it would also be modified to
5 address the change in the criteria.

6 MS. MOORE: And then so districts would know that
7 that's the guidelines, this is the template that their
8 structural engineer must use in order to submit that report
9 to DSA?

10 MR. SMITH: Yes.

11 MS. MOORE: And that can happen -- does that happen
12 in your regulatory structure or is that just by policy --

13 MR. SMITH: Policy.

14 MS. MOORE: Policy. Okay.

15 MR. SMITH: Yeah, not regulatory.

16 MS. MOORE: And that will be soon after this is --
17 we complete this so people know what the lay of the land is?

18 MR. SMITH: The plan would be to have the procedure
19 and template revised, vetted, and ready to publish when the
20 regs are effective.

21 MS. MOORE: Okay.

22 MR. SMITH: Yeah.

23 MR. HARVEY: Please, Masha.

24 MS. LUTSUK: Masha Lutsuk with Division of State
25 Architect. Just to let you know that we have several

1 different processes for vetting our procedural and policy
2 documents, so (indiscernible-away from microphone) we do have
3 a process for (indiscernible).

4 MR. HARVEY: Can you describe that very briefly?
5 What does it entail?

6 MS. LUTSUK: We do focus groups (indiscernible-away
7 from microphone) the engineering firms that have been using
8 the template, for example, which we know (indiscernible)
9 because if the template was to become used by the greater
10 group, it has to be usable so that they know that
11 (indiscernible) statements can be clarified, we would seek
12 their input.

13 We would also then probably seek assistance from --
14 if there are any (indiscernible) meetings (indiscernible)
15 we'd do that and then we do an electronic share
16 (indiscernible) documents also. It would be (indiscernible)
17 available for (indiscernible).

18 MR. HARVEY: Thank you for that clarification.
19 There may be other Committee questions, but for now we will
20 turn to public comment, if you'd simply come to the dais,
21 state your name for the record, and tell us what you like, I
22 hope, or don't like about the proposed regulations.

23 MR. PETTLER: Thank you, Mr. Chair. Matt Pettler,
24 School Facility Consultants. I appreciate the opportunity to
25 address you.

1 I wanted to comment on the comment that you made,
2 Mr. Harvey, regarding the amount of money available under
3 (C). The West Contra Costa Unified School District would
4 appreciate that their project is contemplated in that number.

5 As Mr. Zian pointed out, their project is different
6 from the other 21 who've just been surveyed. The West Contra
7 Costa project has gone through that process and has actually
8 been approved by the Board as meeting the criteria in the
9 current regulation and are just working their way through DSA
10 to get in line for an actual unfunded approval and
11 apportionment.

12 So I just want to make that comment to the
13 Subcommittee.

14 MR. HARVEY: Just get it in, keep working.

15 MR. PETTLER: We are.

16 MR. HARVEY: This will take a while to be approved.
17 In all it will be four months, so just work.

18 MR. PETTLER: Believe me that we are. Thank you.

19 MR. HARVEY: All right. Thank you.

20 MS. MOORE: Mr. Pettler, are you in DSA?

21 MR. PETTLER: We are in DSA and in fact appreciate
22 DSA has reached out to the district to make sure that they
23 know that project and are knowledgeable that that project is
24 their seismic project.

25 MS. MOORE: So isn't it pretty likely that that

1 project would be ahead of anybody else coming forward?

2 MR. HARVEY: Yes. Yes.

3 MR. PETTLER: I would hope so. And again though,
4 you know, if regulations get approved and other projects
5 already have DSA approval that meet this criteria, you know,
6 it's possible that they could be ahead of us.

7 MS. MOORE: Because we rarely in regulation call
8 out an excepted district. We try and create a date or a line
9 or something that is applicable across lines and I just
10 wonder though the real possibility that 170 million would
11 come ahead of Contra Costa and whether that's really a high
12 risk for them.

13 MR. PETTLER: Sure and I appreciate that comment
14 and, you know, I think frankly we just don't know. What we
15 do know is that this project is in DSA and that the district
16 and DSA are working as hard as possible to get the project
17 out in DSA.

18 MR. HARVEY: Dave, on point, is this on this
19 testimony?

20 MR. ZIAN: Yes. It was actually a comment you
21 made. Just a point of clarification, Mr. Chair. We will
22 endeavor to file these on an emergency basis so it may not be
23 four months if we're successful.

24 MR. HARVEY: How are we going to justify the
25 emergency?

1 MR. ZIAN: When we made changes from the 1.70, 1.68
2 in 2009, they were filed on an emergency basis. These are
3 health and safety projects and we believe they should be
4 filed on an emergency basis --

5 MR. HARVEY: Well, I'm --

6 MR. ZIAN: -- in this latest iteration.

7 MR. HARVEY: -- for expediting. I -- that may be a
8 policy call that's made at another level, but --

9 MR. ZIAN: Whether or not OAL approves the
10 emergency basis, that's the question.

11 MR. HARVEY: I mean I'm just nervous. We had
12 something else on an emergency basis. They kicked it back
13 and we're starting at ground zero. I'd almost -- anyway,
14 we'll talk about it, but if we have a track record for these
15 kinds of things being expedited, that's good news. I stand
16 correct. Once again, this is my day of correction. My
17 goodness. Mr. Smoot.

18 MR. PETTLER: And again, you know, given that as
19 well, if it may be expedited, if that actually pushes West
20 Contra Costa's issue a little bit more, so we appreciate your
21 consideration of that.

22 MR. HARVEY: Thank you. Lyle, for the record, your
23 name.

24 MR. SMOOT: Good morning. Lyle Smoot, Los Angeles
25 Unified School District, and I'm going to get pretty close

1 because my -- I've never had asthma, but for some reason this
2 year, I decided to get it, so I probably sound like a frog.
3 I do to myself anyway.

4 We have a number of things I'd like to talk about
5 on these proposed regulations and so I'll try to go through
6 them quickly.

7 Let's start with on page 2 the definition of a
8 Category 2 building. There's a whole bunch of stuff
9 delineated here and it seems to us that if there's some place
10 that these came from that you could just point to that
11 because if, for instance, whoever did these originally
12 decided to add something to them or if the Board wanted to
13 add something to it, you'd have to go back to a regulation.

14 If you just pointed to something where these are
15 already delineated, you wouldn't have to go through a
16 regulation change if something else was added to the list and
17 I just think that would be important.

18 Of course, first of all, I don't know where these
19 came from, so I don't have any way to go look at some of this
20 and see if this is a complete list of all the Category 2
21 buildings. So just -- it'd just make it simpler if you just
22 point to something and say these are where those came from --

23 MR. HARVEY: Let me ask DSA or -- is there a chance
24 there would be addition to the Category 2? I thought this
25 would it. I mean do we add building types commonly. I'm --

1 I kind of like the idea that people can read it and see it
2 and feel it and touch it rather than having to go to another
3 document. What do they mean? But it's a good point, Mr.
4 Smoot.

5 Masha, to answer the question about whether the
6 laundry list of buildings would change or things would be
7 added to Category 2.

8 MS. LUTSUK: No. As I understand the Category 2 is
9 referenced back to the authorizing statute that brings it
10 back to the report that DSA prepared in response to Assembly
11 Bill 300 and those definitions came from a national
12 engineering standard from ASCE and also there were a couple
13 of building types that were a subset of those
14 nationally-recognized building types that were added in the
15 AB300 report.

16 So that's -- if you take that text and compare it
17 to AB300 report, that's your point of reference.

18 MR. SMOOT: Well, I --

19 MR. HARVEY: And that might be harder to track
20 back.

21 MS. LUTSUK: Well, AB300 report supposed to go to
22 our Website and (indiscernible) it also goes to
23 (indiscernible) Website and I think it's page -- I can
24 show --

25 MR. SMOOT: You don't need to show me. Just tell

1 me where I can find it.

2 MS. MOORE: So Masha, the Category 2 list of
3 buildings is from the AB300 report?

4 MS. LUTSUK: Yes. In accordance with the
5 regulation section of -- in your -- page 1 of your
6 (indiscernible-away from microphone) authority, if you see
7 the school facilities (indiscernible) as defined in the
8 reports (indiscernible) pursuant to Section 17
9 (indiscernible). That Education Code section references to
10 Assembly Bill 300 report and that's (indiscernible) report.

11 MR. SMITH: Just to further clarify, the term
12 Category 2 only shows up in that report.

13 MS. MOORE: That's the only place --

14 MR. SMITH: So this -- by clarifying the building
15 types here in regulations is a usability factor. The
16 reader/the user knows what we're talking about right here
17 without hunting down a report somewhere.

18 MS. MOORE: Chip, is there a reason that one of
19 them got crossed off from the existing regulation? So did
20 we -- yeah. What happened?

21 MR. SMITH: Well, it was -- the way it was -- I
22 think you're speaking to the C3A?

23 MS. MOORE: Yes.

24 MR. SMITH: And it was typified incorrectly is my
25 understanding. So we just -- we struck it out and then we

1 put it back in. You'll notice it's struck out, but then it's
2 back in, but look at the wording. It's a little bit
3 different.

4 MS. MOORE: Oh, up at the top. I see.

5 MR. SMITH: Was there more?

6 MS. LUTSUK: (Indiscernible) just to put all the
7 C's together.

8 MS. MOORE: Gotcha'.

9 MS. LUTSUK: So simply just to group them again for
10 (indiscernible) purposes.

11 MS. MOORE: Well, just in response, Mr. Smoot, I
12 for one kind of like that the districts can know exactly what
13 we're talking about Category 2 and the Board and it sounds
14 like it won't change because it comes from a report that's
15 been done; correct?

16 MR. SMITH: Correct. It's static.

17 MS. MOORE: So there won't be more changes to it.

18 MR. SMOOT: No. Actually given that explanation, I
19 see no problem with this. I mean it doesn't sound like
20 there's going to be any additions to it because of the
21 process that was taken to get to this point. So that's fine.

22 Can I move to the next issue?

23 MR. HARVEY: Number two then. Sure.

24 MR. SMOOT: Through this report, a couple places --
25 and I realize some of it existing statute language, but the

1 reference is to most vulnerable Category 2 buildings. That's
2 not what the law says.

3 The law says the most vulnerable buildings that are
4 designated as a Category 2. I realize that's a fine
5 distinction, but it is a pretty substantial potential
6 distinction someplace down the line and it'd be nice to have
7 the words in there correctly.

8 MR. HARVEY: If they're in the statute that way,
9 perhaps we can reflect it the same way here.

10 ASSEMBLY MEMBER BUCHANAN: Well, that potentially
11 solves the other problem. I think you either strike most
12 vulnerable and leave just Category 2 buildings or you say
13 most vulnerable as -- you know, use that language.

14 MR. HARVEY: Right. Or use that language. I'm
15 more comfortable using the language in the statute.

16 MS. MOORE: Yep. Me too.

17 ASSEMBLY MEMBER BUCHANAN: Yep.

18 MR. HARVEY: We'll use the language in the statute.

19

20 ASSEMBLY MEMBER BUCHANAN: Solves the other
21 problem.

22 MR. HARVEY: You're one for two, Smoot. What else?
23 One for two.

24 MR. SMOOT: We'll see if we can try for two out of
25 three.

1 MS. MOORE: Your one though was good to clarify.

2 MR. HARVEY: That is a good --

3 MR. SMOOT: I'm sorry?

4 MS. MOORE: Your one was good to clarify though so
5 we all know where --

6 MR. HARVEY: We're applauding that clarification.

7 MR. SMOOT: Thank you. The next issue is under
8 (C) -- and, Mr. Harvey, you're not going to like this.
9 Pointing to the 199.5 million means that if there was
10 additional funding added someplace down the line, you'd have
11 to come back with a regulation change to be able to act upon
12 that. I was just wondering if it wouldn't be better to just
13 leave the dollar value out and just say, you know, funding
14 that's made available from this or subsequent actions.

15 MR. HARVEY: We can do that or we can reference
16 back to 1D so we know that the 199- was attached to 1D and if
17 there is a Proposition XZ in the future that sets aside money
18 for seismic, that would be separate from.

19 MR. SMOOT: That's what I was thinking. If you
20 just reference the amount in 1D section so-and-so or other
21 funding that may become available, you know, resolve that
22 issue and you wouldn't have to go back to regulation change.

23 MR. HARVEY: Staff, any issue with that?

24 MR. MIRELES: We typically come back and make
25 regulatory changes when a new bill is implemented, so that

1 would be no problem, but we would recommend that we keep the
2 199.5 or reference to current --

3 MR. HARVEY: And say per --

4 MR. MIRELES: -- statutory.

5 MR. HARVEY: -- Proposition 1D or whatever the
6 qualifier is.

7 ASSEMBLY MEMBER BUCHANAN: Whatever -- yeah.
8 Whatever year -- in 2006.

9 MR. HARVEY: As 2019 or whenever it --

10 ASSEMBLY MEMBER BUCHANAN: 2006.

11 MR. HARVEY: 2006?

12 MR. SMOOT: The next issue is a little more
13 difficult. I guess the words in (C)4 second line there
14 result in a high potential for catastrophic collapse. I
15 don't know what a high potential is versus a medium
16 potential. I just think the term high creates a subjective
17 issue that may or may not have relevance someplace down the
18 line.

19 And the second part of that is catastrophic
20 collapse versus collapse. Again these are not the terms that
21 are in the law. The law uses the term unacceptable risk of
22 injury. I don't know that we have a necessary problem with
23 changing that to say --

24 MR. HARVEY: What law are you citing when you say
25 unacceptable --

1 MR. SMOOT: I'm sorry?

2 MR. HARVEY: Which language are you drawing from
3 when you said the law says. What law.

4 MR. SMOOT: That's the Education Code and whatever
5 the section that's referred to 17 blah-blah-blah.

6 ASSEMBLY MEMBER BUCHANAN: 1803A.

7 MR. SMOOT: Or maybe it may even have been the
8 language in the --

9 ASSEMBLY MEMBER BUCHANAN: Do you meaning the
10 Building Code 1803A here or are you talking about the
11 Education Code?

12 MR. HARVEY: He said Education Code.

13 MR. SMOOT: Yeah, it's the Education Code.

14 MR. HARVEY: Well, you're getting back to something
15 we opened with. Can we have a little discussion by staff on
16 that term and why it was selected, what it may mean, and if
17 the California Geological Survey wishes to chime in, I'd
18 appreciate hearing from them.

19 But I think it was trying to capture the kind of
20 discussion that Ms. Buchanan referenced was that there had to
21 be some -- and she used the term imminent.

22 ASSEMBLY MEMBER BUCHANAN: Right.

23 MR. HARVEY: We decided that didn't really work at
24 some earlier hearing. So it was attempting to say it really
25 should be those instances where there is a catastrophic,

1 imminent, high risk, whatever the terms are, but, staff, if
2 you could help us understand why potential for catastrophic
3 collapse in a seismic event was selected, it might help us
4 all.

5 MR. SMITH: Well, I wasn't involved in the original
6 development of the policy, but Dave, were you?

7 ASSEMBLY MEMBER BUCHANAN: I think it came from us
8 actually.

9 MS. SILVERMAN: It came from the Board.

10 MR. HARVEY: It probably came from the Board?

11 MS. SILVERMAN: From the Board, yeah. And it was
12 read into the record.

13 MR. SMOOT: No. I understand that -- the term high
14 wasn't in the record. It just says potential for
15 catastrophic collapse. I'm just pointing out here that both
16 those terms, the term high and the term catastrophic, create
17 different pictures.

18 I mean catastrophic versus regular collapse, I'm
19 not sure what that might mean, but I mean one person dies
20 versus a hundred, I realize that's a bit -- an excessive
21 statement, but at the same time, you know, is somebody going
22 to look at this sometime later and say, well, you don't have
23 a high potential and you don't have a catastrophic collapse
24 because your potential's only 50 percent chance and only a
25 couple people are going to get hurt. You know what I mean.

1 So I just think -- I don't think we need to go
2 that -- of course we like the words in the law, but
3 nevertheless it -- and I understand, Ms. Buchanan, your
4 reason -- or I think I do -- your logic behind using the word
5 potential for collapse and I think if we just take out the
6 word high and catastrophic, we'd have a lot less concern with
7 it.

8 MR. HARVEY: All I'm going to say is if we read it
9 into the record by -- at the Board, we need to reflect that.
10 If high is in, we keep it in. If it wasn't in, we take it
11 out. Whatever was read into the record at the Board is where
12 we should be and if Mr. Smoot wishes to come and ask the
13 Board to alter its motion, that would be I think the course
14 of action.

15 So if you could simply assure us that whatever was
16 read into the record is reflected here.

17 ASSEMBLY MEMBER BUCHANAN: I think --

18 MS. MOORE: In the record of the last Board
19 meeting?

20 MR. HARVEY: At the last Board meeting. Do you
21 have the language.

22 ASSEMBLY MEMBER BUCHANAN: And I'm not sure it was
23 high potential, but I think what happened was this was a
24 combination of my wording and Ms. Moore's wording where I
25 said, look, if an engineer tells me as a school board member

1 that this building isn't safe and you should not have
2 students or teachers occupying it, then that to me is --

3 MR. SMOOT: Is a high potential.

4 ASSEMBLY MEMBER BUCHANAN: -- is the high -- well,
5 not a high potential. That to me is the red flag to say, you
6 know, we've got a problem. You know, you can't have kids
7 occupying it. It's not safe. And I think it was Ms. Moore
8 who added the catastrophic collapse.

9 So I'm not -- I personally am not wed to any
10 particular words. I don't know if I would just go potential
11 because I don't want to -- you know, I --

12 MR. HARVEY: Right.

13 MR. SMOOT: Yeah. No, I understand.

14 ASSEMBLY MEMBER BUCHANAN: I don't want to open the
15 gates more, but --

16 MS. MOORE: I believe what the Board approved is it
17 says must have an accompanying structural engineer's report
18 identifying the building deficiencies and reasoning for
19 conducting the building has a potential for catastrophic
20 collapse and we added in a seismic event, including but not
21 limited to. And that was the language recommended by the --
22 that was the motion --

23 MR. SMOOT: Right.

24 MS. MOORE: -- at the last Board meeting to
25 incorporate that language.

1 MR. SMOOT: Right.

2 MS. MOORE: So that language didn't have high in it
3 and I guess what we're pointing out is we're implementing the
4 -- we're implementing it now and to keep with what the Board
5 approved, we'd have to keep the potential and --

6 ASSEMBLY MEMBER BUCHANAN: For a catastrophic
7 collapse.

8 MS. MOORE: And then if you --

9 MR. HARVEY: In a seismic event which we added.

10 MS. MOORE: We could discuss it at the Board
11 meeting --

12 MR. HARVEY: Yeah.

13 MS. MOORE: -- about --

14 ASSEMBLY MEMBER BUCHANAN: So I think we should --
15 based on that, we should take out the word high but leave
16 potential for catastrophic collapse --

17 MR. HARVEY: Collapse in a seismic event.

18 MS. MOORE: But Mr. Smoot is correct because the Ed
19 Code says determined by the Department to pose an
20 unacceptable risk to injury to its occupants in the event of
21 a seismic event. That's what the law says.

22 ASSEMBLY MEMBER BUCHANAN: Well, maybe there's a
23 way we can put that modifier in there, catastrophic collapse
24 that poses or whatever and add the Ed Code language in there.

25 MR. SMOOT: And I think our concerns are more not

1 so much with the fact that it doesn't reflect exactly what
2 the law says as it is that the terms create a subjective
3 decision-making potential, and, you know, I think everybody
4 understands what you've said.

5 You got an engineer's report says the building's
6 going to collapse, bang, there you are. But then, you know,
7 sometime five years, two years, whatever, from now, somebody
8 reads that and says wait a minute, this isn't a high, you
9 know, so I appreciate your --

10 ASSEMBLY MEMBER BUCHANAN: Well --

11 MR. HARVEY: Ms. Buchanan's made a suggestion where
12 we would keep the phrase potential for catastrophic collapse
13 and then add the language from the Ed Code. Does staff have
14 any --

15 ASSEMBLY MEMBER BUCHANAN: Or refer to it
16 something, yeah.

17 MR. HARVEY: Does staff have any visceral
18 off-the-cuff comment about that addition at this point?

19 MS. SILVERMAN: No. I think that's something we
20 can work in.

21 MR. HARVEY: Well, why don't we add it then and
22 again we will discuss it at the Board and we'll have time to
23 cogitate and think about it.

24 MR. SMOOT: That'd be great. Thank you. The next
25 one is --

1 MR. HARVEY: I thought you only had three.

2 MR. SMOOT: No. I said the third one.

3 ASSEMBLY MEMBER BUCHANAN: Three strikes; okay.

4 MR. SMOOT: I have actually five more. So the next
5 one is related to the -- in (C)4, the conversation about an
6 engineering geologist in accordance with California Building
7 Code Section 1803A and with the concurrence of the California
8 Geological Survey. I don't know that there's a problem with
9 an engineering geologist or with using 1803A, but the
10 concurrent with the California Geological Survey adds another
11 bureaucratic layer to this and a potential increase in time
12 and an increase in cost.

13 So since there wasn't any -- I don't recall. I'm
14 not going to say there wasn't. I don't recall a conversation
15 about adding this layer. I would like to know if it's really
16 a necessary layer and if it's just something that's --

17 MR. HARVEY: Let's hear from DSA. I mean I'm
18 comfortable with it. I see the --

19 ASSEMBLY MEMBER BUCHANAN: I'm comfortable with it
20 too.

21 MR. HARVEY: Ms. Buchanan's comfortable with it.
22 It's a validation of what the district's representative is
23 saying. I think we want to make darn certain it's accurate
24 and complete and thorough. So I see, Chip, you look like you
25 may be wanting to respond. I'd appreciate your comments.

1 MR. SMITH: Yeah. This provision is here to
2 address the fact that we at DSA -- and structural engineers
3 aren't credentialed in the geologic hazards arena. So this
4 concurrence by the California Geologic Survey we feel it is
5 needed. They have the expertise to --

6 MR. SMOOT: No. I understand that. I'm just
7 saying this is a substantial potential cost to the district.
8 Just another cost and by the way, I don't know -- you know,
9 your conversation previously about this only being required
10 if there's the presence of faulting, liquefaction, or
11 landslide hazards, I don't know what other situations there
12 would be where there would be a collapse.

13 MS. MOORE: Isn't there -- Lyle, don't all projects
14 have to have a geohazard report? Aren't they required to? I
15 mean that's one of --

16 MR. SMOOT: Only --

17 MS. MOORE: -- only when you're acquiring land?

18 MR. SMOOT: No.

19 MS. MOORE: I remember in my days in the
20 district --

21 MR. SMOOT: They have to have a geological
22 survey --

23 MS. MOORE: -- every project had to have a
24 geohazard report.

25 MR. HARVEY: You were on a bunch of faults and

1 landslides.

2 MR. SMOOT: But I don't think it's --

3 MS. MOORE: No. As a requirement.

4 MR. SMOOT: I don't think it's necessarily -- I
5 don't know. I'm not going to try to answer that because I
6 really don't know the full answer. I don't think it has to
7 be concurred with by the California Geological Survey. Now I
8 may be wrong in that and if it's --

9 MS. MOORE: Mr. Yeager, do you know?

10 MR. SMOOT: -- if it is the current situation, then
11 fine.

12 MR. HARVEY: I don't -- concurrence doesn't imply a
13 lengthy, costly review, Lyle. I think this is a good --

14 MR. SMOOT: No. I'm not worried about the review
15 necessarily. I'm worried about the report itself and what
16 depth of a report you have to do.

17 ASSEMBLY MEMBER BUCHANAN: But if you're claiming
18 the reason the building's unsafe is because there might be
19 liquefaction and what we're saying is we're opening up --
20 we're making the requirements broader because we want, you
21 know, the buildings that aren't to be occupied to qualify if
22 it's due to a seismic condition, but, you know, for the
23 answer to the people that say well, how come -- you know, how
24 do I know you're just not going to get any engineer --

25 MR. HARVEY: Right.

1 ASSEMBLY MEMBER BUCHANAN: -- to write a report for
2 you.

3 MR. HARVEY: Right.

4 ASSEMBLY MEMBER BUCHANAN: What we're saying is the
5 standard you have to meet is concurrence. The State -- you
6 know, DSA, they have to concur with it.

7 So what DSA is telling us is that we don't have the
8 expertise to concur with these conditions. So what we'd like
9 to do is be sure the Geological Survey concurs with it.

10 So I think that's consistent unless I'm missing
11 something.

12 MR. SMOOT: I just was wanting a conversation about
13 this because it wasn't in the original conversation that the
14 Board adopted, so I wanted to make sure that we -- you
15 obviously -- not us, but you concur that it's a necessary
16 action because it is expensive. That's all.

17 ASSEMBLY MEMBER BUCHANAN: But aren't you going to
18 do that anyway?

19 MR. SMOOT: I don't think so.

20 ASSEMBLY MEMBER BUCHANAN: Well --

21 MR. SMOOT: Not this one.

22 ASSEMBLY MEMBER BUCHANAN: When --

23 MR. SMOOT: But like I say, let us check that out.
24 If I'm wrong --

25 ASSEMBLY MEMBER BUCHANAN: When you say we're not

1 going to do it, I mean --

2 MR. SMOOT: -- I'll be glad to come forth and tell
3 you.

4 ASSEMBLY MEMBER BUCHANAN: -- I can tell you
5 because I was on a school board when -- not when we applied
6 but when we did all the work on San Ramon -- on the gym at
7 San Ramon High and we had to do all that geological work in
8 order to determine that we had a liquefaction situation.

9 So I mean it was part of the work we had to do to
10 submit the information.

11 MR. SMOOT: We can go past this one and we'll --
12 I'll talk to my district and -- at some length and --

13 MS. MOORE: I'd like to hear from --

14 MR. HARVEY: Let's hear, if we may --

15 MS. THORNBERG: Okay. Jennifer Thornberg with
16 California Geological Survey again. I think to clarify the
17 point there is -- if you're purchasing property, there is a
18 requirement for a geologic hazard report. That report is not
19 reviewed by the State Geological Survey.

20 If you are doing new construction, however, this
21 process that's being proposed is very similar to what happens
22 under new construction projects.

23 MR. HARVEY: Well, good. Thank you for that
24 clarity. Lyle, next.

25 MR. SMOOT: Okay. You've already addressed this to

1 some extent, but in listening to Masha explain the process
2 that DSA goes through to establish the guidelines, I wonder
3 if you couldn't just ask them to have an open hearing such as
4 this because, you know, a lot of the people that would
5 otherwise be -- potentially be left out of that process would
6 probably like to have an opportunity to hear what the
7 guidelines are before they're adopted.

8 MR. HARVEY: I think DSA's agreeing to hold such a
9 forum. Next.

10 MR. SMOOT: The next thing is under -- (D) has the
11 same issue with the -- I mean with the vulnerable Category 2
12 buildings -- most vulnerable Category 2 buildings. I assume
13 that'll get addressed along with the other ones.

14 MR. HARVEY: That'll be addressed. Thank you.

15 MR. SMOOT: (E), if an application for the seismic
16 mitigation most vulnerable again Category 2 buildings cannot
17 be fully apportioned or approved for placement on the
18 unfunded list, that goes to that conversation about whether
19 you're going to have an unfunded list that goes past to the
20 dollar value of the -- whatever amount of money you have
21 available and we'd like to see an unfunded list.

22 So that wouldn't be appropriate for an unfunded
23 list. It would be appropriate for apportionment only.

24 MR. HARVEY: I think we've agreed that we'll leave
25 it like this --

1 MR. SMOOT: Right.

2 MR. HARVEY: -- and we'll have the unfunded
3 discussion at the Board because that's --

4 MR. SMOOT: Yes, sir.

5 MR. HARVEY: -- a change in policy.

6 MR. SMOOT: I just -- yeah. I'm just kind of
7 reiterating that we're in support of that conversation.

8 MR. HARVEY: Very good.

9 MR. SMOOT: The term here lack of AB55 loans, I
10 don't know that that's a relevant place for that and I don't
11 know why that's in there because you could have an unfunded
12 list for reasons other than not having AB55 loans.

13 I mean that's maybe what generated all this, but
14 you have it now because -- not because of lack of AB55 loans
15 but because you haven't sold a bond.

16 MR. HARVEY: Juan, if you want to indicate why
17 that's there.

18 MR. MIRELES: That's the current definition that we
19 have in regulation because that's the unfunded list that
20 we're working with now and that's where we reference that
21 particular regulation section.

22 We don't have the other unfunded list. The Board
23 hasn't created yet, but this is what we do have now. That's
24 why we referenced that unfunded list.

25 MR. HARVEY: Okay.

1 MR. SMOOT: It's still a term that makes no sense
2 at this point.

3 MS. MOORE: Can I just ask a follow-up -- not a
4 follow-up, but, Mr. Harvey, on --

5 MR. HARVEY: Sure.

6 MS. MOORE: -- that particular line, we're going to
7 put for a full Board discussion not as a recommendation of
8 the Subcommittee. Is that what you were indicating?

9 MR. HARVEY: No. What I'm saying is we will leave
10 it as drafted and we will have a full discussion. Staff will
11 indicate that there was the viewpoint expressed saying this
12 and the viewpoint expressed saying that and that will call it
13 out, but I think it should stay in.

14 MS. MOORE: Well, I -- actually I'm wondering if we
15 can have what we agree upon to go forward as the
16 recommendation of the Subcommittee and what we don't agree
17 upon should be considered by the full Board as a discussion
18 and that's typically how we take subcommittee work forward.
19 If it's all of us -- pretty much if we agree to how it reads,
20 then that's what moves forward and those items that we don't
21 necessarily agree on, we have -- we can have the full Board
22 discuss.

23 MR. HARVEY: -- do it by consensus, but if you want
24 to vote we can do that as a Subcommittee to determine --

25 ASSEMBLY MEMBER BUCHANAN: Could we just ask staff

1 that when they write up this item that we indicate that we
2 need discussion by this --

3 MR. HARVEY: Yep. That's how I envisioned it.

4 ASSEMBLY MEMBER BUCHANAN: -- on this at the full
5 Board.

6 MS. MOORE: Okay.

7 MR. HARVEY: That's how I envisioned it.

8 MS. MOORE: Just so that it's shown that it's for
9 full Board discussion.

10 ASSEMBLY MEMBER BUCHANAN: Right.

11 MR. SMOOT: And the last issue is with regard to
12 the part where it says the applicant may either reduce their
13 request to the remaining funds or refuse funding entirely,
14 I'd like to a conversation about partial apportionment and
15 leaving the project open to subsequent funding if any funding
16 becomes available.

17 You know, you could have a -- whatever, \$2 million
18 project. You only got a million dollars left, so the choice
19 is to take a million dollars and go ahead on a project you
20 have no choice but to go ahead with or take nothing.

21 Well, clearly, you know, a district is going to
22 have a lot of pressure to take the million dollars and leave
23 the other million dollars on the table, but the next funding
24 that comes in may be savings -- I don't know. Some money
25 comes in and instead of that project being made whole, the

1 next project gets funded and that just seems to be -- I hate
2 the term unfair, but I think it's unfair.

3 MR. HARVEY: Well, again I think we will get to
4 that issue if you raise at the Board because we're calling
5 this section out. But I think staff laid out an eloquent
6 justification for how this is used in three or four other
7 programs and that it seemed appropriate here, but it will
8 obviously now be discussed at the full Board.

9 MR. SMOOT: Thank you.

10 MS. MOORE: I just have a follow-up question. So
11 on our other programs when we get to the end of the list, we
12 say you must take partial, none at all -- or none at all? Is
13 that how we treat the list -- the end of the list?

14 MR. MIRELES: Yeah. We -- several different
15 systems in different programs. Some we allow them to skip.
16 At current priorities in funding, there's not enough funding
17 cash for the next project on the list. We can pass up a
18 project and offer it to the next one. So it varies.

19 MR. SMOOT: But those projects stay on the unfunded
20 list and anticipate --

21 MR. MIRELES: Sure.

22 MR. SMOOT: -- another bond measure or future
23 funding to come in and fund them rather than just giving up,
24 you know, what may be a substantial --

25 MS. MOORE: So Mr. Smoot, are you asking this, that

1 if you're the last one the list and your projects 2 million
2 and we only have a million left that you get funded for the
3 million and if a million becomes available, you are made
4 whole, which seems reasonable. And is that -- do we do that
5 in our programs at all?

6 MR. MIRELES: I think the question is that if you
7 only have a million left in bonding authority whether you
8 keep the other million --

9 ASSEMBLY MEMBER BUCHANAN: Right. Yeah.

10 MR. MIRELES: -- available for future funding.

11 ASSEMBLY MEMBER BUCHANAN: Right.

12 MR. MIRELES: That's the way I understand it.

13 ASSEMBLY MEMBER BUCHANAN: And that's what -- and
14 see that's -- what I was going to say that there's a
15 difference between if you have more bonding authority and
16 you're going to sell, so you're taking partial apportionment
17 this month, but next month you're going to have more money
18 and when all the bond funds have run out.

19 Now the only exception to that would be is if some
20 of the projects come in less than they were apportioned and
21 there's money that returns to the program, but that's sort of
22 another --

23 MR. SMOOT: Well, historically you've gone past
24 bonding authority with your unfunded approvals on new
25 construction and modernization. You've paid very little

1 attention to how much bonding authority's available for an
2 unfunded list. You've gone ahead and then when money comes
3 available from the next bond measure, you've funded an
4 unfunded list.

5 ASSEMBLY MEMBER BUCHANAN: Right. You're assuming
6 that there's seismic set-aside. I mean that's the problem
7 with these special -- I don't know what the answer is on
8 this.

9 MR. SMOOT: I'm just saying --

10 ASSEMBLY MEMBER BUCHANAN: I think it merits more
11 discussion.

12 MR. SMOOT: You know, you take the money, you're
13 running a risk, yes, understood. But that risk shouldn't be
14 made worse because --

15 ASSEMBLY MEMBER BUCHANAN: Right.

16 MR. SMOOT: -- you know, you ran out of money today
17 but you got money tomorrow.

18 ASSEMBLY MEMBER BUCHANAN: Yeah. I understand
19 that.

20 MR. SMOOT: Okay.

21 ASSEMBLY MEMBER BUCHANAN: And if you didn't have
22 the seismic program for ten years, at what point in time --
23 you know, so I don't know what the answer is, but I
24 certainly --

25 MR. SMOOT: Well, I don't either.

1 ASSEMBLY MEMBER BUCHANAN: And certainly if money
2 came back into the program because some of the projects ran
3 under, then I would think that you would be the first to be
4 made whole there as well, so --

5 MR. SMOOT: That's more or less -- that's mostly
6 what I think would happen is that you will get money back
7 from other projects and then you'd be able to make that
8 project whole.

9 Thank you very much. I appreciate your listening
10 to me today.

11 MR. HARVEY: Our pleasure.

12 MR. DUFFY: Mr. Chairman, members, Tom Duffy for
13 CASH. And I'll be brief. But I want to -- I know you're
14 going to have further discussion at the Board, but I just
15 wanted to try to respond, Ms. Buchanan, to something that you
16 said and also that you had said, Ms. Moore.

17 Mr. Smoot is correct. In the history of this
18 program beginning in 1982, we would run out of money and we'd
19 have an unfunded list and that helped us convey the message
20 to the Legislature and the Governor that we needed another
21 bond and we have been consistent and were consistent that
22 through the '90s and then we've been fortunate with the bond
23 measures we had in '98 and 2002 and '04 and '06.

24 With regard to program change and whether or not
25 there's a seismic program that looks like this, Ms. Buchanan,

1 in 1998 when we established Senate Bill 50, there was a
2 significant change as you know in how the program was to
3 operate and the funding methodology.

4 We gave districts the option of withdrawing and
5 reapplying for the new program and there were some deadlines.
6 I think that very same thing could happen here.

7 So what I would argue for is that California has
8 finally put together a seismic program and I want to thank
9 the three of you for the way that you have really taken this
10 issue and looked at it in great detail because I think this
11 is a very workable program now because of the effort that
12 you've made.

13 And I would want this program to then continue to
14 be the model and if it needs changing because of what we
15 learn in the future, then we can certainly do that.

16 But back -- after AB300 was written and there was
17 the controversy of it, we went to Ellen Corbett who was still
18 in the Assembly at the time and asked her to carry a bill for
19 us that was the seismic bill and we got through the Assembly,
20 got through John Vasconsalles (ph) who chaired or Senate Ed
21 and the Senator said basically well, we don't have a funding
22 source for this program, so we shouldn't really move forward
23 and he held the bill.

24 So we had to wait till 2006. Now we have a program
25 that is defined and I think we could argue, especially as we

1 see it unfold, that we could argue that this would be the
2 basis for what we do in the next bond.

3 But my last point, Mr. Harvey, is that if we do
4 what we've done in the past and do as Ms. Moore suggested,
5 then we are taking the AB300 list that you have a high regard
6 for and identifying that whether it's buildings on that list
7 or not, we see that there is need in California and we're
8 encouraging districts to come forward and it's not an easy
9 thing to do at the school district level to tell a board --
10 and you know this having been a board member -- to tell a
11 board we can't use this building because it may collapse and
12 what that does to the community and what that does to the
13 children that are going to that school -- the students.

14 So my argument, Mr. Harvey, would be that with the
15 kind of program that you have now put together, we would want
16 to encourage districts to make application based upon what's
17 here and establish that pipeline so that we can argue for the
18 program in the future.

19 California's a high risk state with seismic events
20 and I think this is a very positive step. Thank you for your
21 time.

22 MR. HARVEY: Thank you. The only thing I want to
23 say and we've said it more than once, while we had the
24 set-aside program and we all I think submit it's going to be
25 an improved program, we still had in place the facility

1 hardship process and folk that can't necessarily qualify
2 because the dollars may ultimately go in the seismic program,
3 they do have another avenue to seek funding and seismic is
4 one of those events. In fact we funded one based on faulting
5 under the facility hardship.

6 So I just want to make sure folk who may be
7 listening understand that we do have more than one avenue and
8 we will continue to.

9 MR. DUFFY: But we -- CASH wants to sincerely thank
10 you for the work that you've done. This is i--

11 MR. HARVEY: Well, thank you for participating.
12 Without participation, I don't think as good a decision is
13 ever made. So hearing the voices is important.

14 Any final comment?

15 MR. DUFFY: Well, start -- having a program that
16 started with a bond in 2006 and finally we're able to I think
17 see some movement, but thank you.

18 MR. HARVEY: Good. Staff, any closing remarks?
19 You have any concerns on the direction and requests we've
20 made to change and amend and alter this before the Board sees
21 it?

22 MS. SILVERMAN: No. We'll just work ambitiously to
23 get this together and post it to our book next week.

24 MR. HARVEY: Well, I think again I want to thank
25 all of you, both the DSA and OPSC and California Geological

1 Survey and others who come to take their time to make sure
2 we're better informed and the work you do to create these
3 documents are certainly appreciated.

4 Thank you all. We'll see you at the next Board
5 meeting. This Committee meeting's adjourned.

6 ASSEMBLY MEMBER BUCHANAN: Thank you.

7 (Whereupon, at 3:30 p.m. the proceedings were recessed.)

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