But even in case it goes haywire if you stand up and say we -- staff has a revised recommendation that we agree with, and staff says they agree with it, and the Board starts making motions, that’s the same situation.

MR. MICHAELS: Yeah.

MR. THOMPSON: Ken Thompson from Valuation.

Just to clarify this, we don’t have a nonappearance calendar in December, so there’s always -- if it’s pulled off the nonappearance, first of all, it has to be pulled; the Board cannot make a decision on the nonappearance calendar. Is that correct, Debbie?

MS. MANDEL: If it’s on an adjudicable --

MS. PELLEGRINI: If it’s on consent calendar.

MR. THOMPSON: If it’s on consent calendar, that’s what I’m saying. It can only stay --

(Indistinguishable simultaneous multiple voices.)

MR. THOMPSON: But as a practical matter if it’s on consent, the Board has to pull it because nothing’s been noticed or the disclosures haven’t been filed.

MS. MANDEL: Correct. But if it’s on an adjudicatory calendar, then the Board can do whatever. And if there’s a taxpayer who has had substantive discussions with a Board member which presumably, if there’s a taxpayer who is worried, they might have
contacted Board members, then it winds up on an
adjudicatory calendar, and you do have all of that.

But you’re correct, the consent calendars would
not have the contribution disclosures and can only be
voted on in a single vote without a separate item. So
discussion on any particular item. Someone would have to
pull off consent, and then you would blow that December
31 statutory deadline unless the Board decided that very
moment to schedule another Board meeting before the end
of the year to deal with the item. But that would --

MR. THOMPSON: -- be unusual.

MS. MANDEL: Boy, talk about confusion in the
boardroom.

MS. RUWART: We will address the comment as we
are addressing all comments, but we believe this states
existing law.

MR. DOERR: Dave Doerr. Why not try and
calendar these appeals for November?

MS. PELLEGRINI: We actually try to calendar as
many as we can in October and November, and have as few
as possible in December. It’s not happening this year,
but we tried.

Okay, we are going to go for a few more minutes,
then I’m going to call a break. So 3151, Prehearing
Conference.
MR. MICHAELS: Well, there’s one other comment, pardon me, Debbie, but the same comment applies, I think, to 3151 as to 3150. It would seem, and we’ve had some not so good experiences in the past where it took a while for us to get a recommendation or some other writing from the Board that directly affects an upcoming hearing. Be nice for there to be some kind of guidance as to sending it in advance. I put this throughout actually, you know, within two business days of receipt, or some such.

MS. RUWART: We will address those, and we’ll see if there are places where it would be appropriate to put a timely deadline in there. But in my view, as we all know, the state assessee process is so time crunched that everybody is making the best effort to get everything out as timely as possible. And to put regulatory requirements in there really doesn’t make any good sense. We are all attempting to do so.

And what we should all be doing is, instead of putting regulatory requirements in, we should be investing our effort in streamlining our internal processes to fulfill the goal that we all are actually trying to do, which is get things out as quickly as possible. That would be my view. It doesn’t do any good to say that Board Proceedings blew the two-day deadline. Well, what is your remedy? It just puts too much into it
I think.

MR. MICHAELS: Okay.

MS. RUWART: That would be my opinion.

MR. MICHAELS: Well, I accept that for 3150 possibly, but, I mean, the next one which we haven't reached yet, I probably have a different view, though.

MS. RUWART: And so if nobody has any more comments on 3150, this would be a good -- this will be our last discussion topic before we take a break. As I mentioned before, we should -- let's discuss the existing provision, and I would also like to discuss this idea coming forth about having an actual appeals conference as well.

The current provision, as you can see, contemplates that the -- codifies existing practice, that the petitioner and the Valuation Division get together. We call it in the regulations a prehearing conference. Everybody knows that it's a continuing back and forth, lot of dialogue in many cases, to exchange the relevant information, identify the issues, attempt to resolve issues as much as possible. And then the Appeals Division, as mentioned previously, takes all the documentation and information and writes up a hearing summary for the Board members, which is then distributed to both petitioner and the Valuation Division prior to an
oral hearing.

Maybe in the interests of orderliness, let's talk about this particular provision and then talk about what if we changed the whole -- if we added this extra conference to the whole process. Mr. Michaels? Anybody else?

MR. MICHAELS: Fair enough. Anybody else?

My fundamental concern here is that at a certain point it's too late, probably, to have a prehearing conference. It wouldn't make a heck of a lot of sense I don't think to have a prehearing conference the day before the hearing.

MS. RUWART: Well --

MR. MICHAELS: And so I respect what you said a moment ago about not handcuffing the Proceedings Division on issuing a recommendation, but for it to be meaningful, these petitioners typically are out of state, or often, many times are out of state. And it's, you know, an effort to come to -- an expense and otherwise -- an effort to prepare for and attend a prehearing conference. So I think there should be some window there that gets closed at a certain point, if you're within five days or some reasonable period of time, it's just not going to happen.

MS. RUWART: Okay.
MS. STANISLAUS: Selvi from Legal. As far as being here physically present, Peter, it doesn’t happen to all other of these conferences; you can have a phone conference, you can have a video conference. You don’t have to be physically present here at the BOE.

MS. RUWART: Okay, just --

MR. MICHAELS: Okay.

MS. RUWART: Go ahead.

MR. HUDSON: Tom Hudson, Bill Leonard’s office.

Bill Leonard had brought up the issue, too, of some guidance on this, our new Appeals Division conference, you know. I’m not even sure precisely what we would want to say about that, but it would be good to have some guidance to taxpayers about how they could request one.

It doesn’t even have to be that the conference is mandatory under any circumstances. But taxpayers who want to know how they could go about requesting one or explaining why their circumstances are extraordinary, it would be helpful.

MS. RUWART: And as I attempted to explain, maybe not very clearly, that would be a whole new provision. Because as this 3151 contemplates, and maybe by taking existing language, maybe these rules do a disservice, because this -- while it says this is a prehearing conference between the petitioner and
Valuation Division, I don’t think the petitioners want to be foreclosed from meeting with the Valuation Division even up to the moment of the hearing.

MR. MICHAELS: You’re absolutely correct about that.

MS. RUWART: So that’s why I would actually not be inclined to put something in there. Maybe what is better is to maybe explain that a prehearing conference is -- that the petitioner is not limited to a conference and that we do contemplate almost an ongoing -- it can be an ongoing exchange of information, which is what really happens.

And if I were asked to apply this terminology to what actually happens, the prehearing conference is probably the first meeting between the petitioner and the Valuation Division, and it goes from there. So I can see where that would be -- this would -- I think in all cases I think this section needs to be retained, maybe fleshed out a little.

What I’m really interested -- and also with no dates, because you want to keep communication going all the way up to the hearing date. But I’m very curious if anybody has ideas off the top of their head or later wants to give comments on if there were an actual appeals conference with an Appeals Division attorney presiding,
with both Valuation Division and petitioner present
either live and in person or remotely, what procedures
would people want to see?

Already at staff level we see two potential
limitations because of the time frame, the compressed
time frame. One limitation would be that the petitioner
may be required to be put on a hearing date as prescribed
by Board Proceedings Division without a lot of choice.
You may not be able to pick an appeals conference and go
in October. Also, the petitioner may also be asked
therefore to waive the regulatory 45-day notice of
hearing. The statute only requires 10 working days. We
may have to --

MS. MANDEL: Oh, yeah, I remember when we used
to get those.

MS. RUWART: And obviously because they would be
in the process of requesting and holding an actual
appeals conference, we would know that this is going on.
Those are two issues that staff sees at the moment to be
procedurally -- to keep things moving along if you want
to put that extra step in there.

So if anybody has any ideas about requesting --
as Tom said, requesting a conference, how we can make it
work time-wise for everybody, either now or in -- as a
follow-up, we would appreciate that, because I think we
would like to put a provision in there about that.
   Any comments? Just yes, okay.
MS. PELLEGRINI: Okay, with that, we will be
   taking a 10-minute break.
MR. SHAH: Carole, this is Neil.
MS. RUWART: Yes, Neil.
MR. SHAH: I'm sorry to ask for this at this
late time, but, you know, the matrix that Peter has
marked up, I don't have that.
MS. RUWART: Oh, dear. I'm so sorry. We have a
break; I will go and e-mail it to you right now.
MR. SHAH: Really appreciate it.
MS. RUWART: Does anyone else online want it?
MS. CROCETTE: Carole, that would be the same
for Sabina and Tonya.
MS. RUWART: Okay. And Jim?
MR. HERD: Yeah.
MS. RUWART: Maybe not, whatever.
MR. SHAH: And real quick, Carole, are you -- on
the prehearing conference, are you going to have that
plus this formal appeals conference you're talking about?
MS. RUWART: Yes. If the question was, are we
going to have the prehearing conference in 3151 and the
appeals conference?
MR. SHAH: Right.
MS. RUWART: The prehearing conference, Section 3151, is existing practice and codifies the communication between the Valuation Division and petitioner. That always has been and always will be.

Currently, the Appeals Division only does a review on the briefs and doesn’t hold a formal appeals conference. We’re considering adding the ability for the petitioner to request a live appeals conference, essentially.

MR. SHAH: Got you.

MS. RUWART: So that would be two different -- and that appeals conference would have both the petitioner and the Valuation Division present similar to how you run a Business Tax appeals conference.

MR. SHAH: Sounds good. Thanks.

MS. PELLEGRINI: We are now giving the court reporter a 10-minute break.

MS. RUWART: Okay, and I’ll e-mail that stuff to you right now.

(A brief recess was taken.)

MS. PELLEGRINI: We’re beginning again and starting on page 9, okay, Section 3160, Oral Hearings – Briefs. Comments?

MR. MICHAELS: Well, Peter Michaels, and I think this is probably just -- for Carole -- I had raised the
question in (a) as to whether Tax and Fees Program
Division is serving as counsel for the Valuation
Division. And I think the answer is yes.

    MS. RUWART: Yeah, it is "yes."

    MR. MICHAELS: And if that's the case and the
Tax and Fees Program Division is an advocate for one of
the parties rather than a neutral, it seems to me that in
(b) it would be inappropriate to include a so-called
recommendation, just as inappropriate as it would be to
include a petitioner's recommendation. And you see I
have stricken those last words there, for the reasons I
think I just explained. The recommended action to be
taken by the Board on each issue. Well, of course an
advocate is going to say whatever his or her position is.

    MS. RUWART: Okay, got it.

    MS. PELLEGRINI: Other comments? Yes.

    MR. RUBIN: Bob Rubin. And this is -- I've got
a concern about petitioner having 13 days to file a reply
brief.

    (Phone noise.)

    MS. PELLEGRINI: Somebody has just entered on
the phone. Can you please identify yourself?

    MR. LoFASO: Sure, Alan LoFaso with Betty Yee's
office.

    MS. PELLEGRINI: Thank you.
Please continue.

MR. RUBIN: And this is more of a general comment, because as I understand the time --

(Phone noise.)

MS. PELLEGRINI: Whoever has just come on the phone --

MR. SMITH: Chris Smith from Betty Yee’s office.

MS. PELLEGRINI: Thank you.

MR. RUBIN: The time line is the same for all the different appeals. And I don’t do very much that has to do with property, so maybe 20 days is fine, but -- or actually 13 days. But in the -- you know, in an appeal of an FTB case, you get 30 days to a file a reply brief, and, you know, it might just be -- you might not always have time with your other work to be able to turn around and do a reply brief in 13 days.

MS. RUWART: I believe I can address that. The state assesssee petition and hearing process is constitutionally mandated that the Board -- and statutorily mandated -- that the Board must decide these values by the end of every year, and there is a specific time line that is the same every year. You must file your property statement by March 1st; the Board must set its initial values no later than June 1st; you must file your petition by July 20th; and, the Board must adopt a
value no later than December 31st.

So we understand that this, to the
nonparticipant, looks pretty short. It has to be that
way, and everybody works with it. What we have done is
we have, prior to -- if you look at the existing
regulations, you see that there was a 45 day prior to the
hearing date brief, or a different date.

But what we’ve done is we’ve now had to
accommodate the fact that the Appeals Division needs a
certain amount of time to look at both the Valuation
Division’s brief and the petitioner’s petition and reply
brief and to create a neutral summary to advise the
Board.

In order to do that, we’ve pushed the dates
around a bit. It does not give the petitioners any less
time than they had previously to respond. And I think
the reality is that people who work in this field, they
just know that it’s the season, and that’s kind of how
you -- that’s certainly how we do in Legal and in
Valuation. But it’s a good question.

MR. MICHAELS: Yeah, if I could just amplify
slightly. For one, I agree with what you said, and it
’tis the season, and it’s all compressed and we have very
little flexibility there.

MR. KOCH: Very little sleep.
MR. MICHAELS: What's that?

MR. KOCH: Sleep, I said.

MR. MICHAELS: That all said, I think Bob's point is an important point if we go to -- it's on the next page, so maybe I should just wait my turn with it, but (f) here, refers to (c) and (d) and (e). Bob was just talking about (d).

Personally, I don't have a problem with the 20 days being in there, and I don't have a problem with the Chief of the Proceedings Division either giving the Valuation Division extra time if they need more time or giving the petitioner more time if the petitioner needs more time.

But I do have a problem when that final countdown is on and we're within 10 days of a hearing, giving the Appeals Division more time, because that's an invitation for us, all of us, Valuation side and the petitioner's side, to end up receiving an analysis the night before the hearing. And I certainly think we should be afforded an opportunity to analyze their analysis. So my suggestion is that we stick with inclusion of (c) and (d), in (f), but remove (e) from (f).

MS. MANDEL: And that means that if you're going to have an appeals conference, that you must -- and
assuming, you know, everything shows up, the filing date
instead of, you know, mailed and gets to Sacramento five
days later, but assuming they have everything on the
actual 20 days before, that within 10 days of that reply
brief filing deadline, you must hold an appeals
conference, and the appeals conferee must write up his
stuff or her stuff.

MS. PELLEGRINI: And this is Debbie. I think
that is in there because if I was to grant it in (c), I
may end up needing to push (d) and then (e), each date
subsequently. And it gives me that ability to do so,
which is what tends to happen in the Business Tax briefs.
If the first party wants a little extra time, it’s not
fair that I compress the next one.

But I agree with you that, yes, we’re not
looking at going to the night before. But I think that
maybe --

MR. MICHAELS: Well, maybe we need at least
seven days, you know, or something where there is some --
or where you have a window that goes down.

MS. MANDEL: I can assure you, at least out of
our office, and I imagine the other Board member offices
feel the same, we don’t care to get them the day before
the hearing either.

MR. KAMP: No, certainly not.
MS. RUWART: No.

MS. PELLEGRINI: Suggestion taken. Okay, any other comments? We were on page 9, but we'll extend it over the rest of this section on page 10.

MR. SHAH: Hi, this is Neil. Carole?

MS. RUWART: Yes, Neil.

MR. SHAH: Carole?

MS. RUWART: Hi.

MR. SHAH: Are you there?

MS. RUWART: Yeah, can you hear me?

MR. SHAH: Yeah. Just a quick question on the appeals summary that's going out to the Board members' staff.

MS. RUWART: Yes.

MR. SHAH: That's the one that's coming out 10 days prior to the Board meeting?

MS. RUWART: Correct.

MR. SHAH: And is that the one that -- is that sent out to the taxpayer, too?

MS. STANISLAUS: Yes.

MS. RUWART: Yes, and to Valuation Division. Maybe Debbie, too.

MS. PELLEGRINI: Selvi spoke there.

MS. RUWART: Sorry, go ahead, Selvi, if you would explain, that would be great.
MS. STANISLAUS: Yes, Neil, it goes to everyone; it goes to the Valuation Division, it goes to the petitioners, and it goes out to everyone, and the Board members, too.

MR. SHAH: Okay. And in case of an oral hearing, it's in the format that's listed in (e)?

MS. STANISLAUS: No. That's something that we need to work on.

MR. SHAH: So that would be the factual issues and the background and the contentions and the law --

MS. PELLEGRINI: Neil, please repeat what you said.

MR. SHAH: I was just going to ask because this time around we had some confusion at this Board hearing, the November 15th Board hearing, so I'm just trying to clarify the format that's coming out as far as the summary that we get, that the Board member staff get, if there's going to be an oral hearing versus if it's just a waived appearance.

MS. STANISLAUS: Okay, if it's an oral hearing, then it's going to be a hearing summary format after the Franchise Tax Board hearing --

MR. SHAH: Okay.

MS. STANISLAUS: -- which you know.

MR. SHAH: Right. That's perfect.
MS. STANISLAUS: But if it's a waived appearance, and that was the confusion that came up this time with Broadwing and Alpine and ICG. It should not be a hearing summary; it should be a summary of recommendation by Appeals stating that it's now a waived appearance.

MR. SHAH: Now, subsequently if the oral hearing becomes a waived appearance, do you then send out a summary decision?

MS. STANISLAUS: That's what we did this time, but that's something we need to talk about in December. We just need to streamline the process, Neil.

MR. SHAH: Right, because it was getting confusing, because the Valuation Division was also sending out a summary.

MS. STANISLAUS: The Valuation Division? No. We always do the brief.

MR. SHAH: Right. Then they sent out a second brief saying, okay, this is what we're agreeing to now.

MS. STANISLAUS: Okay. Let me go back and check on that.

MR. JACKSON: This is Don Jackson. That was Alpine?

MR. SHAH: Right.

MR. JACKSON: And the Alpine was because it was
still actually an oral hearing at the time that we were revising that.

    MR. SHAH: And you’re going to continue that, then?

    MR. JACKSON: That’s what I think they are going to talk about. But at the time when we sent it out, it was an oral hearing, and we were sending out a revised brief for Valuation Division; that was coming out of Val. It was not a waived appearance at the time, but they were -- ultimately, they coincided when -- ultimately. So it looked like the other ones, the ICG and the Broadwing sort of looked like that.

    MS. STANISLAUS: But it was still a revised brief, it was not a hearing summary that came out from Valuation. But that is something, Neil, we need to talk about in December.

    MR. SHAH: It would be better if Appeals could streamline all of that and just send out a summary from Appeals rather than us getting -- you know, it’s up to, you know, the other interested parties also. But from my perspective, I’d be interested in getting one summary from Appeals telling us what’s going on rather than multiple ones and we’re trying to figure out where we are.

    MS. MANDEL: Yeah, I think it was just confusing
in that case, Neil, because the taxpayer had not yet waived appearance, and so Val, Valuation Division felt compelled to revise their brief to reflect their current understanding of the case and the issues so that they had a brief on file. And then I guess the waived appearance came in later. But, yeah, when you get three different documents, it's a little confusing.

MR. SHAH: Right, because then you're trying to compare all the documents saying, okay, where are the changes and what's happening here. Frequently in Business Taxes, they'll send out a little e-mail, they'll send out a little blurb saying what the changes are or why it's been sent out.

MS. MANDEL: Yeah, it's always nice if they say here's the revised thing and here's what the change is.

MR. SHAH: Right.

MS. PELLEGRINI: Neil, we will, as Selvi said, have a meeting before we start going through the same process for December.

MR. SHAH: Sounds good, thanks.

MS. PELLEGRINI: Any other comments on 3160, oral hearing briefs on page 9 and 10?

MR. MICHAELS: Well, Peter Michaels speaking. The very last sentence here, I guess it's part of (g), says, "The case will remain on the agenda ...." And I
think that could possibly be clarified, but maybe that
would confuse things; maybe agenda is sufficient. There
are a lot of different components to an agenda: consent,
appearance, nonappearance.

MS. RUWART: There's definitely -- this is
Carole Ruwart -- there was definitely a lot of discussion
when I was pulling from all the different sources to put
this together, as to how much detail we wanted to put in
a regulation versus giving the Board flexibility to
organize its business of conducting meetings and just
generally, or, you know, that there -- in fact, a lot of
the things we were just talking about, you know, could be
considered internal procedures that you could argue
whether they should or shouldn't be in a regulation
versus in a procedural manual versus just a process.

So I will -- what I would like to do is consider
that, but if we go the route that you're talking about,
then we probably want to do a pretty comprehensive
stating of which kind of matters go on which parts of the
agenda. That may or may not be a good idea when we see
it all in writing.

MR. MICHAELS: As a matter of practice, if there
would be a complete resolution, is there a reason for it
to be on the appearance calendar?

MS. RUWART: Well, I don't know.
MR. MICHAELS: Not necessarily? Carole, anybody?

MS. MANDEL: Could be. I mean, we had three cases that because they were noticed for hearing and -- on the public agenda and subsequently were --

MR. SHAH: It's 10 days, right, you need 10 days?

MS. MANDEL: Right. They stayed on the agenda because they were publicly noticed, but they were appearance waived.

MS. RUWART: Right, anything that occurs.

MS. PELLEGRINI: If the Board -- if anytime the value has changed from May, the Board is the only one that can decide that. Therefore, it has to stay on the calendar. Those are removed when somebody just withdraws their petition. So anything else has to stay.

MR. MICHAELS: What about appearance versus nonappearance?

MS. PELLEGRINI: That all becomes, once it's been noticed at the 10-day mark, we keep it on whatever calendar it's on.

MS. MANDEL: I guess the question is, this sentence, "The case will remain on the agenda for Board action," was that sentence put in here in (g) so that people who resolved their cases will realize if they've
never done state assessment, what Debbie just said, which
is, just because you resolved it with staff does not mean
it’s going away. It will be on a Board agenda for a
Board decision. And --

MR. MICHAELS: And maybe rejected.

MS. MANDEL: And maybe rejected, like it said in
the other rule.

MS. RUWART: I think that would probably be a
primary benefit of having that sentence in the regulation
as it stands.

MS. PELLEGRINI: Any other comments on this
part?

We will then move to 3161, Oral Hearings -

MR. MICHAELS: Peter Michaels speaking here.
And maybe, Carole, I should just ask you, I added a
subparagraph or a paragraph there because it looked to me
as if the language that I have after (c) --

MS. RUWART: Yes.

MR. MICHAELS: -- was not intended to be limited
to private railroad car values but rather to apply
generally to escape assessments.

MS. RUWART: That could well be. Let me see.

MR. THOMPSON: This is Ken Thompson, Valuation
Division. Actually, that is not intended to apply to
escape assessments, only private car assessments.

MS. RUWART: Yeah, the --

MR. MICHAELS: "If the assessment was made outside the regular assessment period, the Board shall hear the petition within 90 days of the date on which the petition was filed and render its decision within 45 days of the date of the hearing on the petition."

MR. THOMPSON: Actually, that's intended for private cars only.

MR. MICHAELS: Private railroad cars.

MS. RUWART: That's it, then.

MR. MICHAELS: Okay, very good.

MR. THOMPSON: And actually staff has a problem with the 90 days, because sometimes we have Board meetings, even though we're having one a month, they can be 59 days apart. We really need to kick that out to 120 days, if we are going to keep this in a rule.

MS. MANDEL: Is that a statutory 90-day requirement, though?

MS. RUWART: Yes.

MR. THOMPSON: It is statutory?

MS. RUWART: It is. I'm going to quote it to you in a second. Revenue Taxation Code Section 11339(d) -- well, (a) says, "Any assessment made outside of the regular assessment period ..." --
MR. MICHAELS: Private railroad cars we're talking about?

MS. RUWART: Private rail cars only. "A petition for reassessment may be filed on or before the 50th day following the date of the notice of assessment." And in (d) it says, "The Board shall hear the applicant on the petition within 90 days of the date on which the petition was filed."

MS. MANDEL: And then there's a deadline on deciding, presumably, a statutory deadline? Because that's an unusual provision.

MS. RUWART: Yes, 11341(a), "The Board shall render its decision on the petition for reassessment within 45 days of the date of the hearing on the petition ...."

MS. MANDEL: Right.

MR. THOMPSON: It may be moot since the law changed on private cars in 1995. Petitions have been very few and very simple. So ...

MR. MICHAELS: Well, my reason for raising it, I'm now glad that I did, is that if this second and second sentence there applies to private rail cars, then I think we have a problem, because there's not a recognition here that an escape assessment does not have to be decided in the calendar year in which the
assessment was issued, if you read (a) with an escape assessment in mind.

And this 3161 appears to be otherwise silent about escape assessments. So let’s read it, "The Board shall hear petitions for reassessment of unitary or nonunitary values and correction," blah, blah, blah, "by December 31 of the year in which the notice was issued and render its decisions no later than December 31 that year."

So hypothetically a company -- a taxpayer gets a notice of assessment on November 16th, after the Board, on the 15th, approved issuance of that escape assessment, and the decision has to be made by December 31st?

MS. RUWART: There’s been --

MR. MICHAELS: It’s not going to happen.

MS. RUWART: Peter, there’s been an omission of the escape assessment scheduling. I will put it in.

MR. MICHAELS: Okay.

MS. RUWART: And so we’ll have (a) being the regular petitions for reassessment of unitary, nonunitary value. (b), I will make more clear applies to -- the entire subdivision applies to private railroad cars. And instead of putting your (c) paragraph right where you put it, I’ll put (c) in below as the escape assessment provisions.
MR. MICHAELS: Thank you. Perfect, great.

MR. THOMPSON: Ken Thompson from Valuation. But there is no equivalent statutory language in unitary assessment for unitary escapes.

MS. RUWART: Maybe that’s why it’s omitted.

MR. MICHAELS: To render a decision by the end of the year.

MR. THOMPSON: As you realize, Peter, working through -- and sometimes it might take us a year after an audit is issued to resolve all the issues with the audit, and that’s why a longer period of time is allowed.

MR. MICHAELS: Of course. I’m fine with it, I just think it should be expressed and clear.

MS. RUWART: To whatever extent there is something applicable to scheduling of hearings on escape assessments, I will put it in. If there is nothing, I will also make a statement to that effect. How about that?

MR. MICHAELS: Just some recognition of escape assessments. But as Ken correctly said, none of the time compression applied to escapes.

MS. RUWART: Correct.

MR. MICHAELS: Or fewer do.

MS. PELLEGRINI: Any other comments on page 10?

Yes?
MS. MANDEL: No, I was stopping for the court reporter.

MS. PELLEGRINI: We are now on page 11, 3162, Oral Hearings - Distribution of Documents.

3163, Consolidation of Petitions into a Single Hearing, page 11.

MR. MICHAELS: Peter Michaels speaking. I’ve raised two concerns. This is a common situation, certainly, especially if there is a parent company that has a number of properties in the state, typically there will be common issues raised.

But seldom will the appeals even for a particular taxpayer be absolutely congruent. There are almost always issues that are unique to a property, and that a petitioner might have in common with other properties it owns or that other state assessees own. I see here that you can opt out of the consolidation, so maybe that’s the answer. But where cases are consolidated, inevitably there will be common and unique issues. And so that’s a concern I have.

And then my second concern is safeguarding confidential and proprietary information. It’s again a common situation that there will be similarly situated taxpayers who have the same legal or methodological issue to present to the Board. And it’s essential that if
those cases are combined and there’s a single write-up by
the Board staff, the Appeals Division, whomever, that
none of the confidences of one taxpayer be disclosed to
another taxpayer. And I don’t see any safeguards here.

    MS. RUWART: Okay, very good. We’ll take that
into account and address those.

    MS. PELLEGRINI: We are now on page 12. 3164,
Oral Hearing Procedures.

    MR. MICHAELS: Peter Michaels speaking. I’ve
made this point in the transmittal letter that I wrote,
and it’s a very important point to me. And there is case
law that I believe squarely addresses this concern. And
it’s case law where the State Board of Equalization lost,
or where its contentions -- its arguments were rejected
by the court of appeal. That’s the GATX case from 1989.

    We really very, very strongly believe that state
Board hearings must be closed to the public where
confidential and proprietary taxpayer business affairs
and trade secret information or data is introduced. And
it is a standard practice before local boards of
equalization to ask the public, the press, everyone
leaves the room, but the parties and the lawyers for the
parties if there is confidential or proprietary
taxpayer-specific information that is being introduced
and discussed. And it is a longstanding practice before
local boards of equalization.

That's a court case that supports our request here that the same practice be applied to state assesses. I can think of no good reason, legal, practical, administrative or other, why the same practice that's recognized locally and that the courts have ruled on is not honored by the state Board of Equalization.

MR. DOERR: Dave Doerr of Cal Tax. Our members are very concerned about the same issue about protecting their proprietary and confidential information.

MR. KAMP: Okay, Peter, you said the courts have ruled. You first mentioned the GATX case.

MR. MICHAELS: Singular, "court."

MR. KAMP: Well, that -- you said -- or are there any other published court decisions you're aware of that you're relying on besides GATX?

MR. MICHAELS: No.

MR. KAMP: Okay. Second --

MR. MICHAELS: I only need one.

MR. KAMP: I would put out, one, GATX involved private railroad cars. Second, there is a statute in the property -- the state assessment provisions of the Revenue and Tax Code, I think it's 833, but I'm not sure, that specifically says state assessee hearings must be open to the public.
MS. RUWART: 743.

MR. KAMP: 743, okay, that's it. That ought to be cited, because that's the basis for what you're doing. And also Proposition 59 says that every hearing is presumptively open to the public. So I think you have to have something more than just a blanket statement that you can close public hearings; there's got to be standards. And I think this is something you might want to take up at the December interested parties meeting.

MR. MICHAELS: Okay.

MR. KAMP: Yeah.

MR. MICHAELS: Of course I don't agree with much of what you said, but I hear what you're saying.

MS. MANDEL: And I think what was pointed out at one of the other meetings was that the trade secrets provision may be in the local property tax statutes and not in the state assessment statutes, which if you're looking at possible legislative proposals, you might look at.

MR. MICHAELS: Well, those very words, I just cribbed the words from the GATX case.

MS. MANDEL: I know. But --

MR. MICHAELS: And they are state assessments.

MS. RUWART: That was a different statute is the difference.
MS. MANDEL: One of the meetings that maybe you were at here where disclosure issues came up, I remember legal staff -- or maybe it was legal staff on the phone to me -- talking about the statutory provisions in private railroad cars, the statutory provisions in local assessment, you know the 1600s, and what is or is not in the provisions for state assessment.

Now, you know, I had this fight with the state Board a long time ago after GATX. But that was one of the things that staff was looking at now, and it does seem a real disconnect that somebody’s trade secrets, business proprietary information, that they would have to choose between not introducing the evidence that would assist them in getting their value reduced, and if -- because the hearing has to be -- if the hearing has to be totally open.

The only sort of benefit that the state assesse has on the flip side is the state assesse does have a trial de novo, but why should they be forced for want of an ability to introduce evidence that they think would be of assistance to them, and then potentially losing because they don’t want to reveal that evidence?

MR. MICHAELS: You know, let me --

MS. MANDEL: But that’s what I understand staff said is that the trade secret stuff, that statutes aren’t
the same apparently, even though we’ve …

MR. MICHAELS: Well, the court certainly did not
-- the opinion, the GATX opinion is insensitive to the
private rail car distinction. And so I’m clear, we are
not suggesting that the entire hearing be closed to the
public. We are only saying that as to the introduction
and discussion of proprietary confidential trade secret
information, costs, expenses, margins, only to the extent
that the hearing specifically deals with confidential,
proprietary information would it be closed to the public.

MR. KAMP: And I see that your proposed sentence
doesn’t include that very important qualifying language.

MR. MICHAELS: No, it does: as required by law.

MR. KAMP: Well, that’s just it. That’s not --

MR. MICHAELS: It’s not required to be shut --
closed to the public by law except if it’s confidential
and proprietary information.

MS. RUWART: What I would like to do is ask if
there’s anybody else who has something to add to the
discussion. But before I do that, to just remind
everybody, I know this is kind of awkward, but the whole
disclosure issue is going to be discussed comprehensively
in December.

So what I’d appreciate is that for those who may
or may not have a chance to come in December, you’ve now
heard the major arguments on both sides. If there’s anybody else who has anything just to add, we’re not going to decide anything today, but just for the benefit of everybody to hear, and then we will then table this discussion and move it to December when we discuss all the disclosures, but recognizing then we have to come back here, depending on what gets determined over there and fix all this.

Yes, Mr. Koch.

MR. KOCH: Al Koch. I just wonder -- and I don’t know anything about the statutory background here, believe me -- whether something could be submitted under seal and still be in a public hearing.

MS. MANDEL: That is what I tried to do and what we used to do. And then after GATX, the Board wouldn’t take it under seal. And my clients had to reconfigure what they were submitting so that it wasn’t -- so that they felt okay in submitting it. And of course the big joke of the whole thing was that Board Proceedings, which wasn’t Debbie, sent all of my client’s materials to a completely different law firm. So that was when we asked for them back.

MR. KOCH: Well, I hope it wasn’t a competitor, anyway.

MS. MANDEL: But I don’t know whether -- we did
have some discussion in one of the earlier meetings, and it will probably come up again in December about whether staff has figured something out in terms of just the documents as opposed the hearing.

MR. KOCH: Right.

MS. MANDEL: But I have had experience with closing local assessment appeals board hearings to the amusement of my clients, competitors, all of whom were happy to leave the room because they said they knew all the information anyway.

MS. RUWART: Those of you who are interested in further discussing this issue, the relevant provisions in terms of the proposed rules, are found in Part 5, General Board Hearing Procedures.

The staff has actually drafted two alternatives for proposed Rule 5033, et seq. essentially at the end of Part 5. Alternative 1 codifies existing Board practices. Alternative 2 provides for more and earlier disclosure of documents and information, but it also provides a mechanism for taxpayers, including state assesses, petitioners, to request that the Board keep confidential certain information that may be harmful to the taxpayer. That is not existing practice. It is open for discussion, and I encourage all of you who have input on this way of the Board conducting its hearings to weigh in
on proposed Rule 5033, each alternative. And it will be discussed at the December meeting.

MR. MICHAELS: Could I -- I respect and understand that. It seemed like meshing the state assessees in with everybody else, some of this is going to get lost, I'm afraid, on the 14th. And we're done for now, I appreciate that.

But there are, I think -- you know, the Board of Equalization is the assessor and the adjudicatory board for state assessees. And it has a very different role in reviewing and deciding cases under other tax programs.

And there may be singular requirements, there may well be singular circumstances for state assessees that don't apply to all those other programs because the Board is the assessor and because the Board is administratively reviewing its own assessment. So I'm afraid we might get lost in the mall on the 14th.

MS. RUWART: I would hope that that would not happen. We are all going to be running the meeting, so if you feel like it's getting run over, we will work with that. What I might add as just a point of clarification is that the Board's three major tax program functions, as a reviewer of decisions from the Franchise Tax Board, as the adjudicator of audited assessments in the Business Tax side of --
MS. MANDEL: Administrator of the tax.

MS. RUWART: As administrator of the tax and the assessor of state assesses, those are all different functions to some degree. We recognize that the reason why we put disclosure as a single topic is because there are many commonalities as well as distinct differences. And given the short time frame in which we are doing this, this was, we thought, the best way to capture the commonalities and -- but magnifying the distinctions as well.

MR. MICHAELS: Thank you.

MS. RUWART: You're welcome. Anything else on 3164?

MS. PELLEGRINI: We then move to 3170, Waiver of Oral Hearing.

Seeing no comments, we move to 3171, Oral Hearing Waived - Unresolved Issues.

MR. MICHAELS: Peter Michaels speaking. This provision contemplates a brief by the Valuation Division and a brief by the Appeals Division. But in waiving a hearing, a petitioner is not conceding defeat, and yet the petitioner is afforded no opportunity to reply to the Valuation Division's brief.

The petitioner may have all kinds of reasons for opting not to appear before the Board, but shouldn't be
foreclosed from refuting or responding to whatever position the staff has taken.

MS. RUWART: Let me review -- offline I'd like to review this section, because if it's unresolved issues, my understanding is it should follow the same procedures as for oral hearings. There may have been an error of resolved issues. Let me take a look at that and make sure. Because if it's unresolved, my understanding is that we allow the same back and forth to go. So I will take a look at that.

MR. MICHAELS: Thank you.

MS. PELLEGRINI: Any other comments on page 12? Moving to page 13, 3180, Withdrawal of a Petition.

MS. MANDEL: Oh, Peter, there is a statutory basis for (a) and (b). I don't remember what it is.

MR. MICHAELS: Okay.

MS. RUWART: I have it as Revenue Taxation Code 744(a) and 11341. And it's in our existing Rules of Practice as well.

MR. MICHAELS: I was just lazy, I didn't ... MS. RUWART: The answer is yes, there is a statutory basis.

MS. PELLEGRINI: Section 3190, Notice of Board Decisions; Findings; Transcripts.
We are now on Article 2, the Review of Assessment of Publicly-Owned Property.

MS. RUWART: Otherwise known as Section 11.

MS. PELLEGRINI: 3200, Application of Article.


MR. RUBIN: I know it’s statutory --

MS. PELLEGRINI: Name, please?

MR. RUBIN: Oh, I’m sorry. Bob Rubin.

I know it’s statutory, but this having it filed by the third Monday of July is the most Draconian statute of limitations that exists as far as I know. And I mean it could be 15 days if July 1st is a Monday.

MS. MANDEL: It is the statute, and it’s -- the statute used to be the same for state assessment, and then they made the state assessment an actual day. And I guess they didn’t do the same thing on the Section 11 properties. I remember having to figure out when the heck it was all the time.

MR. RUBIN: I mean, it would be nice if legislatively something could be done. You talk about obsessing ...  

MS. PELLEGRINI: Comment noted. Thank you.

Anything else on page 14?

We’re on page 15, 3230, content of the
application. Yes.

MR. RUBIN: "(b) Be authorized by the governing body ...." What do you envision there? For example --

MS. MANDEL: I don't remember what I had.

MR. RUBIN: I mean, let's say it's a joint powers agency. And perhaps the general counsel has been delegated authority to do this, to file an application. I mean, what are you looking for? A statement in the application?

MS. RUWART: We can see if it makes any sense to add more detail.

MS. MANDEL: I remember having to get something from the cities, but I don't remember what.

MR. RUBIN: Well, let's say you really want a resolution of the city councils, of the members of the JPA, and you've got to get that done by July 15th, it's not going to happen. I mean, perhaps it would be sufficient if there was a representation on the application that it was authorized.

MS. RUWART: We'll look into that. I'm sure there are procedures for that, and we've certainly gone through it a few times. So if it makes sense to put more details in there, that would be -- then we will do so.

MR. RUBIN: I mean, no one has ever -- I mean, we've always made that representation in the application,
and no one has asked us to prove it, but --  

MS. RUWART: And maybe that's all that is --

MR. RUBIN: -- we have always been prepared to do so.

MS. RUWART: That's okay. That's all we are trying to do here is clarify so people don't have to ask.

MS. PELLEGRINI: Section 3240, Submission of Application.

MR. LEBEAU: Mike Lebeau, Board's Legal Department. The address, should it be the same as the 3131? Just minor formatting differences.

MS. RUWART: Yes. One of the things that I'm hoping we're going to do at the very end of all this is across all the sections, conform the Board Procedures address. We actually cleaned it up a lot from what it was. There was a lot more variation before we undertook this process.

MR. DOERR: At least they don't have to send 10 copies.


MR. LEBEAU: Mike Lebeau, Board's Legal
Department. Going back to 3260 if we could, is it an
Appeals Division attorney?

MS. RUWART: Subdivision (c).

MR. LEBEAU: That's what I mean; is it an
Appeals Division attorney?

MS. RUWART: Yes. Yes, I see what you're
saying, Division.

MS. MANDEL: In (d) as well.

MS. RUWART: Yep.

MR. MICHAELS: Or not.

MR. LEBEAU: The reason I'm asking is last time
it was -- the last appeal of this nature I remember was
the East Bay SMUD case.

MS. RUWART: What I've done is update this to
conform to the directive of the Board that an Appeals
Division attorney prepare a summary, and it seemed
sensible to put in a conference.

MR. LEBEAU: Okay, a conference was required
before anyway, as I remember that.

MS. RUWART: Yes. And we discussed it
internally and decided.

MR. LEBEAU: Okay, sorry.

MS. RUWART: Okay, it's fine.

MR. RUBIN: Bob Rubin. Since there are no
provisions on briefing for Section 11 property, that
means that the normal briefing procedures in Part 5 would apply. But I’m not sure that it’s exactly congruous, because I think in Part 5 --

MS. RUWART: Why don’t I check that. I see that there is not a section in here specifically about briefing, and --

MS. MANDEL: That may be because it may be the application and the answer.

MS. RUWART: Yes.

MS. MANDEL: I don’t know. Do we do other briefing than the application and the answer?

MS. RUWART: Well, that’s true. Yeah, it’s 3240 and 3250, there’s an application and an answer. And then maybe that’s so Part 5 would not apply; it’s just the application and the answer.

MS. MANDEL: Does the -- I don’t -- I don’t remember if we replied. Do you reply to the answer?

MS. RUWART: Maybe Michael knows?

MR. LEBEAU: It’s three years ago.

MS. MANDEL: I don’t remember.

MR. RUBIN: Well, the petition, or it’s an application, or whatever it is --

MS. MANDEL: Right.

MR. RUBIN: The applications that I file generally speaking haven’t addressed valuation issues,
which could arise in a Section 11 case, depending upon --

    MR. MICHAELS: We've had them.
    MR. RUBIN: -- what the Phillips factor was and so forth.
    MS. RUWART: Let me look into that. What you're saying is that the application may not be enough.
    MR. RUBIN: I guaranty you it won't be.
    MS. RUWART: And we may provide specific briefing provisions as briefing is probably necessary in your view, and therefore is it Part 5 general briefing, or should we make specific briefing provisions in here is what I'm going to look at.
    MS. MANDEL: Right, because I remember -- actually, I probably still have them upstairs in the Controller's old files, briefing, and that included evidence before the hearing. Because again, you don't have that December 31 deadline. You file your application, and there's an answer, and -- because I don't think I had your declaration when I filed the application. That came up later.
    MR. THOMPSON: Well, that crazy thing, that was bifurcated with different attorneys. But we had a full --
    MS. MANDEL: Well, because I took a new job.
    MR. THOMPSON: We had a full reply brief thing,
and you got on one side and then you got on the other side, was that the deal? Anyway, but so we’ve been following it, whether it was in the rule or not.

MR. MICHAELS: Yeah.

MS. MANDEL: Right.

MR. MICHAELS: We had a case also where it was the normal exchange of briefs and responses, and whether it was institutional practice or we got lucky, I don’t know.

MS. PELLEGRINI: Carole will --

MS. RUWART: We’ll look at that.

MS. PELLEGRINI: -- look at that and add some things. So that concludes -- are there any other comments on page 16?

We’re on page 17. We were on 3270, Hearing.

MR. RUBIN: I just note that there can be trade secret issues arising in these types of cases, too.

MS. PELLEGRINI: So we’ll note confidentiality disclosure issues as noted before to be addressed.

3280, Board Appraised Property.

MR. MICHAELS: Is it "appraised?" Is that the right word?

MS. MANDEL: Yes, I think it -- sometimes there may be property -- I didn’t have it in mine, but ...

MS. RUWART: This is in the language of existing
-- this is Carole Ruwart. 3280 is existing regulation language, so somebody decided it was the right words, right?

MR. DOERR: What property would the Board appraise under Section 11?

MS. MANDEL: Ken, do you know?

MR. THOMPSON: Well, we have state-assessed property subject to Section 11; that's what it comes right down to.

MS. MANDEL: There are state-assessed properties subject to Section 11, is what he says.

MR. THOMPSON: SMUD, for instance, is a state assessee, because it owns a pipeline. And we assess it every other time in Sacramento.

MR. DOERR: So all of SMUD's property outside this district is appraised by the state?

MR. THOMPSON: If it's a gas transmission pipeline it is.

MR. DOERR: How about the electricity part?

MR. THOMPSON: Nope. That wouldn't be; it has to be a pipeline that crosses county lines for us to have assessment jurisdiction.

MS. PELLEGRINI: Any comments on this section, any others? Then 3290, Notice of Board Decision, which actually continued on page 18.
Okay, we are now at noon. We have eight more --
nine more pages to go. I know the court reporter needs a
break. So we will reconvene at 1 o’clock.

MR. SHAH: Debbie, this is Neil; one more
request. I think we have 13 pages --

MS. PELLEGRINI: Sorry.

MR. SHAH: -- in the e-mail. Is there more that
can be sent to us?

MS. PELLEGRINI: That was it.

MS. RUWART: That was the extent of Mr.
Michaels’ comments.

MR. SHAH: Oh, that’s right, okay. If we could
get the rest, that would be great.

MS. RUWART: Okay. Well, he didn’t give us the
benefit of commenting on the rest of the provisions.

MR. SHAH: Peter is so efficient.

MS. PELLEGRINI: We will be turning off the
phone and then calling back about five minutes to 1, so
you’ll need to call back in. Thank you.

(A luncheon recess was taken.)

MS. PELLEGRINI: This is Debbie Pellegrini, and
we are reconvening our interested parties meeting on Part
3 on the Property Tax. And we are on page 18, Article 3,
And we will continue with the process we were using this
morning. We are on 3300, Application of Article. Any comments?

On that same page, 3310, Definitions?

MR. HUDSON: Why do we do it like that? I'm just curious.

MS. PELLEGRINI: Please identify yourself.

MR. HUDSON: Okay, Tom Hudson, Bill Leonard's office. I'm just curious why we have it structured this way where each time we say the definitions are the same as they are somewhere else, and then we list all the things that are the same like that.

MS. RUWART: This is Carole Ruwart. That was my choice in preparing this draft for two reasons. One was that I wanted to make each section self-supporting.

The second is that I knew that at the same time we were drafting this section, Part 5 was being redrafted, and I wanted us to be able to make sure we followed through at the very end to be able to check off at the very end that whatever we determined the definitions were in each of the individual sections, they would then be matched at Part 5 at the very end.

It may well be that we would delete this part and just reference the Board hearing procedures at the very end. But for completeness, it just seemed to be a useful tool, and it also points out -- it also gave the
opportunity to add additional definitions as applied to each subdivision and not clog up the Board hearing procedures with those other definitions. So if you think that in the final product it should look a little bit different, I'd appreciate the comment.

    MR. HUDSON: Okay.

    MS. PELLEGRINI: Can those who have just joined us on the telephone please identify yourselves?

    MS. CROCETTE: Sabina Crocette from Betty Yee's office.

    MR. SMITH: Chris Smith from Betty Yee's office.

    MS. PELLEGRINI: Thank you.

    MR. HERD: Jim Herd also from Betty Yee's office.

    MS. PELLEGRINI: Thank you. We are now then on page 19, which would be 3320, Time for Filing of Petitions, and 3330, Contents of the Petition.

    3331, Submission of Petition. And we will note the change noted before to keep the address the same throughout.

    3332 on page 20, which is Timeliness of Petition. 3340, Prehearing Conference. 3350, Waiver of Oral Hearing. And then 33- -- who has just joined us?

    MR. SHAH: Neil Shah with Mr. Parrish.

    MS. PELLEGRINI: Thank you, Neil. We are on
page 20, 3360, Briefs, and that continues on page 2. 

Name, please?

MR. RUBIN: Bob Rubin. Again, the petitioner has 15 days to file a reply brief, and sometimes that's not going to be enough time. Thirty days would seem reasonable and consistent with the FTB appeal procedures.

MS. RUWART: Okay.

MR. KOCH: Al Koch. It is intended that the petition be a brief?

MS. RUWART: Can anybody from the Welfare Exemption unit answer the question?

MS. THOMPSON: The brief is not the petition itself.

MS. RUWART: Is somebody typing on the phone? Thanks.

MS. THOMPSON: The petition itself, my understanding is, is from the claimants. The brief is actually from our staff.

MR. KOCH: Yeah. But isn't it normal for the petitioner to file an opening brief?

MR. THOMPSON: No.

MS. THOMPSON: No.

MR. THOMPSON: In all of our programs -- this is Ken Thompson. In all of our programs, the requirements for the petition are laid out, and they are not to the