

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CALIFORNIA PRIVACY PROTECTION AGENCY BOARD

TRANSCRIPTION OF RECORDED PUBLIC MEETING

MAY 26, 2022

OAKLAND, CALIFORNIA

Present: LYDIA DE LA TORRE, Board Member
VINHCENT LE, Board Member
ANGELA SIERRA, Board Member
CHRIS THOMPSON, Board Member
JENNIFER URBAN, Chairperson

Transcribed by: Mieghley Williams-McGuire,
eScribers, LLC
Phoenix, Arizona

--o0o--

1 where our physical meeting is located, has created some
2 substantial logistical challenges, again, on which I hope
3 you will bear with us.

4 We have encouraged the public to join the meeting
5 remotely and are also encouraging everyone to wear masks
6 if you're attending in person. We are not requiring
7 these things. I thought it would be helpful, however, to
8 say a little bit about why we are encouraging them, even
9 though we've been excited about moving to the in-person
10 meetings.

11 First, the current variant of COVID-19 is spreading
12 extremely rapidly due to a very high level of
13 contagiousness. And of course, we want to avoid exposing
14 vulnerable members of the community or inadvertently
15 making our meetings less accessible to them.

16 Second, our temporary ability to meet remotely and
17 still comply with Bagley-Keene has expired and has not
18 been renewed. This means, unfortunately, that the
19 current rapid spread of the virus could pose some serious
20 logistical issues to the Board's work on behalf of the
21 public. This is because we no longer have the option
22 under Bagley-Keene of holding entirely remote meetings,
23 or for any board member to participate remotely, even if
24 they test positive. This means that if a board member is
25 COVID-19 positive, that person simply cannot participate

1 in a public meeting.

2 In addition, our board meetings must be publicly
3 noticed ten days in advance, with all physical and remote
4 locations on the notice. Accordingly, we cannot easily
5 reschedule a meeting if board members test positive or
6 become ill. So I greatly appreciate everyone bearing
7 with us. Thank you.

8 All right. Now I'll go over meeting logistics and
9 participation. We will proceed through the agenda, which
10 is available as a handout here in Oakland and also on the
11 CPPA website. Materials for the meeting are also
12 available as handouts here and on the CPPA website. You
13 may notice board members accessing their laptops or other
14 devices during the meeting. They are using these devices
15 solely to access materials for the board meeting.

16 After each agenda item there will be an opportunity
17 for questions and discussion by the board members. Then
18 there will be an opportunity for public comment. I will
19 ask for public comment on each agenda item. Each speaker
20 will be limited to three minutes per agenda item. We
21 also have a designated time on the agenda for general
22 public comment. I think it's agenda item 8 today.

23 We have members of the public attending online via
24 Zoom and also in person here in Oakland, so I have
25 slightly more complicated logistics than usual. When it

1 is time for the first opportunity for public comment, I
2 will first call for comment from Zoom attendees, then
3 from in-person attendees. At the next opportunity for
4 public comment I will reverse, starting with in-person
5 attendees and then move to Zoom attendees. And I will --
6 I will alternate in that manner for the meeting.

7 If you're attending via Zoom and wish to speak on an
8 item, please use the raise-your-hand function, which is
9 in the reaction feature on the bottom of your Zoom
10 screen. Our moderator will request that you unmute
11 yourself for comment. When your comment is completed,
12 the moderator will mute you. Excuse me.

13 Please note that the Board will not be able to see
14 you, only hear your voice. Thus it is helpful if you
15 identify yourself by your name and your affiliation if
16 you have one, but this is entirely voluntary, and you can
17 also input a pseudonym when you log in to the Zoom
18 meeting.

19 If you're attending in person and wish to speak on
20 an item, please wait for me to call for public comment,
21 then move toward the podium at the front of the room and
22 form a line, keeping social distancing in place. Please
23 move to the podium when you are called to speak. As with
24 the Zoom attendees, it is helpful if you identify
25 yourself when you begin speaking, but again, this is

1 entirely voluntary, and you are free to refer to yourself
2 with a pseudonym or to not give a name. I'd like to
3 remind all speakers to stay on topic and to keep your
4 comments to three minutes or less so everyone has an
5 opportunity to speak.

6 Relatedly, I would like to remind everyone of the
7 rules of the road under Bagley-Keene. Both board members
8 and members of the public may only discuss items that are
9 on the agenda for today when those items are up for
10 discussion. The public can bring up additional topics
11 when the Board brings up the agenda item for that
12 purpose. As I mentioned, it's number 8 today. However,
13 board members can't respond; we can only listen.

14 In addition, items not on the agenda can be
15 suggested for discussion at future meetings when the
16 Board takes up the agenda item designated for that
17 purpose. That is number 9 on today's agenda.

18 The Board welcomes public comment on any item on the
19 agenda, and it is the Board's intent to ask for public
20 comment prior to the Board voting on any agenda item. If
21 for some reason I forget to ask for public comment on an
22 agenda item and you wish to speak on that item, please
23 let us know.

24 **MALE SPEAKER:** Excuse me, Chairperson Urban?

25 **CHAIRPERSON URBAN:** Yes.

1 **MALE SPEAKER:** I believe that there's a technical
2 difficulty via --

3 **MODERATOR HURTADO:** Yeah. If we could just pause
4 for just a minute.

5 **CHAIRPERSON URBAN:** Of course.

6 **MODERATOR HURTADO:** Sorry.

7 **CHAIRPERSON URBAN:** We're going to pause for
8 technical work.

9 **MALE SPEAKER:** And if you don't mind just going back
10 to the -- about two minutes -- you describe how to go
11 about for the agenda items.

12 **CHAIRPERSON URBAN:** Okay.

13 **MALE SPEAKER:** Looks like we're online now.

14 **MODERATOR HURTADO:** Okay. It's all right.

15 (Indiscernible).

16 **MALE SPEAKER:** Great. I think you're set.

17 **CHAIRPERSON URBAN:** How far back should I go?

18 **MODERATOR HURTADO:** About a minute.

19 **MALE SPEAKER:** (Indiscernible).

20 **CHAIRPERSON URBAN:** All right. Thanks for everyone
21 for bearing with us. So should I start with how to
22 participate in public comment?

23 **MODERATOR HURTADO:** Yes.

24 **CHAIRPERSON URBAN:** Okay. Sure.

25 I'll start with -- we're going through the agenda,

1 which is available online, and also here's a handout in
2 Oakland. After each agenda item there will be an
3 opportunity for questions and discussion by the board
4 members. So you'll see us do that.

5 There will also be an opportunity for public comment
6 on each agenda item. Each speaker will be limited to
7 three minutes per agenda item. In addition, we do have
8 an agenda item, number 8 today, for general public
9 comment, which I'll say a little bit more about in a
10 second.

11 We have members of the public attending online via
12 Zoom and also here in person in Oakland. So I have a
13 little bit more on logistics for participation in that --
14 in this situation. When it is time for the first
15 opportunity for public comment, I will first call for
16 comment from Zoom attendees. When that happens, the
17 moderator will -- please raise your hand, and the
18 moderator will recognize you.

19 After the Zoom attendees have given public comment,
20 I will call on in-person attendees, whom we will ask to
21 move forward to the front of the room where there is a
22 podium. At the next opportunity for public comment I
23 will reverse, starting with in-person attendees and
24 moving to Zoom, and so forth through the meeting.

25 If you at any time do not -- think that you've

1 missed a chance to comment because I forgot to ask,
2 please just let us know. Please do note that the Board
3 will not be able to see you if you are attending via
4 Zoom. We will only be able to hear your voice. Given
5 that, it is helpful if you identify yourself verbally,
6 but this is voluntary, and you can also put in a
7 pseudonym when you log in to the Zoom meeting.

8 If you're attending in person, it is also helpful if
9 you identify yourself when you begin speaking. But
10 again, this is voluntary, and you're welcome to refer to
11 yourself with a pseudonym or not give a name. I'd like
12 to remind everybody to stay on topic and to keep your
13 comments to three minutes or less so everyone has the
14 opportunity to speak.

15 Relatedly, I'd like to remind everyone of the rules
16 of the road under Bagley-Keene. Both board members and
17 members of the public may only discuss items on the
18 agenda for today when those items are up for discussion.
19 The public can bring up additional topics when the Board
20 takes up the agenda item for that purpose. As I
21 mentioned, today it is number 8. However, the Board
22 won't be able to respond; we can only listen. In
23 addition, items that are not on the agenda for today's
24 discussion can be brought up by board members or the
25 public for potential discussion at future meetings when

1 the Board takes up the agenda item for the purpose of
2 discussing future agenda items. That is number 9 on
3 today's agenda.

4 The Board welcomes public comment on any item on the
5 agenda, and it is the Board's intent to ask for public
6 comment prior to us voting on any agenda item. If for
7 some reason I forget to ask for public comment on an
8 agenda item and you wish to speak, please let us know.
9 If you're participating by Zoom, please use the raise-
10 your-hand function so our moderator can recognize you.
11 If you are in person, please raise your hand and let me
12 know I forgot. You will be called to the podium to
13 provide your comment.

14 Please note that our first item today is a closed-
15 session item, so I will be establishing a quorum, and
16 then the Board will go into closed session. To most
17 efficiently use everyone's time -- excuse me -- and to
18 avoid members of the public who are attending in person
19 to have to leave the room and come back too often to
20 check if we're back, the Board will finish the closed
21 session item and then break for lunch, after which the
22 Board will return to this public session.

23 I will not resume the public portion of the meeting
24 before 1 p.m. I cannot predict perfectly how long the
25 closed-session discussion will go, so I hope this will

1 give everyone a little bit of certainty and the ability
2 to go take a walk, get something to eat, et cetera. It
3 is possible that the Board's closed session business will
4 take a little bit longer, in which case we will return as
5 soon after 1 p.m. as possible. But either way, we will
6 not resume the meeting -- the public portion -- before 1
7 o'clock. I will repeat necessary introductory
8 information for anyone who was waiting to join until we
9 take up the public session agenda items.

10 My thanks to the board members for their service,
11 and to all the people working to make this meeting
12 possible. I would like to thank the team from the Office
13 of the Attorney General supporting us today: Mr. Milad
14 Dalju, who is acting as our meeting counsel; Ms. Trini
15 Hurtdao, who is acting as moderator and is the
16 conferences services expert who has organized this
17 meeting infrastructure; I would like to thank Brian
18 Soublet, our acting general counsel, for his presentation
19 today and his work behind the scenes; and Ms. Yvonne
20 Chita Vera (ph.), our deputy director of administration,
21 and her team of CPPA staff for their work behind the
22 scenes.

23 I'd also like to express my gratitude for the team
24 at the Department of Consumer Affairs for managing our
25 communications list and website, where I'm sure many of

1 you got some information about this meeting. I would
2 also like to thank the Office of the Attorney General
3 more generally for all the support they've provided for
4 us; the Business, Consumer Services and Housing Agency;
5 the Department of Consumer Affairs; and the Department of
6 General Services for all of the work that goes into
7 making these meetings possible.

8 I now call the meeting to order and ask our
9 moderator, Ms. Hurtado, to please conduct the roll call.

10 **MODERATOR HURTADO:** Yes. Ms. De la Torre?

11 **BOARD MEMBER DE LA TORRE:** Present.

12 **MODERATOR HURTADO:** Mr. Le?

13 **BOARD MEMBER LE:** Present.

14 **MODERATOR HURTADO:** Ms. Sierra?

15 **BOARD MEMBER SIERRA:** Present.

16 **MODERATOR HURTADO:** Mr. Thompson?

17 **BOARD MEMBER THOMPSON:** Present.

18 **MODERATOR HURTADO:** Ms. Urban?

19 **CHAIRPERSON URBAN:** Present.

20 **MODERATOR HURTADO:** All are present and accounted
21 for. You have established a quorum.

22 **CHAIRPERSON URBAN:** Thank you very much, Ms.
23 Hurtado. We have established a quorum. I would like the
24 board members to know that we will be taking a roll-call
25 vote on any action items today.

1 Next, the Board will go into closed session for
2 discussion of the executive director's appointment of
3 deputy director of public affairs under the authority of
4 Government Code 11126, Subdivision (a), Subdivision (1).
5 Before the Board departs for the closed session
6 discussion, is there any public comment from those
7 participating via Zoom?

8 **MODERATOR HURTADO:** The first commenter is Peg
9 Shriner (ph.).

10 Peg Shriner, you have three minutes to make your
11 comment, beginning now.

12 Okay. Ms. Shriner disconnected. The next commenter
13 is Mr. Bruin, Paul Bruin (ph.).

14 Mr. Bruin, you need to unmute your mic on your side.

15 **CHAIRPERSON URBAN:** Okay. Mr. Bruin, if you can
16 hear this, we do need you to unmute your mic. We look
17 forward to your comment.

18 All right. I will now ask if there is any public
19 comment from anyone participating here in person. I will
20 circle back and see if Mr. Bruin is able to make his
21 comment after that.

22 All right. Seeing no one here in person. Have we
23 had any luck with Mr. Bruin?

24 **MODERATOR HURTADO:** No.

25 **CHAIRPERSON URBAN:** Okay. Mr. Bruin, if you can

1 hear us, please do feel free to raise your hand when we
2 next have opportunity for public comment so that we -- so
3 that we can hear from you. And I do apologize if there
4 is a technical issue that is causing challenges for you.

5 With that, the Board will go into closed session.
6 We will return to this public session when we are
7 finished. And again, we won't start before 1 p.m. to
8 give everyone some certainty. For folks who are here in
9 person, as long as you return by 1 p.m. you won't miss
10 anything. Thank you all for attending our meeting today.

11 (Whereupon, a recess was held)

12 **CHAIRPERSON URBAN:** I'd like to inform everyone that
13 the Board did not take any votes or actions during the
14 closed session.

15 We did have one person, at least, who wanted to make
16 a public comment before we went into closed session, and
17 we were unable to contact him. So I'd like to ask again
18 if Mr. Bruin is on the Zoom and would like to make a
19 public comment. We'd like to give him another chance, as
20 well as anybody who had any technical difficulties. So
21 we'll wait for just a moment. And as a reminder, in
22 order to comment via Zoom, please use the raise-hand
23 function. The moderator will contact you, and then you
24 can unmute yourself.

25 Ms. Hurtado, do we have anyone waiting to speak?

1 **MODERATOR HURTADO:** Not at this time.

2 **CHAIRPERSON URBAN:** Okay. Thank you. Okay.

3 Again, welcome back, everyone. We will now move to
4 agenda item number 3 on our agenda, which is an update
5 from our executive director, Mr. Ashkan Soltani.

6 Mr. Soltani, I'll turn it over to you.

7 **MR. SOLTANI:** Thank you, Chairperson Urban. Great.
8 Thank you, Chairperson Urban. And thank you to the Board
9 for the opportunity to provide an update today. Before I
10 start, I want to echo Chairperson Urban's opening remarks
11 and thank the team from both our agency and the Office of
12 the Attorney General for supporting us today. Also I
13 want to thank the folks at the Department of Consumer
14 Affairs and the NBCSH for all the support they provide
15 us.

16 This is our first in-person meeting, and as a
17 fledgling agency, there's a lot to coordinate to meet
18 both our in-person obligations under the Bagley-Keene Act
19 and the desire to provide access to the widest range of
20 stakeholders possible via teleconference. Thank you all.

21 Today I'm going to present an update on three main
22 topics: hiring, budget, and rulemaking. Starting with
23 the hiring, I'm incredibly proud at the progress we've
24 made as we're hiring. We're essentially hiring as
25 quickly as the state process allows.

1 In addition to the previous hires announced during
2 my last update, I'm pleased to announce that we've hired
3 Maureen Mahoney as our director -- deputy director of
4 policy and legislation. Maureen comes to us from
5 consumer reports and brings a wealth of experience on
6 consumer privacy issues. Welcome, Maureen.

7 We've also brought on key HR staff that have really
8 increased our ability to post and hire through the
9 government recruiting process. We're also in the process
10 of bringing on a significant number of staff to further
11 build out the legal division, and I'll be making those
12 hires in the coming weeks.

13 Finally, we're also recruiting for a number of
14 positions, including legal analysts, law clerks,
15 technologists -- sorry, technologist student and
16 assistants, and key admin staff. Those postings will
17 either be on our website or Twitter, and additional ones
18 will be posted in the coming weeks.

19 Finally, we're in the process of reposting for our
20 public affairs deputy to clarify that we're seeking
21 candidates that not only have communications expertise,
22 but also have the education -- the public education and
23 outreach expertise to lead our public awareness effort.

24 As the Board is aware, in addition to implementing
25 and enforcing our statute, promoting public awareness and

1 education on the risks, responsibilities, safeguards, and
2 rights in relations to the collection, use, sale, and
3 disclosure of personal information is one of our key
4 functions.

5 Now I'd like to move to talk about our budget
6 process. I had the honor of presenting our proposed
7 budget to the Senate and Assembly Budget Sub 4 Committees
8 last March. As I previously mentioned, our agency's ten
9 million dollars appropriations is provided for in our
10 statute. However, we are still required to create and
11 present a budget change proposal to outline our
12 expenditure.

13 As I highlighted in our Board's -- in the Board's
14 February meeting, the 2022/2023 budget change proposal
15 requests the creation of thirty-four positions to enable
16 us to satisfy our initial statutory obligations, with an
17 initial focus on rulemaking and public awareness.
18 Importantly, the BCP does not reflect our full complement
19 of staff, and most notably, it does not include staffing
20 of our enforcement division, as that function only begins
21 in July 2023.

22 The BCP is still pending approval. It remains
23 unchanged in the May budget revision. The Governor's
24 budget must be passed by the legislature by June 15th and
25 will take effect July 1st of this year.

1 Now on to our rulemaking. We've made significant
2 process -- sorry -- we've made significant progress in
3 our rulemaking process as well, and I understand the
4 Process Subcommittee plans to discuss this topic further.

5 As the Board is also aware, in addition to the
6 substantive pre-rulemaking comments we received last
7 year, we held a set of instructive informational sessions
8 in late March to inform the Board staff and public on
9 topics relevant to the upcoming rulemaking. Materials
10 for those hearings -- sorry -- the materials for those
11 sessions, including recordings and transcripts of the
12 information session, is available on our meetings and
13 events page on our website.

14 We also held a set of stakeholder sessions earlier
15 this month to provide the opportunity to stakeholders to
16 speak on topics relevant to the upcoming rulemaking.
17 These three-day sessions were held via video conference
18 to assist in accommodating the widest possible range of
19 stakeholders. We had quite a broad turnout, and as with
20 the informational sessions, recordings of the stakeholder
21 sessions are available on our website. Transcripts and
22 other materials will be made available as soon as they're
23 processed.

24 During my last update, I highlighted one of my first
25 acts as executive director after coming on in October was

1 to provide formal notice to the California Attorney
2 General that our agency is prepared to assume rulemaking
3 activities under the CCPA.

4 On April 21st of this year, the rulemaking authority
5 under the CCPA formally transferred to our agency.

6 We recently marked another key milestone earlier
7 this month on May 5th, 2022, when the California Office
8 of Administrative Law, pursuant to Section 100 of the
9 regulations, approved the transfer of the existing CCPA
10 regulations to Title 11, Division 6, a new division of
11 the California Code of Regulations that is under the
12 jurisdiction of our agency.

13 While these amendments are nonsubstantive and merely
14 renumber the existing CCPA regulations, they represent
15 the beginning of our rulemaking role. The rulemaking
16 materials, including a chart highlighting the renumbered
17 sections, is available on our website on the regulations
18 page.

19 Finally, with regards to our initial substantive
20 rulemaking package, over the last six months staff has
21 been working diligently with input with respective
22 subcommittees to develop draft rules and supplemental
23 materials to present to the Board. The draft rules
24 incorporate a significant amount of input provided by the
25 public through the pre-rulemaking activities I laid out

1 above, and the draft package is now mostly complete. We
2 look forward to the discussion by the Process
3 Subcommittee on the proposed rulemaking timeline for how
4 to move forward with these rules.

5 In addition to finalizing our proposed rules, staff
6 has been working on some other administrative components
7 of the rulemaking, including preparation for holding
8 formal hearings and working with the contracted
9 economists on the economic impact assessments of the
10 proposed regulations. While ministerial, these tasks
11 need to be considered in light of the rulemaking timeline
12 as well.

13 And that is my update. Thank you, Chairperson
14 Urban. I'm happy to take questions if there are any.

15 **CHAIRPERSON URBAN:** Thank you very much, Mr.
16 Soltani, both for the clear update and for all of the
17 work. It's -- I find it especially exciting that we have
18 had our authority transferred to us to undertake
19 rulemaking and that we now have our own section in the
20 code of regulations. It makes everything feel a little
21 bit more official.

22 I'd also like to welcome Ms. Mahoney and thank her
23 for helping out today. We're very excited to have her
24 here.

25 And with that, are there questions or comments from

1 the Board? And before we begin, I can only see down the
2 table, so please, like, stick your hand out a little bit
3 so that I can see you and I will recognize you. Any
4 comments or questions from the Board?

5 Yes, Ms. De la Torre?

6 **BOARD MEMBER DE LA TORRE:** I have one question on
7 the budget. I understand that the budget is about to be
8 approved for this year -- and I want to stop here to
9 thank the executive director, and I know our acting
10 general counsel, for helping us getting through these
11 budget crosses. You were hired shortly before the whole
12 process started. Looking into the future for the next
13 budget, what is going to be the process like, and what is
14 the involvement of the Board in terms of understanding
15 the budget ahead of time and having a little bit more
16 feasibility, perhaps?

17 **MR. SOLTANI:** I think that's a great point. I do
18 plan to -- in a future board meeting -- go through some
19 of the strategic priorities, including the budget, and
20 receive input from the Board on whether those priorities
21 are in line with the expectation of the Board. So thank
22 you for flagging that.

23 We -- indeed, I was brought on in October, and I --
24 which is when most agencies have their budget ready, but
25 I hope we get a head start on that this year. Once the

1 budget is approved, we'll move forward. A particular
2 interest will be the remaining complement of staff, as
3 well as any other expenditures the Board feels necessary,
4 such as, you know, the facilities we might engage in,
5 holding events like these, or outreach efforts, et
6 cetera.

7 **BOARD MEMBER DE LA TORRE:** I have a connecting
8 question.

9 **CHAIRPERSON URBAN:** Um-hum.

10 **BOARD MEMBER DE LA TORRE:** In terms of
11 subcommittees, I know there's the Start-Up and
12 Administration Subcommittee; will that be the right
13 subcommittee maybe for the director to have some
14 conversations over future budgets or how -- is it --

15 **CHAIRPERSON URBAN:** Thank you -- thank you for the
16 question, Ms. De la Torre. I think that maybe the thing
17 to do would be for Ms. Sierra and I, as the Start-Up and
18 Administration Subcommittee, to check with counsel.

19 **BOARD MEMBER DE LA TORRE:** Okay.

20 **CHAIRPERSON URBAN:** And the reason why I say that is
21 because the budget -- what is it, budget control
22 proposal? Forgive me.

23 **MR. SOLTANI:** Change.

24 **CHAIRPERSON URBAN:** Budget change proposals, those
25 are confidential, at least until they get to some point.

1 Is it now public because the (indiscernible)?

2 **MR. SOLTANI:** It is now public since it's been
3 included.

4 **CHAIRPERSON URBAN:** Okay. So I will need to figure
5 out what are the sort of parameters, and then -- would it
6 be okay, Ms. Sierra, if we do that and report back in
7 another meeting?

8 **BOARD MEMBER SIERRA:** Yes.

9 **CHAIRPERSON URBAN:** Okay.

10 **BOARD MEMBER SIERRA:** That makes a lot of sense to
11 me.

12 **CHAIRPERSON URBAN:** Does that make sense to you, Ms.
13 De la Torre?

14 **BOARD MEMBER DE LA TORRE:** Yes. Absolutely.

15 **CHAIRPERSON URBAN:** Okay. Thank you. Other
16 questions or comments for the executive director?
17 Ms. Sierra?

18 **BOARD MEMBER SIERRA:** I just have a comment. And I
19 just very much want to thank our executive director, Mr.
20 Soltani, and the whole team. You know, Brian Soublet,
21 our acting general counsel, and welcome Maureen. But I'm
22 really excited about the progress that's being made in
23 hiring, and also wanted to underscore that the
24 stakeholder sessions and informational hearings were
25 really helpful, so thank you very much for all the work

1 on that.

2 **MR. SOLTANI:** Thank you.

3 **CHAIRPERSON URBAN:** Oh, yes. Can I please second
4 that? The info sessions and the stakeholder sessions
5 were incredibly helpful. And I can only imagine how much
6 work that was. So thank you.

7 Other comments or questions? Okay.

8 Thank you very much, Mr. Soltani, and to the Board.

9 I will now ask if there are -- if there's public
10 comment. And this time we'll start with members of the
11 public attending in person. Is there anyone attending in
12 person who would like to make a public comment?

13 Okay. And a public comment for anyone attending via
14 Zoom? Is there anyone who would like to comment, Ms.
15 Hurtado?

16 **MODERATOR HURTADO:** We do have one person, LKG
17 (ph.).

18 **CHAIRPERSON URBAN:** Okay.

19 **MODERATOR HURTADO:** LKG, you now have three minutes.
20 You are now able to speak.

21 **MS. LKG:** Okay. Am I coming through?

22 **CHAIRPERSON URBAN:** Yes. We can hear you.

23 **MS. LKG:** Okay. I actually just have a question if
24 the initial July 1st rulemaking deadline is still in
25 place or if it's been extended. I may have missed that.

1 **CHAIRPERSON URBAN:** Thank you very much for the
2 question. Generally the Board isn't able to respond
3 because of the constraints on a public meeting, for which
4 I apologize. But we do have an agenda item coming up
5 from the Rulemaking Process Subcommittee, and I'm hoping
6 we'll hear more about the schedule then. Thank you very
7 much for your comment. Do we have further public
8 comments?

9 **MODERATOR HURTADO:** No. Not at this time.

10 **CHAIRPERSON URBAN:** Okay. I'll wait for just a
11 second. I can't quite get over being a law professor.

12 All right. Any further comments or questions from
13 the board members before we move on?

14 Okay. Seeing none. We will move to agenda item
15 number 4, which is the Start-Up and Administration
16 Subcommittee. Ms. Sierra and I will be providing an
17 update for that.

18 As a brief reminder, in the June 14th, 2021 and
19 September 7th and 8th, 2021 board meetings, we formed
20 advisory subcommittees. Bagley-Keene allows for advisory
21 subcommittees of up to two people who can act in this
22 advisory capacity for the Board.

23 As you can see from the agenda, we have several
24 advisory subcommittees reporting today. The Start-Up and
25 Administration Subcommittee is made up of Ms. Sierra and

1 myself.

2 And our subcommittee mentioned in the Board's
3 September 7th and 8th, 2021 board meeting that were
4 policies related to incompatible activities were on our
5 list of topics to consider and bring to the Board in our
6 advisory capacity. Our implementing statute prohibits
7 the Board from engaging in incompatible activities. And
8 a reasonable question is what does that mean and how do
9 we comply?

10 At that time, the Board -- in September of last
11 year -- the Board had already voted to put our conflicts
12 of interest policy out for public comment. And in
13 October -- October 18 -- the Board finally approved the
14 conflicts of interest policy. The subcommittee has since
15 sought advice and guidance for the related issue of
16 avoiding incompatible activities. We asked if we could
17 have guidance ready for this meeting in light of Mr. Le's
18 request on the February 17th, 2022 board meeting for an
19 upcoming agenda item on these topics.

20 I'm very grateful to our acting general counsel, Mr.
21 Brian Soublet, who analyzed this issue for us and
22 compared an incompatible activities statement for us to
23 discuss today. I'll just briefly note that Mr. Thompson
24 and I have signed a similar statement, because we signed
25 it upon our appointment by the Governor, and this one is

1 intended to be compatible with our current commitments.

2 So with that, I will hand it over to Mr. Soublet.

3 **MR. SOUBLET:** Thank you, Chair Urban. I'd like to
4 draw your attention to the materials for agenda item
5 number 4. These are in the board members' meeting
6 packets, available as handouts for the in-person meeting
7 attendees, and also available on CPPA's website, on the
8 meetings and events page under this meeting.

9 The conflict of interest and incompatible activity
10 laws are grounded in the idea that personal or private
11 interests and considerations should not enter into the
12 decision-making process of government officials. The
13 CPRA and California Civil Code Section 1798.199.15 states
14 that members of the CPPA Board shall remain free from
15 external influence, whether direct or indirect, and shall
16 neither seek nor take instructions from another, and to
17 refrain from any action incompatible with their duties,
18 and engaging in any incompatible occupation, whether
19 gainful or not, during their term.

20 Civil Code Section 1798.199.15 does not specifically
21 provide guidance as to what constitutes a conflict of
22 interest or an incompatible activity for CPPA board
23 members. Today I'm focusing on the issue of incompatible
24 activities, because as Chair Urban previously pointed
25 out, the Board has already adopted a conflict of interest

1 policy, and board members have complied with the
2 requirements of the Political Reform Act, which focuses
3 on conflicts arising from financial interests. However,
4 the concept of incompatible activities is broader than a
5 member's financial interests.

6 The document I'm presenting for the Board's
7 consideration is intended to assist the Board in
8 understanding the CPRA prohibition on engaging in
9 incompatible activities and to memorialize that
10 understanding in a written format. Under the provisions
11 of California Government Code Section 19990, all state
12 officers and employees are prohibited from engaging in
13 any activity or enterprise that is clearly inconsistent,
14 incompatible, in conflict with, or inimical to their
15 duties as state officers.

16 Section 19990 requires state agencies to determine
17 those activities which, for employees under their
18 jurisdiction, are incompatible with their duties as state
19 officers or employees. However, the provisions of
20 Government Code Section 19990 do not specifically apply
21 to members of governing boards. In our case, with the
22 absence of specificity as to what constitutes an
23 incompatible activity in the CPRA, the list of activities
24 contained in Section 19990, by analogy, can be looked at
25 as to the type of matters that are considered

1 incompatible with the duties of a member of the Board.

2 As Chair Urban mentioned, board members appointed by
3 the Governor have already signed the Governor's
4 Incompatible Activities Statement, which adopts the bulk
5 of the requirements set forth in Government Code 19990
6 and served as the model for the matter -- the document
7 for your consideration today.

8 This document that is submitted for your
9 consideration is intended to provide the examples of
10 incompatible activities that is lacking in the CPRA. It
11 is with that in mind that I have suggested that the Board
12 adopt this document as their statement as to incompatible
13 activities that would be applicable to the Board.

14 I'm available to respond to any questions that you
15 may have.

16 **CHAIRPERSON URBAN:** Thank you very much, Mr.
17 Soublet.

18 Please, board members, stick your hand out if you
19 have a question or a comment. Okay.

20 Mr. Le, please.

21 **BOARD MEMBER LE:** Yeah. So you know, I took a look,
22 I think, at the Incompatible Activities Statement -- and
23 thank you for preparing it -- and you know, for the most
24 part, I -- I think this is great to have some detail.
25 But my -- I am concerned that this appears to be designed

1 for a type of board where, you know, they're, like, a
2 full-time working for the Agency. So as you know, my
3 regular job, as senior legal counsel at The Greenlining
4 Institute, involves privacy issues, which is why, you
5 know, I'm an expert on these types of topics.

6 So with that said, I -- when looking at number 5,
7 right, performance of an act other than in his or her
8 capacity as a board member, knowing that such an act may
9 be subject, directly or indirectly, to the control,
10 inspection, review, audit, or enforcement by the
11 Agency -- I find to be kind of -- kind of troublesome,
12 because there may be acts that I do in my capacity -- my
13 day job that may be indirectly subject to review by the
14 Agency, but not necessarily incompatible. So I would
15 suggest editing number 5 to say performance of an
16 incompatible act.

17 And -- and just -- just for -- for sake of example,
18 you know, in my role I'll ask, you know, agencies to
19 cooperate with each other. Right? So that may be asking
20 the Department of Justice or the Department of Fair
21 Employment and Housing to work with the CPPA so that they
22 can better enforce consumer rights and protect consumer
23 rights. That may end up -- you know, any agreement
24 between the agencies may be under my review, but in my
25 opinion, that is not an incompatible act within my

1 capacity as a board member.

2 So therefore, I would suggest we add to number 5
3 performance of an incompatible act, just to make sure
4 that we cover those kind of situations.

5 **CHAIRPERSON URBAN:** Thank you, Mr. Le. So insert
6 incompatible --

7 **BOARD MEMBER LE:** Yes. In number 5 --

8 **CHAIRPERSON URBAN:** -- between "an" and "at" --

9 **BOARD MEMBER LE:** Yes.

10 **CHAIRPERSON URBAN:** -- in number 5. That is your
11 suggestion? Okay.

12 Mr. Soublet, do you have a further comment on that?
13 I thought this applied -- wouldn't apply to something
14 like the Greenlining Institute because they are a
15 nonprofit, but --

16 **MR. SOUBLET:** Correct. Under -- under the current
17 form of (indiscernible) wouldn't apply to Greenlining
18 because they're -- they don't fall within the ambient of
19 our statute.

20 **CHAIRPERSON URBAN:** Um-hum.

21 **MR. SOUBLET:** So my suggestion would be that maybe
22 it would be a revised statement if at some point in the
23 future that eventuality does happen. But one thing to
24 keep in mind, even though we change the wording here, you
25 still have the -- the -- the issue that for just about

1 everyone else in the state; the word -- the word
2 incompatible isn't necessarily inserted into the statute,
3 nor into their policies.

4 And so it's just that on a public speaking basis,
5 people will still -- may have in mind that they're
6 looking at -- for any act, not necessarily just an
7 incompatible act.

8 **BOARD MEMBER LE:** Yeah. And I would say to, you
9 know, to that, you know, this is -- I guess our board
10 setup is a little bit unique within California in that,
11 you know, we -- we do have adjudicatory powers, but we
12 are kind of a part-time, you know, per diem-based board
13 where we have other responsibilities and roles. So I
14 guess some deviation, I think, would make sense in
15 this -- in this, you know --

16 **CHAIRPERSON URBAN:** The -- the entire part of 19990
17 that this is drawn from is about incompatible, right?

18 **MR. SOUBLET:** That's correct.

19 **CHAIRPERSON URBAN:** So we -- we're really talking
20 about incompatible acts --

21 **MR. SOUBLET:** That's correct.

22 **CHAIRPERSON URBAN:** -- in any case. Okay.

23 **MR. SOUBLET:** So it's kind of assumed in there, you
24 know, even without the word being there, it would be an
25 incompatible act.

1 **CHAIRPERSON URBAN:** Right.

2 **BOARD MEMBER LE:** Yeah.

3 **CHAIRPERSON URBAN:** But Mr. Le would feel more
4 comfortable if we --

5 **BOARD MEMBER LE:** I would feel more comfortable if,
6 yeah, we put that there so it's just that -- there are
7 some acts that are not incompatible that may indirectly
8 influence the Agency.

9 **CHAIRPERSON URBAN:** I see.

10 **BOARD MEMBER LE:** And I just wanted to make sure
11 that we -- we cover those.

12 **CHAIRPERSON URBAN:** Okay. Thank you, Mr. Le.

13 Ms. De la Torre, were you -- I couldn't --

14 **BOARD MEMBER DE LA TORRE:** Actually, I -- yes, thank
15 you. So I had an opportunity to connect with Mr. Le and
16 also have a conversation with Mr. Soublet, and it was
17 suggested to me that -- could you pass it down -- that I
18 might come with edits that I have to suggest. If you can
19 pass it all the way out.

20 **BOARD MEMBER THOMPSON:** Are there one for everyone?

21 **BOARD MEMBER DE LA TORRE:** Yeah. There's two pages.

22 **CHAIRPERSON URBAN:** Oh. There's more copies. Okay.
23 I understand now.

24 **BOARD MEMBER DE LA TORRE:** Right. So I -- and I had
25 the same impression that -- I generally support the

1 policy, but there were some ways in which the language
2 was not tailored to us.

3 And so one of the first things that was confusing to
4 me -- is this a policy? And if it is a policy, then in
5 the first paragraph, the only thing that I think we need
6 to say is the members of the Board of the California
7 Privacy Protection Agency have adopted this statement as
8 Incompatible Activities Statement for the members of the
9 California Privacy Protection Agency Board. The rest of
10 the language is not going to have any historical context.
11 I -- I appreciate it being part of the draft so that we
12 understand what was in the mind of the subcommittee, but
13 I don't think it's necessary for the policy.

14 And then on the second paragraph, there's just a
15 couple of typos. No employment activity or enterprise
16 shall be engaged in by a member of the Board that might
17 result in, or create the appearance of resulting in, any
18 of the following. So those are just small typos.

19 I didn't have any comment to 1, 2, or 3, but when I
20 was reading 4, it became apparent to me that this was
21 coming from a generic language. Receiving or accepting
22 money or any other compensation from anyone other than
23 the State. In our case, it should be instead of the
24 State, as provided by California Civil Code Section --
25 that's the citation to our per diem. That would tailor

1 that statement to us. Usually no other state
2 organization will be expected to pay board members for
3 their services on the Board.

4 So I -- I want to pause there and -- and get some
5 feedback from the rest of the members on the Board.

6 **CHAIRPERSON URBAN:** Thank you, Ms. De la Torre.

7 Mr. Soublet, do you -- and Mr. Dalju, do you have
8 this?

9 **MR. SOUBLET:** No. We don't have a copy of that.

10 **CHAIRPERSON URBAN:** Okay. So does one of you want
11 to maybe share one, and maybe I can share with Mr.
12 Thompson or Ms. Sierra? So -- and then just in terms of
13 getting materials to the public.

14 **MR. DALJU:** Is there one that we can make available
15 to the public?

16 **CHAIRPERSON URBAN:** Well, we have several, so.

17 **BOARD MEMBER LE:** You can use this -- you can make
18 this one -- I don't know how you would do it.

19 **MR. DALJU:** Can I walk across here?

20 **CHAIRPERSON URBAN:** We can just share them down.

21 **MR. DALJU:** We'll post it online.

22 **CHAIRPERSON URBAN:** And we can post it so for
23 everyone at home.

24 **BOARD MEMBER DE LA TORRE:** Apologies. I was not
25 sure as to how many copies we needed, because I was not

1 sure that two of the members were going to physically be
2 here, so I --

3 **CHAIRPERSON URBAN:** Right. Okay.

4 **BOARD MEMBER DE LA TORRE:** -- made a limited number
5 of copies.

6 **CHAIRPERSON URBAN:** Okay. So thanks, everyone, for
7 indulging while we pause to --

8 **BOARD MEMBER SIERRA:** Do you want to see --

9 **BOARD MEMBER LE:** I read it. Yeah.

10 **BOARD MEMBER SIERRA:** Oh. Okay.

11 **BOARD MEMBER LE:** I can glance at it as necessary.

12 **CHAIRPERSON URBAN:** Okay. So Mr. Soublet, Ms. De la
13 Torre has discussed her proposed changes through Section
14 4. How would you like to proceed? Would you like to
15 comment? Would you like us to comment?

16 **BOARD MEMBER DE LA TORRE:** I think that we should
17 comment as the Board, right? That -- that's the track
18 for discussion.

19 **CHAIRPERSON URBAN:** Well, it is, but there's also
20 legal -- you know, legal --

21 **BOARD MEMBER DE LA TORRE:** So it's typos and just
22 the first paragraph and me believing the language is not
23 relevant.

24 **CHAIRPERSON URBAN:** Yes. So would anyone like to
25 comment on those first, down to number 4? All right.

1 **BOARD MEMBER LE:** Yeah. The typos -- you correcting
2 those seem fine to me. And then, yeah, just simplifying
3 the beginning paragraph doesn't seem to change anything
4 substantially.

5 **CHAIRPERSON URBAN:** Thank you, Mr. Le.
6 Ms. Sierra?

7 **BOARD MEMBER SIERRA:** It seems it'll -- well -- I
8 thought the beginning was helpful for context, but
9 ultimately I don't think these are substantive changes.
10 And I think for number 4 it's, I think, implied that the
11 compensation or per diem would be involved. But I think
12 clarifying that is not substantive, so I don't have
13 objections to those changes.

14 **CHAIRPERSON URBAN:** Thank you, Ms. Sierra.

15 Well, I will say I actually like having the statute
16 cited because I think it conveys the legal basis. I
17 don't think there's a need to say -- to describe the
18 Governor appointees' statements, which applies to Mr.
19 Thompson and me. That seems descriptive. I don't feel
20 terribly strongly about it, but I think citing the
21 statute is -- is helpful.

22 Changing typos make perfect sense, of course.
23 Number 4, I actually don't read it the way I understood
24 you to be describing it, Ms. De la Torre. I read this as
25 money or consideration from somebody else -- somebody

1 else, like a third party. A company, a regulated entity,
2 grandma, I don't know. But somebody outside of the State
3 paying one of us to do something. And so I think this is
4 quite important.

5 **BOARD MEMBER DE LA TORRE:** To leave the State?

6 **CHAIRPERSON URBAN:** Yes.

7 **BOARD MEMBER DE LA TORRE:** So to me, there's many
8 agencies within the State that have nothing to do with
9 the Board, and I'm not completely sure that some of them
10 might or might not be regulated even by CCPA. Because if
11 you're an entity that's created for profit and that can
12 exist, that will not be appropriate at all. And in --
13 anyway, our compensation is set by the statute, right?
14 Are we expecting that we will receive any compensation
15 other than the per diem?

16 **CHAIRPERSON URBAN:** Well, no, but that's from the
17 State. The per diem comes from the State. We are part
18 of the State.

19 **BOARD MEMBER DE LA TORRE:** Right. Right.

20 **CHAIRPERSON URBAN:** I apologize. I think I might be
21 missing --

22 **BOARD MEMBER DE LA TORRE:** Right.

23 **CHAIRPERSON URBAN:** -- the --

24 **BOARD MEMBER LE:** I think the idea would be that if
25 a different agency paid us, that would technically be

1 within the State and then technically allowed under this
2 incompatible activities statement, whereas if you put the
3 per diem --

4 **BOARD MEMBER DE LA TORRE:** You're making it clear.

5 **BOARD MEMBER LE:** -- getting paid from a different
6 agency doing something privacy related would be
7 incompatible.

8 **BOARD MEMBER DE LA TORRE:** Right.

9 **CHAIRPERSON URBAN:** Oh, I see. So you've expanded
10 it.

11 **BOARD MEMBER DE LA TORRE:** No, I --

12 **MR. SOUBLET:** She's actually narrowed it.

13 **BOARD MEMBER LE:** Narrowed it.

14 **BOARD MEMBER DE LA TORRE:** Yeah.

15 **MR. SOUBLET:** Which -- which basically what the
16 concept -- so for example, suppose the Department of
17 Financial Protection and Innovation paid you something
18 for work that you're already doing under your per diem
19 for CPPA. Under this amendment, it's like, no, you're
20 only supposed to be receiving the per diem. And so by
21 citing to the specific, instead of taking away the
22 State -- which could be any other agency -- you're making
23 clearer that your only compensation for doing this board
24 work comes from the per diem, which is kind of
25 referenced -- which is referenced in that statute, so --

1 **CHAIRPERSON URBAN:** Right. So --

2 **MR. SOUBLET:** -- she's just basically narrowing the
3 understanding of who is paying.

4 **CHAIRPERSON URBAN:** Right, and broadening the effect
5 of number 4 --

6 **MR. SOUBLET:** Yes.

7 **CHAIRPERSON URBAN:** -- which is what I meant. Okay.
8 I understand now. Thank you.

9 Ms. De la Torre, do you want to talk about the other
10 ones? Are -- are there further comments from the Board?
11 Okay.

12 **BOARD MEMBER DE LA TORRE:** I think Mr. Thompson
13 might have comments or --

14 **BOARD MEMBER THOMPSON:** Oh, no. I felt comfortable
15 either way on number 4. I mean, what I understand it to
16 mean is we're -- we take certain actions as a board, and
17 we are compensated for them by the State, or by the
18 subset under this -- our per diem. And the notion is
19 that we shouldn't be getting money from a third-party
20 entity for taking those actions.

21 **CHAIRPERSON URBAN:** Exactly.

22 **BOARD MEMBER THOMPSON:** So I'm comfortable either
23 way.

24 **CHAIRPERSON URBAN:** Okay.

25 **BOARD MEMBER DE LA TORRE:** I'm just tailoring it to

1 specific language of the -- basically copy-pasted from a
2 section of the government code. So -- and then on 5 I
3 had an opportunity to have a conversation with Mr. Le, so
4 I added incompatible there. That's the reference that he
5 wanted to add.

6 When I read number 5, the first thing that I thought
7 about it I -- myself exercising my rights under CCPA,
8 which I do all of the time. That's a performance of an
9 act. I know that in my capacity as a board member, that
10 I know will be subject to the supervision of the Agency.
11 I know that is not within this period of the law, to
12 limit that, but I thought it was appropriate to just
13 mention there that that section should not be read in any
14 way to limit the ability of the members of the Board in
15 exercising their privacy rights.

16 **CHAIRPERSON URBAN:** Okay. And then for the public,
17 I'm going to just read what you inserted, if that's all
18 right.

19 **BOARD MEMBER DE LA TORRE:** Um-hum.

20 **CHAIRPERSON URBAN:** So number 5 -- with the proposed
21 edits with Ms. De la Torre -- would say performance of an
22 incompatible act in other than his or her capacity as a
23 board member, knowing that such an act may later be
24 subject directly or indirectly to the control,
25 inspection, review, audit, or enforcement by the Agency.

1 This shall not be read to limit --

2 **BOARD MEMBER DE LA TORRE:** So as to limit.

3 **CHAIRPERSON URBAN:** -- so as to limit -- oh, dear.

4 I actually --

5 **BOARD MEMBER DE LA TORRE:** I can read it. So as to
6 limit or preclude a board member from exercising his or
7 her privacy rights pursuant to CCPA.

8 **CHAIRPERSON URBAN:** Right. Comments or questions
9 from the Board on this one? This makes sense to me.

10 **BOARD MEMBER LE:** Yeah. I think the incompatible
11 part would capture that last sentence, but I mean, you
12 know, it doesn't hurt to be even more specific, so I'm
13 fine either way.

14 **BOARD MEMBER DE LA TORRE:** Right. I think we both
15 had the same reaction, and I think Mr. Le solved it one
16 way and I solved it in a different way. But there --
17 both ways are compatible. And I mean, in 6 -- and I'm
18 going to go ahead -- if the Chair is comfortable --

19 **CHAIRPERSON URBAN:** Um-hum.

20 **BOARD MEMBER DE LA TORRE:** -- I'm going to read out
21 loud.

22 **CHAIRPERSON URBAN:** Yes. That makes sense.

23 **BOARD MEMBER DE LA TORRE:** So number 6 says
24 receiving or accepting, directly or indirectly, any
25 gifts, including money, any service, gratuity, favor,

1 entertainment, hospitality, loan, or any other thing of
2 value, from anyone who is doing or seeking to do business
3 of any kind with the Agency or whose activities are
4 regulated or controlled in any way by the Agency, under
5 circumstances -- under circumstances from which it
6 reasonably could be inferred that the gift was intended
7 to influence the member in his or her official duties or
8 was intended as a reward for any official action on his
9 or her part.

10 So when I read that -- and I've been, you know,
11 trying to be as careful as possible when I engage with
12 organizations that are regulated -- the thing that came
13 to mind for me was -- and I'm just going to give an
14 example. I attend conferences sometimes. And sometimes
15 conferences are sponsored by organizations that might be
16 regulated. And those organizations sometimes do cover
17 the cost of the flight and the cost of a hotel if it's
18 somewhere other than where the person that's speaking at
19 the conference resides. That to me is not necessarily
20 something that should be read as influencing my ability
21 to be independent as a member.

22 And -- but however, it came to my mind that if that
23 organization that is sponsoring is in some way under
24 supervision by the Agency, I would like to avoid even
25 engaging in that so that it cannot even be perceived by

1 others. So I might not be aware that an organization
2 that is inviting me or is sponsoring that conference that
3 I'm attending is under audit.

4 So I just, for clarity, added there "in order to
5 better enable the board member to avoid any appearance of
6 impropriety, the Agency shall provide to each board
7 member a periodically updated list of organizations under
8 investigation or audit." That will enable me to be
9 alerted so that if an organization is in that situation,
10 I can be even more careful than I regularly are when
11 engaging in any activity like attending conferences. So
12 that's where the edit came in my mind. I don't know if
13 we can maybe, Chairperson, take feedback from the rest of
14 the Board?

15 **CHAIRPERSON URBAN:** Yes. Thank you, Ms. De la
16 Torre. And thank you for so thoughtfully approaching
17 this.

18 In this instance, I would like to ask Mr. Soublet to
19 comment for two reasons. One is my understanding is we
20 are bound by the general state conflict of interest
21 rules, and those cover things like flights and meals and
22 that kind of thing. So we're actually prohibited, or
23 very limited, in accepting a variety of things, and the
24 details are quite complicated, and I don't have them
25 right in front of me.

1 And then secondly, investigations and audits will
2 probably be -- while they're a part of enforcement and we
3 are going to have to work through enforcement rules --
4 but generally, we are the decision-makers, the Board.
5 And thus, we would actually not have insight, and should
6 not have insight, into investigative targets up to the
7 point that they come to us as decision-makers; is that
8 correct?

9 **MR. SOUBLET:** That's correct. And on the first
10 point, there are rules -- and that's the Political Reform
11 Act conflict of interest part where -- that deal with
12 travel and per diems and things like that for
13 conferences. And that deals more appropriately with what
14 would be considered a financial conflict of interest. So
15 you're already under an obligation with respect to that
16 because of the -- the FPPC's conflict of interest
17 requirements and the reporting requirements that go with
18 your annual Form 700s.

19 The other issue is that when we're in an enforcement
20 action, since the Board is the ultimate decision-maker on
21 that, they can't participate in or know a lot about what
22 is happening in the investigatory process, because that
23 can jeopardize the participation in the final decision
24 making with respect to it. So for those two reasons, I
25 would be a little concerned about adding this extra

1 language to that paragraph.

2 **BOARD MEMBER DE LA TORRE:** May I ask a question on
3 that? So this is -- I'm just trying to draw comparisons
4 here.

5 In the criminal process, a judge is involved from
6 the beginning of the process until the end, and all the
7 knowledge that that judge might accumulate from
8 arraignment -- all of those stages -- doesn't preclude
9 the judge from sitting in the trial and making a decision
10 that could be a determination of whether somebody goes to
11 jail or not.

12 And so it's a little surprising to me that -- and
13 I'm not -- I'm not expecting that we will be involved --
14 I don't think it would be appropriate for the Board to be
15 involved. But simply the awareness of the fact that an
16 organization is under investigation, I think that --
17 would you say that would create some kind of inability
18 for me to be impartial when I'm -- can you elaborate on
19 that?

20 **MR. SOUBLET:** We're talking about two completely
21 different processes, because under the Administrative
22 Procedures Act, that is a whole different procedure. And
23 the decision-makers actually come in at the end of the
24 process. There's an investigation, and then there's a
25 hearing process, of which the Board would not participate

1 in.

2 **BOARD MEMBER DE LA TORRE:** Um-hum.

3 **MR. SOUBLET:** And so -- and at the end of that
4 process, the Board adopts the decision that comes after
5 all of that preliminary work.

6 Now, there's case law that it is inappropriate for
7 the decision-maker to be involved in the earlier stages
8 of the process, because they can influence on that -- on
9 that process.

10 So for those reasons -- that's why I'm concerned
11 about -- without taking a little bit stronger look at
12 this -- I would be concerned about, you know, having to
13 maintain a list to keep you up-to-date on, you know, what
14 are the matters that are under investigation because you
15 are part of the process, but it's at the end of that
16 process.

17 **BOARD MEMBER DE LA TORRE:** Could you elaborate more
18 on that case law that you mentioned? What is the case
19 law that indicates that involvement, and what is
20 involvement? Because here we are --

21 **MR. SOUBLET:** I don't have the exact cite for the
22 case, but I can tell you it's probably Morongo. But I
23 don't have the Supreme Court cite sitting with me right
24 now for that case.

25 **BOARD MEMBER DE LA TORRE:** No, no. And I think

1 we're putting you on the spot and you're just doing your
2 best to provide us advice. But if there's a need maybe
3 to do legal research, we could allow for time for that.
4 Maybe ask the DOJ for that report. I just -- to me -- it
5 doesn't stand to reason that knowing the name -- nothing
6 involved in the investigation -- but just knowing the
7 name of the organizations -- which would be really
8 helpful for me to avoid the appearance of impropriety --
9 will interfere with the ability of a board member to be
10 an impartial judge if the case actually comes up for
11 resolution.

12 **MR. SOUBLET:** Well, two suggestions. One, since we
13 haven't really laid out what our enforcement policies and
14 procedures are going to be and how we're going to go
15 about them, it may be early right now to be talking about
16 that as a consideration. So with adopting a policy
17 today, which can always be amended in the future, that is
18 one possibility.

19 And the other issue is that -- I don't want to get
20 into a lot of discussions about what we might be
21 including and how we do our procedures into the future.
22 I would just caution that I wouldn't want to do something
23 now that really we don't have to consider with until we
24 get to the point of when we're starting to outline how
25 we're going to do our enforcement procedures.

1 **BOARD MEMBER DE LA TORRE:** I just basically want to
2 be in the best position to avoid the appearance of
3 impropriety, and I think that this would be a toll that
4 would be of assistance to me. So maybe if it's
5 appropriate to ask for a legal memo on this topic, it
6 would be -- it would be something that would at least be
7 helpful to me.

8 **MR. SOUBLET:** Right. And I think one of our other
9 goals is as we're approaching the -- the phase where we
10 want to get to the point of actually propagating our
11 first set of regulations, to have this clear
12 understanding prior to us doing that. I would not like
13 to see that good work get delayed by waiting for some
14 further research on an issue that's not going to come up
15 for us until the future.

16 **CHAIRPERSON URBAN:** Thank you, Mr. Soublet. I would
17 also like to add that, as I remember 6 -- again, this is
18 covered -- we are already bound by rules related to what
19 we can and cannot accept and under what circumstances,
20 and when you might be able to accept something but have
21 to disclose it on the Form 700 versus when we can't
22 accept it at all. So I think that those rules help us --
23 help keep us from any appearance of impropriety because
24 they are quite strict.

25 **BOARD MEMBER DE LA TORRE:** My point is that even

1 following those strict rules, I could be placed in a
2 situation where there's an appearance of impropriety
3 because I am receiving that allowable amount from an
4 organization that is later known to have been under
5 investigation without me knowing that they was under
6 investigation, if that makes sense.

7 **CHAIRPERSON URBAN:** It does make sense, but there's
8 another appearance of impropriety if the decision-maker
9 knows the targets of investigation. So in a criminal
10 case, or in a civil case in civil courts in the United
11 States, for example, nobody knows any target until it
12 gets to court, until the prosecutor brings charges and --

13 **BOARD MEMBER DE LA TORRE:** But I'm saying under
14 investigation or audit.

15 **CHAIRPERSON URBAN:** Right. And that is exact
16 precisely what is protected, so that the decision-
17 maker -- it does not have the appearance of having been
18 involved in the investigation, helped choose the
19 investigation targets, have some interest in how those
20 were chosen, but only in the decision.

21 Now, I'm not an expert in criminal law, so -- but
22 that's -- just my sense of it is that there is a
23 potential concern for impropriety -- appearance of
24 impropriety, obviously, not actual impropriety -- but it
25 goes in both directions, and that the usual rules under

1 the APA that would prevent the decision-maker from having
2 input into the investigation and the investigatory
3 process are intended to prevent the second form of
4 impropriety, if that makes sense.

5 **BOARD MEMBER THOMPSON:** Can I make a --

6 **BOARD MEMBER DE LA TORRE:** For clarity, I'm not
7 saying that we should be involved in the investigation in
8 any way. I'm just -- I'm looking for a way to put myself
9 in a better position to avoid the appearance.

10 **BOARD MEMBER THOMPSON:** Can I make a -- go ahead,
11 Brian.

12 **CHAIRPERSON URBAN:** Thank you.

13 **MR. SOUBLET:** And I have a suggestion --

14 **CHAIRPERSON URBAN:** Mr. Soublet and then Mr.
15 Thompson. Mr. Soublet. Okay.

16 **MR. SOUBLET:** And just a suggestion. For the legal,
17 we're always available to provide input and advice on any
18 of these types of issues. You know, if you have an
19 issue, for example, what do I need to disclose on my Form
20 700? Or this activity is coming up -- we're always
21 available to help provide some guidance with respect to
22 that. You know, just -- the document is not necessarily
23 the entire universe of what could be incompatible, and so
24 you may always in the future have questions. And we'll
25 always be available to assist with that.

1 **BOARD MEMBER DE LA TORRE:** But I'm confused about
2 that. Because if it's my own incompatibility, shouldn't
3 I look for my counsel to -- I mean, you're counsel to the
4 Agency, right?

5 **MR. SOUBLET:** Right.

6 **BOARD MEMBER DE LA TORRE:** So wouldn't there be a
7 conflict for you if you were providing legal advice to
8 board members on incompatibilities?

9 **MR. SOUBLET:** We always get called upon to ask for
10 legal advice with respect to issues. We -- I mean, even
11 earlier this year we provided advice on what's acceptable
12 to put in the Form 700s and et cetera. So I don't see a
13 conflict, necessarily, there. But if you -- any time you
14 have questions on matters like this, you can always ask.
15 If we're not capable of providing you a response, you
16 also have the availability to get your own counsel to
17 provide to it, with advice on --

18 **BOARD MEMBER DE LA TORRE:** Right. That's -- that's
19 what makes sense to me. But just going back to the --

20 **CHAIRPERSON URBAN:** But before we go to that, Ms. De
21 la Torre, I'd like to give Mr. Thompson and Mr. Le a
22 chance to make their comments.

23 **BOARD MEMBER THOMPSON:** Okay. A couple of things on
24 this. One is -- I see what the -- the goal that you're
25 trying to drive at is. The way I read this -- there's

1 two -- there's a couple of different issues. One,
2 about -- there's an information asymmetry in that an
3 entity under investigation knows it's under investigation
4 but you don't.

5 **BOARD MEMBER DE LA TORRE:** Exactly.

6 (Indiscernible). Right.

7 **BOARD MEMBER THOMPSON:** And so there's an imbalance
8 there. They might be motivated to take an act --

9 **BOARD MEMBER DE LA TORRE:** Right.

10 **BOARD MEMBER THOMPSON:** -- that's informed by
11 information that they possess that you don't. So -- and
12 I think that's what you're trying to --

13 **BOARD MEMBER DE LA TORRE:** Yeah. Trying to avoid
14 that.

15 **BOARD MEMBER THOMPSON:** Right. The way I read the
16 way this is worded is you can't accept a thing of
17 value -- I'll just summarize it -- that could be
18 reasonably inferred that the thing of value was given to
19 you to influence you. If you don't know that they're
20 under investigation, then it can't be reasonably inferred
21 that it was -- that you accepted it for the purposes of
22 influence because you didn't even know that they were
23 under investigation. They might have given it with that
24 intent, but you didn't receive it with that intent,
25 because you were unaware of their being under

1 investigation.

2 **BOARD MEMBER DE LA TORRE:** But --

3 **CHAIRPERSON URBAN:** Right. That's why it protects
4 the process to prevent the decision-maker from knowing
5 who is the target of an investigation. It protects
6 targets of investigation as well from, you know, having
7 that information be more widely known. For example,
8 maybe they end up not -- the investigation gets dropped.
9 But it protects the decision-maker from the appearance of
10 influence.

11 **BOARD MEMBER DE LA TORRE:** But then it should say
12 received under circumstances for which it's reasonable it
13 could be inferred that it was received to influence,
14 right? Not intended. Because I don't necessarily know
15 the intention. And I think that in any case --

16 **BOARD MEMBER THOMPSON:** That's a -- yeah.

17 **BOARD MEMBER DE LA TORRE:** -- it doesn't cover the
18 public awareness --

19 **BOARD MEMBER THOMPSON:** Right.

20 **BOARD MEMBER DE LA TORRE:** -- and the suspicion that
21 the public might have if I find myself in that situation
22 unknowingly.

23 **CHAIRPERSON URBAN:** Thank you, Ms. De la Torre.

24 Mr. Le?

25 **BOARD MEMBER LE:** Oh, no. I think Mr. Thompson kind

1 of stated kind of what I understand what the -- what the
2 edits are for. But after hearing both sides of it, I
3 think the -- our ignorance actually does protect us from
4 those inferences. The public may not -- may have, you
5 know -- they think -- may appear impropriety, but we can
6 just say we didn't know. So yeah.

7 **BOARD MEMBER DE LA TORRE:** Because it says or create
8 the appearance of resulting --

9 **BOARD MEMBER LE:** Yeah.

10 **BOARD MEMBER DE LA TORRE:** -- then maybe we need to
11 take that out of the first --

12 **BOARD MEMBER LE:** Yeah.

13 **BOARD MEMBER DE LA TORRE:** -- sentence. Is that
14 what we're saying? That we don't necessarily want to
15 avoid creating the appearance?

16 **CHAIRPERSON URBAN:** Okay. It says reasonably could
17 be -- could -- from which it reasonably could be inferred
18 that the gift was intended.

19 **BOARD MEMBER DE LA TORRE:** Right. But the first
20 paragraph says no employment activity or enterprise can
21 be engaged in by a member of the board that might result
22 in or create the appearance of resulting. So how do I
23 avoid creating the appearance of resulting in if I'm not
24 aware? We could take that out of the first sentence if
25 that's -- but I would prefer to be in a position where I

1 can avoid the appearance.

2 **CHAIRPERSON URBAN:** Further comments?

3 Yes, Ms. Sierra?

4 **BOARD MEMBER SIERRA:** I mean, at that point -- I
5 mean, just in the beginning, there's a general clause,
6 but number 6 narrows it to what reasonably could be
7 inferred. So I think that there's the protection right
8 there. And I think the spirit of this is that we're
9 knowingly engaging in something, not something that we're
10 doing that we didn't realize we were doing, as long as
11 we're taking reasonable steps.

12 And the point I also think is very important, Mr.
13 Soublet, that you made that our agency hasn't yet
14 finalized our guidelines around enforcement and, you
15 know, and how the enforcement branch will be working with
16 the other branches of our agency and with the Board. So
17 I'm very concerned about adding any language here now
18 that could then impede what the Agency develops as its
19 best practice.

20 And so what I would suggest is that we leave 6 as
21 is, and we can -- after the Agency has adopted those
22 enforcement protocols -- if any of us would like to
23 discuss revisiting it, we would have an opportunity to do
24 that. I think that would be the most prudent way to --
25 to proceed.

1 **CHAIRPERSON URBAN:** Thank you, Ms. Sierra.

2 **BOARD MEMBER THOMPSON:** I had one other --

3 **CHAIRPERSON URBAN:** Yes, Mr. Thompson.

4 **BOARD MEMBER THOMPSON:** -- observation that -- on
5 the -- because the proposed edit is around investigations
6 or audits. I just want to make sure, Mr. Soublet, that I
7 understand the intention here correctly. Under -- and
8 correct me where I misstate -- under the Fair Political
9 Practices Act and our filing of Form 700, we can accept
10 things of value up to a certain threshold and disclose
11 them.

12 **CHAIRPERSON URBAN:** Um-hum.

13 **MR. SOUBLET:** Correct.

14 **BOARD MEMBER THOMPSON:** This adds an additional
15 requirement prohibiting the acceptance of things of value
16 from regulated entities if it could be reasonably
17 inferred that the regulated entity was providing it as --
18 to influence or as a reward for action, right?

19 **MR. SOUBLET:** Correct.

20 **BOARD MEMBER THOMPSON:** So we're -- we're going
21 beyond -- Regulated Entity X wants to take -- wants to
22 pay my travel to a conference. Under what we have
23 currently, I could do that and disclose it, right, and
24 then it's publicly available. If we adopt this, I
25 couldn't -- I don't know whose reasonable inference is

1 required here -- but if it could be reasonably inferred
2 that the travel to the conference was meant to influence,
3 then that would be prohibited.

4 **MR. SOUBLET:** Right. If that is an entity under
5 investigation and are the subject of an enforcement
6 action, if it can be inferred that they're paying for you
7 to do that in order to influence what your decision may
8 ultimately be in that matter, yes, that would be a
9 problem here. Not only do you have the FPPC issue of
10 reporting that travel and reporting that income as the
11 way it is phrased, it would be something that would be
12 prohibited under here, because it is intended to
13 influence you and your ultimate decision.

14 **BOARD MEMBER THOMPSON:** So the Sunshine Rule is, you
15 know, sunshine is the best disinfectant. If -- if we are
16 regulating Entity X and Entity X pays for me to go to a
17 conference, somebody could say, well, you were regulating
18 that entity and I now know through your disclosure that
19 you were paid -- they paid for you to go to wherever.
20 What's the -- well, whose reasonable inference is -- is
21 it there?

22 **MR. SOUBLET:** It would be the reasonable person's
23 inference.

24 **BOARD MEMBER THOMPSON:** Okay.

25 **MR. SOUBLET:** You know, like is it reasonable to

1 assume that an entity has paid you in order to influence
2 a decision that you may make on the Board. Now, mind
3 you, there's -- if you think about it, there's any
4 business that's subject to the, you know, the provisions
5 of the laws that we're enforcing is an entity, right?
6 But it's now paying for you to come to a conference that
7 they may be hosting. Can it be reasonably inferred that
8 it is to influence you in some action that is before the
9 Board? And that's -- and that's the way you need to
10 think about it.

11 **BOARD MEMBER THOMPSON:** It -- it seems -- it seems
12 pretty -- I -- I would want some more refined guidance
13 around that to -- to understand it. I don't particularly
14 like going to conferences, so that would not be an
15 effective way of influencing me.

16 **CHAIRPERSON URBAN:** Thank you, Mr. Thompson.
17 Ms. Sierra?

18 **BOARD MEMBER SIERRA:** And just briefly, I think you
19 had already mentioned that there are limitations in any
20 of that --

21 **CHAIRPERSON URBAN:** Yep.

22 **MR. SOUBLET:** Right.

23 **BOARD MEMBER SIERRA:** -- on accepting, you know,
24 travel or payments for attending conferences and things
25 like that.

1 **MR. SOUBLET:** Yeah. There are travel honoraria
2 rules, and then there are -- are gift limits --

3 **BOARD MEMBER SIERRA:** Yeah.

4 **MR. SOUBLET:** -- that are already part of the --
5 the -- the Political Reform Act.

6 **BOARD MEMBER DE LA TORRE:** And so one question on
7 that that is kind of related that would be helpful if you
8 have the answer, in my case, I do get invited -- and I
9 think Mr. Le might be in that situation -- as an expert,
10 not because of my role as a board member but because of
11 my capacity as an expert to participate in conferences
12 usually organized by universities. Is there a difference
13 for me participating or being invited as an expert versus
14 me being invited because I'm a member of the Board in
15 terms of the rules, or is the rules apply in, you know,
16 across the board, whatever capacity I'm invited?

17 **MR. SOUBLET:** But you have to remember the -- the
18 second leg of it. Is that invitation intended to
19 influence a decision of you as a member of the Board on a
20 matter that the Board would be taking an enforcement
21 action on? And so is a university inviting you to attend
22 in a panel on privacy -- is that intended to influence a
23 decision that you as a board member would make in an
24 enforcement proceeding?

25 **BOARD MEMBER DE LA TORRE:** I don't think you -- I

1 maybe not didn't ask the question correctly, but let's
2 table it because maybe I can have a private conversation
3 with you --

4 **MR. SOUBLET:** Sure.

5 **BOARD MEMBER DE LA TORRE:** -- to where I can
6 understand that difference.

7 **MR. SOUBLET:** Okay.

8 **CHAIRPERSON URBAN:** Thank you, Ms. De la Torre.

9 Mr. Soublet, can you enlighten us as to the
10 difference between this language and what's already
11 required?

12 **MR. SOUBLET:** This language is --

13 **CHAIRPERSON URBAN:** If any.

14 **MR. SOUBLET:** Well, what's -- the language as it was
15 drafted, it is very similar to the language that is in
16 the -- the statement that you signed as an appointee of
17 the Governor's office.

18 **CHAIRPERSON URBAN:** Um-hum.

19 **MR. SOUBLET:** The only change is I may have
20 substituted out the word the State for Board or Agency,
21 or official or employee for board member. But generally
22 it is identical to the statement that has been signed by
23 appointees of the Governor's office. So there's not --
24 other than those minor changes, there's not any
25 difference.

1 **CHAIRPERSON URBAN:** Thank you. And is it -- is it
2 restating the law, basically, I guess is what I'm asking.

3 **MR. SOUBLET:** It is -- it is a restatement of those
4 provisions. Generally what Government Code 19990 says,
5 you know, it has a preamble about avoiding the conflicts,
6 and then it says appointing authorities are to adopt a
7 conflict of interest policy, which should include -- and
8 it includes this universe. Now it can include more, but
9 it lists, in Government Code Section 19990, these
10 elements.

11 **CHAIRPERSON URBAN:** Okay. Thank you.

12 **MR. SOUBLET:** You're welcome.

13 **CHAIRPERSON URBAN:** I think now would be a good time
14 for me to see if I have -- can summarize the conversation
15 and where we are, and then we can discuss where we might
16 go next.

17 So Ms. De la Torre has recommended removing a fair
18 amount of the descriptive language from the first
19 paragraph, including the quotations from the relevant
20 statutes, and also the descriptive statement that this is
21 similar to the statement that Governor's appointees --
22 which is myself and Mr. Thompson -- have signed.

23 On the second paragraph, Ms. De la Torre has
24 proposed two changes which change typos. Adding the word
25 "in" between engaged and by and revising the word "and"

1 to "any".

2 She has also proposed revising section 4 in order to
3 narrow the scope of what board member can do and expand
4 the scope of the provision by changing the words other
5 than the State to other than, as provided in California
6 Civil Code Section 1798.199.25 -- which, for everyone
7 listening at home who don't know the statute as well as
8 we all do at this point, is our per diem -- the part of
9 the statute that sets out the per diem, which is the
10 honorarium for board members.

11 She also suggests that on section number 5, as does
12 Mr. Le, to insert the word "incompatible" between "an"
13 and "act" in the first line, and also to add at the end
14 of this provision, "this shall not be read so as to limit
15 or preclude a board member from exercising his or her
16 privacy rights pursuant to the CCPA." And my
17 understanding of Ms. De la Torre's reasoning is that this
18 is so it's abundantly clear that we are able to opt out
19 of sale, and ask for correction, et cetera, all the
20 various things that any Californian is allowed to do
21 under the CCPA.

22 And then with regards to section number 6, Ms. De la
23 Torre has suggested adding a sentence to the end. "In
24 order to better enable the board member to avoid any
25 appearance of impropriety, the Agency shall provide to

1 each board member a periodically updated list of
2 organizations under investigation or audit." And as I
3 understand Ms. De la Torre's reasoning, this is so board
4 members are able to avoid interactions or accepting
5 anything from an entity that may be under investigation
6 or audit.

7 **BOARD MEMBER DE LA TORRE:** Even if it was customary
8 and it was not something that might alert us to an
9 impropriety, and it would be within the rules of the
10 (indiscernible), I would like to avoid receiving any or
11 participating in any situation where there's an
12 organization that later might find themselves before us
13 for enforcement.

14 **CHAIRPERSON URBAN:** Thank you. I just want to
15 check, is our sound coming through all right? We're sort
16 of talking to each other and not into the microphone.
17 Okay. Thank you.

18 And I think that there is support, certainly for the
19 typo changes. Probably for removing the preambular
20 language. I'm the one who likes those first sentences,
21 but I don't feel that strongly about it. And also for
22 the changes to number 4.

23 And Mr. Soltani?

24 **MR. SOLTANI:** I'm sorry to interrupt your process.
25 If it's possible, I'd also like to just make one point

1 and one suggestion, too.

2 **CHAIRPERSON URBAN:** Yes, please.

3 **MR. SOLTANI:** One is that if we share a list of
4 entities under consideration, there is the question that
5 whether that would need to then be public, because that
6 would be materials going to the Board.

7 **CHAIRPERSON URBAN:** Right.

8 **MR. SOLTANI:** And then the other thing -- and this
9 came from staff, but it was a suggestion -- would be to
10 fix all the language that says his or her to their to be
11 gender-neutral. There's a 2018 concurrent resolution
12 that suggests using gender-neutral pronouns in
13 legislation. So those are just two points.

14 **CHAIRPERSON URBAN:** Okay. Thank you. Just to get a
15 sense, gender-neutral pronouns, good with everyone, yes?

16 **BOARD MEMBER SIERRA:** Um-hum.

17 **CHAIRPERSON URBAN:** Of course. Thank you. All
18 right. So I think that the source of our discussion is
19 mostly -- actually, let me back up.

20 I apologize, Ms. De la Torre. Did you have other
21 changes?

22 **BOARD MEMBER DE LA TORRE:** If you go to the last
23 page, there's a whole signature block that doesn't make
24 sense in a policy that's going to be approved by the
25 Board. We would simply vote to approve. I don't see

1 what sense it makes to sign a policy that we're voting to
2 approve. We've never signed them before with the code of
3 conduct.

4 **CHAIRPERSON URBAN:** That would -- I would have to
5 ask Mr. Soublet or Mr. Dalju about it.

6 **MR. SOUBLET:** It still makes sense to sign it
7 anyway, as we already have board members who've had to --
8 had gone to the process of signing a document like this.
9 And if there are future board members and we have them
10 come on board, they would not have taken part in the --
11 in this decision to vote for it now, and so I --

12 **BOARD MEMBER DE LA TORRE:** Right. I thought about
13 that. It would make sense in the future for board
14 members who do not approve policies, when they are
15 onboarded, to sign that they understand that they have
16 received all of the policies. That's what I thought the
17 paragraph was for in the draft.

18 In this particular case, if we are voting to
19 approve, I think the appropriate way of handling it would
20 be taking the vote and then -- we don't have a secretary
21 of the Board; maybe we need one -- but either the general
22 counsel or the secretary of the Board will certify that
23 the document was adopted. It's in general what I have
24 seen done in boards. It just doesn't make sense to
25 propose as a Board an approve something and then say, I

1 have read and understood.

2 I was confused at the beginning of this document
3 where there was a self-declaration on a policy. Policies
4 do not include the signature of individuals when they are
5 approved. They are --

6 **MR. SOUBLET:** But you're approving it as the Board's
7 Incompatible Activities Policy --

8 **BOARD MEMBER DE LA TORRE:** Right.

9 **MR. SOUBLET:** -- and an Incompatibility Statement is
10 really what the document is phrased as. It is the
11 Incompatible Activities Statement. And you are signing
12 that you are agreeing that you have read it, understand
13 it, and are agreeing to the provisions of the statement.

14 **BOARD MEMBER DE LA TORRE:** Right. We are adopting
15 it. That's my point. That is not necessary.

16 **MR. SOUBLET:** But you're adopting it as the
17 statement, which you would be agreeing to sign to.

18 **CHAIRPERSON URBAN:** Thank you, Ms. De la Torre and
19 Mr. Soublet.

20 Ms. Sierra?

21 **BOARD MEMBER SIERRA:** Yeah. I just wanted to ensure
22 that, too, is I think that fact that we are making an
23 agreement. One thing is if, you know, this may be a
24 partial vote, you know, for this. Or it needs to be
25 unanimous -- not be unanimous, but I think this

1 underscores that everybody, regardless, is going to agree
2 to it.

3 **CHAIRPERSON URBAN:** Thank you, Ms. Sierra. So --

4 **BOARD MEMBER THOMPSON:** One other thing on that. I
5 don't -- I don't have a problem with signing it, but
6 should the staff sign it as well? Should this not be an
7 incompatible activities statement for the entire Agency,
8 not just the Board?

9 **MR. SOUBLET:** We already have.

10 **BOARD MEMBER THOMPSON:** Okay. And does it mirror
11 this?

12 **MR. SOUBLET:** Just because that we have to sign the
13 one that is geared for State employees.

14 **BOARD MEMBER THOMPSON:** Okay.

15 **MR. SOUBLET:** So we -- we've already -- it's part of
16 our employment package.

17 **BOARD MEMBER THOMPSON:** Thank you.

18 **BOARD MEMBER DE LA TORRE:** Right. And that's where
19 this language comes from. It comes from the statute
20 that --

21 **BOARD MEMBER THOMPSON:** Right.

22 **BOARD MEMBER DE LA TORRE:** -- describes how it works
23 for --

24 **BOARD MEMBER THOMPSON:** The State.

25 **BOARD MEMBER DE LA TORRE:** -- employees and

1 officers.

2 **CHAIRPERSON URBAN:** Thank you. All right. So with
3 that -- with the question over the signature -- that is
4 all of the proposed changes, yes, Ms. De la Torre?

5 **BOARD MEMBER DE LA TORRE:** Yes.

6 **CHAIRPERSON URBAN:** Okay. Does anybody else have
7 any proposed changes or any sort of specific responses?
8 Okay. I really appreciate your attention to this, Ms. De
9 la Torre, and your thoughtful suggestions. Also Mr. Le
10 with regards to section 5.

11 My view of the Incompatible Activities Statement is
12 that it is a public assertion by members of the Board
13 that we intend to take seriously our statutory
14 prohibition to avoid incompatible activities. And I
15 really appreciate that all of the suggestions have really
16 tried to further that goal.

17 I think it is also a message that the Board is
18 willing to hold itself to the same standard as our own
19 employees and all state officials. So I strongly support
20 this. I confess, Mr. Thompson and I already signed one,
21 so I may be in a slightly different position in that I
22 already made that decision. But I think that I would
23 support it either way. And so I would really like for
24 the Board to be able to come to an understanding that
25 allows us to adopt this Incompatible Activities Statement

1 today.

2 I, for my own part as a board member, support all of
3 the changes up until section number 6, because I think
4 that section number 6 restates important rules for which
5 we are already bound, and I am not comfortable with the
6 idea of revealing investigated entities or audited
7 entities. I don't know what those ramifications are.

8 I would certainly be willing to have a further
9 discussion, as staff have suggested, once we have more
10 information about what enforcement practices will look
11 like in some detail in the Agency. But for the reasons
12 that -- for these reasons, both legal under the APA, and
13 usual practice as I understand it in criminal law and --
14 in criminal law and because of the fact that I just don't
15 think that we should be making investigative --
16 investigated entities public until the appropriate time,
17 I cannot support that change.

18 I also understand what Ms. De la Torre is saying
19 with regards to the Board adopting the policy. I do
20 think there is value in signing it, because again, it is
21 an individual assertion that the board member has said to
22 the public that they will be avoiding incompatible
23 activities and that they will be following this policy.

24 I also take staff's point that we are five people,
25 and we are not the only five people who will ever serve

1 on this board. We certainly hope. We hope there will be
2 many, many after us.

3 So my proposal is that we adopt this as amended up
4 to and through section 5, and that we do not take the
5 proposed amendment to section 6, and that we maintain the
6 signature requirement. That's my proposal, and I will
7 ask for discussion on that.

8 **BOARD MEMBER THOMPSON:** I support that proposal.

9 **CHAIRPERSON URBAN:** Thank you, Mr. Thompson.

10 **BOARD MEMBER SIERRA:** I support that as well.

11 **CHAIRPERSON URBAN:** Thank you, Ms. Sierra.

12 **BOARD MEMBER LE:** Sure. Yeah. I support that.

13 **CHAIRPERSON URBAN:** Thank you, Mr. Le.

14 Ms. De la Torre, is that what --

15 **BOARD MEMBER DE LA TORRE:** Yes. I support it, but
16 could I ask for -- in between now and the time where we
17 have that second conversation, could we ask for a legal
18 limit so that we understand what are the limitations
19 around that awareness? It would be helpful. I do not
20 intend to create any liability for the Agency. What I'm
21 intending to is put myself in a situation where even
22 where according to the rules, I'm doing something that is
23 correct, I can create the appearance of impropriety.

24 **CHAIRPERSON URBAN:** I absolutely hear you and
25 understand, and really appreciate the thoughtfulness. I

1 propose that Ms. Sierra and I, as the Start-Up and
2 Administration Subcommittee, again, sort of take this to
3 the subcommittee and see if there is, like, a useful rule
4 or something that we should try to help ask counsel to
5 produce for us.

6 **BOARD MEMBER DE LA TORRE:** I will appreciate if the
7 DOJ will write a memo on this. I think their expertise
8 will be very valuable in terms of understanding the --
9 you know, the rules around that.

10 **CHAIRPERSON URBAN:** Thank you very much. All right.
11 I do want to pause, in case -- because we've had -- thank
12 you, everyone, for the robust discussion so far.

13 Are there -- excuse me -- is there public comment
14 from anyone participating via Zoom on this agenda item?

15 **MODERATOR HURTADO:** Not at this time.

16 **CHAIRPERSON URBAN:** Thank you. Is there public
17 comment from any members of the public participating here
18 in person? All right. I'll wait for just a moment.
19 Also let board members think a little bit more.

20 Ms. Hurtado, no one?

21 **MODERATOR HURTADO:** No, not at this time.

22 **CHAIRPERSON URBAN:** Okay. Thank you. In that case,
23 may I have a motion to adopt the Incompatible Activities
24 Statement in substantially the form of the draft labeled
25 "For Board Discussion" in today's meeting materials in

1 agenda item 4 as amended according to today's discussion?

2 **BOARD MEMBER DE LA TORRE:** I so move.

3 **CHAIRPERSON URBAN:** Thank you, Ms. De la Torre.

4 May I have a second?

5 **BOARD MEMBER LE:** I'll second.

6 **CHAIRPERSON URBAN:** Thank you, Mr. Le. I have a

7 motion from Ms. De la Torre and a second from Mr. Le.

8 Ms. Hurtado, would you please perform the roll-call

9 vote?

10 **MODERATOR HURTADO:** Okay. Ms. De la Torre?

11 **BOARD MEMBER DE LA TORRE:** Aye.

12 **MODERATOR HURTADO:** Mr. Le?

13 **BOARD MEMBER LE:** Aye.

14 **MODERATOR HURTADO:** Ms. Sierra?

15 **BOARD MEMBER SIERRA:** Aye.

16 **MODERATOR HURTADO:** Mr. Thompson?

17 **BOARD MEMBER THOMPSON:** Aye.

18 **MODERATOR HURTADO:** Ms. Urban?

19 **CHAIRPERSON URBAN:** Aye.

20 **MODERATOR HURTADO:** Five ayes, and no nays.

21 **CHAIRPERSON URBAN:** Thank you very much, Ms.

22 Hurtado.

23 And thank you very much, board members, for the
24 robust discussion and careful thinking about our duties
25 to the public. The motion has been approved by a vote of

1 five to zero. I will work with staff to ensure that we
2 have the copy of the draft Incompatible Activities
3 Statement with Ms. De la Torre and Mr. Le's notations
4 available to the public. And we'll work with staff to
5 make sure the agreed-upon statement is revised
6 appropriately and disseminated. Wonderful. Thank you,
7 everybody.

8 Our next agenda item is agenda item number 5, which
9 is a -- an update from the Rulemaking Process
10 Subcommittee, a course of action for upcoming rulemaking
11 process. Before we dive in, I just want to check and
12 make sure would like to go ahead. No one needs a break.
13 Good? Okay. Wonderful.

14 This is our second advisory subcommittee report. As
15 a bit of background, on June 14, 2021, the Board formed a
16 Regulations Subcommittee to advise on the Agency's
17 upcoming rulemaking. That subcommittee was comprised of
18 Ms. De la Torre and me.

19 In the September 7th and 8th, 2021 meeting, Ms. De
20 la Torre and I recommended dissolving our subcommittee
21 and for the Board to form three separate subject-matter-
22 based subcommittees to continue to advise the Board on
23 the Agency's rulemaking.

24 The Board agreed and we have for the past month
25 now -- several months now -- had these three

1 subcommittees. The Rulemaking Process Subcommittee,
2 which is Ms. De la Torre and Mr. Thompson; the Update of
3 CCPA Rules Subcommittee, which is Ms. Sierra and myself;
4 and the New CPRA Rules Subcommittee, which is Mr. Le and
5 Ms. De la Torre.

6 The Rulemaking Process Subcommittee is going to go
7 first today, and I will now turn everything over to them.

8 **BOARD MEMBER DE LA TORRE:** Thank you so much,
9 Chairman.

10 I want to direct all of the board members to one of
11 the handouts that has the slides for the presentation.
12 They're not going to be projected so -- there we go.
13 Yeah. Mr. Le has the slide (indiscernible). And I
14 believe they will be projected for the members of the
15 public.

16 So in the first slide, what we see is basically a
17 slide that was used before in other presentations that
18 describes the regular rulemaking process under California
19 law. It starts with the notice of the proposal making,
20 initial statement of reasons, and text of the regulations
21 being released. That's something that has not happened
22 yet during the informal rulemaking process. The formal
23 rulemaking process will start with that taking place.

24 I don't know if there's an opportunity for board
25 members that might have questions on the regular

1 rulemaking to maybe consult with Mr. Soublet so that we
2 can answer those questions if they have not been answered
3 in prior presentations. If there are no questions, I
4 would like to just move to the second slide. Are there
5 any questions? No? Okay.

6 So the second slide that we have here, it basically
7 reflects two things. The line on top is a very
8 summarized version of the slide that we just saw. It
9 includes the different steps in the formal APA rulemaking
10 process. The information that we see below is a view of
11 what our subcommittee anticipates will happen in terms of
12 the activities of the Board connected with the APA
13 rulemaking process.

14 So I'm going to talk a little bit about this line on
15 top. First, a summation before the formal process starts
16 with a Notice of Proposed Rulemaking. After that, a
17 forty-five day public comment starts where we will be
18 receiving comments from the public, and we will have also
19 an obligation to host public hearings. They're not that
20 different aside (indiscernible) from the hearings that we
21 have conducted in the formal process.

22 And depending on whether there's a decision to make
23 some changes to the rules after we receive those
24 comments, additional periods will open for public
25 comments. And those might be fifty days or forty-five,

1 days depending on the changes that are made. And that
2 process basically repeats itself until we arrive to a
3 moment where there are no more changes. That will be our
4 final package.

5 One of the things that I -- my subcommittee wanted
6 to gather feedback from the Board about is for that
7 forty-five day public comment and public hearings, we
8 have to make a determination as to the nature of the
9 public hearings. Those are mandated by the APA, and we
10 have basically two options. The first option would be to
11 host those public hearings as board meetings. The second
12 option is to host them as Agency-driven meetings.

13 The board meeting, if that's the path that we
14 choose, would require a notice like the notice that we
15 had for this board meeting, class quorum. We will have
16 to have quorum during the public hearings.

17 The Agency-driven process would require also notice
18 under the APA but would not require the Board to be
19 present or maintain a quorum.

20 There's a flexible possibility that we also
21 discussed within the subcommittee that would be hosting
22 them as Agency-driven but having some form of
23 participation by members of the Board to show that we are
24 paying attention and we are listening to the -- to the
25 comments, which we will be able to do if they are Agency-

1 driven. They will be recorded. Transcription will be
2 available to us. We could actually attend as
3 participants, even if it's not hosted as a board meeting.

4 This option that is flexible is similar to the
5 stakeholder sessions that were held, where the Chair
6 participated to demonstrate and to show to the public our
7 awareness of the fact that the meeting was taking place
8 and that we are paying attention.

9 So I want to pause here and just gather a little bit
10 of feedback from the Board in terms of that -- those two
11 possibilities, hosting these public hearings as board
12 meetings or Agency-driven. They have different logistics
13 requirements, and it's important for the executive
14 director to understand what is our preference.

15 **CHAIRPERSON URBAN:** Thank you. I have a couple
16 questions. Anybody else? Okay.

17 I realize I do have a question on the process after
18 all. So the public hearings -- or hearing or hearings --
19 do they need to occur during the forty-five day comment
20 period, or can they occur after?

21 **BOARD MEMBER DE LA TORRE:** Let me ask our general
22 counsel to answer that question.

23 **MR. SOUBLET:** No, they -- they can occur after the
24 forty-five day comment period. A lot of agencies
25 typically hold it on the forty-fifth day.

1 **CHAIRPERSON URBAN:** Okay.

2 **MR. SOUBLET:** But I've also participated in holding
3 a public hearing after the forty-fifth day. If you hold
4 it after the -- and remember, the forty-five days is a
5 minimum comment period.

6 **CHAIRPERSON URBAN:** Um-hum.

7 **MR. SOUBLET:** So if you do hold it after the forty-
8 five days, of course you'll open for comments coming in
9 up until the close of your -- of your hearing.

10 **CHAIRPERSON URBAN:** Oh, okay. Thank you. And then
11 I also had a question about the detail under the -- under
12 the chart -- which is really helpful, thank you, and I
13 don't know where you found that graphic that fills up the
14 half-circle, but it's delightful.

15 **BOARD MEMBER DE LA TORRE:** Do you want to hold on to
16 that question?

17 **CHAIRPERSON URBAN:** Oh, okay.

18 **BOARD MEMBER DE LA TORRE:** Because I want to go
19 through each one and then just gather the feedback so
20 that we have clarity.

21 **CHAIRPERSON URBAN:** Okay. Thank you. I think I
22 might have been misunderstanding something to do with the
23 hearings combined with this, so I think that this --
24 hearing you walk through it will help. Any other
25 comments or questions before?

1 **BOARD MEMBER DE LA TORRE:** In terms of the -- those
2 options -- board meetings or Agency-driven -- for the
3 public hearings, Member Thompson and I have a little bit
4 of a difference of opinion. We both see the advantages
5 and disadvantages of both options. I tend to think about
6 the Agency-driven option as more flexible, specifically
7 for the Agency, while allowing our participation. But in
8 some conversations that we have had -- and really, I
9 don't want to put words in your mouth, but you have
10 expressed the importance of our presence and support and
11 showing the public that we are listening, which might be
12 better displayed if we hold them as Agency meetings. So
13 it was really important for us to have that conversation
14 of support and see where everybody else was in terms
15 of --

16 **CHAIRPERSON URBAN:** Thank you, Ms. De la Torre.
17 Mr. Soltani, did you have a --

18 **MR. SOLTANI:** Yes. If I could just clarify -- and
19 just to -- just to clarify one piece, which is the -- my
20 understanding -- which, please correct me if I'm wrong,
21 counsels -- the two options are to hold them as a board
22 meeting like this one, and under the current rules we
23 would do them in person so those hearings would be also
24 meetings of the Board that would need to have quorum
25 happen in person.

1 Or we could have them as staff-driven as we did with
2 the stakeholder sessions, and board members could not
3 participate. Board members could, I understand,
4 potentially view them in the audience, but we would not
5 have knowledge of that, and we could have less than a
6 quorum. We could have one member of the Board present
7 opening comments, but it would be a staff-driven event
8 and the Board could not participate. Just to clarify
9 those -- those words.

10 And that would be the distinction. If we have more
11 than two members or, say, more than a subcommittee -- a
12 minority of the Board -- in those events, they would need
13 to be board hearings or board meetings. Those hearings
14 would be board meetings. Sorry.

15 **CHAIRPERSON URBAN:** Thank you.

16 **BOARD MEMBER THOMPSON:** And just to clarify, the way
17 we treat -- the way we handle public comment, the Board
18 would not really participate if it was a board meeting.
19 Public comment is generally a one-way delivery. So
20 whether the Board was meeting or the Board was observing,
21 functionally, I think that would be the same.

22 **CHAIRPERSON URBAN:** Okay. Thank you. Are you
23 asking, Ms. De la Torre, for our opinion? Or Mr.
24 Thompson? I think I need to hear the whole picture,
25 actually, if that's all right, before I --

1 **BOARD MEMBER DE LA TORRE:** So do you want to --

2 **CHAIRPERSON URBAN:** For -- for myself, I would like
3 to kind of hear all of it before --

4 **BOARD MEMBER DE LA TORRE:** Okay. Perfect. We just
5 have to remember at the end to just go back to these so
6 that the executive director can have clarity on our
7 preference.

8 So I was talking -- I was describing the APA
9 process. What we see below is, we're proposing in terms
10 of the meetings that we will be having as a board. So
11 there's going to be a first meeting, and this will be the
12 meeting, basically, where the rules are released to the
13 Board and to the public.

14 In terms of that initial meeting, we don't have
15 determination as to the timing of that meeting, because
16 it could be potentially as early as June, but it depends
17 on the path that the regulations take. The executive
18 director provided in his update information about these.
19 There's a distinction between (indiscernible) regulations
20 or whether they are not (indiscernible) regulations. We
21 are still trying to conclude our analysis on that.

22 So the first meeting, we recommend that it should
23 include a delegation of authority that is specific to the
24 rulemaking for the executive director. Our
25 recommendation is that all administrative steps related

1 to rulemaking process be delegated on the executive
2 director to the degree that is allowable under the law.

3 And that will include the scheduling and logistics
4 for meetings to gather comments from the public, as well
5 as approval of Form 399, or the Standardized Regulatory
6 Impact Assessment, whichever document is needed for the
7 rulemaking process.

8 Our recommendation is that in that initial meeting
9 we could have the staff present the rules to the Board,
10 and we can have a conversation about the rules and then
11 take a decision to vote on whether to approve those rules
12 to move forward, meaning they will be approved so that
13 the Agency can file the notice, and we can open the
14 formal period.

15 We have a lot of flexibility in terms of how we
16 organize the -- the -- the board meetings. We were
17 thinking, does it make sense in that particular board
18 meeting to go in depth into maybe discussion, different
19 opinions that -- or questions that board members will
20 have.

21 And our initial recommendation will be to stay away
22 from that to give the Board time to really read through
23 the rules, which we probably will receive just, you know,
24 potentially days before, and schedule a second meeting --
25 that's what you see as the second meeting on -- in this

1 chart -- where after we have the opportunity to go
2 through the rules, maybe have some conversations with it,
3 (indiscernible) to better understand the different
4 documents that will be presented to us, and we are ready
5 to actually have that conversation as a Board, we can
6 engage more in that. Into the discussion -- go ahead.

7 **CHAIRPERSON URBAN:** I apologize. This is where I
8 was a little confused.

9 **BOARD MEMBER DE LA TORRE:** Okay.

10 **CHAIRPERSON URBAN:** So that second meeting is not
11 the same as the public hearing?

12 **BOARD MEMBER DE LA TORRE:** Exactly.

13 **CHAIRPERSON URBAN:** Okay.

14 **BOARD MEMBER DE LA TORRE:** No. It's -- it will just
15 be a board meeting for us as a Board to have a
16 conversation on -- like we just had in the prior agenda
17 meeting, potentially, right? Like, obviously it's
18 something much smaller, but we will be all prepared; we
19 will have an opportunity to read the rules; we will have
20 an opportunity to share with the staff what opinion we
21 might have or what questions we might have.

22 So we're kind of creating two meetings, the initial
23 meeting to receive the rules, start the rulemaking formal
24 process so that the process can advance as quickly as
25 possible, and then a second meeting to have more of a in-

1 depth conversation that will also guide the staff in
2 terms of the positions the different board members might
3 have and different points that might be included in that
4 package.

5 The board members can always choose to present their
6 comments verbally at the meeting, and the staff can
7 advise on how, or we could choose to prepare writings --
8 like policy statements -- that would be each individual
9 member making a determination as to how to best present
10 that information to the other members.

11 The purpose of this second meetings is really to
12 allow board members to have the time to think through the
13 package that is going to be presented. Some of the board
14 members are not going to have any knowledge of any of the
15 rules that are presented. Some will have, like, partial
16 knowledge of part of the rules but not some of the
17 other -- of the other piece, and we thought it was
18 important to allow for that.

19 So let me pause here and gather feedback on the two
20 points that I mentioned -- actually, the one point that I
21 mentioned before, which is the delegation to the
22 executive director. Just in general, do the other board
23 members support this proposal to provide delegation is as
24 broad as possible to the executive director to deal with
25 all of the administrative steps?

1 **CHAIRPERSON URBAN:** Thank you, Ms. De la Torre. I
2 support that.

3 **BOARD MEMBER LE:** I as well.

4 **CHAIRPERSON URBAN:** Mr. Le?

5 **BOARD MEMBER LE:** Yeah. I support that.

6 **CHAIRPERSON URBAN:** Thank you.

7 **BOARD MEMBER SIERRA:** Yeah. I do as well.

8 **CHAIRPERSON URBAN:** Okay.

9 **BOARD MEMBER DE LA TORRE:** So perhaps we can direct,
10 at this point, our general counsel to prepare that
11 delegation so that it is presented to us for approval.

12 **CHAIRPERSON URBAN:** That sounds perfect. Now,
13 should the Rulemaking Process Subcommittee do that, or
14 would you like me to work with Mr. Soublet? I don't
15 mind.

16 **BOARD MEMBER DE LA TORRE:** I -- I -- I don't know
17 exactly. Mr. Soublet, that delegation that we're talking
18 about, does it need any feedback from the Board? I'm
19 letting you know that we want it to be as broad as
20 possible.

21 **MR. SOUBLET:** If you want it to be as broad as
22 possible, you can set the parameters for it
23 (indiscernible).

24 **CHAIRPERSON URBAN:** Okay. Thank you. So I'll just
25 make sure it's in the materials, that we all have it.

1 All right.

2 **BOARD MEMBER DE LA TORRE:** Okay. So do we want
3 to -- do we want to move back to the question on the
4 public comments -- sorry -- on the public hearings -- the
5 nature of the public hearings, or do we want to move
6 forward and talk about the -- the other --

7 **BOARD MEMBER THOMPSON:** I would suggest we go
8 through the whole process --

9 **BOARD MEMBER DE LA TORRE:** Okay.

10 **BOARD MEMBER THOMPSON:** -- and then circle back to
11 the question.

12 **BOARD MEMBER DE LA TORRE:** Okay.

13 **CHAIRPERSON URBAN:** Okay.

14 **BOARD MEMBER DE LA TORRE:** So like I mentioned, the
15 first meeting is the meeting where we will approve the
16 regulations to move forward and start the formal process.
17 The second meeting will allow for our more substance
18 discussions. And then there's going to be additional
19 meetings.

20 And basically, after the closing of any public
21 comment period where we have changes to the rules, those
22 changes will have to be approved before we move forward.
23 So if in between -- and maybe -- I want to look at Mr.
24 Soublet in case I misstate this, but my understanding is
25 that after every public comment period, if there are

1 changes, we will meet again as the Board to discuss those
2 changes and approve the changes so that it can move
3 forward. Is that correct? Am I stating correctly?

4 **MR. SOUBLET:** Other than anything that's not
5 substantive, yeah. Because you're approving what is the
6 substantive change to the text of the regulation. So it
7 would be a Board decision to approve substantive changes
8 to the text of the regulation.

9 **BOARD MEMBER DE LA TORRE:** So we will vote in each
10 one of those meetings. And we cannot anticipate how many
11 there will be. There will be as many as times we have
12 changes to the initial package, basically.

13 **MR. SOUBLET:** Right.

14 **BOARD MEMBER DE LA TORRE:** And then the last meeting
15 here will be the final meeting once the package is ready
16 to be presented for final approval so that it can be --
17 it can go to OAL. That package will include the final
18 statement of reasons, and that will be the vote with more
19 consequence. That's the vote where we actually, as a
20 board, approve the final versions of the rules to move
21 forward.

22 Do we have any questions? I just want to restate
23 that we have four meetings here, but we don't know the
24 actual number of meetings, because the third one could
25 be -- likely will be multiple times every time we have a

1 change.

2 **CHAIRPERSON URBAN:** Understood. Questions and
3 comments?

4 **BOARD MEMBER SIERRA:** I just have (indiscernible)
5 clarifying questions. So as I understand it -- oh, thank
6 you very much for putting this together. It's really
7 helpful. I just want to make sure I'm understanding. So
8 after the first meeting, the -- what we would anticipate
9 is we will then make a decision to have the -- the
10 proposed regulations published for the public to begin
11 the commentary.

12 **BOARD MEMBER DE LA TORRE:** Um-hum.

13 **BOARD MEMBER SIERRA:** So that's just after the --
14 this first column here --

15 **BOARD MEMBER DE LA TORRE:** Yeah.

16 **BOARD MEMBER SIERRA:** -- correct? And then
17 thereafter during public comment periods when we may be
18 meeting during it, or right after --

19 **BOARD MEMBER DE LA TORRE:** Right.

20 **BOARD MEMBER SIERRA:** -- depending how --

21 **BOARD MEMBER DE LA TORRE:** Right.

22 **BOARD MEMBER SIERRA:** -- we're feeling about that
23 after the first meeting. Okay. That, I think, is -- I
24 think it makes a lot of sense to me, and I -- as I -- you
25 noted, like our final votes are going to be, obviously,

1 ones of most consequence. And we still have a lot to
2 consider during this period of public comment. I'm
3 not -- are we talking about the types of meetings --
4 whether they should be board meetings or --

5 **BOARD MEMBER DE LA TORRE:** Do we want to go back to
6 the question?

7 **BOARD MEMBER SIERRA:** -- or staff meetings, or would
8 you prefer to table that topic until comments?

9 **CHAIRPERSON URBAN:** I don't mind. Why don't we stay
10 with this --

11 **BOARD MEMBER SIERRA:** Stay with this. Okay. Okay.

12 **CHAIRPERSON URBAN:** -- for the moment. I keep --
13 Mr. Le, I'm so sorry. I keep -- I can't see you, so --

14 **BOARD MEMBER LE:** It's okay. I'll lean forward or
15 something.

16 **BOARD MEMBER SIERRA:** (Indiscernible).

17 **CHAIRPERSON URBAN:** It's not your fault. It's --
18 it's -- we're in a straight line --

19 **BOARD MEMBER LE:** Yeah.

20 **CHAIRPERSON URBAN:** -- and I don't want to miss
21 anything that anyone has to say.

22 So the reason I was asking about the public hearings
23 versus a board meeting to discuss is because I was trying
24 to get straight in my mind the entire proposed process,
25 including the public and everything to go with it. I

1 really appreciate the thought that has gone into this,
2 and I really appreciate the thought -- and I think, the
3 reality -- the sort of recognition of the reality that
4 board members will have -- I think it will be more than
5 just a couple of days, but fully time to really digest
6 the rule package. As you said, none of us have more than
7 partial information, because Bagley-Keene does not allow
8 it, and we will have to digest it.

9 I also heard what you were saying about maybe not
10 having a really in-depth conversation. You know, having
11 been more familiar with the rules, we hear from staff and
12 then discuss whether to put it into the formal
13 rulemaking, which is just the beginning. Then we hear
14 from the public.

15 I'm a little puzzled about a board meeting to have a
16 more in-depth discussion during the forty-five day public
17 comment period, because if I think as, like, a
18 stakeholder, or as the advocate that I have been in the
19 past, I'm not sure I would think I had all information in
20 order to comment until I listened to the Board discuss
21 the material. And if we were to meet twenty days in,
22 then I only have, you know, twenty-five days left -- if
23 we were doing a forty-five day public comment period --
24 in order to use all that information for my comments, if
25 that makes sense.

1 Maybe I'm being a very linear thinker here, but I
2 would like to have as much information as possible -- all
3 the information if I could -- from the public, and thus,
4 I would like to have the public have a chance to provide
5 comments before discussing in more detail.

6 And secondly, as someone who has been a stakeholder
7 in the past and an advocate in the past, I wasn't sure
8 how I would manage a situation where the Board who will
9 be making the decision has an in-depth discussion during
10 the public comment period. Because I think that I might
11 want to listen to that discussion before completing my
12 written comments in order to have what I would see as
13 full information. And I would like to be sure that we
14 don't create any kind of tension like that for the
15 public. So I just am unsure about that, but I really do
16 understand and respect and am grateful for the Rulemaking
17 Process Subcommittee's attempt to give the Board time to
18 digest and time to discuss in detail before the time for
19 the final decision.

20 But I would probably suggest -- first of all, I
21 would say I really do support their proposal for how we
22 might conduct ourselves with the first meeting, which is
23 to discuss -- well, this is my amendment -- would be to
24 discuss any kind of major items that someone noticed, but
25 not to have a hugely in-depth discussion before deciding

1 to put the draft rules out for public comment. That
2 would then give us the benefit of all the public
3 comments, and then maybe we could have a board meeting
4 after that in order to have a more detailed discussion,
5 which we'll be having anyway as we will be considering
6 responses to the comments by staff.

7 At the same time, I do understand the impetus behind
8 the sort of twenty-day or forty-five-day meeting, but I
9 just -- I'm just not sure about that one component of it.
10 Are there other comments?

11 **BOARD MEMBER DE LA TORRE:** I really appreciate the
12 thoughtful considerations from the Chair. And I'm going
13 to briefly say two things, and then I'm going to ask our
14 general counsel to give more in-depth information as to
15 how we arrived to this recommendation.

16 The two things that I wanted to mention is in terms
17 of the Board having an opportunity to have a conversation
18 having the benefit of having access to all of the
19 comments that are going to be received, the third meeting
20 will enable that, because that meeting is going to happen
21 after the public comment ends and after the public
22 hearings. My understanding is that the second meeting
23 there is flexibility in terms of whether we want to hold
24 it during the forty-five period or after, but let me ask
25 our acting general counsel to give more feedback --

1 **MR. SOUBLET:** Actually, I don't know if I can,
2 because that's not necessarily an APA question. That's
3 your Board procedural question, so there's not much more
4 advice I can give you on that because it's not really an
5 APA requirement.

6 **BOARD MEMBER THOMPSON:** Let me add something here,
7 if I might, which is -- I want to restate what -- what
8 the Chair said to make sure I understand. There's a --
9 what we have proposed is the initial meeting where we
10 would, as a Board, consider and act upon the Notice of
11 Proposed Rulemaking, thus initiating the forty-five day
12 public comment period. What we're proposing is during
13 that -- that forty-five days, having a meeting because we
14 will have just received -- when we approved the Notice of
15 Proposed Rulemaking, we will have just received the rules
16 pack -- the full rules package. And so nobody on the
17 Board would have seen everything, so give us some time to
18 digest it and then have a subsequent meeting.

19 What I -- what I hear your thoughtful comment is
20 stakeholders might want to know what we're thinking
21 before making their public comments and want their public
22 comments before really opining on what we think. There's
23 a little bit of a circle there.

24 **CHAIRPERSON URBAN:** Um-hum.

25 **BOARD MEMBER THOMPSON:** Because everybody wants

1 fuller information from the other party before they opine
2 in that situation. There is some flexibility on whether
3 or not we do that. What we're trying to balance is
4 the -- our thoughtful deliberation, having an open and
5 transparent process, but also the efficiency of the
6 process so that we're -- we have multiple opportunities
7 as the Board to review the rules and propose changes.

8 We can -- we can discuss them without really taking
9 an action in that -- in that intervening meeting. Nobody
10 has to file their public comments prior to hearing from
11 us. Does that -- I don't know if that -- any of that
12 resolves your concern.

13 **CHAIRPERSON URBAN:** Thank you. It absolutely helps.
14 And I do -- as I said, I really understand the impetus
15 behind --

16 **BOARD MEMBER THOMPSON:** Um-hum.

17 **CHAIRPERSON URBAN:** -- behind this, both to be sure
18 that the Board feels comfortable having digested all of
19 the information and has a chance to have a full
20 discussion with that in place. I do like -- I do -- for
21 my own part, I think I would like the public comments,
22 but I understand, you know, that we could go either way
23 on that.

24 My concern with having a board discussion in the
25 midst of the forty-five day public comment period -- not

1 after; if we had the same discussion after I wouldn't
2 have the same concern -- is that in practical terms, it
3 would reduce the amount of time the public has to
4 comment. Because they would understandably want to wait
5 for us to have a discussion before they finalize their
6 comments.

7 **BOARD MEMBER THOMPSON:** Um-hum.

8 **CHAIRPERSON URBAN:** That was my -- that was how I
9 was having -- I was just having a little bit of trouble
10 putting those things together.

11 **BOARD MEMBER THOMPSON:** Right.

12 **CHAIRPERSON URBAN:** If I were someone, I would
13 probably want to listen to us talk, even though we aren't
14 making any decisions. And I could be wrong about that.
15 I could be wrong about that, but that was my, kind of,
16 concern about it.

17 **BOARD MEMBER THOMPSON:** Yeah. What we were trying
18 to do is balance the open meeting requirements -- and
19 obviously we can't discuss among the five of us the
20 contents of these packages except in that kind -- in that
21 kind of format. So that was the attempt at balance, but
22 there are, as you know, trade-offs there.

23 **BOARD MEMBER LE:** I have some thoughts.

24 **CHAIRPERSON URBAN:** Mr. Le?

25 **BOARD MEMBER LE:** Yeah. It seems to me -- is there

1 a way to just extend that -- maybe instead of doing it
2 twenty days in, we do it ten days in, and then we add ten
3 days to the comment period? You know, when the CPAC does
4 it, right, they'll have, you know, a scoping memo, and
5 then they'll have some rules, and then they'll have
6 multiple comment periods. And that way the commission
7 could always just say, well, we would love comments on --
8 you know, they'll get a first take, and then they are
9 like, we would love comments on these particular
10 subjects.

11 So I do think -- I do like the idea of having an
12 early meeting to kind of maybe direct, kind of, where
13 some of our questions are, so that members of the public
14 can wait for us. And it's like, well, we have questions
15 around how you would implement this or that; it would be
16 great to get comments on this. And that all presupposes,
17 kind of, can we add some time to this process for the
18 public to process that and have more time to comment.

19 **CHAIRPERSON URBAN:** Thank you, Mr. Le. And that
20 speaks -- or I think -- supports Mr. Thompson's
21 observation that the public would like to hear what we
22 are thinking, and we want to hear what the public is
23 thinking. And I had not thought about the fact that --
24 and I believe we were just told this -- that our comment
25 period doesn't have to be exactly forty-five -- it has to

1 be at least forty-five days. So we certainly could have
2 a meeting and give people forty-five days after that.

3 **BOARD MEMBER THOMPSON:** That's correct, barring any
4 correction from Mr. Soublet. We also will have multiple
5 meetings and multiple sets of public comment to the point
6 the Mr. Le was making.

7 We'll have the initial forty-five days. We will
8 receive public comment. Presuming there are
9 modifications to the rules that flow from that process,
10 we will then have an additional set of public comments.
11 So there will be multiple public opportunities to opine,
12 as well as multiple Board opportunities.

13 **CHAIRPERSON URBAN:** Right. I understand.

14 **BOARD MEMBER THOMPSON:** As proposed.

15 **BOARD MEMBER DE LA TORRE:** I just wanted to take a
16 moment to I think summarize where we are in the
17 conversation, just to make sure that I accurately
18 understand. It seems like there is general support for
19 the idea of having this second meeting; the question is
20 when --

21 **BOARD MEMBER THOMPSON:** Um-hum.

22 **CHAIRPERSON URBAN:** Yeah.

23 **BOARD MEMBER DE LA TORRE:** -- and how it interacts
24 with the public -- okay. I just wanted to make sure that
25 I summarized that.

1 **CHAIRPERSON URBAN:** Sorry --

2 **BOARD MEMBER THOMPSON:** And it sounds like there's a
3 consensus forming around doing a second meeting earlier,
4 say ten days after the Notice of Proposed Rulemaking, and
5 then extend the public comment -- that's what we were
6 discussing --

7 **CHAIRPERSON URBAN:** Make up for --

8 **BOARD MEMBER THOMPSON:** -- right?

9 **CHAIRPERSON URBAN:** Make sure there's forty-five
10 days --

11 **BOARD MEMBER THOMPSON:** Make it forty-five days
12 after the ten.

13 **BOARD MEMBER SIERRA:** Yeah. (Indiscernible).

14 **BOARD MEMBER DE LA TORRE:** I want -- I want to make
15 sure that we take in the input of the executive director.

16 **CHAIRPERSON URBAN:** Yep.

17 **BOARD MEMBER DE LA TORRE:** We support the idea of
18 providing that broad delegation, including delegation of
19 when to schedule. I hear and I think the comments that
20 we are receiving are valuable, but I -- I'm concerned
21 that we might be missing other points that have to be
22 also part of the equation. And maybe, you know, giving
23 that flexibility to the executive director to make that
24 determination as opposed to be very prescriptive in this
25 meeting as to when exactly the -- the board meeting has

1 to take place could be -- could be an option.

2 **CHAIRPERSON URBAN:** I certainly agree with that.

3 **BOARD MEMBER SIERRA:** Yeah. That makes a lot of
4 sense.

5 **MR. SOLTANI:** Thank you for that, and if I may -- is
6 it okay to --

7 **CHAIRPERSON URBAN:** Yes, please.

8 **MR. SOLTANI:** So I do want to be mindful of both
9 the -- effectively -- the ability to schedule a venue for
10 the hearings that the public has access to, and then be
11 mindful of the Board's time and availability in those
12 subsequent meetings, both if we do one, you know, for the
13 NOPA ten-day -- you know, ten days after the NOPA, Notice
14 of Proposed Rulemaking, is announced -- we just want to
15 make sure the Board has availability then to meet in
16 person under Bagley-Keene.

17 And then we also want to -- we will have to be
18 mindful that we have to decide by the time the NOPA goes
19 out the planned dates for the hearing -- dates and
20 locations for those hearings as well. So when we put out
21 the NOPA, we'll have already pre-determined when those
22 hearings will be and where, so just want to be mindful of
23 the moving parts.

24 So I don't have a preference; I think both -- both
25 models are -- go ahead.

1 **BOARD MEMBER THOMPSON:** Point of clarification, when
2 you say public hearings, you're talking about the
3 proposed meetings to take public comment, which could be
4 board hearings or staff-driven?

5 **MR. SOLTANI:** Correct.

6 **BOARD MEMBER THOMPSON:** Okay.

7 **MR. SOLTANI:** Exactly right. And I think the -- the
8 term in the APA is public hearings, right?

9 **MR. SOUBLET:** Right. Right.

10 **BOARD MEMBER THOMPSON:** Got it.

11 **MR. SOUBLET:** So the Notice of Proposed Actions will
12 say the date and the location -- I'm sorry. The notice
13 of the proposed action will give the date and the
14 location of the public hearing.

15 **BOARD MEMBER THOMPSON:** Okay.

16 **BOARD MEMBER DE LA TORRE:** I'm going to propose
17 something that might, kind of, help us satisfy all of the
18 room's considerations and just see how the Board feels
19 about it. Maybe what we could do today is exactly what
20 Ms. Urban and just -- that is raise to the attention of
21 the executive director the considerations that we want
22 him to have him in mind when he schedules without really
23 giving him a window that is so precise that then it
24 might -- it might not be logistically something that we
25 can -- that we can achieve, so that, you know, we can

1 help him understand the concerns and that the same time
2 giving him the flexibility to best address all of them.

3 **CHAIRPERSON URBAN:** Thank you. Yeah. So I'm going
4 to ask folks not to nod. I realize we nod a lot, and it
5 doesn't get captured by the audio. So if it sounds good
6 to you, please say so.

7 **BOARD MEMBER LE:** Yes. That sounds good to me.

8 **BOARD MEMBER SIERRA:** Yes. I agree. I think that's
9 a really great approach.

10 **CHAIRPERSON URBAN:** Yes. I also agree.

11 **BOARD MEMBER DE LA TORRE:** So let me go back to our
12 executive director and as -- Mr. Soltani, did we -- did
13 the discussion of the Board clearly reflect the different
14 viewpoints, or do you need clarity in order to make that
15 determination?

16 **MR. SOLTANI:** Let me try to reiterate and then make
17 sure I captured it correctly. So with the exception of
18 the decision of whether the hearing should be board
19 meetings or staff-driven events that are then
20 memorialized for the Board, the preference of the Board
21 is to have some time or window by which they can
22 effectively digest the full package of the rules and then
23 essentially deliberate on the rules. And that may be
24 before or after the public comment or the hearing --
25 sorry -- the public window -- public comment window

1 closes at the forty-five day after the NOPA.

2 Or let's say for the sake of argument we do the
3 hearing very close after that forty-five day. The Board
4 could meet before or after, but the preference seems to
5 be to meet -- to try to meet before the forty-five day
6 just to give an additional opportunity to deliberate. Do
7 I have that correctly?

8 **BOARD MEMBER THOMPSON:** I would add one other thing
9 that I heard, which was that the public have as close to
10 forty-five days after that second meeting --

11 **MR. SOLTANI:** Um-hum.

12 **BOARD MEMBER THOMPSON:** -- to -- that the public
13 comment period as close to forty-five days after -- so if
14 the meeting was ten days after the Notice of Proposed
15 Rulemaking, then it would be a fifty-five day period, or
16 as close to that as possible. That's what I was hearing,
17 was the desire to --

18 **CHAIRPERSON URBAN:** Right.

19 **BOARD MEMBER LE:** Yes.

20 **BOARD MEMBER THOMPSON:** Yep.

21 **CHAIRPERSON URBAN:** Yes. Thank you, Mr. Thompson.

22 **MR. SOLTANI:** Understood. So the goal of making
23 sure the public has a full forty-five days to provide
24 comment, as well as some time before the public comment
25 window closes, the Board would like to deliberate and

1 discuss the rules. So effectively, we're -- in essence,
2 while we might start our public, you know, rulemaking
3 window -- official rulemaking process window on the
4 NOPA -- day of the NORM, we effectively are going to put
5 time in after that process has started to essentially
6 allow the Board to deliberate on the rules.

7 **BOARD MEMBER DE LA TORRE:** I -- I just want to make
8 a comment that I wouldn't tie the executive director to
9 say forty-five days.

10 **BOARD MEMBER LE:** Right.

11 **BOARD MEMBER DE LA TORRE:** Let's just say something
12 that is reasonable --

13 **MR. SOLTANI:** Understood.

14 **BOARD MEMBER DE LA TORRE:** -- to provide the
15 comments. We know the comments are typically received
16 towards the end of the period. So you know, there's
17 other considerations. There's a need to finalize the
18 rules so that we can give clarity to the public. So
19 let's not say, you know, forty-five days, but just --

20 **BOARD MEMBER LE:** As close as.

21 **BOARD MEMBER SIERRA:** Yeah.

22 **BOARD MEMBER DE LA TORRE:** -- as much as possible --

23 **BOARD MEMBER SIERRA:** Yeah.

24 **BOARD MEMBER DE LA TORRE:** -- a reasonable time
25 for -- for the public to comment. Would that be okay

1 with the Board?

2 **CHAIRPERSON URBAN:** Yes.

3 **MR. SOLTANI:** Yeah.

4 **BOARD MEMBER DE LA TORRE:** And I'll just
5 (indiscernible) two other things that -- while that's --
6 I just want to echo one thing Board Member Thompson
7 mentioned, which is that there will -- my expectation is
8 there will be multiple opportunities post the forty-five
9 day period, and you know, my expectation is at least one
10 fifteen-day. But it will depend on, effectively, if
11 comments were received. So there will -- there will be
12 ample time.

13 Any additional time we add up front is effectively
14 pushing back the calendar fully, and then I'll just flag
15 that it will -- you know, I'm happy to take this under
16 advisement with the consideration that the Board make
17 themselves available at those times, which we -- I don't
18 think -- yet have the ability to have quorum during the
19 windows as I'm anticipating one potential timeline.

20 So as it stands now, under one proposed timeline
21 that -- depending on what the Board's decisions are -- I
22 don't think we have an opportunity to meet in that first,
23 you know, ten days or so. We don't have a majority of
24 the Board available. So (indiscernible) we're at.

25 **BOARD MEMBER LE:** Would it -- could we still meet,

1 though? Would it -- assuming, you know, we don't have a
2 full quorum. I mean, I don't know if the rest of the
3 Board's okay with that. I'm just curious because --

4 **MR. SOLTANI:** Yeah. That's a -- that's a great
5 question for the Board, is whether they want -- that you
6 all want to meet or whether -- you know, or not. I would
7 worry that, you know, it would be a lopsided conversation
8 from the public if the full Board -- particularly since
9 it's the first time discussing --

10 **BOARD MEMBER LE:** Yeah.

11 **MR. SOLTANI:** -- the packages. And to Mr.
12 Thompson's point, there's asymmetries already with who's,
13 you know, who's been able to -- to participate.

14 **BOARD MEMBER DE LA TORRE:** I think that's a very
15 important point. Because we're thinking about the
16 availability to allow time for the public to comment. We
17 know there's those forty-five days. There's going to be
18 public hearings after that, and then other periods where
19 they probably can comment.

20 Let's imagine that there could be a situation where
21 the logistics just make it very difficult for the
22 executive director to bring us together, or to bring the
23 whole Board together. I think for that second meeting,
24 it will be another consideration to try to have the five
25 of us have that conversation, as opposed to a situation

1 where for whatever reason one member cannot participate.

2 That's something that should also be a
3 consideration. To the -- to the extent possible, bring
4 the five of us together.

5 **BOARD MEMBER LE:** Yeah. My --

6 **CHAIRPERSON URBAN:** I really appreciate all of this,
7 and I'd like to hark back to Ms. De la Torre's
8 observation that the detail, if we're comfortable, we can
9 leave to the staff.

10 **BOARD MEMBER DE LA TORRE:** Um-hum.

11 **CHAIRPERSON URBAN:** But Mr. Le, I apologize, I think
12 I started talking, and then I heard --

13 **BOARD MEMBER LE:** Yeah. I just wanted to say, to
14 me, I think the second meeting, the point is to kind of
15 share where we have questions, right? And you know, that
16 for the CPUC it might work, it's like an email ruling
17 saying we would love further comment on this. And that
18 helps direct the public onto where the decision-makers
19 have issues, they're not sure where to go on a certain
20 direction. So my thought, I'm just saying, like, maybe
21 we don't need everyone is like I would -- if I couldn't
22 make it, I would submit my questions.

23 But I actually would prefer just to give Mr. Soltani
24 and staff the leeway to do whatever they think is best.
25 You know, we have, like, our ideal preference, but we

1 have realities of time and scheduling. So if that
2 doesn't work out, we will have that forty-five day -- we
3 will have at least one fifteen days. So you know, we'll
4 make do regardless.

5 **BOARD MEMBER THOMPSON:** There's a balance to be
6 struck, and I think we've given you a sense of where our
7 priorities lie.

8 **MR. SOLTANI:** Yep. And if I may respond, I
9 appreciate -- I really appreciate that in my -- and I
10 also appreciate not only are there informational
11 asymmetries between board members, but also between the
12 Board and myself since I have a better sense of folks'
13 calendars and availability.

14 My sense is, you know, if it were, you know -- if I
15 were to make the decision today, if I -- and based on
16 what I understand of the state of the package and where
17 we're at -- as I said, the package -- the bulk of the
18 rulemaking text is complete on staff's end. At least for
19 the -- in draft form. And there is some externalities
20 with regards to the fiscal analysis and some other
21 elements that we don't have control over.

22 But assuming that we are, you know, ready -- based
23 on the Board's feedback -- to put out our comments in,
24 you know, in a reasonable -- sorry -- put out our draft
25 rules in a reasonable amount of time, I don't currently

1 see that window based on the initial timeline that I'm
2 seeing for that -- for these -- for these needs.

3 So if -- if it were -- you know, if the decision
4 were made today and we're currently on the path that I
5 anticipate we're on, I wouldn't be able to accommodate
6 that ten-day -- only for the fact that I know certain
7 board members, or a majority of the Board, aren't
8 available. So then we would have to consider a sub --
9 sub-portion of the Board.

10 I will flag that as I understand it -- and please
11 correct me if I'm wrong -- but staff can provide
12 individual board members kind of support and
13 understanding the rules. And we will be providing the
14 initial statement of reasons, which will provide the
15 primary justification for why all the decisions are made
16 or what the -- how the rules were crafted. So the Board
17 will have those materials.

18 And then my expectation is after the forty-five
19 day -- and we'll probably -- I would plan to hold the
20 hearings, the APA stakeholder hearings, shortly after
21 that forty-five day window. I would plan at that point,
22 once -- I think that would be a -- particularly a good
23 point to plan to have multiple meetings.

24 Because there's essentially two points that -- of --
25 inflection there. One is that immediately after the

1 hearings, depending on whether they're board meetings or
2 staff-driven, there's -- we're still in the same state
3 with our understanding of the rules. And then sometime
4 after the hearings and the public comment window is
5 closed, we will then have assimilated all of the comments
6 that come in, as well as the comments in the hearing, in
7 a form that's more digestible, which is like, here's the
8 bulk of comments. And we have to do that as part of the
9 rulemaking process anyway. And so essentially,
10 immediately after those hearings and the public comment
11 period closes, I think that's also a good opportunity to
12 have these discussions.

13 And then I would also recommend shortly after -- say
14 give us two weeks to process all the comments, present
15 them -- maybe that's aggressive -- but you know,
16 essentially digest the hearings, and provide memos to the
17 Board of that the summarizations of those hearings are.
18 That's another point of inflection.

19 So I think if it were up to me, based on my current
20 understanding of timeline, that's probably what I would
21 propose. And then again, as I said, there's other
22 externalities with regards to economic analysis that
23 might alter that timeline, at which point we would have,
24 you know, a greater amount of flexibility in terms of
25 when to schedule those hearings.

1 **CHAIRPERSON URBAN:** Thank you, Mr. Soltani.

2 **BOARD MEMBER DE LA TORRE:** Thank you so much.

3 **CHAIRPERSON URBAN:** Ms. De la Torre?

4 **BOARD MEMBER DE LA TORRE:** I was just going to
5 summarize what I think is my understanding of this
6 conversation --

7 **CHAIRPERSON URBAN:** Yeah.

8 **BOARD MEMBER DE LA TORRE:** -- and then maybe we can
9 move into the conversation about the nature of the public
10 hearing.

11 My understanding from this conversation is that we
12 all support giving the executive direction -- executive
13 direction -- director a delegation on scheduling that
14 will enable him to consider all of those things. He just
15 gave us, you know, five minutes of a lot of details that
16 maybe we don't completely generally understand with
17 the -- with the understanding that the preference of the
18 Board will be for this second meeting to be scheduled so
19 as to allow time after the meeting for those who want to
20 comment to have the ability to receive and hear our
21 conversation and present their comments. That was one
22 consideration for the executive director.

23 And then the other consideration that was mentioned
24 that Mr. Le brought forward is the idea that to the
25 extent possible, for that second meeting, it would be

1 preferable for it to be scheduled so that the five of us
2 can be part of the conversation. Is that a good summary
3 of where we are?

4 **BOARD MEMBER LE:** Yes.

5 **CHAIRPERSON URBAN:** Yeah.

6 **BOARD MEMBER SIERRA:** Seems to me, yes.

7 **CHAIRPERSON URBAN:** Yes. And I will just -- this is
8 just a very small legalistic note, which is that we're
9 not delegating; the executive director is delegated
10 already the authority to do day-to-day administrative
11 things. We're giving him our sense, but we're asking
12 that staff be the ones to figure out how this will all be
13 scheduled and implemented; is that correct?

14 **BOARD MEMBER DE LA TORRE:** I think Mr. Soublet might
15 correct me, but the specific delegation for rulemaking
16 that is typically --

17 **CHAIRPERSON URBAN:** Oh. You mean the first --

18 **BOARD MEMBER DE LA TORRE:** That's the one that I'm
19 referring to.

20 **CHAIRPERSON URBAN:** Oh. I apologize, Ms. De la
21 Torre.

22 **BOARD MEMBER DE LA TORRE:** Yeah. So that's --

23 **CHAIRPERSON URBAN:** Yes.

24 **BOARD MEMBER DE LA TORRE:** You're completely right,
25 but there's a need for a --

1 **CHAIRPERSON URBAN:** Yes.

2 **BOARD MEMBER DE LA TORRE:** -- kind of rulemaking a
3 specific delegation that includes this (indiscernible).

4 **CHAIRPERSON URBAN:** Yes. Absolutely. My -- I
5 apologize. I misunderstood what you were referring to.
6 And we did have a sense in the Board that everyone --

7 **BOARD MEMBER DE LA TORRE:** Right.

8 **CHAIRPERSON URBAN:** -- did agree that the delegation
9 of authority for rulemaking be constructed, so as the
10 executive director is able to do all of the
11 administrative work related to it. Thank you.

12 **BOARD MEMBER DE LA TORRE:** Thank you so much. So if
13 we're -- does the executive director have -- yeah.

14 So let's move on to determination on the public
15 hearings. And I want to -- just to refresh the
16 recollection of the Board -- mention that there's two
17 options. One option is to host those public hearings as
18 board meetings. The second option is to host them as
19 Agency-driven meetings.

20 And there's one option that is kind of a mix that
21 will enable some participation of the Board, while giving
22 the logistic flexibility of an Agency-driven hearing, and
23 that would be to host it as an Agency-driven hearing, but
24 with some form of participation of the Board similar to
25 what we had for the stakeholder sessions that were held

1 in the past.

2 So on that point, what is the feedback from the
3 Board? What would be the preference?

4 **BOARD MEMBER SIERRA:** I -- I'm not -- I mean, I --
5 in balance, given, you know, the pros and cons of each,
6 and I think given the difficulty, you know, in just
7 ensuring that we can all be there if there's a board
8 meeting, I would favor at this time the Agency-driven
9 meetings, as long as we can either be able to observe
10 while they're happening or be able to then do -- see a
11 follow-up video of them. Because I think, you know,
12 they're going to be critical to our decision-making, but
13 I just -- I'm worried if we have them as board meetings,
14 it could hold them up.

15 **BOARD MEMBER DE LA TORRE:** And my understanding is
16 that those two things will be possible, Mr. Soublet,
17 right? Like they --

18 **BOARD MEMBER SIERRA:** Yeah.

19 **MR. SOLTANI:** They would -- if we did them as staff-
20 driven, we would run them primarily the same way we did
21 the stakeholder sessions, with the exception we would
22 have them in -- it would be more of a hybrid meeting.
23 And we would obviously have sorted out the technical
24 issues by then.

25 So -- you can't see me smiling, but I'm smiling --

1 so that -- but yes. So we would hold them as we did the
2 stakeholder sessions, where they were staff-driven. If
3 we have them as a board meeting, they would be scheduled
4 as this.

5 And then just to reiterate the point, if we held
6 them as a -- as a board meeting, we would have to decide
7 on those dates prior to essentially putting together our
8 package for submission to OAL. So that decision would
9 need to be made relatively soon.

10 **CHAIRPERSON URBAN:** Thank you. Just as a point of
11 clarification -- and if -- if the hearings were staff-
12 driven, we would need to know the location and the date,
13 but we would need more information if it were a board
14 meeting, or it's the same?

15 **MR. SOUBLET:** You said -- you'd have to schedule it
16 as the board meeting and notice it as the board
17 meeting --

18 **CHAIRPERSON URBAN:** Oh, okay. Sure.

19 **MR. SOUBLET:** -- prior to the -- yeah.

20 **CHAIRPERSON URBAN:** As we normally do.

21 **MR. SOUBLET:** Right.

22 **CHAIRPERSON URBAN:** Okay. Thank you.

23 **BOARD MEMBER SIERRA:** And as one last point, as we
24 did the stakeholder meetings, I just thought they were
25 very effective because they allowed folks to

1 participate -- the presenters -- virtually if they would
2 like, and we were able to see them during the
3 presentations if they so chose. And so I thought that
4 just worked very well.

5 **MR. SOLTANI:** That would be the intent.

6 **CHAIRPERSON URBAN:** Thank you, Ms. Sierra. I was
7 going to say I thought I didn't have an opinion on this,
8 but Ms. Sierra has persuaded me that I also think that
9 the staff-driven model, like the stakeholder sessions,
10 would be preferable for the reason she just stated.

11 Now, we cannot see members of the public who are
12 participating by Zoom. We can hear them, and that's
13 good, but I did really like that format where we could
14 watch, and we could see people who wanted to speak if
15 they chose. So I -- that would be my preference at this
16 moment, but I think, again, that staff will have more
17 information about all of the underlying considerations
18 and would support either.

19 **BOARD MEMBER LE:** Yeah. I support either. I think
20 whatever is easier for staff, and it appears to be the
21 staff-driven.

22 **BOARD MEMBER DE LA TORRE:** And I just want to say
23 that, you know, staff is ready to do the logistics for
24 the board meeting if that's our preference, and they have
25 demonstrated that in the past. So it's not the

1 preference of the staff to avoid any logistics.

2 But I do very much agree with Ms. Sierra in terms of
3 the considerations and the advantages and disadvantages.
4 And I also like that hybrid stakeholder session that we
5 had where you have the opportunity to have one board
6 member to provide a message to the public, and we still
7 can receive all of that information.

8 I just want to stay away from being super specific.
9 So if we can enable that, I really think to have the
10 (indiscernible) be great, but if there's any logistics,
11 we'll let the executive director kind of guide us through
12 what can be feasible.

13 **MR. SOLTANI:** Indeed. And -- and I just want to
14 echo what Board Member De la Torre said is we don't -- I
15 don't necessarily have a preference. It's more that I
16 will then need you all to be available for probably two
17 days and tell me that availability quite soon and have
18 some flexibility on the dates that work with our ability
19 to reserve the state building so we can get, you know,
20 auditoriums, those kind of things.

21 So it just adds to the -- it adds logistical
22 overhead, which I'm happy to take on. It would just also
23 just require, kind of, substantive commitment from the
24 Board in terms of dates we're available. I would expect
25 we would do at least two days -- two days and -- for --

1 for those hearings.

2 **CHAIRPERSON URBAN:** Thank you. All right.

3 Ms. De la Torre, and Mr. Thompson, and Mr. Soltani,
4 do you have enough information on what we've discussed so
5 far?

6 **BOARD MEMBER THOMPSON:** Oh. We have, like, three
7 more points.

8 **CHAIRPERSON URBAN:** No, I know. So are we ready to
9 move on?

10 **BOARD MEMBER DE LA TORRE:** I think that we should
11 check with the executive director? Do we have enough
12 information on the public hearings and the format to move
13 forward, or is there any --

14 **MR. SOLTANI:** I -- I believe so. I have a good
15 guidance and I will, you know, we will -- based on the
16 remaining discussions, I'll have more clarity on the
17 timeline. And then that will essentially let me have
18 some things fall into place with regards to when we begin
19 publicizing our rules, when we begin -- our draft
20 rules -- when we begin, you know, essentially planning
21 for the meetings, and then the subsequent points that Mr.
22 Thompson is going to discuss.

23 **BOARD MEMBER DE LA TORRE:** So I'm just going to
24 summarize to make sure that we get it on the record. My
25 understanding is that the preference of the Board for the

1 public hearings is to host it in a way that's Agency-
2 driven but flexible, potentially with the participation
3 of a board member of some sort, and similar to what was
4 done for the stakeholder sessions if possible. Is that a
5 good summary of where we are as a Board?

6 **CHAIRPERSON URBAN:** I guess so. We're all nodding
7 for the recording.

8 **BOARD MEMBER SIERRA:** Um-hum.

9 **BOARD MEMBER LE:** Yes.

10 **BOARD MEMBER DE LA TORRE:** Perfect. So that
11 concludes my side of the presentation. If there are
12 questions on this slide, we should discuss them now,
13 because Mr. Thompson is going to present on the rest of
14 the slides if we don't have questions. No, I don't think
15 we have questions.

16 **BOARD MEMBER THOMPSON:** Thank you. I'm going to go
17 a little bit out of order and just in the -- in the
18 interest of, kind of, continuity and time. So I'm going
19 to skip ahead to the slide that is titled Formal
20 Rulemaking Period, which I think is number 4.

21 And a couple of things as we're moving through
22 what -- when we approve the Notice of Proposed Rulemaking
23 and enter the formal rulemaking process, a reminder that
24 all the public comments we receive, written and oral,
25 have to be included in the rulemaking file.

1 One of the things that we discussed is there's
2 likely to be interest by stakeholders in clarifying and
3 expanding upon their comments, and they may seek to meet
4 with us. And so we talked to counsel about what that
5 would look like. It is at the discretion of an
6 individual board member if board members care to meet
7 with stakeholders who want to clarify their comments, but
8 we wanted to also share the guidance, and Mr. Soublet,
9 please jump in and correct me here if I misstate
10 anything.

11 Their guidance as far as best practice would be that
12 we -- if we choose to take meetings with stakeholders
13 regarding their public comments -- that we not take them
14 alone, that a member of the staff be present for the --
15 for the meeting. And we would be required to summarize
16 the content of those meetings and then make them
17 available as part of the public record. As part of our
18 obligation and commitment to a transparent and open
19 process, we can't have meetings that are -- the contents
20 of which are not available to the public.

21 So we wanted to share that. I'll pause there. Mr.
22 Soublet, if I misstated anything there.

23 **MR. SOUBLET:** No. I would just add just notifying
24 whoever that person or entity is that the conversation
25 with them will be part -- will be summarized and will be

1 included as part of the record.

2 **BOARD MEMBER THOMPSON:** Right.

3 **CHAIRPERSON URBAN:** And that is part of the
4 Administrative Procedure Act requirements.

5 **MR. SOUBLET:** Well, yes, because the public is
6 supposed to be able to participate in all of the -- all
7 of the process. And so anything that we have that is
8 consideration of the rulemaking needs to be part of the
9 public file.

10 **CHAIRPERSON URBAN:** Um-hum.

11 **MR. SOUBLET:** So it's a public open process. So we
12 wouldn't want to see it challenged on the basis of
13 someone had meeting that wasn't recorded and put into the
14 record.

15 **CHAIRPERSON URBAN:** So just so that I am sure that I
16 understand, record the meeting, record anything that
17 could be interpreted as a comment, and then that will
18 need to be responded to along with the other comments,
19 and then --

20 **MR. SOUBLET:** It would -- it would have to be
21 treated exactly like that, yes.

22 **CHAIRPERSON URBAN:** Okay. Thank you.

23 **BOARD MEMBER THOMPSON:** I just want to clarify the
24 word record. It could be a written summary.

25 **CHAIRPERSON URBAN:** Oh, apologies.

1 **BOARD MEMBER THOMPSON:** You don't have to -- yeah.

2 **CHAIRPERSON URBAN:** No, I did not mean you needed to
3 like --

4 **BOARD MEMBER THOMPSON:** Yeah. Yeah. Yeah.

5 **CHAIRPERSON URBAN:** -- record the audio of the
6 conversation.

7 **BOARD MEMBER THOMPSON:** Right.

8 **BOARD MEMBER LE:** Just like an ex parte letter,
9 right, essentially?

10 **BOARD MEMBER THOMPSON:** Effectively, yeah.

11 **BOARD MEMBER LE:** Okay.

12 **BOARD MEMBER THOMPSON:** You're referring to the CPUC
13 process?

14 **BOARD MEMBER LE:** Yeah.

15 **BOARD MEMBER THOMPSON:** Yeah. I was with you on
16 that. So I wanted to share that because when we move
17 into these processes, these things may arise and I wanted
18 to have a conversation, some guidance around that.

19 The other thing, as we're talking about how we will
20 deliberate upon the rules -- so we will issue the Notice
21 of Proposed Rulemaking, we'll get comments, we will --
22 the public will make recommendations of changes, and we
23 may well make recommendations of changes. So how we will
24 dispose of those proposed -- how we will propose them and
25 then dispose of them is, I think, important for us to

1 have a conversation around and discuss.

2 There are basically two ways that we centered
3 around. One is that members of the board may offer
4 textual amendments, where we are modifying -- proposing
5 modifying the draft regulations, or conceptual guidance,
6 where we instruct the staff that we would like more of
7 this and less of this, hopefully with a little more
8 specificity than I just gave.

9 There are pros and cons to both approaches. The --
10 a textual amendment has the advantage of being very
11 clear; it's crystal clear what the word changes are. And
12 then when it's disposed of, it's disposed of.

13 The conceptual amendments you could more easily
14 construct on the fly. We could have a discussion, and if
15 we start to center around a concept, we could more easily
16 give guidance to the staff that we would like this policy
17 more significantly reflected in the regulations. The
18 downside there is when they come back with the draft, it
19 may not be what we intended, and then we'll start that
20 cycle again.

21 So we -- as a part of this process, we also
22 consulted with Bob Stern, who is the initial general --
23 the first general counsel and the Fair Political
24 Practices Commission, upon which this body was based upon
25 them. So I wanted to get some guidance on how they did

1 things, and his advice was do both. Don't close -- be
2 flexible. Don't close off any options, which we
3 generally concurred with.

4 My personal view is that I think a textual amendment
5 is a cleaner process, but certainly would not want to
6 foreclose any other processes. So in my opinion, I think
7 we should bias ourselves towards textual amendments where
8 we can, so we can dispose of them and have them done
9 with.

10 But wanted to surface that issue as well before we
11 start getting into deliberating on rules, changes, and
12 get your thoughts and see to the extent that we can put
13 some process around how we're going to consider rules --
14 modifications to the rules packages. The more clarity we
15 have going into it, I think the better our process will
16 be as we're in it.

17 **CHAIRPERSON URBAN:** Thank you, Mr. Thompson. Did
18 you want to take feedback now or did you still have more?

19 **BOARD MEMBER THOMPSON:** If folks have feedback -- I
20 know that was --

21 **CHAIRPERSON URBAN:** Okay. Mr. Le or Ms. Sierra?

22 **BOARD MEMBER SIERRA:** I have a question first. So
23 withing Bagley-Keene, for us to be giving feedback like
24 line edits or conceptual, you know, or doing a little bit
25 of both, is the idea that each of us would be able to do

1 that to send to staff? Or -- I just -- I'm trying to
2 visualize this in my head, like how this works in terms
3 of deliberating as a body.

4 **BOARD MEMBER THOMPSON:** In the way I'm conceiving of
5 it, if I had a textual amendment, I would draft it ahead
6 of time, probably with assistance from Mr. Soublet or
7 somebody else on the staff --

8 **BOARD MEMBER SIERRA:** Yeah.

9 **BOARD MEMBER THOMPSON:** -- so that it was in the
10 correct form and did what I intended. I wouldn't think
11 that I -- that I would be writing a textual amendment
12 during a board meeting, but I wouldn't rule that out.
13 Does that answer --

14 **BOARD MEMBER SIERRA:** No, but this is like ahead of
15 time. Right? This is before a board meeting.

16 **BOARD MEMBER THOMPSON:** Right.

17 **BOARD MEMBER SIERRA:** Is it okay for -- I guess, I
18 just wanted to get, like, the ground rules. We can be
19 then communicating -- each of us -- with staff about --
20 I'm thinking about something that's in this area, or I
21 have some conceptual issues with this area. Kind of
22 doing the prep work before the board meeting. So I
23 just -- that's why (indiscernible) --

24 **BOARD MEMBER THOMPSON:** Yeah.

25 **BOARD MEMBER SIERRA:** -- I just wanted to get -- to

1 get --

2 **BOARD MEMBER THOMPSON:** You mean from a APA --

3 **BOARD MEMBER SIERRA:** -- you know, the guard rails
4 on.

5 **BOARD MEMBER THOMPSON:** -- or Bagley-Keene
6 perspective?

7 **BOARD MEMBER SIERRA:** Yeah. From a Bagley-Keene
8 perspective.

9 **BOARD MEMBER THOMPSON:** Yeah. I would --

10 **MR. DALJU:** You're -- from a Bagley-Keene
11 perspective, the safest course would be for each member
12 to send potential drafts or changes to whichever staff is
13 working on the matter, whether it's the general counsel
14 or the executive director.

15 **BOARD MEMBER SIERRA:** Okay.

16 **MR. DALJU:** Back and forth between staff and each
17 member is a little bit more risky, because then the
18 thoughts that a staff member is getting from one member
19 may influence what the staffer is saying to the other
20 member, and then you have --

21 **BOARD MEMBER SIERRA:** Okay.

22 **MR. DALJU:** -- the risk of serial meetings. So the
23 safest course of action would be one-way communication
24 individually from a board member to a staffer. So you
25 know, if one board member has certain amendments they

1 want included, they just send it -- send an email to the
2 staffer, and then at the meeting all that is going to be
3 discussed amongst -- at the notice meeting.

4 **BOARD MEMBER SIERRA:** So --

5 **BOARD MEMBER DE LA TORRE:** I want to make sure that
6 I understand. So just giving an example. So for the
7 example of the edits that I have to suggest to the draft
8 that was presented today, the process will be -- and I
9 didn't have clarity about this when I was editing. It
10 was suggested to me that it would be helpful doing
11 edits -- but so the process would be for me to draft
12 those edits and then send them to Mr. Soublet or whomever
13 the executive director designates so that they have
14 awareness prior to the meeting. Am I understanding that
15 correctly?

16 **MR. DALJU:** Right. And also right now under Bagley-
17 Keene, that information will be public as soon as you
18 sent it to the staffer. So your edits, right, your
19 suggested edits -- if you send suggested edits to the
20 staff member for an upcoming meeting and somebody -- for
21 example, someone submitted a CPRA request -- a public
22 records request -- we would probably have to disclose
23 that information.

24 **CHAIRPERSON URBAN:** Well, and also if it were to be
25 the topic of the meeting, it would be in the meeting

1 materials, correct?

2 **MR. DALJU:** Right.

3 **CHAIRPERSON URBAN:** Right, which is fine. We're
4 adding -- we added it -- we're adding it to the meeting
5 materials today. But in a scenario where someone was
6 sending edits ahead of the meeting, then it would be in
7 the materials for the meeting. And we can all refer to
8 it and the public can refer to it.

9 **BOARD MEMBER DE LA TORRE:** Okay. So then that's how
10 we'll kind of see, okay, three of us had a similar edit.
11 We'll see that as part of our package before the board
12 meeting for us to be able to discuss that. And then I
13 guess -- I suppose staff would be prepared to say, like,
14 you know, maybe some ups -- pros or cons to any
15 particular edit as well.

16 **BOARD MEMBER DE LA TORRE:** Okay. I have one more
17 question. If the edits came from two members -- I'm
18 thinking about a subcommittee situation -- could those
19 two members propose edits together, or is it best if we
20 individually, if we have edits, propose them separately,
21 I guess?

22 **MR. DALJU:** Two members, like a subcommittee, could
23 propose -- or two members could propose -- as long as
24 they don't discuss it --

25 **BOARD MEMBER DE LA TORRE:** With anyone.

1 **MR. DALJU:** -- or share it with a single other
2 member.

3 **BOARD MEMBER DE LA TORRE:** Okay.

4 **MR. DALJU:** As long as it's just those two members
5 sending it to staff to put it on an agenda, for
6 example -- their proposals on the agenda.

7 **BOARD MEMBER DE LA TORRE:** That's helpful because I
8 didn't have clarity. I had a conversation yesterday with
9 Mr. Le about, you know, he's said it on my edit. And I
10 was thinking, well, I'm sure everybody else would love to
11 see them before, but I just didn't send them around
12 because I wasn't clear. So that's -- okay. Thank you.

13 **MR. DALJU:** Again, it's just the rule of two, you
14 know. The best rule is to never --

15 **BOARD MEMBER DE LA TORRE:** (Indiscernible) the rule
16 of --

17 **MR. DALJU:** -- share with more than one other board
18 member.

19 **BOARD MEMBER DE LA TORRE:** Thank you.

20 **CHAIRPERSON URBAN:** Does that help?

21 **BOARD MEMBER SIERRA:** Yeah. Thank you. That's very
22 helpful. And I agree with the sentiment of doing both.
23 Some issues, I think, are just going to lend themselves
24 to more of a conceptual point. You know, line edits are
25 very helpful, but you know, sometimes that just may be

1 not right depending on the issue.

2 **BOARD MEMBER THOMPSON:** Right.

3 **BOARD MEMBER SIERRA:** So I think we could --

4 **BOARD MEMBER THOMPSON:** What I was referring to was
5 slightly different than I think what we heard, which is
6 if you had a concept you wanted reflected, what I was
7 describing was asking for assistance in drafting it --

8 **BOARD MEMBER SIERRA:** Okay. Yeah.

9 **BOARD MEMBER THOMPSON:** So that you could then
10 propose it.

11 **BOARD MEMBER SIERRA:** Yeah.

12 **BOARD MEMBER THOMPSON:** There's another path that we
13 could take, which is that the staff aggregate all of the
14 proposed changes and present them individually as -- I
15 mean, it could mean that it originated from -- this
16 originated from this public comment, this originated from
17 Board Member Sierra, this originated from so-and-so. And
18 just go through them in order.

19 **BOARD MEMBER DE LA TORRE:** Let's pause -- let's
20 pause and give general --

21 **BOARD MEMBER THOMPSON:** Yeah.

22 **MR. DALJU:** So I'm trying to think of how this would
23 work logistically. So if each board member sent their
24 proposed changes to the staff member -- each -- like,
25 let's say each board member sent their proposed changes

1 to the staff member, and then the staff member would put
2 it all together and propose a draft. Is that what you're
3 proposing? And that draft that has --

4 **BOARD MEMBER THOMPSON:** No. That's not --

5 **MR. DALJU:** Okay.

6 **BOARD MEMBER THOMPSON:** I'm not say -- so here's the
7 proposed rules --

8 **MR. DALJU:** Um-hum.

9 **BOARD MEMBER THOMPSON:** -- and then here are
10 proposed changes. On page 2, line 4, strike this, insert
11 this. Not a new set of rules with all the proposed
12 changes already incorporated. Because the Board is the
13 entity ultimately accountable for the rules, right? So
14 this -- in my mind, the staff isn't changing the draft
15 rules without the concurrence of the Board. That was
16 kind of a going-in assumption of mine. I don't know if
17 that's a going-in assumption of you all's.

18 **BOARD MEMBER SIERRA:** Yeah. I was, but I was
19 thinking the staff may have some recommendations.

20 **BOARD MEMBER THOMPSON:** Right.

21 **BOARD MEMBER SIERRA:** Because it may be, like, this
22 is going to impact this other issue, and then, oh, okay,
23 I didn't realize that. Or as a Board, you know, it may
24 help guide this conversation. So it may be a -- it
25 may -- the staff may need more flexibility in how to,

1 kind of, address this, depending on how many line edits,
2 how many things are conflicting or not conflicting. And
3 then maybe a kind of a hybrid of everybody seemed to be
4 concerned about this issue, or had a similar edit, how
5 about this. And I think they may just need flexibility
6 on how to address it. But ultimately I agree, because
7 we're going to be the decision-makers of --

8 **BOARD MEMBER THOMPSON:** Right.

9 **BOARD MEMBER SIERRA:** -- what the rules are.

10 **BOARD MEMBER THOMPSON:** And you can do that in --
11 inn a couple of different ways. I mean, in my mind, you
12 could have some that are noncontroversial or, you know,
13 appear to be widely -- that are thought to be widely
14 supported. And these ones are for consent, and these
15 ones are for more debate and deliberation. This is the
16 kind of discussion I think we need to -- we need to know
17 how we're going to do this --

18 **BOARD MEMBER LE:** Yeah.

19 **BOARD MEMBER THOMPSON:** -- before we walk into it.

20 **CHAIRPERSON URBAN:** Mr. Le?

21 **BOARD MEMBER LE:** Yeah. I think my thoughts are --
22 yeah. In my experience I think I -- in my head -- I was
23 thinking, you know, maybe like -- I was more leaning
24 conceptual to staff. I was like, hey, you know, these
25 comments seem to make more sense. And perhaps some line

1 edits here and there. And then give it to staff, staff
2 aggregates all of the opinions of the Board, and then
3 kind of makes their recommendations. I just assume --
4 just because staff will have more time to work on this.
5 They'll -- they're -- you know -- versus us.

6 So you know, I think with regard to the original
7 question, conceptual versus line edit, that makes sense
8 to me. With regard to how the process will work, I'm
9 still pretty unclear on how we would do that. Because I
10 was thinking I would just email staff saying, like, I
11 like these comments. And yeah.

12 **CHAIRPERSON URBAN:** Thank you, Mr. Le. I really
13 appreciate you bringing the question to us. I also
14 appreciate you checking with experts at our sort of model
15 agency. It's a little hard for me to respond. We are
16 all in the same boat having not seen the whole package of
17 rules --

18 **BOARD MEMBER SIERRA:** Right.

19 **BOARD MEMBER LE:** Um-hum.

20 **CHAIRPERSON URBAN:** -- but I think this combination
21 of conceptual and line edits makes sense. Sometimes one
22 will make sense; sometimes another one will make sense.

23 I also would like to echo what Mr. Le is saying with
24 regards to sort of the practicality of things. And my
25 one -- my only strong opinion is just that we have to

1 comply with Bagley-Keene. And so that -- I would suggest
2 that we give staff -- that's hopefully the benefit of
3 this conversation; I hope it's a benefit -- and that they
4 help us implement generally our consensus, which I think
5 is a mix of conceptual and line edits is probably what's
6 expected. Mr. Le mentioned a preference towards
7 conceptual, and I think it's going to depend.

8 And then in terms of the information streams, that
9 we take their direction. Because what we cannot ever do
10 is cross the information streams between two board
11 members and any other board member. And what I heard
12 counsel saying, please correct me if I'm wrong, is that
13 we could set things up so that we have a risk of staff
14 accidentally connecting them because they're influenced
15 by one board member and then they've heard from two more
16 board members, and that hasn't all been in a public
17 discussion.

18 So as long as it complies with Bagley-Keene and the
19 public has the seat at the table contemplated by the
20 statute, I'm happy with, kind of, any approach.

21 Mr. Soltani?

22 **MR. SOLTANI:** Yep. No, I appreciate this. And I
23 appreciate the Board's responsibility on this, and kind
24 of both models as well as -- so I -- I understand both a
25 model question and a process question in there. I will,

1 you know, like to consult with staff -- rulemaking staff,
2 not counsel here -- to see what could work process-wise.

3 I'll flag -- I would, you know, be hesitant to make
4 a -- not even a determination, but kind of come to a
5 conclusion without everyone first seeing the rulemaking
6 package and the size and scope of the package, just to
7 understand both the level of depth and the size of what
8 might be involved.

9 The other thing I'll just flag -- which Board Member
10 Thompson's comments highlighted for me -- is that -- so
11 we have the rulemaking text -- the draft text -- that's
12 going to be proposed. We have an ISOR that staff put
13 together. Then -- and the Board approves the rulemaking
14 text, and then -- but in the final package, the Board
15 approves the rulemaking -- the final rulemaking text and
16 the final -- the FSOR -- the final statement of reasons.
17 And the final statement of reasons essentially says to
18 comment number one, we responded this way. To comment
19 number two, comment -- you know, whatever -- these --
20 these other sets of comments around this issue, this is
21 how we responded.

22 And those comments can come from both the Board, you
23 know, the guidance of the Board -- we don't have to
24 respond to them in the FSOR in that way. But essentially
25 comments -- the staff is responding both to comments from

1 the Board in kind of a different process, and comments
2 from the public in this final statement of reasons
3 process, essentially, and effectively doing somewhat of
4 the same thing.

5 So we might look at that as another way is if the
6 Board presents their comments in public and the staff say
7 this is -- you know, if we take a process where the Board
8 is sending, either at a conceptual level or line edits,
9 the staff could then -- depends on the process Bagley-
10 Keene question -- the staff could then say -- to your
11 point, Mr. Thompson, you know, people on page 1 wanted to
12 insert this and do that. Some other people wanted to do
13 this other thing. And staff responded to them in this
14 way. Right. We took Mr. Thompson's considerations, and
15 we moved this section, and the Board can effectively have
16 some response about -- and consult with staff if that's
17 their preferred method.

18 But we have a model for this, which is how we
19 respond to public comments. And we might consider what
20 are the advantages of doing that for the input the Board
21 provides.

22 **BOARD MEMBER THOMPSON:** One thought about that is it
23 is the Agency as a whole that is responding. Right?
24 It's --

25 **MR. SOLTANI:** That's right. Right.

1 **BOARD MEMBER THOMPSON:** So public comment comes in,
2 says you should modify your rules to do this. Ultimately
3 the -- and I just want to clarify this -- it's not -- it
4 is ultimately the Board modifying the proposed rules
5 that -- so this comment comes in, the staff says we agree
6 with this comment, the rules should be changed; it
7 requires a Board action to modify and ultimately the FSOR
8 will reflect -- so -- the Agency decided to change it and
9 adopted this change. I just wanted to make sure that
10 we're -- I'm not envisioning a process -- and I don't
11 know if you all are -- where we go from draft to revised.
12 There -- there has to be intervening board action to go
13 from draft to revised.

14 **MR. SOLTANI:** Indeed.

15 **BOARD MEMBER THOMPSON:** There isn't another path
16 there.

17 **MR. SOLTANI:** Indeed. And if I may respond, that's
18 exactly the -- the point, is --

19 **BOARD MEMBER THOMPSON:** Okay.

20 **MR. SOLTANI:** -- you -- we could envision a process
21 where the board members feel like they want to respond to
22 individual comments or highlight individual comments you
23 all want to respond to, where the board members can
24 essentially evaluate staff's response to the individual
25 comments, and whether that's an adequate response,

1 whether that's a lacking response, et cetera.

2 So you could effectively go at each level, is what I
3 was saying. And you know, I think that's a consideration
4 for the time and -- time taking to respond to all the
5 comments. But staff do -- as part of APA rulemaking
6 process -- do need to respectively respond adequately to
7 both what the Board considers adequate as well as to what
8 the Office of Administrative Law consider adequate to
9 public stakeholder comments.

10 **BOARD MEMBER DE LA TORRE:** I just wanted to mention
11 that we had a lot of conversations within our
12 subcommittee as to which way we could do this best, and
13 the thing thing that I took away from the last
14 conversation with the general counsel of the Fair
15 Political Practices is be flexible, don't foreclose any
16 venue, and trust the process.

17 Just like we had a conversation about some edits
18 that I had to propose, if we hear each other, listen to
19 the concerns, and understand where they come from,
20 there's always space to compromise. There might be
21 things, like in this case there was a preference on my
22 side to have information so that I can avoid the
23 appearance of impropriety. Maybe it was not approved at
24 this time, but it -- it's something that in the future I
25 will have more information about, because we are going to

1 have that memo from the DOJ.

2 It could be the same thing with thinking about the
3 rules. Maybe, you know, Ms. Sierra might have a policy
4 preference that cannot be implemented at this time in the
5 rules, but we can all come to the agreement that in
6 future rulemaking, it's something that can be considered.
7 I think that the conversation will guide us, and we
8 should embrace that deliberate process.

9 **CHAIRPERSON URBAN:** Thank you, Ms. De la Torre.

10 Mr. Thompson, did you -- do you -- do you feel -- I
11 mean, I feel as though I understand the basic issues, and
12 as I said, my strong opinion is simply that we comply
13 with Bagley-Keene. And that's not just my opinion.

14 **BOARD MEMBER THOMPSON:** Yes.

15 **CHAIRPERSON URBAN:** We must comply with Bagley-
16 Keene. Did anybody else have anything they wanted to
17 add? Mr. Thompson and Ms. De la Torre, should the
18 approach be that, again, Mr. Soltani, Mr. Soublet have
19 listened to our discussion and they will put in --
20 together a process to help us deliberate that works, or
21 is it --

22 **BOARD MEMBER THOMPSON:** I think that's -- and we can
23 meet, I think, additionally as a subcommittee to -- we --
24 we wanted -- we've been talking about this quite a bit.
25 We wanted to bring you all into the conversation that we

1 were having to get a sense of where the Board
2 collectively was, which I think we've achieved. And we
3 can use that feedback, I think, to further refine the
4 process going into our upcoming board meetings.

5 **CHAIRPERSON URBAN:** Wonderful. Thank you.

6 **BOARD MEMBER DE LA TORRE:** I just want to do the
7 same thing that we did before, which is kind of summarize
8 it to make sure that everybody has clarity.

9 So the general consensus is that we should embrace
10 the flexibility of the idea that we might have policy
11 points, we might have in some cases edits that come from
12 individual board members.

13 That we will all, in case of doubt, check with Mr.
14 Soublet, or just our legal office, to make sure we're all
15 in compliance with Bagley-Keene, if there are any doubts.

16 And -- and then finally that in terms of the
17 different opinions that we might see that we should be
18 open to, you know, having different individual board
19 members have different opinions, and also to the
20 possibility that the Agency might have a recommendation
21 that is different from the individual opinions, and
22 that's a recommendation that will be put forward to us
23 for consideration.

24 We might, you know, accept it. We might have
25 questions. It might be modified based on our feedback.

1 Let's keep all of those options open.

2 Is that a correct summary of the conversation?

3 **BOARD MEMBER LE:** Yes.

4 **CHAIRPERSON URBAN:** All right. I will say for the
5 audio that there are nods all along the table.

6 **BOARD MEMBER DE LA TORRE:** And I just want to check
7 with Mr. Soublet and Mr. Soltani. Do we have enough
8 feedback based on that -- okay. Thank you so much.

9 **CHAIRPERSON URBAN:** Yes. They are also nodding.

10 **MR. SOUBLET:** Yes. Thank you.

11 **MR. SOLTANI:** Yes.

12 **CHAIRPERSON URBAN:** Okay. All right. Mr. Thompson.

13 **BOARD MEMBER THOMPSON:** One last point of discussion
14 was around the role -- the role of the subcommittee after
15 rules are presented to the Board.

16 So as you all know, we formed subcommittees to
17 assist in the development of draft rules packages and
18 provide guidance to the staff. So what happens to
19 those -- what is the role of those -- of those two
20 subcommittees while we're dealing with revisions to the
21 rules?

22 I think we started to illuminate that through the
23 discussion we had around how the staff will process
24 incoming comments and make proposed changes to the Board.
25 But these subcommittees have played an important role in

1 helping to formulate these rules packages.

2 What the discussion we had in the rules -- or the
3 Process Subcommittee is that once the rules packages are
4 moving forward through the Board process, they become a
5 Board product as opposed to a subcommittee product. And
6 then we then become an entity that is reflecting the --
7 the --

8 (Lights turn off)

9 **BOARD MEMBER THOMPSON:** That was interesting.

10 **CHAIRPERSON URBAN:** We aren't moving enough. We
11 have to wave.

12 **BOARD MEMBER THOMPSON:** Where the staff would
13 propose changes either based on incoming from -- incoming
14 comments from the public or incoming comments from other
15 board members, that we would then collectively dispose
16 of.

17 Another -- a different path might be that comments
18 come in and the subcommittee would play a role in
19 considering should that change be made, and work with the
20 staff and present -- we agree with these changes, we
21 don't agree with these changes.

22 So those were a couple of different paths. We
23 tended more towards the former, which is that when the
24 package gets approved to be published as a Notice of
25 Proposed Rulemaking, that the role of the subcommittee in

1 vetting changes would go away, and it would be a
2 collective decision by the entire Board. But open to --
3 open to both of those suggestions.

4 One observation is -- and I've said this before--
5 the subcommittees have an institutional knowledge, but
6 they also present an information asymmetry. If they have
7 a role in processing changes, you continue that
8 information asymmetry going into a meeting that two
9 members of the subcommittee would already have a view and
10 knowledge of the proposed changes, and what proposed
11 changes are going to be recommended versus the other
12 three members of the Board. That information would be
13 somewhat new to them. As opposed to if we're all hearing
14 it at the same time, we're all kind of on the same
15 footing. That's one point.

16 The other is what are we going to do with the
17 subcommittees once this rules package goes final? There
18 are some issues that were in the jurisdiction or scope of
19 the subcommittees that were not disposed of. Should
20 those subcommittees continue to work on those discrete
21 issues? Or should we reconstitute subcommittees, put
22 those issues into a reconstituted subcommittee that may
23 also address additional issues that we would, you know --
24 there are issues that -- to come that we will need to
25 address.

1 Should we keep the discrete subcommittees with their
2 discrete scopes; add new subcommittees with new issues;
3 or dissolve these, reconstitute them, and give them a new
4 scope?

5 **CHAIRPERSON URBAN:** Thank you, Mr. Thompson.

6 **BOARD MEMBER THOMPSON:** Those are the two questions
7 to be resolved.

8 **CHAIRPERSON URBAN:** I am feeling the strong need to
9 stand up and draw a Venn diagram. I'm really going to --
10 I'm going to quell the urge, but it is strong.

11 Mr. Le or Ms. Sierra?

12 **BOARD MEMBER LE:** I think for the packages that are
13 not included, I think that subcommittee should continue
14 to work on that, because of the institutional knowledge.
15 And with regard to the other question of, like, do we
16 dissolve -- if they have done everything, do we dissolve
17 or do we keep it, I just -- I think the pros and cons
18 just kind of cancel each other out for me, so I'm kind of
19 neutral on either direction of that.

20 **CHAIRPERSON URBAN:** Thank you. Yes.

21 **BOARD MEMBER SIERRA:** Yeah. This really is a lot of
22 food for thought. I'm not sure. But I'm thinking of in
23 terms of, like, staff -- to what extent it's helpful --
24 to be able to brainstorm with some members of the Board.
25 Some of the issues that have been discussed at great

1 length -- you know, I'm torn on that.

2 **CHAIRPERSON URBAN:** Thank you.

3 **BOARD MEMBER SIERRA:** And I do, though -- I do
4 think, though, if we continue with the subcommittees, I
5 still think though the ultimate decision will be
6 individual and all collectively as a Board.

7 **CHAIRPERSON URBAN:** Legally, it must be.

8 **BOARD MEMBER SIERRA:** Yeah. I know, but I mean, I
9 think that we could -- you know, I don't think there's
10 a -- I guess too much of a danger that would undermine
11 that. But I -- you know, I just -- I've yet to -- I
12 would like to think about that a little bit. I'm not
13 sure.

14 **CHAIRPERSON URBAN:** Thank you, Ms. Sierra.

15 Well, this is going to be no surprise to anybody at
16 this point that I am going to say Bagley-Keene. So this
17 is why I'm tempted to draw Venn diagrams. Because for me
18 a lot of this is about information sharing and
19 appropriate information siloing --

20 **BOARD MEMBER THOMPSON:** Yeah.

21 **CHAIRPERSON URBAN:** -- until the moment that we
22 discuss and deliberate as a Board in the public eye.

23 And as to the first question, whether we put out the
24 NOPA and then the subcommittees continue up to the end
25 when the rules are adopted, I share, I think, Mr. Le's

1 feeling, that it would make -- no, maybe it was Ms.
2 Sierra's; I apologize --

3 **BOARD MEMBER SIERRA:** (Indiscernible) continues.

4 **CHAIRPERSON URBAN:** -- (indiscernible) a bit long --
5 that the subcommittees remain constituted both for their
6 institutional information and also because that, for me,
7 is a clear communication path that we can be sure doesn't
8 violate Bagley-Keene.

9 And I really appreciate and hear your comment about
10 us having information asymmetries on the Board. I guess
11 I'm not wholly persuaded that having advisory
12 subcommittees of two people who might be able to talk to
13 each other is worse than each of us as an independent one
14 of five people trying to figure things out individually
15 will be more efficient. So I would -- I would -- I would
16 lean towards keeping the subcommittees up until the end.

17 And then afterwards, for me, it really -- terms of
18 Bagley-Keene. Because any time we add a third board
19 member --

20 **BOARD MEMBER THOMPSON:** Right. Um-hum.

21 **CHAIRPERSON URBAN:** -- to a conversation that two
22 board members have had, we have to hold a public meeting.
23 So for anything that, for example, a subcommittee discuss
24 but doesn't put into the package, we have two board
25 members who deliberated on that. And then I'm sure we

1 have lots of things that nobody has deliberated on, and
2 those could be assigned into any configuration of us as a
3 subcommittee of two people.

4 Where that leaves me is I think we would have full
5 information to figure out if we want to have advisory
6 subcommittees after this rulemaking on the potential next
7 rulemaking kind of at that point --

8 **BOARD MEMBER THOMPSON:** That's right.

9 **CHAIRPERSON URBAN:** -- when we know what's in the
10 package and what isn't. So my feeling would be probably
11 keep them for now to help sort of advise -- and if
12 there's any need -- until the end, and then we decide
13 what to do. Probably dissolving the existing ones. But
14 what we can do in new ones will depend on Bagley-Keene.

15 **BOARD MEMBER THOMPSON:** Right. One issue that
16 arises there, if I'm understanding you -- because I
17 thought that was a good -- a good way to separate the
18 issues -- one is a future issue. Whether or not we have
19 subcommittees after this rules packages is finalized is
20 something we can deal with in the future. But I wanted
21 to surface it as something that folks should think about.
22 And you're right, a Bagley-Keene issue could exist that
23 might be most safely addressed by making it two other
24 people -- two --

25 **CHAIRPERSON URBAN:** Right.

1 **BOARD MEMBER THOMPSON:** Right.

2 **CHAIRPERSON URBAN:** Well --

3 **BOARD MEMBER THOMPSON:** You don't want to add a
4 third to that conversation.

5 **CHAIRPERSON URBAN:** Never add a third. Yeah.

6 **BOARD MEMBER THOMPSON:** Right. On the -- how
7 does -- what are the rules of the subcommittees as we
8 consider this rules package -- and we can talk about this
9 with Mr. Soltani and Mr. Soublet as a subcommittee based
10 on the feedback we get here. As comments come in -- and
11 I'm at -- I'm stating this as a statement, but it's meant
12 as a question -- as comments come in as you were
13 conceiving of that, would you think of the subcommittee
14 as having a role in vetting the comments with the staff
15 and vetting potential changes?

16 **CHAIRPERSON URBAN:** Well --

17 **BOARD MEMBER SIERRA:** You mean comments from the
18 public?

19 **BOARD MEMBER THOMPSON:** From the public.

20 **BOARD MEMBER SIERRA:** From the public, yeah,
21 versus -- because we can't be aware of the comments of
22 other board members.

23 **BOARD MEMBER THOMPSON:** Right. That's right.

24 **BOARD MEMBER SIERRA:** That -- we cannot do that.

25 **BOARD MEMBER THOMPSON:** It would be the public --

1 comments from the public. Because when we were thinking
2 through different scenarios -- so if you and I were a
3 subcommittee and a public comment came in, and you and I
4 had different conclusions, then what would we do with
5 that? As opposed to if the staff was processing them all
6 and making recommendations to us collectively, then that
7 problem doesn't exist.

8 One solution is -- could be these five this
9 subcommittee agrees on, and those can be process in one
10 way. These five -- or these four, make it a different
11 number -- the subcommittee doesn't agree on. There's a
12 recommendation from the staff that we go in this
13 direction, but there's not consensus among the
14 subcommittee members. And that would be a fine way to do
15 it also.

16 **CHAIRPERSON URBAN:** Yes. And because subcommittees
17 are solely advisory, a subcommittee just couldn't -- we
18 would have to come to the entire Board--

19 **BOARD MEMBER THOMPSON:** Right.

20 **CHAIRPERSON URBAN:** -- in order for any decisions to
21 be made. So in thinking through how a subcommittee may
22 or may not be useful once we're in the formal public
23 comment period, I think it would probably be sort of an
24 an institutional memory.

25 You know, as comments come in, being able to connect

1 that to the work that the subcommittee had already done,
2 and maybe we would be able as a subcommittee -- if I'm on
3 a subcommittee, or Ms. De la Torre and Mr. Le -- to have
4 a little bit more background that they could prepare and
5 provide to the Board.

6 Now, that would look a little -- I mean, that does
7 look different for the conversation than the five
8 separate people.

9 **BOARD MEMBER THOMPSON:** Right.

10 **CHAIRPERSON URBAN:** So I don't -- I don't guess I
11 really have a strong opinion about that. I do feel like
12 the subcommittees keep it clean for Bagley-Keene.

13 **BOARD MEMBER DE LA TORRE:** I want to --

14 **BOARD MEMBER THOMPSON:** I like that.

15 **BOARD MEMBER SIERRA:** I want to keep t-shirts.

16 **BOARD MEMBER LE:** Yeah.

17 **BOARD MEMBER DE LA TORRE:** Take a moment to pause
18 and try to summarize where we are. I think we're
19 continuing the conversation. But what I think I'm
20 hearing is that there's support for not dissolving the
21 subcommittees. Whether they stay more in a dormant state
22 or whether they stay in the same activity state that they
23 have been, that's something that we're still having a
24 conversation about. But there's support for not
25 dissolving the subcommittees until the end of the

1 process, so that they're available.

2 I wanted to also take a little bit of feedback from
3 Mr. Soltani and the staff because my impression is that
4 as comments are received, there might be decisions that
5 can be made by the staff without the need to consult with
6 subcommittees. There might be things that they already
7 have enough information from the subcommittee.

8 So if we could have a little bit of the thoughts
9 that Mr. Soltani might have in this conversation, that
10 would be helpful.

11 **MR. SOLTANI:** Okay. I'm happy to share my thoughts.
12 I will flag that, again, rulemaking staff aren't here, so
13 I'm going to try to summarize what I understand of their
14 need, but we would obviously want them to provide input
15 as well.

16 My sense is it's valuable to have input from the
17 subcommittees ongoing, because of -- primarily for the
18 institutional knowledge. Like, it's taken up, you know,
19 some amount of time to know, for example, staff have
20 architected something in a particular way. So the
21 subcommittee members might know some of that history and
22 then be able to provide input of whether that's the right
23 approach.

24 Ultimately, as Board Member Thompson mentioned,
25 we'll ultimately still need to provide that -- present

1 that -- present that to the Board of, like, we received
2 these comments, we decided to go left. Subcommittee
3 agreed we should go left. Someone else wants to go
4 right, and what does the Board want to do on those policy
5 pieces. But again, I'll just flag -- I wouldn't come to
6 a determination on this until we've spoken with staff as
7 well as you all have seen the package just to know what
8 level is useful.

9 Because to Ms. De la Torre's point, there's some
10 things that we can just deal with, which is like
11 terminology, or some -- like -- there's some comments
12 that we will receive that are going to be just like, oh,
13 yeah, that's an error. Or that's something that's -- you
14 know, that we should fix because it just needs to be
15 fixed. It doesn't fit in the statute, or it conflicts
16 with something else.

17 And then there's some things that are going to be
18 more on the side of a policy decision that the Board will
19 want to provide input on, which is the, like -- and
20 everything is still going to go by the Board, but the
21 policy pieces are what I think both the subcommittee and
22 the full Board are going to want to really guide staff
23 of, like, we think we should draw the line here. What
24 does the Board think. Subcommittee might, you know --
25 staff might want to draw the line here, the subcommittee

1 might want to draw it here, and then the Board might want
2 to provide input on somewhere in between.

3 So that's my sense is -- to summarize, I think the
4 notion is right to maintain the subcommittees, to let
5 staff use them if they find it useful. I do think there
6 are going to be issues that the staff will want to run
7 across, not just the subcommittee but the entire Board,
8 and I think there's other issues that I think staff are
9 adept at dealing with, and we should let them deal with
10 it.

11 Because ultimately, the Board will still see those
12 in the rulemaking package, and they might not -- might
13 not be that significant, and they will also be explicitly
14 responded to in the comments. So not only will you see
15 the changes, but you'll see, like, we made a change on
16 page 53. It says X; it should have said Y. We did so
17 because Y. And the Board has to approve not only the
18 change, but that the -- basically the response is
19 adequate for both the Board and OAL.

20 **CHAIRPERSON URBAN:** So -- sorry. Yes. Please, Mr.
21 Soublet.

22 **MR. SOUBLET:** I just wanted to echo, working with
23 the staff, there is immense value in the interaction with
24 the subcommittees as they're drafting, so I wouldn't want
25 you to downplay the value of that interaction. And

1 that's why I would see there is a value of continuing the
2 subcommittees because of the resource that they are to
3 the staff that's doing the drafting.

4 **CHAIRPERSON URBAN:** Thank you, Mr. Soublet. I
5 simply wanted to respond in a partial and small way to
6 Mr. Soltani's comment by saying while -- by saying that I
7 think that the subcommittees probably should continue
8 through the rulemaking period, I did not want to imply
9 that we would -- that subcommittees should in any way be,
10 like, a hinderance. So I liked the way that Mr. Soltani
11 described it and Mr. Soublet described it, as a resource
12 if needed. I didn't intend to potentially add some other
13 layer to the process.

14 And again, like, I feel most comfortable with it
15 simply because I think it makes it very clear which board
16 members have consulted on which topics, and who is not
17 with -- you know -- and -- anyway, excuse me. It makes
18 it easy for us to understand all of those streams for
19 Bagley-Keene.

20 Were there comments or -- Mr. Le, nothing further?

21 **BOARD MEMBER DE LA TORRE:** I just wanted to
22 reiterate that idea that we shared before that is, you
23 know, it's compliant with Bagley-Keene. But I think we
24 also have to think about being compliant with the spirit
25 of Bagley-Keene and think about what part of that

1 subcommittee's conversation will be beneficial for all of
2 us to hear. Because that conversation maybe doesn't need
3 to happen at the subcommittee level. It would be more
4 beneficial to have it at the board level.

5 So I'm going to try to summarize and see if -- I'm
6 sorry. I'm going to try to summarize and see if we all
7 agree that in principle the subcommittees will continue
8 until the end of the process, and they will act as
9 advisories to the staff when the staff considers that
10 there's a need for it. But the staff doesn't necessarily
11 have to consult with the subcommittees on everything if
12 they already have an understanding of the policy.

13 And especially consider whether that conversation
14 that they might have with the subcommittee is a
15 conversation that the whole Board will benefit from, and
16 in those cases just reserve those conversations for our
17 board meeting as opposed to have them at the subcommittee
18 level.

19 Is that a good summary of the conversation, Mr.
20 Thompson?

21 **BOARD MEMBER THOMPSON:** I think it is, with the
22 caveat that a substantive conversation, I think, that
23 happens at the subcommittee level will probably need to
24 be repeated at the board level --

25 **BOARD MEMBER DE LA TORRE:** Um-hum. Right. Yeah.

1 **BOARD MEMBER THOMPSON:** -- in order to get the issue
2 resolved.

3 **BOARD MEMBER DE LA TORRE:** Right. Right. So then
4 at that point, the value of having that conversation at a
5 subcommittee level might be little, right? Like, it
6 might be of -- to the benefit of the public and to the
7 benefit of the Board to have --

8 **BOARD MEMBER THOMPSON:** I think that it could be
9 beneficial to the staff to the point that was made
10 earlier about the institutional memory and the knowledge
11 of the subcommittee members. I think that that
12 conversation could be beneficial to the process, but it's
13 not going to -- it'll be one step in the ultimate
14 resolution of whatever that issue is.

15 **CHAIRPERSON URBAN:** For the recording, there are
16 lots of -- there have been lots of heads nodding in
17 response to Ms. De la Torre's summary, and also to Mr.
18 Thompson's sort of further observation and clarification.

19 **BOARD MEMBER DE LA TORRE:** There is -- there's one
20 point that I think we still haven't completely discussed
21 with clarity, which is the possibility that one
22 subcommittee might not provide, in this initial package,
23 all of the rules that are within the commitment of that
24 subcommittee. There's a second column here that --
25 regarding rules not included in the initial package. Is

1 the general idea that if that were the case, that
2 subcommittee might be able to request from the Board, or
3 just continue work on the aspects that might not be in
4 the initial package, and that Bagley-Keene is also a
5 consideration? Does that make sense as a general idea?

6 **CHAIRPERSON URBAN:** Thank you. Mr. Le? Ms. Sierra?

7 **BOARD MEMBER SIERRA:** I think I'm -- I think I'm not
8 following.

9 **CHAIRPERSON URBAN:** I think that --

10 **MR. SOLTANI:** Can I --

11 **CHAIRPERSON URBAN:** Tell me if I get this wrong.

12 **BOARD MEMBER SIERRA:** Okay.

13 **CHAIRPERSON URBAN:** I think that the question is --
14 oh. Sorry, is it --

15 **MR. SOLTANI:** Can I ask the board members to bring
16 their microphones up?

17 **CHAIRPERSON URBAN:** Sorry. I think that the
18 question is once this rulemaking package is put
19 together --

20 **BOARD MEMBER SIERRA:** Um-hum.

21 **CHAIRPERSON URBAN:** -- and finished, there may be
22 items that were under the jurisdiction of the two
23 subcommittees that were not put into the package.

24 **BOARD MEMBER SIERRA:** Right.

25 **CHAIRPERSON URBAN:** And then the question is should

1 that subcommittee continue to work on these issues for a
2 different package?

3 **BOARD MEMBER SIERRA:** Okay.

4 **CHAIRPERSON URBAN:** Is that right?

5 **BOARD MEMBER DE LA TORRE:** Yes.

6 **BOARD MEMBER THOMPSON:** Or should there be
7 another -- a new subcommittee -- if you don't -- I'm
8 going to skip to the end of that, because I thought the
9 consensus was we don't need to answer that question now.
10 We'll revisit later.

11 **BOARD MEMBER SIERRA:** Right.

12 **CHAIRPERSON URBAN:** My feeling was it would be hard
13 to answer that question, and that a lot of it would turn
14 Bagley-Keene and who had what information. But that was
15 my thought, so.

16 **BOARD MEMBER SIERRA:** Yeah.

17 **BOARD MEMBER LE:** Yeah.

18 **BOARD MEMBER DE LA TORRE:** Okay. Do we have enough
19 feedback from the Board?

20 **BOARD MEMBER THOMPSON:** I think we also came up with
21 a new marketing slogan.

22 **CHAIRPERSON URBAN:** Keep it clean.

23 **BOARD MEMBER THOMPSON:** Keep it clean for Bagley-
24 Keene.

25 **CHAIRPERSON URBAN:** Okay. Ms. De la Torre and Mr.

1 Thompson, is that your -- all right. Thank you very much
2 for this --

3 **BOARD MEMBER SIERRA:** Thank you.

4 **CHAIRPERSON URBAN:** -- really detailed, thoughtful,
5 careful mapping out of the topics that we needed to
6 consider to get us going on our rulemaking.

7 **BOARD MEMBER THOMPSON:** Thank you.

8 **CHAIRPERSON URBAN:** So thank you very much. Our
9 next agenda item is --

10 **MR. SOLTANI:** Can we -- can we take public comment?

11 **CHAIRPERSON URBAN:** Oh. I apologize. I am so
12 sorry. This will be the first time I ever started to
13 move on without asking for public comment. I really
14 apologize. First of all, is there any public comment
15 from members of the public comment participating here in
16 Oakland in person?

17 All right. Seeing none. Is there any public
18 comment from those participating via Zoom?

19 **MODERATOR HURTADO:** Yes. We do have two people
20 waiting to comment. The first commenter is Andrea Cao.
21 Ms. Cao, one moment and I'll unmute you.

22 Okay. Ms. Cao, you have three minutes. You are now
23 able to speak.

24 **MS. CAO:** Okay. Thank you. Good afternoon, members
25 of the Board. My name is Andrea Cao, public policy

1 manager at the California Asian Pacific Chamber of
2 Commerce. We are participating today to voice our
3 concerns over the uncertainty of the privacy regulations
4 and their potential unintended consequences.

5 Throughout the Agency's pre-rulemaking activities,
6 we have not heard anything about the actual scope of
7 regulations or the cost that will need to be shouldered
8 by small businesses. These regulations will not only
9 impact large companies, but they will also affect small
10 business owners who have relied on digital tools and
11 platforms to connect with customers and build their
12 reputation in the communities they serve.

13 How are you reaching out to small businesses to
14 ensure they are included in the rulemaking process? Many
15 small business owners are wondering if these regulations
16 will shut them down, what of the economic impact to
17 businesses which is legally required. It is important
18 that the Agency is transparent about how many businesses
19 will be created and how many businesses will be closed
20 under the proposed regulations.

21 We do know that the statutory deadline is rapidly
22 approaching. We have not seen a plan for how the Agency
23 will address missing it. What is the Agency's plan to
24 address the July 1st deadline other than missing it? The
25 Agency should be clear about its process, timing, and

1 analysis of impact to small businesses.

2 We are looking forward to providing input as the
3 Agency works towards the important goal of protecting
4 California's privacy, and we hope the Agency actively
5 solicits feedback from small businesses on the draft
6 regulations once they are available. Thank you for your
7 time.

8 **CHAIRPERSON URBAN:** Thank you very much, Ms. Cao,
9 for your comment.

10 Ms. Hurtado, is there anyone else?

11 **MODERATOR HURTADO:** Yes. There is one more person.
12 One more. Okay. The next commenter is Julian Canete.

13 **MR. CANETE:** Thank you. And thank you for the
14 opportunity of the comment. My name is Julian Canete,
15 and I represent the California Hispanic Chambers of
16 Commerce.

17 There are 120 Chambers and Business Association
18 members. Our organization gives a voice and represents
19 the interest of over 815,000 Hispanic-owned businesses in
20 California, many of which will be impacted by the
21 forthcoming privacy regulations.

22 Privacy regulations do not just impact large
23 companies. They impact businesses of all sizes that rely
24 on online platforms to serve customers. This is
25 important because we do not believe enough is being done

1 to meet those businesses where they are. We are standing
2 by to provide meaningful input, but the lack of draft-
3 ready regulations and uncertainty of surrounding timing
4 and scope of the regulations is a real challenge.

5 In regards to the July 1st deadline of draft
6 regulations, we -- we request that the Agency formally
7 extend that July 1st deadline and extend the enforcement
8 deadline as well so -- so small businesses have ample
9 time to provide feedback and prepare for compliance.
10 Some Agency board members have previously mentioned a
11 desire to work with the legislature to extend the July
12 1st deadline; however, with only six weeks left, we are
13 not aware of any such dealings or actions on this issue.

14 After July 1st, the Agency will be in violation of
15 Proposition 24, the law creating the Privacy Protection
16 Agency. How will the Agency look to -- how will the
17 Agency look to extend the deadline?

18 We do not see any way the Agency will be able to
19 collect sufficient feedback to draft regulations by the
20 1st of July when in fact no draft regulations have even
21 been released. These regulations are too important to
22 rush. We must be certain this is done right, starting
23 with getting a full understanding of the potential
24 economic impact these regulations will have on small and
25 diverse-owned businesses.

1 Many of our members are operating on razor thin
2 margins after a tumultuous two years. Any additional
3 compliance cause and activities they have to undertake
4 could unfairly burden small business owners at a time
5 when they can least afford it. Thank you for the
6 opportunity to address you.

7 **CHAIRPERSON URBAN:** Thank you very much, Mr. Canete.
8 Ms. Hurtado, are there further public comments on
9 Zoom?

10 **MODERATOR HURTADO:** No, he was the last commenter.

11 **CHAIRPERSON URBAN:** Thank you. And again, I do
12 apologize for accidentally starting to move on. And I
13 thank both commenters for their comments today.

14 We will now move to agenda item number 6, an update
15 from the Update CCPA Rule Subcommittee, which is
16 comprised of Angela Sierra and myself. And we will be
17 talking about the anticipated rulemaking draft and
18 providing a little bit of background on that.

19 We wanted to provide an update and some background
20 on the upcoming draft rules that are within the advisory
21 purview of our subcommittee. I'll say a little bit about
22 background and method, and then Ms. Sierra will talk
23 about the anticipated draft rules. We hope this will
24 provide some helpful context for everyone when the draft
25 rules are published.

1 As a reminder, the CCPA Rules Update Subcommittee,
2 which I'll refer to as the Update Subcommittee for short,
3 has been tasked with advising on rules that update the
4 existing rules promulgated by the Attorney General's
5 office in response to amendments to the CCPA by the CPRA.

6 We had a Board training in February, during our
7 February training -- February board meeting and the
8 training team from Solid (ph.) talked about rule concepts
9 as a beginning process. And those were largely set out
10 for us in the CCPA as amended by the CPRA and the
11 Regulations Subcommittee that was previously doing work
12 to advise the Board further propose these subject matter
13 subcommittees and split of topics. So we sort of split
14 the concepts in that way.

15 Our subcommittee started with a list of topics
16 identified by the Regulations Subcommittee. And then in
17 our work, we identified a handful of additional topics
18 that related most closely to the existing rules or topics
19 we'd been assigned and requested that those be added to
20 our work in the October 18th, 2021 and November 15th,
21 2021 meetings.

22 At the November 15th, 2021 meeting, the Board
23 finished allocating topics, leaving any additional
24 allocations to staff. I won't go over the entire list of
25 topics allocated to the Update Rules Subcommittee,

1 although if you're interested, they are collected in
2 materials from previous meetings. But just as a
3 reminder, these relate to any needed updates to
4 regulations or things that are very connected to existing
5 regulations but were new in the CPRA.

6 So for example, incorporating the right to correct,
7 which is new and very connected to the processes for
8 existing rights and the right to limit use of sensitive
9 information. The list of other topics is pretty long,
10 but it includes things like updating the definitions,
11 making sure the processes that are in the regulations
12 work with the new rights, and that kind of thing.

13 We thought it would also be helpful to describe our
14 method of work. We've mentioned most of this before, but
15 we thought it might be helpful to provide an overview at
16 this point. In order to best advise the Board, the
17 subcommittee has endeavored to understand the
18 implementing statute, the existing regulations,
19 stakeholder needs, and other important background
20 information. Excuse me. Sorry. I have a frog in my
21 throat.

22 Accordingly, we have reviewed the statute, the CPRA,
23 amendments from the initiative, existing regulations, and
24 all preliminary comments that were filed in the autumn.
25 We attended the information sessions in late March and

1 the stakeholder sessions in early May. All of those
2 preliminary information efforts proved to be very helpful
3 background.

4 With that foundation in place, the subcommittee has
5 been working closely with staff as they prepare a set of
6 draft rules. This means we've been meeting with staff at
7 least every week to discuss topics and issues needed --
8 excuse me -- related to drafting and to receive legal
9 advice. I say at least every week because we've met
10 substantially more often recently as staff have put
11 together a draft set of rules.

12 Staff have presented all sections of the draft to us
13 for discussion and feedback. And here I just want to say
14 how grateful we are to both the CPPA staff and the DOJ
15 staff who have been assisting us under the CPRA's
16 exhortation that DOJ provide staffing to the Agency.
17 They have given us legal advice, including on the
18 regulations, as well as some of the other administrative
19 work that you've seen the results have in these meetings.

20 I'd also like to especially thank Lisa Kim and
21 Stacey Schesser for their expertise that to many of you
22 in the public will have seen they provided expertise to
23 all of us at the info sessions. It's been incredibly
24 helpful to have the experience from DOJ as we think
25 things through.

1 And now I'll hand things over to Ms. Sierra, who
2 will say a bit about the anticipated draft rules.

3 **BOARD MEMBER SIERRA:** Thank you, Chair Urban.

4 So our subcommittee -- our Update Rules
5 Subcommittee -- we thought it would be helpful to provide
6 a bit of information about what we expect the anticipated
7 draft or the proposed rules to cover.

8 First, we expect it to amend the existing rules to
9 accommodate new consumer rights and other relevant
10 changes made by the CPRA. Now, as a reminder, we -- our
11 subcommittee -- the Update Rules Subcommittee -- are
12 advising on items that connect to what was in place prior
13 to the CPRA. The separate subcommittee, the New Rules
14 Subcommittee, is advising on entirely new things.

15 So for example, the Update Rules Subcommittee, we
16 are anticipating the draft rules we are advising on to
17 make, for example, necessary revisions, which may be very
18 small textual changes, for example, to include the newly
19 defined sharing of personal information, which is now in
20 the CPRA, where it's needed in the regulations.

21 Also we're advising on incorporating the new right
22 of correction and right to limit the use of sensitive
23 personal information which businesses will need to
24 implement alongside their already existing rights. And
25 we also anticipate that the draft rules will provide

1 explanations on how the CPRA's requirement to avoid dark
2 patterns applies to required processes.

3 And we also thought it would be helpful to give
4 everyone a preview of some other types of changes we
5 anticipate, as they may first appear to be more extensive
6 than they actually are in reality.

7 First, we anticipate some reorganization and
8 consolidation of existing requirements. This will help
9 integrate new material easily and will help make the
10 regulations easy to follow.

11 Second, and relatedly, we anticipate some material
12 that actually restates the statute where that makes sense
13 to help the reader. The intent here is to gather
14 relevant material into an organizational structure that
15 is easier to follow for consumers and businesses, and to
16 provide some helpful context.

17 And finally, neither -- and we want to underscore
18 the neither -- of these types of revisions are regulatory
19 changes. They are just being provided or incorporated to
20 help everyone understand and follow the proposed
21 regulations.

22 Before I turn it over to Chair Urban in case she has
23 anything to add, I too -- so much -- want to thank the
24 CPPA staff, our executive director, our general
25 counsel -- acting general counsel, all staff at

1 California Department of Justice for their tremendous
2 help on this. Thank you. And I'll turn it over to Chair
3 Urban, if you have anything to add.

4 **CHAIRPERSON URBAN:** Thank you, Ms. Sierra; I do not.
5 Do we have any Board questions or comments?

6 Yes, Ms. De la Torre.

7 **BOARD MEMBER DE LA TORRE:** I just wanted to state
8 that I'm really glad to hear that some of the effort has
9 gone into reorganizing and consolidation of the current
10 rules. And that I think it makes a lot of sense to
11 restate the statute where it's needed to help the reader,
12 so that somebody who has access to the rules can read
13 through them without having to constantly go back into
14 the statute.

15 It was a great effort that the Department of Justice
16 did to enact the initial rules, but I think this is a
17 very welcome modification from my point of view, that is
18 going to help the stakeholders that will have to
19 interpret the rules. So I just want to applaud and
20 express my support for that.

21 **CHAIRPERSON URBAN:** Thank you, Ms. De la Torre.
22 Other comments or questions from board members?

23 All right. Do we have any public comment from those
24 attending via Zoom?

25 **MODERATOR HURTADO:** There are no commenters at this

1 time.

2 **CHAIRPERSON URBAN:** Thank you, Ms. Hurtado. Do we
3 have any public comments from members of the public
4 participating here in person?

5 It doesn't look like it. I'll give Zoom just a
6 second more just in case.

7 All right. Well, if there is no public comment,
8 thank you, Ms. Sierra.

9 Thanks to the Board. And we will move to agenda
10 item number 7, which is an update the New CPRA Rules
11 Subcommittee.

12 **BOARD MEMBER THOMPSON:** Chair Urban?

13 **CHAIRPERSON URBAN:** Yes.

14 **BOARD MEMBER THOMPSON:** Could I request a five-
15 minute recess?

16 **CHAIRPERSON URBAN:** Of course. My apologies, Mr.
17 Thompson.

18 **BOARD MEMBER THOMPSON:** It's all right.

19 **CHAIRPERSON URBAN:** We have been meeting for a
20 while.

21 Ms. Hurtado, if we take a break, maybe we could
22 break until -- how long would be good, Mr. Thompson?

23 **BOARD MEMBER THOMPSON:** Five minutes.

24 **CHAIRPERSON URBAN:** Five minutes. Well, let's take
25 at least ten, though. Let's reconvene at 4:50 p.m.

1 **BOARD MEMBER THOMPSON:** Can I withdraw my request,
2 then?

3 **CHAIRPERSON URBAN:** Okay. You don't want it that
4 long.

5 **BOARD MEMBER LE:** I have a flight as well that I'm
6 trying to (indiscernible) later.

7 **CHAIRPERSON URBAN:** Oh. Okay. All right. All
8 right. This is the Chair's job is to try to manage
9 different interests. So let's say we will return at
10 4:43. That is -- that is seven minutes.

11 **BOARD MEMBER THOMPSON:** Okay.

12 **CHAIRPERSON URBAN:** Okay. Thank you, everybody.

13 (Whereupon, a recess was held)

14 **CHAIRPERSON URBAN:** All right. Wonderful. Thank
15 you Ms. Hurtado. And welcome back, everyone. We'll now
16 resume the public session of the California Privacy
17 Protection Agency's May 26th, 2022 board meeting with
18 agenda item number 7. New CPRA Rules Subcommittee
19 Update. The New CPRA Rules Subcommittee is Lydia De la
20 Torre and Vinhcent Le, and I will turn it over to them.

21 **BOARD MEMBER DE LA TORRE:** Thank you, Chairman
22 Urban. As you might recall, the New Rules Subcommittee
23 was created on September 7th, 2021. The scope of the
24 mandate, as was mentioned in the prior agenda meeting,
25 was to propose -- help propose rules for those items that

1 we had to rule one but were not necessarily part of CCPA.

2 The scope of the initial assignment of the
3 subcommittee was to work towards issuing rules in regards
4 to processing that presents a significant risk to
5 consumer's privacy or security and the corresponding need
6 to perform cyber security audits and/or privacy risk
7 assessment. This is Civil Code Section 1798.185(a)(15),
8 and then it's (A) and (B), just to be precise. Again,
9 this is one requirement that does not exist under CCPA
10 but will exist once the rules are issued on this topic.

11 It was also assigned to our subcommittee to present
12 rules on the governing of consumer's accessed and
13 (indiscernible) with respect to businesses' use of
14 automated decision-making technology and the provision of
15 meaningful information regarding the same. This is in
16 California Civil Code Section 1798.185(a)(16), to again,
17 be precise. And again, automated decision technology
18 (indiscernible) is not something that is part of the
19 current version of the CCPA.

20 In addition, it was assigned to the subcommittee to
21 present rules regarding the Agency's authority to audit
22 businesses' compliance with the law, including the scope
23 of such authority, the criteria to select businesses to
24 audit, and the related safeguards the agency should
25 follow to protect consumer's information. This is

1 outlined in California Civil Code Section
2 1798.185(a) (18) .

3 In addition, during the November 15th, 2021 meeting
4 of the Board, the scope of the mandate of the New Rules
5 Subcommittee was expanded to include the following.

6 First, considering if there was need to further define
7 the term law-enforcement agency approved investigation.
8 This is California Civil Code Section 1798.185(a) (17) .

9 Second, consider the need to which rules on the
10 administrative enforcement process set forth in CPRA, and
11 this is permitted under California Civil Code Section
12 1798.185(b) . This will relate to the administrative
13 enforcement process that the Agency will undertake once
14 it is in the position and under the legal obligation to
15 ensure compliance with CPRA.

16 Finally, issue -- if needed -- those record-keeping
17 requirements that might relate to cyber security audits,
18 risk assessments, and automated decision-making
19 obligations.

20 As (indiscernible) during our October 18th update to
21 this Board, the subcommittee has been working
22 continuously since the assignment. We have been meeting
23 weekly. We have been also updating the benefit of
24 advisor, the executive director, our, you know, counsel
25 and other experts.

1 **BOARD MEMBER LE:** Yeah. And I can take it from
2 here. And you know, as part of that, we want to thank
3 all the Agency staff, counsel from Attorney General, and
4 all the other folks that have helped us out in our
5 subcommittee work.

6 You know, as part of that, we have been reviewing
7 comments from all of the stakeholders. We meet regularly
8 throughout the week. We review academic papers and other
9 available information related to the topics within the
10 scope of our subcommittee, which is quite broad. And
11 then we're consulting, where appropriate, with other
12 agencies that have mandates that intersect our own. And
13 then as part of that work, we also -- as part of our
14 subcommittee work, we have also helped prepared
15 information on stakeholder sessions. And we're making
16 progress.

17 You know, I think we've seen our Agency make great
18 strides since our initial meeting almost a year ago. Our
19 executive director, Mr. Soltani, has been tirelessly
20 working towards hiring required personnel that will help
21 us continue to do this work. But given the limited
22 resources and the scope of the tasks assigned, we've
23 prioritized the work of our subcommittee to better serve
24 the goals of the CPRA.

25 There are a set of rules that we prioritized that we

1 felt were particularly urgent. As you know, the CPRA
2 provides that the Agency shall commence enforcement
3 activities July 1st. There's a subset of rules assigned
4 to the subcommittee, as Lydia mentioned, that deal with
5 this administrative enforcement process. So we felt that
6 the issuance of those rules on how to do that
7 administrative enforcement process was essential to put
8 us in the best position to take on our statutory
9 responsibility to implement and enforce the updated rules
10 and the other provisions of the CCPA.

11 So therefore, our New Rules Subcommittee has
12 concentrated resources on proposing procedural rules for
13 enactment that ensure our Agency can do enforcement in
14 July. And the -- with regards to the automated decision-
15 making, the privacy risk assessment, and audit topics, we
16 found they were, as you may imagine, pretty intertwined
17 and particularly complex.

18 So you know, some of the issues that we are tackling
19 as part of the subcommittee is how to define and scope
20 that audit, and the opt-out and risk-assessment rules to
21 protect privacy and other consumer rights while
22 continuing to promote responsible innovation and
23 listening to the concerns of small businesses as we've
24 heard comments here today.

25 We're particularly cognizant that small businesses

1 may not have the same resources as larger tech companies,
2 and as part of our subcommittee process, you know, we're
3 looking into how to balance those concerns. We're
4 looking at how to design our rules in ways that could
5 promote harmonization with existing and emerging privacy
6 frameworks. For example, the Department of Fair
7 Employment and Housing just released some new rules.
8 There was some DOJ EEOC that we're looking at as we
9 develop our own rules.

10 And finally, we're investigating what information is
11 meaningful to consumers when it comes to automated
12 decisions and profiling, but across different contexts
13 and types of decisions. So you know, as complex issues,
14 we saw a wide range of comments received particularly on
15 these topics, and that really gave us -- it really
16 gave -- it really tested the need to carefully consider
17 and weight the requirements that should be included on
18 these topics.

19 And as part of that, we found that because these
20 three topics -- automated decision-making, privacy risk
21 assessments, and the cyber security audits -- are closely
22 related, we didn't want to issue rules as to one of them
23 and not others. So given the above, we came to certain
24 conclusions, and I'll let Lydia discuss those.

25 **BOARD MEMBER DE LA TORRE:** Thank you. So now we

1 wanted to take this opportunity, prior to the release of
2 the draft rules to the public and the Board, to inform
3 the Board that first our subcommittee has successfully
4 been able to prepare and will be proposing several rules
5 that relate to one, the Agency's authority to audit
6 businesses' compliance with the law. This includes the
7 scope of such authority, the criteria to select
8 businesses to audit, and the related safeguards that the
9 Agency should follow to ensure the protection of
10 consumer's information in this contest. This is, to be
11 precise, California Civil Code Section 1798.185(b)(18).

12 We will also be proposing several rules that relate
13 to -- apologies. So with the assistance of the staff
14 assigned to support our subcommittee, we made the
15 determination that there is need to issue rules on the
16 administrative enforcement process set forth in CPRA, and
17 we will issue those -- not issue -- but propose those
18 rules. And these will, among other things, describe the
19 process for the probable cause hearing that is embedded
20 in the requirements of CPRA. This is Civil Code Section
21 1798.199.50 and California Civil Code 1798.199.55.

22 With the assistance of the experts assigned to
23 support our subcommittee, we have made a determination
24 that there is no need at this time to issue rules to
25 further define law enforcement agency approval

1 investigation. This is California Civil Code
2 1798.185(a) (17) .

3 And what is really important for us to highlight to
4 the Board is that the New Rules Subcommittee will not
5 propose, as part of the initial package, rules on the
6 following topics: Cyber security audits, that's
7 1798.185(a) (15) (A); privacy risk assessments, that's
8 1798.185(a) (15) (B); and automated decision-making, that's
9 1798.185(a) (16) .

10 Mr. Le?

11 **BOARD MEMBER LE:** Yeah. So you know, our request to
12 the Board is that you allow our subcommittee to remain
13 active during the upcoming formal rulemaking process
14 until we're in a position to propose rules on those
15 topics that Lydia just mentioned. As the commenter
16 earlier mentioned, you know, these cannot be rushed,
17 considering how important they are to California
18 businesses, and by allowing the subcommittee to continue
19 work on these topics, we'll be able to prepare and
20 present rules on these topics as soon as feasible.

21 And finally, as we continue to work on the rules on
22 those aforementioned topics, we would request that the
23 Board -- from the Board that the rules we would be
24 proposing in regard to the audit authority and
25 administrative processes of the Agency move forwards as

1 part of that initial package. And this will allow us to
2 have enforcement rules to commence enforcement. Thanks.

3 **BOARD MEMBER DE LA TORRE:** So we wanted to gather
4 the feedback of the -- thank you -- the feedback of the
5 Board on those two last topics. One relates to our
6 presentation that we already had, which is what should
7 the subcommittee in terms of the three topics we're -- we
8 will not propose rules that can be incorporated in the
9 initial package.

10 Our suggestion, as Mr. Le mentioned, would be to
11 allow the subcommittee to continue to work on those
12 topics. And from a Bagley-Keene perspective, I think
13 that would be preferable. And then there's some
14 historical knowledge already in the subcommittee. So
15 let's pause there and just gather feedback from the Board
16 on that point.

17 **CHAIRPERSON URBAN:** Thank you, Ms. De la Torre and
18 Mr. Le. I was just hoping I could check my
19 understanding.

20 **MR. SOLTANI:** Can I just ask everyone to pull their
21 mics closer?

22 **CHAIRPERSON URBAN:** Yeah. I'm sorry. My apologies.
23 I forget that it has -- it seems to drift back away from
24 me. I don't know -- I don't know how.

25 So I just wanted to check my understanding. So the

1 anticipated rulemaking package for this package that
2 we've talked about the process for today would include
3 some rules on administrative enforcement -- how that
4 would happen; on the Agency's audit authority; and not on
5 law enforcement investigation definition because the
6 subcommittee has decided they advise that's not
7 necessary. And also not on automated decision-making,
8 cyber security audits, or risk assessments, which are
9 interrelated, and the subcommittee believes requires more
10 work.

11 So the thought would be -- that would be a separate
12 package in the future?

13 **BOARD MEMBER DE LA TORRE:** Exactly.

14 **CHAIRPERSON URBAN:** Okay. Thank you. Well, I think
15 the subcommittee should continue. That's my thinking.
16 Anybody else?

17 **BOARD MEMBER SIERRA:** Yeah. No. I agree. And this
18 was a great example -- kind of thinking back, like, why
19 it may be helpful to continue forward, because you've
20 been -- I'm sure have a lot of foundational work, you
21 know, that the subcommittee, the Board, and the staff
22 could only benefit from.

23 **CHAIRPERSON URBAN:** Yes. And under Bagley-Keene,
24 you have the ability to keep working together and another
25 board member cannot join. So I think that seems like the

1 right approach.

2 **BOARD MEMBER LE:** Are there any other questions?

3 **BOARD MEMBER THOMPSON:** I'm trying to square this
4 conversation with the conversation we had a couple of
5 agenda items ago, which I came away with the impression
6 we were going to wait to decide on continuity. I have a
7 concern about what will be in the next rules package.
8 Those three items won't be it. How are we going to
9 constitute -- how will we all organize ourselves to work
10 on those -- whatever the next rules package is? So it
11 will have presumably those three items, plus some others.
12 I'm reluctant to make that decision here, today, now.

13 **CHAIRPERSON URBAN:** Thank you, Mr. Thompson. And I
14 think you also should draw Venn diagrams on the Board. I
15 realize I wasn't actually thinking about that second
16 point when we finish the rulemaking package that we
17 anticipate. I was simply thinking of the subcommittee
18 continuing on and that we would have another
19 conversation. But of course, if these three items aren't
20 complete, these three items aren't complete. It is
21 entirely possible that they would end up in a package
22 with some other item.

23 I do think if Mr. Le and Ms. De la Torre are working
24 actively on the subject matter, I would prefer for them
25 to be able to continue doing that. But maybe we should

1 recognize that we will need to pause and revisit some
2 point, whether that is the end of our process for this
3 rulemaking package if that makes sense, or if board
4 members have an idea for another timeline that would make
5 sense.

6 **BOARD MEMBER THOMPSON:** I agree with -- that may
7 well be the outcome. And so I think that once we get
8 through this rulemaking process, we should collectively
9 determine how we will organize ourselves for the next
10 rulemaking package. It may well be that that's what
11 makes the most sense is to have the same two people
12 continue to work on those three topics. There is a logic
13 to that. I'm just reluctant to make that decision.

14 **CHAIRPERSON URBAN:** Sure. Are you comfortable with
15 the subcommittee continuing its work for now?

16 **BOARD MEMBER THOMPSON:** Yeah.

17 **CHAIRPERSON URBAN:** Okay. Mr. (sic) De la Torre and
18 Mr. Le, have we responded with understanding or have
19 we --

20 **BOARD MEMBER LE:** Yeah.

21 **CHAIRPERSON URBAN:** -- gotten it wrong.

22 **BOARD MEMBER LE:** I feel like Lydia (indiscernible).

23 **BOARD MEMBER DE LA TORRE:** Let me summarize --

24 **CHAIRPERSON URBAN:** Okay.

25 **BOARD MEMBER DE LA TORRE:** -- to make sure that we

1 are understanding.

2 So the Board feedback is that the rules that are
3 ready should be incorporated in the package and move
4 forward with this package; is that a correct
5 understanding?

6 **BOARD MEMBER LE:** For the audit and --

7 **BOARD MEMBER DE LA TORRE:** That would be the audit
8 and the --

9 **CHAIRPERSON URBAN:** Yes. Well, I think of that as a
10 staff decision and then we all look at the package to see
11 if it goes into the NOPA, but --

12 **BOARD MEMBER DE LA TORRE:** Right. Right. With the
13 understanding that -- yeah. And then on the second
14 piece, which is whether this subcommittee should continue
15 to work, the decision would be to -- for now, let's
16 continue, wait until the final -- when we come close to
17 finalizing the current package, and then revisit the idea
18 as to whether those three items should remain within this
19 subcommittee or be assigned differently. Is that the
20 correct summarization?

21 **CHAIRPERSON URBAN:** Thank you, Ms. De la Torre. I
22 think Mr. Soltani also had some input.

23 **MR. SOLTANI:** Just a quick comment on -- it is
24 entirely possible they'll be kind of concurrent but
25 overlapping timelines on, for example, these other items

1 by this subcommittee. So I just want to flag that
2 there's not a -- there might not be one end date; there
3 might, you know, there might be some concurrence. So
4 when we, for example, submit our initial package, our
5 next package might be in process.

6 **CHAIRPERSON URBAN:** Okay. So we should look for the
7 appropriate time to check in with the New CPRA Rules
8 Subcommittee and the Board and find out if the New CPRA
9 Rules Subcommittee should continue its work at that time.

10 But I will say for myself, I would anticipate that
11 if the New CPRA Rules Subcommittee is still working
12 through our process with the rulemaking package we
13 anticipate, and they would like to come to the Board and
14 say we think that there will be a package with these
15 three items, that that isn't foreclosed for you to come
16 to us with that information and advice. But we will
17 figure out when it makes sense for the subcommittee to
18 keep working and when it makes sense to disband it.

19 **BOARD MEMBER DE LA TORRE:** Thank you so much for
20 that clarification. I think one thing that maybe we
21 neglected to highlight is that the resources that we have
22 have been really lending help, and we have been making
23 progress. It's just that given the limitations of
24 resources and time, the subcommittee is not ready to
25 propose it at this time. So you know, the Agency has

1 been working towards it. Let me summarize maybe again
2 the understanding.

3 So we as a subcommittee should continue to work and
4 at the same time keep the Board updated on our progress
5 on a periodical basis and wait until we have more
6 visibility on the timing and how we might want to
7 organize moving forward to make a final determination as
8 to whether those three topics should stay within the
9 subcommittee or be differently assigned. Is that a
10 correct summary?

11 **MR. SOLTANI:** And again, Lydia, the audio is not
12 getting picked up on the stream, so just if you could --
13 if everyone could pull --

14 **BOARD MEMBER DE LA TORRE:** Repeat it? Or maybe, Mr.
15 Le, do you want to repeat it? Your audio might have
16 been --

17 **BOARD MEMBER LE:** Oh, I -- oh, no. I was just --
18 were we talking about reassigning these three things. I
19 thought we would just finish -- our sub -- I mean, I
20 think in my head, we would finish this -- these three
21 items and then just propose another package. If there's
22 other items ready to be included in that package,
23 potentially a concurrent one. But that's how I
24 thought -- like, our subcommittee would continue,
25 hopefully finish, and then propose another package.

1 **CHAIRPERSON URBAN:** Yes. That does make sense to
2 me. I just want to be sure we were remembering Mr.
3 Thompson's -- exhortation is probably too strong -- that
4 we check in and figure out when it's time for
5 subcommittees to stay in place or disband, if I have a --

6 **BOARD MEMBER THOMPSON:** Yeah.

7 **CHAIRPERSON URBAN:** Okay.

8 **BOARD MEMBER LE:** I think we're kind of stuck
9 because of Bagley-Keene.

10 **CHAIRPERSON URBAN:** Um-hum.

11 **BOARD MEMBER LE:** We couldn't --

12 **CHAIRPERSON URBAN:** Right.

13 **BOARD MEMBER LE:** Well, if we dissolve it, then no
14 one could work on it. (Indiscernible).

15 **CHAIRPERSON URBAN:** Well, the staff could work on
16 it, and we would all individually be one board member at
17 a time. Yes.

18 **BOARD MEMBER THOMPSON:** Well, I think two new people
19 could also work on it.

20 **CHAIRPERSON URBAN:** No. I don't -- well, we could
21 take advice, but I think that -- well, anyway.

22 **BOARD MEMBER THOMPSON:** Yeah. We had talked about
23 that previously --

24 **CHAIRPERSON URBAN:** Oh. Okay.

25 **BOARD MEMBER THOMPSON:** -- but not to a conclusion.

1 **CHAIRPERSON URBAN:** Okay. All right. Mr. Le and
2 Ms. De la Torre, what do you need from us?

3 **BOARD MEMBER DE LA TORRE:** I believe we have enough
4 advice to continue to work for now, and then make sure
5 that we check with the Board for any, you know, update or
6 change to that mandate that was provided to our
7 subcommittee.

8 **CHAIRPERSON URBAN:** Thank you. Mr. Le?

9 **BOARD MEMBER LE:** That's fine.

10 **CHAIRPERSON URBAN:** Any further comments from Ms.
11 Sierra or Mr. Thompson?

12 **BOARD MEMBER THOMPSON:** Nope.

13 **BOARD MEMBER SIERRA:** None from me.

14 **CHAIRPERSON URBAN:** All right. Do we have any
15 public comments on this topic from any member of the
16 public participating here in person?

17 All right. Seeing none. Is there any public
18 comment on this topic from anyone participating via Zoom?

19 **MODERATOR HURTADO:** Not at this time.

20 **CHAIRPERSON URBAN:** Thank you, Ms. Hurtado.

21 In that case, we will move to agenda item number 8,
22 which is public comments on items not on the agenda. So
23 this is the agenda item in which we invite public comment
24 generally and including on items not on the agenda.

25 Before we proceed with public comment, please note

1 that the only action the Board can take is to listen to
2 comments and consider whether we'll discuss the topic at
3 a future meeting. No other action may be taken on the
4 item at this meeting. I do want to reiterate, though it
5 may seem board members are not being responsive, we are
6 listening, and following these guidelines is critical to
7 ensure the rules of the Bagley-Keene Open Meeting Act are
8 followed, and to avoid compromising either the
9 commenter's goals or the Board's mission.

10 With that, I will ask if there is any public comment
11 on items not on the agenda from those participating via
12 Zoom.

13 **MODERATOR HURTADO:** Give them a minute to respond.

14 **CHAIRPERSON URBAN:** Okay.

15 **MODERATOR HURTADO:** Oh. We almost had one. Please
16 raise your hand if you wish to comment. There we go.

17 Okay. We have a comment from April Chang (ph.).

18 Ms. Chang, you are now unmuted. You may now speak.
19 You have three minutes.

20 **MS. CHANG:** Hi. Thank you. Thank you for this very
21 informative session today.

22 I wanted to talk to the subcommittee issuing the new
23 rules, and the Board generally, just to -- to
24 reiterate -- I know this has been raised before -- but to
25 reiterate, given that it sounds like the -- the most

1 forthcoming rules -- the soonest forthcoming rules -- are
2 related to auditing, businesses' compliance with -- with
3 rules. I just want to reiterate that the -- there's an
4 interest in -- in having some kind of adequate time to be
5 able to prepare for these new rules, given that -- that
6 there's -- I understand -- some shift in the schedule
7 from the July 1st time frame, but, you know, we're --
8 businesses are -- we're all still expecting that we will
9 have to comply at this point at the beginning of 2023.

10 So -- so I would just like to -- to emphasize that
11 some kind of clarity regarding the expected time frame
12 for when compliance expected would be helpful and
13 understanding of the need for time to implement
14 compliance efforts in advance of -- of any auditing would
15 be welcome.

16 **CHAIRPERSON URBAN:** Thank you, Ms. Chang, for your
17 comment. Are there further public comments from anyone
18 on Zoom?

19 **MODERATOR HURTADO:** There are no other hands raised
20 at this time.

21 **CHAIRPERSON URBAN:** All right. Thanks very much.
22 Is there a public comment from members of the public
23 participating here in person?

24 All right. Seeing none. I will move to agenda item
25 number 9, which is an item for discussion of future

1 agenda items.

2 In listening to the conversation today, I have that
3 we will, when appropriate, revisit the subcommittee
4 assignments; that we will have an initial meeting to
5 discuss putting the rules -- the draft rules into the
6 NOPA process; and that staff will be advising on
7 subsequent meetings -- all on rulemaking -- but we'll
8 have plenty of meetings to discuss the substance of the
9 rules. We may have more discussion of hiring as that
10 happens.

11 I would like to just -- and this is far out, just to
12 put it on the table -- that -- well, it's -- excuse me,
13 it's not far out. It's something that Mr. Le and I
14 believe Mr. Thompson mentioned from the very beginning,
15 which is strategic planning. Obviously we have plenty
16 dictated in the statute as to what our purpose and
17 strategy is for a little while, but I want to be sure
18 that it's in everyone's mind that that is something that
19 hopefully the executive director will help us facilitate
20 at a future date.

21 And we will also be doing some review of the budget
22 and so forth as he mentioned earlier, when that is
23 appropriate.

24 Are there any additional agenda items from members
25 of the Board?

1 Is there any public comment on potential future
2 agenda items from anyone participating here in person?

3 Seeing none. Is there any public comment on future
4 agenda items from those participating via Zoom?

5 **MODERATOR HURTADO:** Not at this time.

6 **CHAIRPERSON URBAN:** Wonderful. Thank you very much.
7 Our final agenda item is number 10, adjournment. I would
8 like to thank board members, staff, and public for
9 everything that went into this meeting today, and
10 everyone for their patience as we work out this hybrid
11 meeting format. I really appreciate it, and I am looking
12 forward to future meetings where hopefully we don't have
13 as many tech issues. But in any case, I look forward to
14 future meetings with all of you. And thank you all for
15 your contributions to the meeting and the Board's work.

16 May I have a motion to adjourn the meeting?

17 **BOARD MEMBER DE LA TORRE:** I so move.

18 **CHAIRPERSON URBAN:** Thank you. May I have a second?

19 **BOARD MEMBER SIERRA:** I'll second.

20 **CHAIRPERSON URBAN:** Thank you. Ms. De la Torre has
21 moved to adjourn. Ms. Sierra has seconded.

22 Ms. Hurtado, could you please conduct the roll call
23 vote?

24 **MODERATOR HURTADO:** Yes. Ms. De la Torre?

25 **BOARD MEMBER DE LA TORRE:** Aye.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MODERATOR HURTADO: Mr. Le?

BOARD MEMBER DE LA TORRE: Not present.

MODERATOR HURTADO: Ms. Sierra?

BOARD MEMBER SIERRA: Aye.

MODERATOR HURTADO: Mr. Thompson? Ms. Urban.

CHAIRPERSON URBAN: Aye.

MODERATOR HURTADO: There are three ayes and two not present.

CHAIRPERSON URBAN: Thank you. The motion has been approved by a vote of three to zero. This meeting of the California Privacy Protection Agency Board is now adjourned. Thank you.

(End of recording)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIBER'S CERTIFICATE

STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA)

 This is to certify that I transcribed the
foregoing pages 1 to 191 to the best of my ability from
an audio recording provided to me.

 I have subscribed this certificate at
Phoenix, Arizona, this 24th day of June, 2022.



Mieghley Williams-McGuire
eScribers, LLC

--o0o--