
**California Underground Facilities Safe Excavation Board
("Dig Safe Board")**

January 13-14, 2020

Agenda Item No. 8 (Action Item) – Staff Report

*Resolution No. 20-01-06 Approval of the Adoption of the Regulations for
Investigation, Enforcement and Area of Continual Excavation and to continue
with Rulemaking Proceedings*

PRESENTER

Jeff Brooks, Attorney

SUMMARY

Staff will discuss changes made to the text of the Board's second set of pending regulations which relate to investigations, enforcement actions, and areas of continual excavation. The Office of Administrative Law suggested changes to the regulation package to improve clarity. Staff agreed with the suggestions and made the edits presented here for Board review.

Staff are not requesting approval of the changes at this time because the changes will be published for a 15-day review period. The Board will receive public comments during that period, and anticipates presenting the text again, along with those comments, during the Board's February meeting, and asking for approval at that time.

BACKGROUND

During its February, 2019 meeting, the Board adopted resolution no. 19-02-01, which approved the text of the Board's proposed regulations relating to the renewal of tickets for investigations, enforcement actions, and areas of continual excavations. And during its July, 2019 meeting, the Board was briefed on comments on the regulations provided by members of the public. During that meeting, the Board adopted Resolution 19-07-01, which directed staff to continue with the administrative process necessary to adopt the regulations.

Following the July meeting, staff submitted the package to the Office of Administrative Law (OAL) for review. The OAL reviews and approves all regulations proposed by state agencies before the regulations take effect. Described generally, the OAL applies six standards in reviewing regulations: (1) necessity, (2) authority, (3) clarity, (4) consistency, (5) reference, and (6) nonduplication.¹ OAL's review is the last review in the development of regulations, and often the most valuable, because OAL's staff is comprised of specialists with significant experience.

¹ See, Gov. Code § 11349.1(a)

DISCUSSION

Text to be deleted is indicated with ~~red strikethrough~~ and the text to be added is in blue.

Section 4201(b). Considerations to Assess Sanctions

Explanatory Note

Sub-section (b) makes certain issues relevant to the Board's decision to impose a sanction: reporting of the violation, cooperation with investigating agencies, the size of the respondent's business, economic benefit of the violation, and the respondent's history of violations. This edit changes "may be considered" to "must consider" to better convey the intent of the regulation and to clarify the nature of the matters the Board will consider.

Original Version

(b) Any of the following may be considered to determine whether to assess a sanction for a violation of the Act or this division, and if so, the appropriate sanction for the violation:

(1) ...

Proposed Edit

(b) ~~Any of the following may be considered to determine~~ In determining whether to assess a sanction for a violation of the Act or this division, and if so, the appropriate sanction for the violation, the Board must consider evidence that is relevant to any of the following matters:

Section 4201(c). Considerations to Assess Sanctions

Explanatory Note

This change is identical to the change made to section 4201(b). This regulation makes certain issues relevant to the Board's decision to impose a corrective action rather than a monetary penalty: reporting of the violation, cooperation with investigating agencies, damage caused by the violation, the respondent's state of mind, and mitigation efforts. This edit changes "may be considered" to "must consider" to better convey the intent of the regulation and to clarify the nature of the matters the Board will consider.

Original Version

(c) Any of the following may be considered to issue an order for corrective action instead of monetary penalty:

(1) ...

Proposed Edit

(c) ~~Any of the following may be considered~~ In determining whether to issue an order for corrective action instead of monetary penalty, the Board must consider evidence that is relevant to any of the following matters:

Section 4201(d). Considerations to Assess Sanctions

Explanatory Note

This change clarifies both the respondent's obligations after receiving an order for corrective action and the circumstances in which the Board will impose a monetary penalty following a respondent's failure to comply with an order.

Original Version

(d) Monetary penalties may be assessed if the respondent fails to comply with an order for corrective action. Respondent shall provide the Board, or other state agency with jurisdiction over the respondent under Government Code section 4216.6, with access to respondent's records, sites, and facilities to verify compliance with an order for corrective action.

Proposed Edit

(d) ~~Monetary penalties may be assessed if the respondent fails to comply with an order for corrective action.~~ When the Board issues an order for corrective action, Respondent shall ~~must~~ provide the Board, ~~or other state agency with jurisdiction over the respondent under Government Code section 4216.6,~~ with access to respondent's records, sites, and facilities to verify compliance with ~~an~~ the order for corrective action. ~~The Board has discretion to impose a monetary penalty upon a respondent that fails to timely comply with a monetary penalty if the Board determines that the failure to comply was willful.~~

Section 4252(a)(1)(B). Response Options to a Notice of Probable Violation

Explanatory Note

This change clarifies the nature of the action the Board will take if a respondent chooses not to appeal the NOPV, and if that respondent that is under the jurisdiction of a state or local agency specified in Government Code section 4216.6. The change from “the Board may recommend enforcement” to “the Board will transmit the investigation results” better states the requirement section 4216.19(d) that, “the board shall transmit the investigation results and any recommended penalty to the state or local agency....”

Original Version

(1) Respondent may choose not to contest the allegation, penalty (if any), and corrective action (if any).

(A) ...

(B) If, pursuant to Government Code section 4216.6, subdivision (c), the respondent is under the jurisdiction of the Registrar of Contractors of the Contractors State License Board, the Public Utilities Commission, or the Office of the State Fire Marshal, the Board may recommend enforcement by the proper state agency.

Edited Version

(B) ~~If, pursuant to Government Code section 4216.6, subdivision (c),~~ If the respondent is under the jurisdiction of ~~the Registrar of Contractors of the Contractors State License Board, the Public Utilities Commission, or the Office of the State Fire Marshal,~~ a state or local agency referenced in subdivisions (c) or (d) of Government Code section 4216.6, the Board ~~may recommend enforcement by~~ will transmit the investigation results and any recommended penalty to the ~~proper~~ appropriate state agency.

Section 4252(c). Response Options to a Notice of Probable Violation

Explanatory Note

Section 4252, subdivision (c), applies when a respondent does not provide any response to

an NOPV. This change to subdivision (c) makes clear the nature of the Board's decision when that happens. That decision is to either transmit the investigation results to the appropriate authority as required by Government Code section 4216.19(d), or to impose sanctions directly pursuant to Government Code section 42616.6(d).

Original

(a) If a penalty or corrective action is stated in a notice of probable violation, the respondent must respond by choosing one of the following options

(b) The Board shall notify respondent of the date, time and location of any public meeting or hearing

(c) Failure of the respondent to respond in accordance with this section constitutes a waiver of the respondent's right to contest the notice of probable violation, including allegation, penalty (if any), and corrective action (if any). The Board may, without further notice to the respondent, find facts to be as alleged in the notice of probable violation and issue a decision or recommendation to the proper state agency with jurisdiction over the respondent under Government Code section 4216.6, subdivision (c).

Edited Version

~~(c) Failure of the respondent to respond in accordance with this section constitutes a waiver of the respondent's right to contest the notice of probable violation, including allegation, penalty (if any), and corrective action (if any). The Board may, without further notice to the respondent, find facts to be as alleged in the notice of probable violation and issue a decision or recommendation to the proper state agency with jurisdiction over the respondent under Government Code section 4216.6, subdivision (c).~~

(c) Failure of a respondent to respond as required by subdivision (a) constitutes a waiver of any right to appeal the Board's decision to either (1) transmit the investigation results and any recommended penalty to another state or local agency pursuant to Government Code section 4216.19, or (2) impose a civil penalty or order corrective action pursuant to Government Code section 4216.6.

Section 4252(a)(2)(A)(ii). Response Options to a Notice of Probable Violation

Explanatory Note

This change corrects the reference to the response a respondent may provide after receiving an NOPV.

Original Version

(a)(2)(A)(ii) The public meeting shall be held no later than 60 business days from the date of the Board's receipt of respondent's request. If a quorum of the Board cannot be gathered at the public meeting, the Board may consider the matter at the next public meeting where a quorum is present. At that public meeting or thereafter, within 45 business days or at the next public meeting where a quorum of the Board is present, the Board shall adopt a written decision or recommendation, as applicable. The Board's decision is effective upon the adoption of the written decision or a later date as may be provided in the written decision.

Edited Version

(a)(2)(A)(ii) The public meeting shall be held no later than 60 business days from the date of the Board's receipt of respondent's ~~request~~ **response**. If a quorum of the Board cannot be gathered at the public meeting, the Board may consider the matter at the next public meeting where a quorum is present. At that public meeting or thereafter, within 45 business days or at the next public meeting where a quorum of the Board is present, the Board shall adopt a written decision or recommendation, as applicable. The Board's decision is effective upon the adoption of the written decision or a later date as may be provided in the written decision.

Section 4253(a)(2). Informal Hearing Before the Board

Explanatory Note

This change clarifies the condition on which staff will grant a request to reschedule an informal hearing on a respondent's appeal.

Original Version

(a) An informal hearing before the Board shall be held at a public meeting within 60 business days of the Board's receipt of respondent's request.

(1) If a quorum of the Board cannot be gathered at the public meeting, the Board may consider the matter at the next public meeting where a quorum is present.

(2) If the notice of probable violation does not include any corrective action, the respondent may request staff to reschedule the hearing date to a date no later than 45 business days from the scheduled hearing date. Respondent must submit such a request in writing to staff no later than 15 business days before the scheduled hearing date. Staff may grant the request to reschedule the hearing only once if a quorum of the Board is available and only for good cause.

Edited Version

(2) If the notice of probable violation does not ~~include~~ **order** any corrective action, the respondent may request staff to reschedule the hearing date. ~~to a date no later than 45 business days from the scheduled hearing date.~~ Respondent must submit such a request in writing to staff no later than 15 business days before the scheduled hearing date. ~~Staff may grant the request to reschedule the hearing only once if a quorum of the Board is available and only for good cause.~~ Staff will reschedule the hearing only one time, and must reschedule the hearing for a date that is no more than 45 business days after the original hearing date and on which a quorum of the Board is available to conduct the hearing.

Section 4253(e). Informal Hearing Before the Board

Explanatory Note

This change clarifies the date upon which a decision on an appeal is effective.

Original Version

(e) The Board shall issue a decision or recommendation at the informal hearing or thereafter within 45 business days of the informal hearing, or at the next public meeting where a quorum of the Board is present. The Board shall adopt a written decision or recommendation at the informal hearing or subsequent public meeting. The Board's decision is effective upon the

adoption of the written decision or a later date as may be provided in the written decision. The Board's decision is effective upon the adoption of the written decision or a later date as may be provided in the written decision.

Edited Version

(e) The Board shall issue a decision or recommendation at the informal hearing or thereafter within 45 business days of the informal hearing, or at the next public meeting where a quorum of the Board is present. The Board shall adopt a written decision or recommendation at the informal hearing or subsequent public meeting. The Board's decision is effective upon the adoption of the written decision or a later date as may be provided in the written decision. The Board's decision is effective upon the adoption of the written decision. ~~or a later date as may be provided in the written decision.~~

Section 4255(a)(2). Request for Reconsideration

Explanatory Note

This change clarifies the date upon which a decision on a request for reconsideration.

Original Version

The Board's decision on the request for reconsideration is effective upon the adoption of the written decision or a later date as may be provided in the written decision.

Edited Version

The Board's decision on the request for reconsideration is effective upon the adoption of the written decision. ~~or a later date as may be provided in the written decision.~~

Section 4254(a)(2). Hearing Before an Administrative Law Judge

Explanatory Note

This change removes sub-section (a)(2) to narrow the range of issues presented by an appeal and to clarify the nature of the discretion to be exercised by the administrative law judge when a respondent opts for a formal hearing of the appeal.

Original Version

(a) If a respondent, under the jurisdiction of the Board pursuant to Government Code section 4216.6, subdivision (e), requests a hearing before an administrative law judge under section 4252, subdivision (a)(4), the hearing shall be conducted pursuant to chapters 4.5 and 5 of part 1 of division 3 of title 2 of the Government Code (commencing with sections 11400 and 11500) and California Code of Regulations, title 1, section 1000 et seq., and shall be subject to the following:

(1)

(2) The Board may recover costs as provided under California Code of Regulations, title 1, section 1042.

(A)

(B)

(C)

(D) The Board may not increase the amount of the cost awarded by the administrative law judge. However, the Board may reduce or eliminate the amount of the cost awarded by the administrative law judge, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested by Board staff pursuant to paragraph (A).

Edited Version

(a) If a respondent, under the jurisdiction of the Board pursuant to Government Code section 4216.6, subdivision (e), requests a hearing before an administrative law judge under section 4252, subdivision (a)(4), the hearing shall be conducted pursuant to chapters 4.5 and 5 of part 1 of division 3 of title 2 of the Government Code (commencing with sections 11400 and 11500) and California Code of Regulations, title 1, section 1000 et seq., and shall be subject to the following:

(1)

~~(2) The Board may recover costs as provided under California Code of Regulations, title 1, section 1042.~~

~~(A)~~

~~(B)~~

~~(C)~~

~~(D) The Board may not increase the amount of the cost awarded by the administrative law judge. However, the Board may reduce or eliminate the amount of the cost awarded by the administrative law judge, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested by Board staff pursuant to paragraph (A).~~

~~(D) ...~~

~~(E) ...~~

~~(F) ...~~

~~(G) ...~~

Section 4350(a)(1). Locate and Field Mark for Agricultural Operations Near High Priority Subsurface Installations

Explanatory Note

This change removes duplicate references to the Common Ground Alliance Best Practices Guide and the American Public Works Association color code. The original text expressly referenced those documents and also referenced them indirectly, through Government Code section 4216(n), which also references those documents. This regulation does not need both references, so the edit removes the express reference, preserving the incorporation through

section 4216(n).

Original Version

(a)(1) If the operator locates and field marks within the area delineated for excavation as provided in Government Code section 4216.3, subdivision (a)(1)(A)(i), the excavator and operator shall agree to the method to be used under the guidelines in Appendix B of the “Guidelines for Operator Facility Field Delineation” published in the most recent version of the Best Practices guide of the Common Ground Alliance and in conformance with the uniform color code of the American Public Works Association as provided in Government Code section 4216, subdivision (n).

Edited Version

(a)(1) If the operator locates and field marks within the area delineated for excavation as provided in Government Code section 4216.3, subdivision (a)(1)(A)(i), the excavator and operator shall agree to the method to be used ~~under the guidelines in Appendix B of the “Guidelines for Operator Facility Field Delineation” published in the most recent version of the Best Practices guide of the Common Ground Alliance and in conformance with the uniform color code of the American Public Works Association~~ to locate and field mark as provided in Government Code section 4216, subdivision (n).

Section 4360(a)(1). Locate and Field Mark for Continual Excavation on Flood Control Facilities near High Priority Subsurface Installations

Explanatory Note

This is the same change made to section 4350(a). The change removes duplicate references to the Common Ground Alliance Best Practices Guide and the American Public Works Association color code. The original text expressly referenced those documents and also referenced them indirectly, through Government Code section 4216(n), which also references the documents. This regulation does not need both references, so the edit removes the express reference, preserving the incorporation through section 4216(n).

Original Version

(a)(1) If the operator locates and field marks within the area delineated for excavation as provided in Government Code section 4216.3, subdivision (a)(1)(A)(i), the excavator and operator shall agree to the method to be used under the guidelines in Appendix B of the “Guidelines for Operator Facility Field Delineation” published in the most recent version of the Best Practices guide of the Common Ground Alliance and in conformance with the uniform color code of the American Public Works Association as provided in Government Code section 4216, subdivision (n).

Edited Version

(a)(1) If the operator locates and field marks within the area delineated for excavation as provided in Government Code section 4216.3, subdivision (a)(1)(A)(i), the excavator and operator shall agree to the method to be used ~~under the guidelines in Appendix B of the “Guidelines for Operator Facility Field Delineation” published in the most recent version of the Best Practices guide of the Common Ground Alliance and in conformance with the uniform color code of the American Public Works Association~~ to locate and field mark as provided in Government Code section 4216, subdivision (n).

Section 4351(b). Onsite Meeting and Plan for Agricultural Operations Near High Priority Subsurface Installations

Explanatory Note

This change makes clear that the excavator may authorize a representative to attend the meeting, and that that the operator can also authorize a representative to attend. This technical change is driven by the fact that “authorized representative” is specified at the paragraph level, which is (b)(1) and (b)(2), but not at the subdivision level, which is (b). Failure to reference the “authorized excavator” at the subdivision level created an inconsistency.

Original Version

(b) The excavator, which may be the real property owner or lessee, and the operator must attend the onsite meeting.

(1) The onsite meeting must include the excavator or the excavator’s authorized representative with the following knowledge and authority:

- (A)
- (B)

(2) The onsite meeting must include the operator or the operator’s authorized representative with the following knowledge and authority:

- (A)
- (B)

Edited Version

(b) The excavator **or the excavator’s authorized representative**, which may be the real property owner or lessee, and the operator **or the operator’s authorized representative**, must attend the onsite meeting.

Section 4361(b). Onsite Meeting and Plan for Continual Excavation on Flood Control Facilities Near High Priority Subsurface Installations

Explanatory Note

This change is the same as that made to section 4351(b)(1), (2). The change makes clear that the excavator may authorize a representative to attend the meeting, and that that the operator can also authorize a representative to attend. This technical change is driven by the fact that “authorized representative” is specified at the paragraph level, which is (b)(1) and (b)(2), but not at the subdivision level, which is (b). Failure to reference the “authorized excavator” at the subdivision level created an inconsistency.

Original Version

(b) The excavator, which may be the real property owner or lessee, and the operator must attend the onsite meeting.

(1) The onsite meeting must include the excavator or the excavator’s authorized representative with the following knowledge and authority:

(A)

(B)

(2) The onsite meeting must include the operator or the operator's authorized representative with the following knowledge and authority:

(A)

(B)

Edited Version

(b) The excavator [or the excavator's authorized representative](#), which may be the real property owner or lessee, and the operator [or the operator's authorized representative](#) must attend the onsite meeting.

Section 4351(b)(1)(B). Onsite Meeting and Plan for Agricultural Operations Near High Priority Subsurface Installations

Explanatory Note

This edit is a technical change to accurately specify the agreement incorporated by the regulation.

Original Version

(B) Authority to develop and agree to an area of continual excavation plan by completing the Area of Continual Excavation Agreement (Agricultural Operations).

Edited Version

(B) Authority to develop and agree to an area of continual excavation plan by completing the Area of Continual Excavation Agreement (Agricultural Operations), [form number ACE Agreement 01 \(07-01-2020\)](#).

Section 4361(b)(1)(B). Onsite Meeting and Plan for Continual Excavation on Flood Control Facilities Near High Priority Subsurface Installations

Explanatory Note

This edit is a technical change to accurately specify the agreement incorporated by the regulation.

Original Version

(B) Authority to develop and agree to an area of continual excavation plan by completing the Area of Continual Excavation Agreement (Flood Control Facilities).

Edited Version

(B) Authority to develop and agree to an area of continual excavation plan by completing the Area of Continual Excavation Agreement (Flood Control Facilities), [form number ACE Agreement 02 \(07-01-2020\)](#).

Section 4253(a)(3). Informal Hearing Before the Board

Explanatory Note

This change corrects a typographical error.

Original Version

(a)(3) At least 15 business days before the hearing, respondent may submit a written response and other records to the notice of probable violation that may support modification or elimination of the penalty or corrective action for the Board’s consideration. Respondent must provide a minimum of one original and 12 copies of the original written response to staff, or submit the written response electronically as provided on the Board’s website: digsafe.fire.ca.gov. The written response must not exceed 10 pages (excluding exhibits), must be on 8 1/2" x 11” white paper, double-spaced text lines, and minimum 11-point fonttext.

Edited Version

(a)(3) At least 15 business days before the hearing, respondent may submit a written response and other records to the notice of probable violation that may support modification or elimination of the penalty or corrective action for the Board’s consideration. Respondent must provide a minimum of one original and 12 copies of the original written response to staff, or submit the written response electronically as provided on the Board’s website: digsafe.fire.ca.gov. The written response must not exceed 10 pages (excluding exhibits), must be on 8 1/2" x 11” white paper, double-spaced text lines, and minimum 11-point fonttext.

Section 4253(b). Informal Hearing Before the Board

Explanatory Note

This change clarifies the standard the Board will use in determining whether to exclude evidence from the record during a hearing.

Original Version

(b) ... Nevertheless, at the Board’s discretion, the Board may exclude evidence that is unduly repetitious, irrelevant, or reasonably unreliable.

Edited Version

(b) ... Nevertheless, at the Board’s discretion, the Board may exclude evidence that is unduly repetitious, irrelevant, or **reasonably** unreliable.

<u>Attachments</u>	<u>No.</u>
Resolution No. 19-02-01	1
Resolution No. 19-07-01	2

RESOLUTION NO. 19-02-01

**RESOLUTION OF THE CALIFORNIA UNDERGROUND FACILITIES
SAFE EXCAVATION BOARD APPROVING THE ADOPTION OF THE REGULATIONS FOR
INVESTIGATION, ENFORCEMENT, AND AREA OF CONTINUAL EXCAVATION
PURSUANT TO THE DIG SAFE ACT OF 2016 AND
AUTHORIZING RULEMAKING PROCEEDINGS**

WHEREAS, pursuant to the Dig Safe Act of 2016 (SB 661, Chapter 809, Statutes of 2016) (the “Act”), codified under Government Code section 4216 et seq. (the “statute”), the California Underground Facilities Safe Excavation Board (the “Board”) is mandated to coordinate education and outreach activities that encourage safe excavation practices, develop certain standards for safe excavation practices, investigate possible violations of the statute, enforce the statute on specified persons, and recommend enforcement to the Registrar of Contractors of the Contractors State License Board, the Public Utilities Commission, and the Office of the State Fire Marshal;

WHEREAS, the Board must adopt regulations to implement the statute relative to investigation, enforcement, and area of continual excavation;

WHEREAS, pursuant to Government Code section 4216.11, on or before January 1, 2020, the Board is required to adopt regulations to establish minimum elements for the onsite meeting and minimum elements for the mutually agreed-upon plan described in paragraph (1) of subdivision (c) of Government Code section 4616.10 for managing an area of continual excavation; and

WHEREAS, Government Code section 4216.22 provides that the Board may prescribe rules and regulations as may be necessary or proper to carry out the purposes and intent of the Act and to exercise the powers and duties conferred upon it by the Act;

THEREFORE, BE IT RESOLVED by the California Underground Facilities Safe Excavation Board as follows:

Section 1. The proposed regulations for investigation and enforcement of the statute, and area of continual excavation onsite meeting and agreement, are hereby approved in substantially the form submitted to the Board by staff. The Executive Officer is hereby authorized, for and on behalf of the Board, to proceed as required by the Administrative Procedure Act to adopt the proposed regulations and submit the proposed regulations with the supporting documentation required by law to the Office of Administrative Law.

Section 2. The Executive Officer is hereby authorized, for and on behalf of the Board, to take such actions, including making or causing to be made such changes to the proposed regulations as may be required for approval thereof by the Office of Administrative Law, and to execute and deliver any and all documents, including STD. 399 and STD. 400, that the Executive Officer may deem necessary or advisable in order to effectuate the purposes of this resolution.

Section 3. This resolution shall take effect immediately upon approval.

Date of Adoption: February 11, 2019

I hereby certify that the attached resolution is a true and exact copy of Resolution No. 19-02-01 adopted by the California Underground facilities safe excavation Board on February 11, 2019 APPROVING THE ADOPTION OF THE REGULATIONS FOR INVESTIGATION, ENFORCEMENT, AND AREA OF CONTINUAL EXCAVATION PURSUANT TO THE DIG SAFE ACT OF 2016 AND AUTHORIZING RULEMAKING PROCEEDINGS.

/s/ Tony Marino

/s/ Carl Voss

Tony Marino
Executive Officer

Carl Voss
Chair

Date: February 11, 2019

RESOLUTION NO. 19-07-01

**RESOLUTION OF THE CALIFORNIA UNDERGROUND FACILITIES
SAFE EXCAVATION BOARD APPROVING THE ADOPTION OF THE
REGULATIONS FOR INVESTIGATION, ENFORCEMENT, AND AREA OF
CONTINUAL EXCAVATION AND AUTHORIZING RULEMAKING
PROCEEDINGS**

WHEREAS, pursuant to the Dig Safe Act of 2016 (SB 661, Chapter 809, Statutes of 2016) (the “Act”), codified under Government Code section 4216 et seq. (the “statute”), the California Underground Facilities Safe Excavation Board (the “Board”) is mandated to coordinate education and outreach activities that encourage safe excavation practices, develop certain standards for safe excavation practices, investigate possible violations of the statute, enforce the statute on specified persons, and recommend enforcement to the Registrar of Contractors of the Contractors State License Board, the Public Utilities Commission, and the Office of the State Fire Marshal;

WHEREAS, the Board must adopt regulations to implement the statute relative to investigation, enforcement, and areas of continual excavation; and

WHEREAS, pursuant to Government Code section 4216.11, on or before January 1, 2020, the Board is required to adopt regulations to establish minimum elements for the onsite meeting and minimum elements for the mutually agreed-upon plan described in paragraph (1) of subdivision (c) of Government Code section 4616.10 for managing an area of continual excavation; and

WHEREAS, Government Code section 4216.22 provides that the Board may prescribe rules and regulations as may be necessary or proper to carry out the purposes and intent of the Act and to exercise the powers and duties conferred upon it by the Act; and

WHEREAS, the Board reviewed and considered public comments received during the 45-day written public comment period;

THEREFORE, BE IT RESOLVED by the California Underground Facilities Safe Excavation Board as follows:

Section 1. The proposed regulations for investigation and enforcement of the statute and for area of continual excavation onsite meeting and agreement are hereby approved in substantially the form submitted to the Board by staff. The Executive Officer is hereby authorized, for and on behalf of the Board, to proceed as required by the Administrative Procedure Act to adopt the proposed regulation and submit the proposed regulation with the supporting documentation required by law to the Office of Administrative Law.

Section 2. The Executive Officer is hereby authorized, for and on behalf of the Board,

to take such actions, including making or causing to be made such changes to the proposed regulation as may be required for approval thereof by the Office of Administrative Law, and to execute and deliver any and all documents, including STD. 399 and STD. 400, that the Executive Officer may deem necessary or advisable in order to effectuate the purposes of this resolution.

Section 3. This resolution shall take effect immediately upon approval.

Date of Adoption: July 15, 2019

I hereby certify that the attached resolution is a true and exact copy of Resolution No. 19-07-01 adopted by the California Underground Facilities Safe Excavation Board on July 15, 2019: RESOLUTION OF THE CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD APPROVING THE ADOPTION OF THE REGULATIONS FOR INVESTIGATION, ENFORCEMENT, AND AREA OF CONTINUAL EXCAVATION AND AUTHORIZING RULEMAKING PROCEEDINGS.

/s/ Tony Marino

Tony Marino
Executive Officer

/s/ Carl Voss

Carl Voss
Chair

Date: July 15, 2019