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, totake 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: _____

CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD
PROPOSED RULEMAKING SCHEDULE
(Investigation, Enforcement, and Area of Continual Excavation)
February 11, 2019

Regulatory Process	**Deadline**
Present proposed regulations to Board for approval	February 2019
Internal review/approval (State Fire Marshal, CAL FIRE, Resources Agency, etc.)	February-May 2019
Submit to Office of Administrative Law ("OAL") for publication in the CA Regulatory Notice Register	May 2019
Notice is published in the CA Regulatory Notice Register and 45-day public written comment period begins	May 2019
Close of public written comment period. Public hearing scheduled or will be held if member of the public requests a public hearing in writing at least 15 days before comment period closes (Gov. Code section 11346.8).	July 2019
Present to Board for approval if there are any public comments or substantive changes to the regulations	July/August 2019
Internal review/approval (State Fire Marshal, etc.)	July/August 2019
Submit to OAL for approval (30 working days to review)	September 2019
Effective date of regulations if approved by OAL	January 1, 2020

TEXT OF PROPOSED REGULATIONS

California Code of Regulations
Title 19. Public Safety

Division 4. California Underground Facilities Safe Excavation Board
Chapter 1. General
Article 1. General

Section 4000. Definitions

(a) The definitions in this section are supplementary to those under Government Code section 4216.

(b) The following definitions shall apply wherever the terms are used throughout this division:

"Act" means the Dig Safe Act of 2016 (SB 661, Chapter 809, Statutes of 2016) and article 2 of chapter 3.1 of division 5 of title 1 of the Government Code (commencing with section 4216).

"Agreement" as the term is used in the Area of Continual Excavation Agreement (Agricultural Operations) means the Area of Continual Excavation Agreement (Agricultural Operations) between an excavator and operator.

"Agreement" as the term is used in the Area of Continual Excavation Agreement (Flood Control Facilities) means the Area of Continual Excavation Agreement (Flood Control Facilities) between an excavator and operator.

"Area of Continual Excavation Agreement (Agricultural Operations)" means the Area of Continual Excavation Agreement – Agricultural Operations (Form No. ACE Agreement 01 (07-01-2020)), which is available on the Board's website: digsafe.fire.ca.gov.

"Area of Continual Excavation Agreement (Flood Control Facilities)" means the Area of Continual Excavation Agreement – Flood Control Facilities (Form No. ACE Agreement 02 (07-01-2020)), which is available on the Board's website: digsafe.fire.ca.gov.

"Business day" means a weekday Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding State of California observed holidays under Government Code section 19853.

"Damage" means any damage to a subsurface installation caused by excavation or excavation related work, including breaks, leaks, nicks, dents, strikes, gouges, grooves, cracks, or punctures to a subsurface installation.

"Farm Owner/Lessee" as the term is used in the Area of Continual Excavation Agreement (Agricultural Operations), means "excavator" as defined in Government Code section 4216, subdivision (h).

“Flood control facility” means an engineered basin operated by a state or local agency, used for the temporary slowing and storing of storm water runoff and for which regular removal of debris is required.

“Investigator” means an investigator under the California Underground Facilities Safe Excavation Board.

“One-call center” as the term is used in the Area of Continual Excavation Agreement (Agricultural Operations) and the Area of Continual Excavation Agreement (Flood Control Facilities) means “regional notification center” as defined in Government Code section 4216, subdivision (g).

“Record” means records related, pertaining, or relevant to any damage or probable violation of the Act or this division. Such “records” include any document, email, photograph, electronic recording, map, drawing including computer-aided designs, film, microfiche, tape, disc, flash drive, book, log, journal, global positioning system (“GPS”) coordinates, design plan, ticket, previous incident documentation, soil sample, writing as defined in Evidence Code section 250, or any other tangible or intangible material of any kind.

“Respondent” means the excavator or operator who has been issued a notice of probable violation.

“Staff” means the staff of the California Underground Facilities Safe Excavation Board.

“Utility” as the term is used in the Area of Continual Excavation Agreement (Agricultural Operations), means “high priority subsurface installation” as defined in Government Code section 4216, subdivision (j).

“Utility Owner” as the term is used in the Area of Continual Excavation Agreement (Agricultural Operations), means “operator” as defined in Government Code section 4216, subdivision (o).

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216 and 19853, Government Code; Section 250, Evidence Code.

Section 4001. Valid and Current Contact Information for Members of Regional Notification Centers

(a) Members of regional notification centers shall maintain valid and current contact information, including phone number, email, and address, with the appropriate regional notification center, and shall promptly inform the appropriate regional notification center of any changes to the contact information.

(b) Regional notification centers shall provide updated contact information for their members to the Board upon request by the Board.

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.1 and 4216.12, Government Code.

Chapter 2. Investigation
Article 1. Damage Notification

Section 4100. Damage Notification by Excavators

(a) Immediately after calling 911 emergency services or other emergency responders as necessary, and in no event longer than 2 hours after the excavator's knowledge of the damage, the excavator shall notify the appropriate regional notification center of any of the following types of damages:

(1) Damage to natural gas or hazardous liquid pipeline subsurface installation in which the damage results in the escape of any flammable, toxic, or corrosive gas or liquid.

(2) Damage to high priority subsurface installation of any kind.

(3) Damage causing injury that requires treatment at a facility that provides medical services, such as a clinic as defined under Health and Safety Code section 1200 or a health facility defined under Health and Safety Code section 1250.

(4) Damage causing fatality.

(b) The excavator shall notify the appropriate regional notification center of the damage through the regional notification center's website or mobile application, as available, or by phone. ~~If internet access is not available, the excavator may contact the regional notification center by phone~~. The notification shall include the following, as may be known to the excavator at the time of notification:

(1) Excavator's contact information.
(2) Location of the damage.
(3) Type of subsurface installation.
(4) Approximate date and time the damage occurred.
(5) Any injury or fatality.
(6) Whether damage caused fire or evacuation.
(7)Type of excavation equipment or tool used by the excavator when the damage occurred or when the excavator discovered the damage.

(c) Regional notification centers shall transmit the notification by email, phone, or other method as may be provided on the Board's website (digsafe.fire.ca.gov), to the Board immediately, but not longer than 1 hour, after the regional notification center's receipt of the notification.

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.4, 4216.6, 4216.12, and 4216.19, Government Code; Sections 1200 and 1250, Health and Safety Code.

Chapter 2. Investigation
Article 2. Investigators

Section 4150. Investigators

(a) Investigators are authorized to investigate any damage, probable violation of the Act or this division, reports of incident events as defined in Government Code section 4216.6, subdivision (h)(1), and complaints of damage or probable violation of the Act or this division.

(b) Investigators are delegated the powers conferred on the Board under article 2 of chapter 2, part 1, division 3, title 2 of the Government Code (commencing with section 11180). Investigators are authorized to pursue any other investigatory or discovery power authorized under the laws of the State of California, such as inspection warrants under Code of Civil Procedure section 1822.51.

(c) Investigators may interview witnesses and obtain statements, declarations, verifications, certificates, oaths, or affidavits under penalty of perjury pursuant to Code of Civil Procedure section 2015.5.

(d) Investigators may issue notices of probable violation and information letters. An information letter may include safe excavation education and training opportunities, and information on the Act or this division.

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12, 4216.19, and 11180-11191, Government Code; Sections 1822.51 and 2015.5, Code of Civil Procedure.

Section 4151. Evidence Collected by Investigators

(a) Investigators may inspect, examine, gather, and maintain records.

(b) Upon an investigator’s request, excavators and operators shall provide access to sites and facilities, and any records. Excavators and operators shall remove objects, such as barricades and plates, at or near the site of the damage to facilitate the investigation.

(c) Any excavator or operator who obstructs an investigation by taking actions that were known or reasonably should have been known to prevent, hinder, or impede an investigation is subject to sanctions under the Act and this division.

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12, 4216.19, and 11180-11191, Government Code; Sections 1822.51 and 2015.5, Code of Civil Procedure.

Chapter 3. Enforcement
Article 1. Sanctions

Section 4200. Categories of Sanctions

(a) Violation of the Act or this division is subject to any of or a combination of any of the following sanctions:

(1) Order for corrective action, such as completion of relevant education or training courses; facility or equipment repair, testing, or replacement; and changes to operational or management procedures or processes, including updates to Geographic Information Systems ("GIS") data.

(2) Monetary penalty up to the maximum amounts under Government Code section 4216.6, subdivision (a).

(b) This section does not limit or bar any other or additional sanctions that may be issued under the authority of the Registrar of Contractors of the Contractors State License Board, the Public Utilities Commission, or the Office of the State Fire Marshal.

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12, and 4216.19, Government Code.

Section 4201. Considerations to Assess Sanctions

(a) All of the following shall 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) Type of violation and its gravity, such as risk of or actual injury, death, or environment or property damage.

(2) Degree of culpability, which may be measured in part by whether there were intervening acts or omissions by other persons. ~~including intervening acts or omissions by other persons.~~

(3) Respondent's history of violations.

(4) Respondent's history of work conducted without violations.

(5) Efforts taken by the respondent to prevent the violation and, once the violation occurred, the efforts taken to mitigate the safety consequences of the violation.

(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) Respondent notified the appropriate regional notification center, the Board, or other state agency with jurisdiction over the respondent under Government Code section 4216.6, if possible, of the violation immediately after detecting it and before the

respective state agency learned of it by other means. This consideration does not apply when the respondent is required to report ~~to~~ violations related to damages that must be reported under section 4100, or violations under any other law to the appropriate regional notification center, the Board, or other state agency with jurisdiction over the respondent under Government Code section 4216.6.

(2) Cooperation with state agencies during the investigation.

(3) Appropriateness of the sanction to the size of the business of the respondent, including any effect on the respondent's ability to continue doing business.

(4) Economic benefit gained from the violation without any reduction because of subsequent costs.

(5) Respondent had received one or more information letters from a Board investigator.

(6) Other factors in consideration of the facts, evidence, and violation.

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

(1) Respondent is willing and able to comply with an order for corrective action.

(2) Respondent notified the appropriate regional notification center, the Board, or other state agency with jurisdiction over the respondent under Government Code section 4216.6, if possible, of the violation immediately after detecting it and before the state agency or the Board learned of it by other means. This consideration does not apply when the respondent is required to report ~~to~~ violations related to damages that must be reported under section 4100, or violations under any other law to the appropriate regional notification center, the Board, or other state agency with jurisdiction over the respondent under Government Code section 4216.6.

(3) Cooperation with state agencies during the investigation.

(4) Violation did not cause death or substantial injury, environment or property damage, or pose significant risk of death or substantial injury, or environment or property damage.

(5) Respondent did not act willfully or knowingly, which includes ~~recklessness~~ recklessly.

(6) Respondent does not have a history of the same or similar violations, and has not failed to comply with an order for corrective action.

(7) If the respondent has a history of engaging in excavation or excavation related work, the respondent has a history of ~~work conducted~~conducting this work without a history of the same or similar violations.

(8) Respondent took immediate action upon discovery to mitigate the safety consequences of the violation.

(9) Other factors in consideration of the facts, evidence, and violation.

(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.

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12, and 4216.19, Government Code.

Chapter 3. Enforcement
Article 2. Enforcement of Violations

Section 4250. Effective Date for Enforcement by the Board

Beginning July 1, 2020, the Board shall enforce the Act and this division on persons under the jurisdiction of the Board pursuant to Government Code section 4216.6, subdivision (e).

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12, and 4216.19, Government Code.

Section 4251. Notice of Probable Violation

(a) Based on the results of an investigation, the Board may issue a notice of probable violation of the Act or this division. A notice of probable violation shall include the following:

(1) Statute, regulation, or order that the respondent is alleged to have violated and a statement of the evidence upon which the allegation is based.

(2) Maximum amount of the penalty the respondent is subject to under the Act and this division.

(3) Amount of the penalty, if any.

(4) Corrective action, if any.

(5) Response options available to the respondent under section 4252.

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12, and 4216.19, Government Code.

Section 4252. Response Options to a Notice of Probable Violation

(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 in writing, which must be received by the Board within 30 business days of the date of the notice of probable violation:

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

(A) If the respondent is under the jurisdiction of the Board pursuant to Government Code section 4216.6, subdivision (e), the respondent shall pay any penalty and complete any corrective action, in accordance with section 4256, as may be provided in the notice of probable violation and ordered by the Board.

(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.

(2) (A) Respondent may submit a written explanation and other records the respondent believes may warrant modification or elimination of the penalty or corrective action for the Board's consideration at a public meeting held in accordance with the Bagley-Keene Open Meeting Act (Government Code section 11120 et seq.).

(i) 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 font text. The 10-page limit may be extended at respondent's request by the Chair or Vice-Chair of the Board, depending on the complexity of the facts and evidence. Respondent must submit such a request to staff within 5 business days of the date of the notice of probable violation, which shall include the basis for the request. Staff shall notify respondent of the Chair's or Vice-Chair's decision within 10 business days of receipt of respondent's request.

(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.

(iii) If the respondent is under the jurisdiction of the Board pursuant to Government Code section 4216.6, subdivision (e), the respondent shall pay any penalty and complete any order for corrective action, in accordance with section 4256, that may be ordered by the Board.

(iv) 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.

(3) Respondent may request an informal hearing before the Board at a public meeting held in accordance with the Bagley-Keene Open Meeting Act (Government Code section 11120 et seq.), as provided in section 4253.

(A) If the respondent is under the jurisdiction of the Board pursuant to Government Code section 4216.6, subdivision (e), the respondent shall pay any penalty and complete any order for corrective action, in accordance with section 4256, that may be ordered by the Board.

(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.

(4) If the respondent is under the jurisdiction of the Board pursuant to Government Code section 4216.6, subdivision (e), the respondent may request a hearing before an Administrative Law Judge of the Office of Administrative Hearings, as provided in section 4254.

(5) 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 respondent may contest the allegation, penalty (if any), or corrective action (if any) and request the Board to make a recommendation to the state entity with jurisdiction over the respondent.

(b) The Board shall notify respondent of the date, time, and location of any public meeting or hearing under subdivision (a)(2) or (a)(3) at least 20 business days before the public meeting or hearing. The Board shall also notify respondent of any Board decision or recommendation within 2 business days of the Board's decision or recommendation.

(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).

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12, 4216.19, 11120, 11400, and 11500, Government Code.

Section 4253. Informal Hearing Before the Board

(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.

(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 font text.

(b) Rules relating to admission of evidence do not apply to the informal hearing. Nevertheless, at the Board's discretion, the Board may exclude evidence that is unduly repetitious, irrelevant, or reasonably unreliable.

(c) The informal hearing shall proceed as follows.

(1) Staff may present the basis for the notice of probable violation. The Board may place time limitations, not less than 15 minutes, depending on the complexity of the facts and evidence to make such a presentation to the Board.

(2) After staff's presentation, the respondent may present respondent's reasons for contesting the allegation or reasons that may support a modification or elimination of the penalty or corrective action. The Board may place time limitations, not less than the time afforded to staff to present the basis for the notice of probable violation, depending on the complexity of the facts and evidence to make such a presentation to the Board.

(3) Staff may present a rebuttal to respondent's presentation. The Board may place time limitations, not less than 5 minutes, depending on the complexity of the facts and evidence to make such a rebuttal.

(4) Respondent may present a rebuttal to staff's rebuttal. The Board may place time limitations, not less than the time afforded to staff to present a rebuttal to respondent's presentation, depending on the complexity of the facts and evidence to make such a rebuttal.

(5) The Board may pose questions to staff, respondent, or other witnesses or experts.

(d) At sole cost to the respondent, the respondent may arrange for a stenographer or court reporter to transcribe the informal hearing if transcription by a stenographer or court reporter is feasible at the hearing, and the respondent notifies staff at least 15 business days in advance of the hearing. Respondent shall submit a complete copy of the transcript to the Board.

(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.

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12, 4216.19, and 11120, Government Code.

Section 4254. Hearing Before an Administrative Law Judge

(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) At the Board's discretion, the hearing may be recorded electronically instead of by a stenographer or court reporter.

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

(A) Board staff may request the administrative law judge, as part of the proposed decision, to direct a respondent found to have committed a violation of the Act or this division to pay to the Board all reasonable costs of investigation and prosecution of the case, including attorney's fees. The Board may not recover costs incurred at the hearing.

(B) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the Board's Executive Officer or legal counsel, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case.

(C) Upon Board staff's request under paragraph (A), the administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case. The administrative law judge shall set forth the basis for the finding in the proposed decision, and shall consider all of the following in making the proposed finding:

(i) Waiver or reduction of costs when to do so will unfairly penalize the respondent who has committed a violation, but who has used the hearing process to obtain dismissal of a charge of another violation or a reduction in the severity of the sanction.

(ii) Respondent's subjective good faith belief in the merits of respondent's position and whether the respondent has raised a colorable (appearance of plausibly valid) challenge to the proposed sanction.

(iii) Respondent demonstrated to the administrative law judge that the respondent cannot pay all or a portion of the costs, or that payment of the costs would cause an unreasonable financial hardship that cannot be remedied through a payment plan.

(iv) Investigation was disproportionately large in relation to the type and number of violations.

(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).

(E) Costs are payable 120 days after the effective date of the Board's decision, unless otherwise provided for by the administrative law judge or if the date for payment is extended by the Board.

(F) Where an order for recovery of costs is issued and timely payment is not made as directed in the Board's decision, the Board may enforce the order for payment in any appropriate court. This right of enforcement shall be in addition to any other rights the Board may have as to any respondent directed to pay costs.

(G) In any action for recovery of costs, proof of the Board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(b) The Board shall act on the administrative law judge's proposed decision in accordance with Government Code section 11517, subdivision (c).

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12, 4216.16, 4216.19, 11120, 11400, 11500, and 11517, Government Code.

Section 4255. Request for Reconsideration

(a) Respondent may request the Board to reconsider the Board's decision or recommendation issued pursuant to section 4252, subdivision (a)(2), or 4253. The request for reconsideration must be in writing and received by the Board within 30 days of the Board's decision or recommendation.

(1) The Board will not consider information or other records previously submitted to or received by the Board prior to the Board's decision or recommendation issued pursuant to section 4252, subdivision (a)(2), or 4253. The basis of the request for reconsideration must be that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the time of the respondent's response or informal hearing on the matter.

(2) The Board may grant or deny, in whole or in part, a request for reconsideration without further proceedings. The Board shall issue a decision at a public meeting within 60 business days of the Board's receipt of respondent's request for reconsideration, or at the next public meeting where a quorum of the Board 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 on respondent's request for reconsideration. 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.

(3) The Board shall notify respondent of the date, time, and location of any public meeting held under this subdivision at least 20 business days before the public meeting. The Board shall also notify respondent of the Board's decision on the request for reconsideration within 2 business days of the Board's decision.

(4) The filing of a request for reconsideration stays the payment of any assessed penalty, but does not stay any order for corrective action unless specified otherwise by the Board in the Board's written decision under section 4252, subdivision (a)(2), or 4253.

(b) Respondent may request the Board to reconsider the Board's decision issued pursuant to section 4254. The request for reconsideration must be in writing and received by the Board within 5 days of the date of the Board's decision, and shall be administered in accordance with Government Code section 11521 and California Code of Regulations, title 1, section 1050.

(1) The Board shall notify respondent of the date, time, and location of any public meeting held under this subdivision at least 10 days before the public meeting. The

Board shall also notify respondent of the Board's decision on the request for reconsideration within 2 business days of the Board's decision.

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12, 4216.19, 11120, 11400, 11500, and 11521 Government Code.

Section 4256. Payment of Penalty and Compliance with Order for Corrective Action

(a) If the respondent is under the jurisdiction of the Board pursuant to Government Code section 4216.6, subdivision (e), the respondent must pay any Board ordered penalty within 30 days of the Board's decision unless specified otherwise in the decision. Payment shall be made by certified check or money order payable to "Safe Energy Infrastructure and Excavation Fund – Enforcement Account" and sent to: California Underground Facilities Safe Excavation Board, 2251 Harvard Street, Sacramento, California 95815.

(b) If the respondent is under the jurisdiction of the Board pursuant to Government Code section 4216.6, subdivision (e), the respondent must comply with any order for corrective action within the timeframe specified in the Board's decision.

(c) 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 respondent shall pay any penalty or comply with any corrective action as may be ordered by the respective state agency with jurisdiction over the respondent. Payment shall be made by certified check or money order payable to "Safe Energy Infrastructure and Excavation Fund – Enforcement Account" and sent to: California Underground Facilities Safe Excavation Board, 2251 Harvard Street, Sacramento, California 95815.

(d) If the respondent fails to pay the full amount of the penalty in accordance with this section, the matter may be referred to the Attorney General to enforce the penalty, including any interest and costs, in a civil action in the appropriate court.

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12, ~~and~~ 4216.19, and 4216.24, Government Code.

Section 4257. Valid and Current Contact Information

Respondent shall maintain valid and current phone number, email, and mailing or business address with the Board and promptly notify the Board of any changes to the phone number, email, or mailing or business address.

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12, 4216.19, 11400, and 11500, Government Code.

Section 4258. Ex Parte Communication

Ex parte communication with any Board member or staff regarding the substance of the matter is prohibited from the date of the notice of probable violation until the Board issues a written decision or recommendation, and from the date a request for reconsideration (if any) is filed until the Board issues a written decision on the request for reconsideration. However, ex parte communication with staff regarding procedural issues ~~is permitted~~, such as scheduling a hearing, is permitted.

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12, 4216.19, 11400, and 11500, Government Code.

Chapter 4. Area of Continual Excavation
Article 1. General

Section 4300. Effective Date

This chapter is effective beginning July 1, 2020.

NOTE: Authority cited: Sections 4216.10, 4216.11, and 4216.22, Government Code. Reference: Sections 4216.10 and 4216.12, Government Code.

Chapter 4. Area of Continual Excavation
Article 2. Onsite Meeting and Plan to Manage Area of Continual Excavation – Agricultural Operations

Section 4301. Locate and Field Mark for Agricultural Operations Near High Priority Subsurface Installations

(a) Prior to the onsite meeting under section 4302, the operator shall provide a response to the excavator pursuant to Government Code section 4216.3, subdivision (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.

NOTE: Authority cited: Sections 4216.11 and 4216.22, Government Code. Reference: Sections 4216.3, 4216.10 and 4216.12, Government Code.

Section 4302. Onsite Meeting and Plan for Agricultural Operations Near High Priority Subsurface Installations

(a) An onsite meeting for agricultural operations near a high priority subsurface installation held pursuant to Government Code section 4216.10, subdivision (c)(1), must take place at the parcel of real property where the high priority subsurface installation is present. The onsite meeting must be held at a mutually agreed upon date and time that does not unreasonably disrupt the excavator's or operator's business operations.

(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) Knowledge of the agricultural operations that will occur in the area of continual excavation during the period of time the continual excavation ticket is valid under Government Code section 4216.10, subdivision (d). Excavator must be prepared at the onsite meeting with all relevant information concerning the agricultural operations that will occur in the area of continual excavation.

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

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

(A) Knowledge of the location of the high priority subsurface installation, such as a superintendent, supervisor, or engineer. Operator must be prepared at the onsite meeting with all relevant information concerning the location of the high priority subsurface installation in the area of continual excavation.

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

(3) The excavator and operator must complete the Area of Continual Excavation Agreement (Agricultural Operations).

(c) Excavator must be aware of the exact location of the high priority subsurface installations in conflict with the excavation pursuant to Government Code section 4216.4.

(1) If the operator's understanding of the exact location of the high priority subsurface installation is contrary to the excavator's understanding, the operator must demonstrate that the high priority subsurface installation is in conflict with the excavation, and excavation activities within a specified distance from each side of

the high priority subsurface installation may cause damage to the high priority subsurface installation, by any of the following methods:

(A) Provide documentation indicating the exact location of the high priority subsurface installations.

(B) Expose the high priority subsurface installations within the tolerance zone at a date and time, in a manner, and with the hand tool or vacuum excavation device agreed upon by the excavator and operator.

NOTE: Authority cited: Sections 4216.11 and 4216.22, Government Code. Reference: Sections 4216.10 and 4216.12, Government Code.

Chapter 4. Area of Continual Excavation
Article 3. Onsite Meeting and Plan to Manage Area of Continual Excavation – Flood Control Facilities

Section 4350. Locate and Field Mark for Continual Excavation on Flood Control Facilities Near High Priority Subsurface Installations

(a) Prior to the onsite meeting under section 4351, the operator shall provide a response to the excavator pursuant to Government Code section 4216.3, subdivision (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.

NOTE: Authority cited: Sections 4216.11 and 4216.22, Government Code. Reference: Sections 4216.3, 4216.10, and 4216.12, Government Code.

Section 4351. Onsite Meeting and Plan for Continual Excavation on Flood Control Facilities Near High Priority Subsurface Installations

(a) An onsite meeting for continual excavation on flood control facilities near a high priority subsurface installation held pursuant to Government Code section 4216.10, subdivision (c)(1), must take place at the parcel of real property where the high priority subsurface installation is present. The onsite meeting must be held at a mutually agreed upon date and time that does not unreasonably disrupt the excavator’s or operator’s business operations.

(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) Knowledge of continual excavation that will occur on the flood control facilities during the period of time the continual excavation ticket is valid under Government Code section 4216.10, subdivision (d). Excavator must be prepared at the onsite meeting with all relevant information concerning the continual excavation that will occur on the flood control facilities.

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

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

(A) Knowledge of the location of the high priority subsurface installation, such as a superintendent, supervisor, or engineer. Operator must be prepared at the onsite meeting with all relevant information concerning the location of the high priority subsurface installation in the area of continual excavation.

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

(3) The excavator and operator must complete the Area of Continual Excavation Agreement (Flood Control Facilities).

(c) Excavator must be aware of the exact location of the high priority subsurface installations in conflict with the excavation pursuant to Government Code section 4216.4.

(1) If the operator's understanding of the exact location of the high priority subsurface installation is contrary to the excavator's understanding, the operator must demonstrate that the high priority subsurface installation is in conflict with the excavation, and excavation activities within a specified distance from each side of the high priority subsurface installation may cause damage to the high priority subsurface installation, by any of the following methods:

(A) Provide documentation indicating the exact location of the high priority subsurface installations.

(B) Expose the high priority subsurface installations within the tolerance zone at a date and time, in a manner, and with the hand tool or vacuum excavation device agreed upon by the excavator and operator.

NOTE: Authority cited: Sections 4216.11 and 4216.22, Government Code. Reference: Sections 4216.10 and 4216.12, Government Code.

AREA OF CONTINUAL EXCAVATION AGREEMENT
AGRICULTURAL OPERATIONS

(Government Code section 4216.10 and California Code of Regulations, title 19, sections 4300-4302)

This Agreement must be completed legibly in ink or typed. Signatures must be handwritten in ink.

Excavator ("Farm Owner/Lessee") and Operator ("Utility Owner") with assets located in Farm Owner's/Lessee's property are required to complete this Area of Continual Excavation Agreement – Agricultural Operations (Form No. ACE Agreement 01 (07-01-2020)) ("Agreement") for a Continual Excavation Ticket for farming activities involving excavation within 10 feet of the Utility Owner's **high priority subsurface installation** ("Utility"). Farming activities described in this Agreement may be performed up to one year after the Farm Owner/Lessee obtains a Continual Excavation Ticket, which may be renewed within two (2) working days by calling "811" or accessing the regional notification center's ("one-call center") website. This Agreement applies to only **ONE** Utility Owner. Other Utilities may be present on the property, and a separate Area of Continual Excavation Agreement – Agricultural Operations (Form No. ACE Agreement 01 (07-01-2020)) is required with each Utility Owner.

CONTINUAL EXCAVATION TICKET NUMBER: _____

DATE OF ONSITE MEETING: _____

TIME OF ONSITE MEETING: _____

LOCATION: _____
(Parcel number, GPS Coordinates, or Description)

FARM OWNER/LESSEE: _____

FARM OWNER/LESSEE REPRESENTATIVE: _____

PHONE NUMBER: _____

EMAIL: _____

UTILITY OWNER: _____

OWNER REPRESENTATIVE: _____

PHONE NUMBER: _____

EMAIL: _____

DRAFT

UTILITY DESCRIPTION:

Size, Materials, Operating Pressures, etc.

UTILITY LOCATION:

Utility Owner must provide information to assist in verifying the location of the Utility.

FARM OPERATION DESCRIPTION:

Describe all farming activities involving excavation that may be conducted within 25 feet of each side of the Utility, including method, tools and equipment, depth of excavation, subcontractors (if any), etc.

DRAFT

REQUIRED CHECKLIST:

	Onsite Meeting	Onsite Meeting between Farm Owner/Lessee and Utility Owner (onsite meeting must include the 1) Utility Owner's authorized representative with knowledge of the location of the Utilities, and authority to develop and sign this Agreement, such as a superintendent, supervisor, or engineer; and 2) Farm Owner/Lessee or Farm Owner's/Lessee's authorized representative with knowledge of the farming activities involving excavation that will occur in the area of continual excavation during the year, and authority to develop and sign this Agreement). Discussion and agreed terms and conditions must be documented in this Agreement.
	Signature & Distribution	Farm Owner/Lessee and Utility Owner sign this Agreement and copies are distributed to both parties.

This Agreement applies only to the farming activities documented in this Agreement. Any deviating activities such as work requiring greater excavation depth or other tools or equipment are beyond the scope of this Agreement. All work outside the scope of this Agreement require separate Tickets and shall be performed in accordance with Government Code section 4216 et seq.

Each party will notify the other of any unexpected occurrences (ex., fire, flood, earthquake or other soil/geologic movement, riot, accident, sabotage, damage to Utility requiring immediate repair) or excavation activities that may be in conflict with the Utility. The Farm Owner/Lessee shall notify the one-call center of any damage to the Utility in accordance with California Code of Regulations, title 19, section 4100.

Prior to conducting farming activities described in this Agreement, Farm Owner/Lessee will communicate information about the terms and conditions under this Agreement to all workers, including any subcontractors, who perform excavation work in the area of continual excavation.

FARM OWNER/LESSEE:

Signature	Name	Title	Date

UTILITY OWNER:

Signature	Name	Title	Date

DRAFT

AREA OF CONTINUAL EXCAVATION AGREEMENT
FLOOD CONTROL FACILITIES

(Government Code section 4216.10 and California Code of Regulations, title 19, sections 4300 and 4350-4351)

This Agreement must be completed legibly in ink or typed. Signatures must be handwritten in ink.

Excavator and Operator with assets located in property where flood control facilities are present are required to complete this Area of Continual Excavation Agreement – Flood Control Facilities (Form No. ACE Agreement 02 (07-01-2020)) ("Agreement") for a Continual Excavation Ticket for continual excavation within 10 feet of the Operator's **high priority subsurface installation**. Excavation described in this Agreement may be performed up to one year after the Excavator obtains a Continual Excavation Ticket, which may be renewed within two (2) working days by calling "811" or accessing the regional notification center's ("one-call center") website. This Agreement applies to only **ONE** Operator. Other high priority subsurface installations may be present on the property, and a separate Area of Continual Excavation Agreement – Flood Control Facilities (Form No. ACE Agreement 02 (07-01-2020)) is required with each Operator.

CONTINUAL EXCAVATION TICKET NUMBER: _____

DATE OF ONSITE MEETING: _____

TIME OF ONSITE MEETING: _____

LOCATION: _____
(Parcel number, GPS Coordinates, or Description)

EXCAVATOR: _____

EXCAVATOR REPRESENTATIVE: _____

PHONE NUMBER: _____

EMAIL: _____

OPERATOR: _____

OPERATOR REPRESENTATIVE: _____

PHONE NUMBER: _____

EMAIL: _____

DRAFT

HIGH PRIORITY SUBSURFACE INSTALLATION DESCRIPTION:

Size, Materials, Operating Pressures, etc.

HIGH PRIORITY SUBSURFACE INSTALLATION LOCATION:

Operator must provide information to assist in verifying the location of the high priority subsurface installation.

FLOOD CONTROL FACILITIES EXCAVATION DESCRIPTION:

Describe all activities involving excavation that may be conducted within 25 feet of each side of the high priority subsurface installation, including method, tools and equipment, depth of excavation, subcontractors (if any), etc.

DRAFT

REQUIRED CHECKLIST:

	Onsite Meeting	Onsite Meeting between Excavator and Operator (onsite meeting must include the 1) Operator or Operator's authorized representative with knowledge of the location of the high priority subsurface installation and authority to develop and sign this Agreement, such as a superintendent, supervisor, or engineer; and 2) Excavator or Excavator's authorized representative with knowledge of the excavation that will occur in the area of continual excavation during the year and authority to develop and sign this Agreement). Discussion and agreed terms and conditions must be documented in this Agreement.
	Signature & Distribution	Excavator and Operator sign this Agreement and copies are distributed to both parties.

This Agreement applies only to the excavation activities documented in this Agreement. Any deviating activities such as work requiring greater excavation depth or other tools or equipment are beyond the scope of this Agreement. All work outside the scope of this Agreement require separate Tickets and shall be performed in accordance with Government Code section 4216 et seq.

Each party will notify the other of any unexpected occurrences (ex., fire, flood, earthquake or other soil/geologic movement, riot, accident, sabotage, damage to the high priority subsurface installation requiring immediate repair) or excavation activities that may be in conflict with the high priority subsurface installation. The Excavator shall notify the one-call center of any damage to the high priority subsurface installation in accordance with California Code of Regulations, title 19, section 4100.

Prior to conducting excavation activities described in this Agreement, Excavator will communicate information about the terms and conditions under this Agreement to all workers, including any subcontractors, who perform excavation work in the area of continual excavation.

EXCAVATOR:

Signature	Name	Title	Date

OPERATOR:

Signature	Name	Title	Date

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