California Underground Facilities
Safe Excavation Board

Item #6a-e

Agenda Item – Resolution

DATE: January 9, 2018

TO: Members, Underground Facilities Safe Excavation Board

FROM: Tony Marino, Executive Officer

SUBJECT: Board Policies: Legislative Framework

BACKGROUND:
Congress, the federal Department of Transportation, and the State Legislature have developed a legislative framework to promote safety and guide Board policy development.

DISCUSSION:
Much of the state's policy framework for safety around underground infrastructure flows from the many amendments to the federal Natural Gas Pipeline Safety Act of 1968, the first federal statute concerning the safety of natural gas transportation by pipeline (and would be amended to include hazardous liquid pipelines in 1979), which created minimum standards by which pipelines were regulated. The statute called for partnership with existing state pipeline regulators and would lead to today's system where the federal Department of Transportation subsidizes up to 80% of a state's pipeline safety program (the "base grant"), so long as it meets minimum standards. Almost all states have an agency certified by the Department of Transportation as a state partner; the exceptions are Alaska and Hawaii, who have no state agency partner, and California, who has two in the California Public Utilities Commission (CPUC) and the Office of the State Fire Marshal (OSFM), regulating natural gas pipelines and hazardous liquid pipelines (including petroleum), respectively.

Federal interest in safe excavation around pipelines was crystalized by a 1997 National Transportation Safety Board safety study that highlighted a number of fatalities caused by excavation damage in the 1990's, including an accident in San Juan, Puerto Rico that killed 33 and injured another 69.[1] Nonetheless, regulation of excavation-related activities has been subject to state-level, not federal jurisdiction, and so federal regulators (currently housed in the Pipeline and Hazardous Materials Administration (PHMSA)) had few tools to affect excavation safety around buried infrastructure. Federal statute (L-01) and regulation (L-01.a) requires operators of natural gas[2] and

[1] National Transportation Safety Board. *Protecting Public Safety Through Excavation Damage Prevention*. Safety Study NSTB/SS-97/01, Washington, DC, 1997
[2] Title 49 of the Code of Federal Regulations, Part 192, Section 614.

hazardous liquid[3] pipelines to have damage prevention programs, but these requirements outline responsibilities of the operators.

The Pipeline Inspection, Protection, Enforcement, and Safety (PIPES) Act of 2006, however, gave OPS clear direction to intervene in state affairs and assert jurisdiction over violations of states' one-call laws if it deems a state's enforcement program to be inadequate.[4] Congress also provided guidance, in the form of nine elements, with which to judge the effectiveness of a state damage prevention program[5] (L-2):

1. Enhanced communication between operators and excavators
2. Fostering support and partnership of all stakeholders
3. Operator's Use of Performance Measures for Locators
4. Partnership in Employee Training
5. Partnership in Public Education
6. Enforcement Agencies' Role to Help Resolve Issues
7. Fair and Consistent Enforcement of the Law
8. Use of Technology to Improve the Locating Process
9. Data Analysis to Continually Improve Program Effectiveness

In July of 2015, PHMSA announced its final rule to implement evaluations of state damage prevention programs.[6] In The agency outlined the criteria by which it would evaluate the effectiveness of state enforcement programs (L-02.a)[7] and adopted a potential penalty of 4% on the state's base grant if the state fails to implement an adequate enforcement program within five years of a finding of inadequacy.[8] California's Attorney General was notified by a letter dated December 28, 2016[9] that PHMSA determined the state's enforcement program to be inadequate. The CPUC and OSFM would be subject to a reduction in their base grants should PHMSA to continue to find the state's enforcement program to be inadequate after five years.

The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 further restricted the availability of grants to improve state one-call systems to only those states without notification exemptions for state agencies or municipalities (California does not have such exemptions, and remains eligible), and it also required the Department of Transportation to undertake a study of excavation damage impacts and a survey of state exemptions.

Whereas the federal policy framework has focused on effective enforcement of state damage prevention laws, California's legislative framework has historically focused on

[3] 49 CFR 195.442.
[4] Title 49 of the United States Code, Section 60114.
[5] 49 USC 60134.
[6] Federal Register, v. 80, no. 141, July 23, 2015.
[7] 49 CFR 198.55.
[8] 49 CFR 198.53.
[9] Letter from Alan Mayberry to Kamala Harris, December 28, 2016.

creating an effective one-call notification regime. The first call center in Southern California (which continues today as DigAlert) was created after a June 1976 accident in Culver City claimed the lives of nine people and severely burned another fourteen after a construction crew hit a petroleum pipeline pressurized to 550 psi.[10]

In 1982 the first comprehensive state one-call law was enacted,[11] requiring owners of subsurface installations as well as excavators to participate in the one-call center process. Further refinements would be made through 2004, adding definitions, penalties, liability provisions, and other details.[12] In 2004, a serious accident in Walnut Creek, in which a contractor hit an inadequately marked 10-inch high pressure gasoline pipeline, killing five,[13] prompted another significant effort to improve California's one-call law. The resulting legislation[14] required operators and excavators to hold an on-site meeting when an excavation is planned within ten feet of a high-priority subsurface installation, among other changes.

The most recent legislative effort, the Dig Safe Act of 2016[15] (L-03), was precipitated by a heightened awareness of natural gas safety in the wake of the fatal 2010 natural gas pipeline explosion in the City of San Bruno. It changed California's one-call law in a number of ways, and its most distinguishing feature is the creation of the California Underground Facilities Safe Excavation Board (the Board), whose responsibilities bridge the gap between federal efforts to improve safe excavation enforcement and the state's efforts to improve excavation practice and include accident investigation and enforcement, development of excavation safety standards, and coordination of the state's education and outreach programs for safe excavation work around underground facilities.

State law articulates a number of policies that reinforce the PIPES Act's nine elements of effective state damage prevention programs. It recognizes the safe excavation program not as a Board program but a state program, in which the state's regulatory agencies must coordinate, both in enforcement[16] and in the education of and outreach to excavators and operators.[17] Both state law and the nine elements recognize that safe excavation isn't accomplished solely by calling a regional notification center before

[10] http://www.nbclosangeles.com/news/local/Why-You-Should-Call-811-Before-Digging-102887724.html
[11] AB 3019 (Elder, Chapter 1507, Statutes of 1982).
[12] AB 1606 (N. Waters, Chapter 1153, Statutes of 1983), AB 3020 (Elder, Chapter 674, Statutes of 1986), AB 73 (Elder, Chapter 928, Statutes of 1989), AB 1264 (Benoit, Chapter 77, Statutes of 2004).
[13] Office of the State Fire Marshal, Pipeline failure investigation report SFM #277, March 4, 2005.
[14] SB 1359 (Torlakson, Chapter 651, Statutes of 2006)
[15] SB 661 (Hill, Chapter 809, Statutes of 2016), modified by SB 92 (Committee on Budget and Fiscal Review, Chapter 26, Statutes of 2017).
[16] GOV 4216.6.
[17] GOV 4216.17.

excavating, but requires well-trained locators,[18] ongoing communication,[19] fair and consistent enforcement,[20] and program review.[21]

RECOMMENDATION:
Adopt attached statutes and regulations as recognized policies. Adoption of these statutes and policies does not bind the Board to agreeing with these policies, does not preclude the Board from recommending changes to Congress, the federal Department of Transportation, or the Legislature, and does prevent the Board from deviating from the policies stated in the attached statutes and regulations where permissible by law.

ATTACHMENTS:

1) Resolution
2) Legislative Framework L-01: 49 USC 60116 – Public Education Programs
3) Legislative Framework L-01.a: 49 CFR 192.614, 49 CFR 195.422 – Damage prevention program
4) Legislative Framework L-02: 49 USC 60134(b) – Damage Prevention Program Elements
5) Legislative Framework L-02.a: 49 CFR 198.55 - What criteria will PHMSA use in evaluating the effectiveness of State damage prevention enforcement programs?
6) Legislative Framework L-03: California's Dig Safe Law

[18] Element 3 and GOV 4216.3(a)(2).
[19] Element 1 and GOV 4216.3(e), 4216.4(d).
[20] Element 7 and GOV 4216.19(e).
[21] Element 9 and GOV 4216.12(c), 4216.23.

CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD

RESOLUTION No. _____

A RESOLUTION OF THE CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD ADOPTING AS A RECOGNIZED LEGISLATIVE FRAMEWORK RELEVANT CALIFORNIA LAW AND FEDERAL LAW AND REGULATION

Whereas the California Underground Facilities Safe Excavation Board exists in a legislative framework established by the United States Congress, the federal Department of Transportation, and the California Legislature; and

Whereas these bodies have defined requirements and guidance for how the management of safety in the vicinity of subsurface installations should be conducted; and

Whereas a recognized legislative framework can provide Board members and staff with direction in further developing Board policy;

Be it resolved that the Board recognizes Sections 60116 (“Public education programs”) and 60134(b) (“Damage prevention program elements”) of Title 49 United States Code, Sections 192.614 (“Damage prevention program”), 195.422 (“Damage Prevention Program”), and 198.55 (“What criteria will PHMSA use in evaluating the effectiveness of State damage prevention enforcement programs?”) of Title 49 of the Code of Federal Regulations, and Article 2 (“Regional Notification Center System”) of Chapter 3.1 of Division 5 of Title 1 of the Government Code as elements of the legislative framework in which the Board operates and adopts them as policies L-01, L-01.a, L-02, L-02.a, and L-03.

I certify that this resolution was adopted by the California Underground Facilities Safe Excavation Board at its business meeting on January 9, 2018, the following Members approving it:

_____

ANTHONY R. MARINO
Executive Officer

Category:	**Legislative Framework**	Policy Number:	L-01
Title:	**49 USC 60116 – Public Education Programs**		
Adopted:	DRAFT	Resolution:	
Revision:			

United States Code, Title 49, § 60116. Public education programs

(a) In General.-Each owner or operator of a gas or hazardous liquid pipeline facility shall carry out a continuing program to educate the public on the use of a one-call notification system prior to excavation and other damage prevention activities, the possible hazards associated with unintended releases from the pipeline facility, the physical indications that such a release may have occurred, what steps should be taken for public safety in the event of a pipeline release, and how to report such an event.

(b) Modification of Existing Programs.-Not later than 12 months after the date of enactment of the Pipeline Safety Improvement Act of 2002, each owner or operator of a gas or hazardous liquid pipeline facility shall review it's existing public education program for effectiveness and modify the program as necessary. The completed program shall include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations. The completed program shall be submitted to the Secretary or, in the case of an intrastate pipeline facility operator, the appropriate State agency, and shall be periodically reviewed by the Secretary or, in the case of an intrastate pipeline facility operator, the appropriate State agency.

(c) Standards.-The Secretary may issue standards prescribing the elements of an effective public education program. The Secretary may also develop material for use in the program.

Monitoring Method: Staff
Frequency: Annual

Category:	**Legislative Framework**	Policy Number:	L-01.a
Title:	**49 CFR 192.614, 49 CFR 195.422 – Damage prevention program**		
Adopted:	DRAFT	Resolution:	
Revision:			

Code of Federal Regulations, Title 49, § 192.614 – Natural gas operator damage prevention program.

(a) Except as provided in paragraphs (d) and (e) of this section, each operator of a buried pipeline must carry out, in accordance with this section, a written program to prevent damage to that pipeline from excavation activities. For the purposes of this section, the term “excavation activities” includes excavation, blasting, boring, tunneling, backfilling, the removal of aboveground structures by either explosive or mechanical means, and other earthmoving operations.

(b) An operator may comply with any of the requirements of paragraph (c) of this section through participation in a public service program, such as a one-call system, but such participation does not relieve the operator of responsibility for compliance with this section. However, an operator must perform the duties of paragraph (c)(3) of this section through participation in a one-call system, if that one-call system is a qualified one-call system. In areas that are covered by more than one qualified one-call system, an operator need only join one of the qualified one-call systems if there is a central telephone number for excavators to call for excavation activities, or if the one-call systems in those areas communicate with one another.
An operator's pipeline system must be covered by a qualified one-call system where there is one in place. For the purpose of this section, a one-call system is considered a “qualified one-call system” if it meets the requirements of section (b)(1) or (b)(2) of this section.

(1) The state has adopted a one-call damage prevention program under § 198.37 of this chapter; or

(2) The one-call system:

(i) Is operated in accordance with § 198.39 of this chapter;
(ii) Provides a pipeline operator an opportunity similar to a voluntary participant to have a part in management responsibilities; and
(iii) Assesses a participating pipeline operator a fee that is proportionate to the costs of the one-call system's coverage of the operator's pipeline.

(c) The damage prevention program required by paragraph (a) of this section must, at a minimum:

Monitoring Method: Staff
Frequency: Annual

(1) Include the identity, on a current basis, of persons who normally engage in excavation activities in the area in which the pipeline is located.

(2) Provides for notification of the public in the vicinity of the pipeline and actual notification of the persons identified in paragraph (c)(1) of this section of the following as often as needed to make them aware of the damage prevention program:

(i) The program's existence and purpose; and
(ii) How to learn the location of underground pipelines before excavation activities are begun.

(3) Provide a means of receiving and recording notification of planned excavation activities.

(4) If the operator has buried pipelines in the area of excavation activity, provide for actual notification of persons who give notice of their intent to excavate of the type of temporary marking to be provided and how to identify the markings.

(5) Provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins.

(6) Provide as follows for inspection of pipelines that an operator has reason to believe could be damaged by excavation activities:

(i) The inspection must be done as frequently as necessary during and after the activities to verify the integrity of the pipeline; and
(ii) In the case of blasting, any inspection must include leakage surveys.

(d) A damage prevention program under this section is not required for the following pipelines:

(1) Pipelines located offshore.

(2) Pipelines, other than those located offshore, in Class 1 or 2 locations until September 20, 1995.

(3) Pipelines to which access is physically controlled by the operator.

(e) Pipelines operated by persons other than municipalities (including operators of master meters) whose primary activity does not include the transportation of gas need not comply with the following:

(1) The requirement of paragraph (a) of this section that the damage prevention program be written; and

(2) The requirements of paragraphs (c)(1) and (c)(2) of this section.

Code of Federal Regulations, Title 49, § 195.442 – Hazardous liquid operator damage prevention program.

(a) Except as provided in paragraph (d) of this section, each operator of a buried pipeline must carry out, in accordance with this section, a written program to prevent damage to that pipeline from excavation activities. For the purpose of this section, the term “excavation activities” includes excavation, blasting, boring, tunneling, backfilling, the removal of aboveground structures by either explosive or mechanical means, and other earthmoving operations.

(b) An operator may comply with any of the requirements of paragraph (c) of this section through participation in a public service program, such as a one-call system, but such participation does not relieve the operator of the responsibility for compliance with this section. However, an operator must perform the duties of paragraph (c)(3) of this section through participation in a one-call system, if that one-call system is a qualified one-call system. In areas that are covered by more than one qualified one-call system, an operator need only join one of the qualified one-call systems if there is a central telephone number for excavators to call for excavation activities, or if the one-call systems in those areas communicate with one another. An operator's pipeline system must be covered by a qualified one-call system where there is one in place. For the purpose of this section, a one-call system is considered a “qualified one-call system” if it meets the requirements of section (b)(1) or (b)(2) or this section.

(1) The state has adopted a one-call damage prevention program under § 198.37 of this chapter; or

(2) The one-call system:
(i) Is operated in accordance with § 198.39 of this chapter;
(ii) Provides a pipeline operator an opportunity similar to a voluntary participant to have a part in management responsibilities; and
(iii) Assesses a participating pipeline operator a fee that is proportionate to the costs of the one-call system's coverage of the operator's pipeline.

(c) The damage prevention program required by paragraph (a) of this section must, at a minimum:

(1) Include the identity, on a current basis, of persons who normally engage in excavation activities in the area in which the pipeline is located.

(2) Provides for notification of the public in the vicinity of the pipeline and actual notification of persons identified in paragraph (c)(1) of this section of the following as often as needed to make them aware of the damage prevention program:
(i) The program's existence and purpose; and

(ii) How to learn the location of underground pipelines before excavation activities are begun.

(3) Provide a means of receiving and recording notification of planned excavation activities.

(4) If the operator has buried pipelines in the area of excavation activity, provide for actual notification of persons who give notice of their intent to excavate of the type of temporary marking to be provided and how to identify the markings.

(5) Provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins.

(6) Provide as follows for inspection of pipelines that an operator has reason to believe could be damaged by excavation activities:

(i) The inspection must be done as frequently as necessary during and after the activities to verify the integrity of the pipeline; and

(ii) In the case of blasting, any inspection must include leakage surveys.

(d) A damage prevention program under this section is not required for the following pipelines:

(1) Pipelines located offshore.

(2) Pipelines to which access is physically controlled by the operator.

Category:	**Legislative Framework**	Policy Number:	L-02
Title:	**49 USC 60134(b) – Damage Prevention Program Elements**		
Adopted:	DRAFT	Resolution:	
Revision:			

Nine Elements of and Effective Damage Prevention Program (from United States Code, Title 49, § 60134, subdivision (b))

(b) Damage Prevention Program Elements.— An effective damage prevention program includes the following elements:

(1) Participation by operators, excavators, and other stakeholders in the development and implementation of methods for establishing and maintaining effective communications between stakeholders from receipt of an excavation notification until successful completion of the excavation, as appropriate.

(2) A process for fostering and ensuring the support and partnership of stakeholders, including excavators, operators, locators, designers, and local government in all phases of the program.

(3) A process for reviewing the adequacy of a pipeline operator's internal performance measures regarding persons performing locating services and quality assurance programs.

(4) Participation by operators, excavators, and other stakeholders in the development and implementation of effective employee training programs to ensure that operators, the one-call center, the enforcing agency, and the excavators have partnered to design and implement training for the employees of operators, excavators, and locators.

(5) A process for fostering and ensuring active participation by all stakeholders in public education for damage prevention activities.

(6) A process for resolving disputes that define the State authority's role as a partner and facilitator to resolve issues.

(7) Enforcement of State damage prevention laws and regulations for all aspects of the damage prevention process, including public education, and the use of civil penalties for violations assessable by the appropriate State authority.

(8) A process for fostering and promoting the use, by all appropriate stakeholders, of improving technologies that may enhance communications, underground pipeline locating capability, and gathering and analyzing information about the accuracy and effectiveness of locating programs.

Monitoring Method: Staff
Frequency: Annual

(9) A process for review and analysis of the effectiveness of each program element, including a means for implementing improvements identified by such program reviews.

Category:	**Legislative Framework**	Policy Number:	L-02.a
Title:	**49 CFR 198.55 - What criteria will PHMSA use in evaluating the effectiveness of State damage prevention enforcement programs?**		
Adopted:	DRAFT	Resolution:	
Revision:			

Code of Federal Regulations, Title 49, § 198.55 - What criteria will PHMSA use in evaluating the effectiveness of State damage prevention enforcement programs?

(a) PHMSA will use the following criteria to evaluate the effectiveness of a State excavation damage prevention enforcement program:

(1) Does the State have the authority to enforce its State excavation damage prevention law using civil penalties and other appropriate sanctions for violations?

(2) Has the State designated a State agency or other body as the authority responsible for enforcement of the State excavation damage prevention law?

(3) Is the State assessing civil penalties and other appropriate sanctions for violations at levels sufficient to deter noncompliance and is the State making publicly available information that demonstrates the effectiveness of the State's enforcement program?

(4) Does the enforcement authority (if one exists) have a reliable mechanism (e.g., mandatory reporting, complaint-driven reporting) for learning about excavation damage to underground facilities?

(5) Does the State employ excavation damage investigation practices that are adequate to determine the responsible party or parties when excavation damage to underground facilities occurs?

(6) At a minimum, do the State's excavation damage prevention requirements include the following:

(i) Excavators may not engage in excavation activity without first using an available one-call notification system to establish the location of underground facilities in the excavation area.

(ii) Excavators may not engage in excavation activity in disregard of the marked location of a pipeline facility as established by a pipeline operator.

(iii) An excavator who causes damage to a pipeline facility:

(A) Must report the damage to the operator of the facility at the earliest practical moment following discovery of the damage; and

(B) If the damage results in the escape of any PHMSA regulated natural and other gas or hazardous liquid, must promptly report to other appropriate

Monitoring Method: Staff
Frequency: Annual

authorities by calling the 911 emergency telephone number or another emergency telephone number.

(7) Does the State limit exemptions for excavators from its excavation damage prevention law? A State must provide to PHMSA a written justification for any exemptions for excavators from State damage prevention requirements. PHMSA will make the written justifications available to the public.

(b) PHMSA may consider individual enforcement actions taken by a State in evaluating the effectiveness of a State's damage prevention enforcement program.

Category:	**Legislative Framework**	Policy Number:	L-03
Title:	**California's Dig Safe Law**		
Adopted:	DRAFT	Resolution:	
Revision:			

Article 2 of Chapter 3.1 of Division 5 of Title 1 of the Government Code reads:

4216.

As used in this article, the following definitions apply:

(a) "Active subsurface installation" means a subsurface installation currently in use or currently carrying service.

(b) "Board" means the California Underground Facilities Safe Excavation Board.

(c) "Area of continual excavation" means a location where excavation is part of the normal business activities of agricultural operations and flood control facilities.

(d) "Delineate" means to mark in white the location or path of the proposed excavation using the guidelines in Appendix B of the "Guidelines for Excavation Delineation" published in the most recent version of the Best Practices guide of the Common Ground Alliance. If there is a conflict between the marking practices in those guidelines and other provisions of this article, this article shall control. "Delineation" also includes physical identification of the area to be excavated using alternative marking methods, including, but not limited to, flags, stakes, whiskers, or a combination of these methods, if an excavator makes a determination that standard delineation may be misleading to those persons using affected streets and highways, or be misinterpreted as a traffic or pedestrian control, and the excavator has contacted the regional notification center to advise the operators that the excavator will physically identify the area to be excavated using alternative marking methods.

(e) "Electronic positive response" means an electronic response from an operator to the regional notification center providing the status of an operator's statutorily required response to a ticket.

(f) (1) "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate the loss of, or damage to, life, health, property, or essential public services.

(2) "Unexpected occurrence" includes, but is not limited to, fire, flood, earthquake or other soil or geologic movement, riot, accident, damage to a subsurface installation requiring immediate repair, or sabotage.

Monitoring Method: Staff
Frequency: Annual

(g) “Excavation” means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives in any of the following ways: grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing and driving, or any other way.

(h) Except as provided in Section 4216.8, “excavator” means any person, firm, contractor or subcontractor, owner, operator, utility, association, corporation, partnership, business trust, public agency, or other entity that, with their, or his or her, own employees or equipment performs any excavation.

(i) “Hand tool” means a piece of equipment used for excavating that uses human power and is not powered by any motor, engine, hydraulic, or pneumatic device.

(j) “High priority subsurface installation” means high-pressure natural gas pipelines with normal operating pressures greater than 415kPA gauge (60psig), petroleum pipelines, pressurized sewage pipelines, high-voltage electric supply lines, conductors, or cables that have a potential to ground of greater than or equal to 60kv, or hazardous materials pipelines that are potentially hazardous to workers or the public if damaged.

(k) “Inactive subsurface installation” means either of the following:

(1) The portion of an underground subsurface installation that is not active but is still connected to the subsurface installation, or to any other subsurface installation that is active or still carries service.

(2) A new underground subsurface installation that has not been connected to any portion of an existing subsurface installation.

(l) “Legal excavation start date and time” means two working days, not including the date of notification, unless the excavator specifies a later date and time, which shall not be more than 14 calendar days from the date of notification. For excavation in an area of continual excavation, “legal excavation start date and time” means two working days, not including the date of notification, unless the excavator specifies a later date and time, which shall not be more than six months from the date of notification.

(m) “Local agency” means a city, county, city, and county, school district, or special district.

(n) (1) “Locate and field mark” means to indicate the existence of any owned or maintained subsurface installations by using 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. If there is a conflict between the marking practices in the guidelines and this article, this article shall control.

(2) “Locate and field mark” does not require an indication of the depth.

(o) “Operator” means any person, corporation, partnership, business trust, public agency, or other entity that owns, operates, or maintains a subsurface installation. For purposes of Section 4216.1, an “operator” does not include an owner of real property where subsurface installations are exclusively located if they are used exclusively to furnish services on that property, and the subsurface facilities are under the operation and control of that owner.

(p) “Qualified person” means a person who completes a training program in accordance with the requirements of Section 1509 of Title 8 of the California Code of Regulations Injury and Illness Prevention Program, that meets the minimum locators training guidelines and practices published in the most recent version of the Best Practices guide of the Common Ground Alliance.

(q) “Regional notification center” means a nonprofit association or other organization of operators of subsurface installations that provides advance warning of excavations or other work close to existing subsurface installations, for the purpose of protecting those installations from damage, removal, relocation, or repair.

(r) “State agency” means every state agency, department, division, bureau, board, or commission.

(s) “Subsurface installation” means any underground pipeline, conduit, duct, wire, or other structure, except nonpressurized sewer lines, nonpressurized storm drains, or other nonpressurized drain lines.

(t) “Ticket” means an excavation location request issued a number by the regional notification center.

(u) “Tolerance zone” means 24 inches on each side of the field marking placed by the operator in one of the following ways:

(1) Twenty-four inches from each side of a single marking assumed to be the centerline of the subsurface installation.

(2) Twenty-four inches plus one-half the specified size on each side of a single marking with the size of installation specified.

(3) Twenty-four inches from each outside marking that graphically shows the width of the outside surface of the subsurface installation on a horizontal plane.

(v) “Working day” for the purposes of determining excavation start date and time means a weekday Monday through Friday, from 7:00 a.m. to 5:00 p.m., except for federal holidays and state holidays, as defined in Section 19853, or as otherwise posted on the Internet Web site of the regional notification center.

(Amended by Stats. 2017, Ch. 26, Sec. 45. Effective June 27, 2017.)

4216.1.

Every operator of a subsurface installation, except the Department of Transportation, shall become a member of, participate in, and share in the costs of, a regional notification center. Operators of subsurface installations who are members of, participate in, and share in, the costs of a regional notification center, including, but not limited to, the Underground Service Alert—Northern California or the Underground Service Alert—Southern California are in compliance with this section and Section 4216.9. A regional notification center shall not charge a fee to a person for notifying the regional notification center to obtain a ticket or to renew a ticket.

(Amended by Stats. 2016, Ch. 809, Sec. 3. Effective January 1, 2017.)

4216.2.

(a) Before notifying the appropriate regional notification center, an excavator planning to conduct an excavation shall delineate the area to be excavated. If the area is not delineated, an operator may, at the operator's discretion, choose not to locate and field mark until the area to be excavated has been delineated.

(b) Except in an emergency, an excavator planning to conduct an excavation shall notify the appropriate regional notification center of the excavator's intent to excavate at least two working days, and not more than 14 calendar days, before beginning that excavation. The date of the notification shall not count as part of the two-working-day notice. If an excavator gives less notice than the legal excavation start date and time and the excavation is not an emergency, the regional notification center will take the information and provide a ticket, but an operator has until the legal excavation start date and time to respond. However, an excavator and an operator may mutually agree to a different notice and start date. The contact information for operators notified shall be available to the excavator.

(c) When the excavation is proposed within 10 feet of a high priority subsurface installation, the operator of the high priority subsurface installation shall notify the excavator of the existence of the high priority subsurface installation to set up an onsite meeting prior to the legal excavation start date and time or at a mutually agreed upon time to determine actions or activities required to verify the location and prevent damage to the high priority subsurface installation. As part of the meeting, the excavator shall discuss with the operator the method and tools that will be used during the excavation and the information the operator will provide to assist in verifying the location of the subsurface installation. The excavator shall not begin excavating until after the completion of the onsite meeting.

(d) Except in an emergency, every excavator covered by Section 4216.8 planning to conduct an excavation on private property that does not require an excavation permit may contact the appropriate regional notification center if the private property is known, or reasonably should be known, to contain a subsurface installation other than the underground facility owned or operated by the excavator. Before notifying the appropriate regional notification center, an excavator shall delineate the area to be excavated. Any temporary marking placed at the planned excavation location shall be seen, functional, and considerate to surface aesthetics and the local community. An excavator shall check if any local ordinances apply to the placement of temporary markings.

(e) The regional notification center shall provide a ticket to the person who contacts the center pursuant to this section and shall notify any member if known, who has a subsurface installation in the area of the proposed excavation. A ticket shall be valid for 28 days from the date of issuance. If work continues beyond 28 days, the excavator shall renew the ticket either by accessing the center's Internet Web site or by calling "811" by the end of the 28th day.

(f) A record of all notifications by an excavator or operator to the regional notification center shall be maintained for a period of not less than three years. The record shall be available for inspection by the excavator and any member, or their representative, during normal working hours and according to guidelines for inspection as may be established by the regional notification centers.

(g) Unless an emergency exists, an excavator shall not begin excavation until the excavator receives a response from all known operators of subsurface installations within the delineated boundaries of the proposed area of excavation pursuant to subdivision (a) of Section 4216.3 and until the completion of any onsite meeting, if required by subdivision (c).

(h) If a site requires special access, an excavator shall request an operator to contact the excavator regarding that special access or give special instructions on the location request.

(i) If a ticket obtained by an excavator expires, but work is ongoing, the excavator shall contact the regional notification center and get a new ticket and wait a minimum of two working days, not including the date of the contact, before restarting excavation. All excavation shall cease during the waiting period.

(Amended by Stats. 2017, Ch. 26, Sec. 46. Effective June 27, 2017.)

4216.3.

(a) (1) (A) Unless the excavator and operator mutually agree to a later start date and time or otherwise agree to the sequence and timeframe in which the operator will locate and field mark, an operator shall do one of the following before the legal excavation start date and time:

(i) Locate and field mark within the area delineated for excavation and, where multiple subsurface installations of the same type are known to exist together, mark the number of subsurface installations.

(ii) To the extent and degree of accuracy that the information is available, provide information to an excavator where the operator's active or inactive subsurface installations are located.

(iii) Advise the excavator it operates no subsurface installations in the area delineated for excavation.

(B) An operator shall mark newly installed subsurface installations in areas with continuing excavation activity.

(C) An operator shall indicate with an "A" inside a circle the presence of any abandoned subsurface installations, if known, within the delineated area. The markings are to make an excavator aware that there are abandoned subsurface installations within that delineated work area.

(2) Only a qualified person shall perform subsurface installation locating activities.

(3) A qualified person performing subsurface installation locating activities on behalf of an operator shall use a minimum of a single-frequency utility locating device and shall have access to alternative sources for verification, if necessary.

(4) An operator shall amend, update, maintain, and preserve all plans and records for its subsurface installations as that information becomes known. If there is a change in ownership of a subsurface installation, the records shall be turned over to the new operator. Commencing January 1, 2017, records on abandoned subsurface installations, to the extent that those records exist, shall be retained.

(b) If the field marks are no longer reasonably visible, an excavator shall renotify the regional notification center with a request for remarks that can be for all or a portion of the excavation. Excavation shall cease in the area to be remarked. If the delineation markings are no longer reasonably visible, the excavator shall delineate the area to be remarked. If remarks are requested, the operator shall have two working days, not including the date of the request, to remark the subsurface installation. If the area to be remarked is not the full extent of the original excavation, the excavator shall delineate the portion to be remarked and provide a description of the area requested to be remarked on the ticket. The excavator shall provide a description for the area to be remarked that falls within the area of the original location request.

(c) Commencing January 1, 2018, every operator may supply an electronic positive response through the regional notification center before the legal excavation start date and time. The regional notification center shall make those responses available to the excavator.

(d) The excavator shall notify the appropriate regional notification center of the failure of an operator to identify subsurface installations pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (a), or subdivision (b). The notification shall include the ticket issued by the regional notification center. A record of all notifications received pursuant to this subdivision shall be maintained by the regional notification center for a period of not less than three years. The record shall be available for inspection pursuant to subdivision (f) of Section 4216.2.

(e) If an operator or local agency knows that it has a subsurface installation embedded or partially embedded in the pavement that is not visible from the surface, the operator or local agency shall contact the excavator before pavement removal to communicate and determine a plan of action to protect that subsurface installation and excavator.

(Amended by Stats. 2016, Ch. 809, Sec. 5. Effective January 1, 2017.)

4216.4.

(a) (1) Except as provided in paragraph (2), if an excavation is within the tolerance zone of a subsurface installation, the excavator shall determine the exact location of the subsurface installations in conflict with the excavation using hand tools before using any power-driven excavation or boring equipment within the tolerance zone of the subsurface installations. In all cases, the excavator shall use reasonable care to prevent damaging subsurface installations.

(2) (A) An excavator may use a vacuum excavation device to expose subsurface installations within the tolerance zone if the operator has marked the subsurface installation, the excavator has contacted any operator whose subsurface installations may be in conflict with the excavation, and the operator has agreed to the use of a vacuum excavation device. An excavator shall inform the regional notification center of his or her intent to use a vacuum excavation device when obtaining a ticket.

(B) An excavator may use power-operated or boring equipment for the removal of any existing pavement only if there is no known subsurface installation contained in the pavement.

(3) An excavator shall presume all subsurface installations to be active, and shall use the same care around subsurface installations that may be inactive as the excavator would use around active subsurface installations.

(b) If the exact location of the subsurface installation cannot be determined by hand excavating in accordance with subdivision (a), the excavator shall request the operator to provide additional information to the excavator, to the extent that information is available to the operator, to enable the excavator to determine the exact location of the installation. If the excavator has questions about the markings that an operator has placed, the excavator may contact the notification center to send a request to have the operator contact the excavator directly. The regional notification center shall provide the excavator with the contact telephone number of the subsurface installation operator.

(c) (1) An excavator is discovering or causing damage to a subsurface installation, including all breaks, leaks, nicks, dents, gouges, grooves, or other damage to subsurface installation lines, conduits, coatings, or cathodic protection, shall immediately notify the subsurface installation operator. The excavator may contact the regional notification center to obtain the contact information of the subsurface installation operator. If the operator is unknown and the damage or discovery of damage occurs outside the working hours of the regional notification center, the excavator may follow the instructions provided by the regional notification center through its Internet Web site or the telephone line recorded a message.

(2) An excavator shall call 911 emergency services upon discovering or causing damage to either of the following:

(A) 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.

(B) A high priority subsurface installation of any kind.

(d) Each excavator, operator, or locator shall communicate with each other and respect the appropriate safety requirements and ongoing activities of the other parties, if known, at an excavation site.

(Amended by Stats. 2016, Ch. 809, Sec. 6. Effective January 1, 2017.)

4216.5.

The requirements of this article apply to state agencies and to local agencies which own or operate subsurface installations, except as otherwise provided in Section 4216.1. A local agency which is required to provide the services described in Section 4216.3 may charge a fee in an amount sufficient to cover the cost of providing that service.

(Added to Stats. 1989, Ch. 928, Sec. 4.)

4216.6.

(a) (1) Any operator or excavator who negligently violates this article is subject to a civil penalty in an amount not to exceed ten thousand dollars ($10,000).

(2) Any operator or excavator who knowingly and willfully violates any of the provisions of this article is subject to a civil penalty in an amount not to exceed fifty thousand dollars ($50,000).

(3) Except as otherwise specifically provided in this article, this section is not intended to affect any civil remedies otherwise provided by law for personal injury or property damage, including any damage to subsurface installations, nor is this section intended to create any new civil remedies for those injuries or that damage.

(4) This article shall not be construed to limit any other provision of law granting governmental immunity to state or local agencies or to impose any liability or duty of care not otherwise imposed by law upon any state or local agency.

(b) An action may be brought by the Attorney General, the district attorney, or the local or state agency that issued the permit to excavate, for the enforcement of the civil penalty pursuant to this section in a civil action brought in the name of the people of the State of California. If penalties are collected as a result of a civil suit brought by a state or local agency for collection of those civil penalties, the penalties imposed shall be paid to the general fund of the agency. If more than one agency is involved in enforcement, the penalties imposed shall be apportioned among them by the court in a manner that will fairly offset the relative costs incurred by the state or local agencies, or both, in collecting these fees.

(c) The requirements of this article may also be enforced following a recommendation of the California Underground Facilities Safe Excavation Board by the following agencies, that shall act to accept, amend, or reject the recommendations of the board as follows:

(1) The Registrar of Contractors of the Contractors' State License Board shall enforce the provisions of this article on contractors, as defined in Article 2 (commencing with Section 7025) of Chapter 9 of Division 3 of the Business and Professions Code, and telephone corporations, as defined in Section 234 of the Public Utilities Code, when acting as a contractor, as defined in Article 2 (commencing with Section 7025) of Chapter 9 of Division 3 of the Business and Professions Code. Nothing in this section affects the California Public Utilities Commission's existing authority over a public utility.

(2) The Public Utilities Commission shall enforce the provisions of this article on gas corporations, as defined in Section 222 of the Public Utilities Code, and electrical corporations, as defined in Section 218 of the Public Utilities Code, and water corporations, as defined in Section 241 of the Public Utilities Code.

(3) The Office of the State Fire Marshal shall enforce the provisions of this article on operators of hazardous liquid pipeline facilities, as defined in Section 60101 of Chapter 601 of Subtitle VIII of Title 49 of the United States Code.

(d) A local governing board may enforce the provisions of this article on local agencies under the governing board's jurisdiction.

(e) Commencing July 1, 2020, the California Underground Facilities Safe Excavation Board shall enforce the provisions of this article on persons other than those listed in subdivisions (c) and (d).

(f) Money collected as a result of penalties imposed pursuant to subdivisions (c) and (e) shall be deposited into the Safe Energy Infrastructure and Excavation Fund.

(g) Statewide information provided by operators and excavators regarding incident events shall be compiled and made available in an annual report by regional notification centers and posted on the Internet Web sites of the regional notification centers.

(h) For purposes of subdivision (g), the following terms have the following meanings:

(1) "Incident event" means the occurrence of excavator downtime, damages, near misses, and violations.

(2) "Statewide information" means information submitted by operators and excavators using the California Regional Common Ground Alliance's Virtual Private Damage Information Reporting Tool. Supplied data shall comply with the Damage Information Reporting Tool's minimum essential information as listed in the most recent version of the Best Practices guide of the Common Ground Alliance.

(Amended by Stats. 2017, Ch. 26, Sec. 47. Effective June 27, 2017.)

4216.7.

(a) If a subsurface installation is damaged by an excavator as a result of failing to comply with Section 4216.2 or 4216.4, or subdivision (b) of Section 4216.3, or as a result of failing to comply with the operator's requests to protect the subsurface installation as specified by the operator before the start of excavation, the excavator shall be liable to the operator of the subsurface installation for resulting damages, costs, and expenses to the extent the damages, costs, and expenses were proximately caused by the excavator's failure to comply.

(b) If an operator has failed to become a member of, participate in, or share in the costs of, a regional notification center, that operator shall forfeit his or her claim for damages to his or her subsurface installation arising from an excavation against an excavator

who has complied with this article to the extent damages were proximately caused by the operator's failure to comply with this article.

(c) If an operator of a subsurface installation without a reasonable basis, as determined by a court of competent jurisdiction, has failed to comply with the provisions of Section 4216.3, including, but not limited to, the requirement to field mark the appropriate location of subsurface installations within two working days of notification, as defined by subdivision (v) of Section 4216 and subdivision (b) of Section 4216.2, has failed to comply with subdivision (c) of Section 4216.2, or has failed to comply with subdivision (b) of Section 4216.4, the operator shall be liable for damages to the excavator who has complied with Section 4216.2, subdivisions (b) and (d) of Section 4216.3, and Section 4216.4, including liquidated damages, liability, losses, costs, and expenses, actually incurred by the excavator, resulting from the operator's failure to comply with these specified requirements to the extent the damages, costs, and expenses were proximately caused by the operator's failure to comply.

(d) An excavator who damages a subsurface installation due to an inaccurate field mark by an operator, or by a third party under contract to perform field marking for the operator, shall not be liable for damages, replacement costs, or other expenses arising from damages to the subsurface installation if the excavator complied with Sections 4216.2 and 4216.4.
This section is not intended to create any presumption or to affect the burden of proof in any action for personal injuries or property damage, other than damage to the subsurface installation, nor is this section intended to affect, create, or eliminate any remedy for personal injury or property damage, other than damage to the subsurface installation.

(e) For the purposes of this section, "inaccurate field mark" means a mark, or set of markings, made pursuant to Section 4216.3, that did not correctly indicate the approximate location of a subsurface installation affected by an excavation and includes the actual physical location of a subsurface installation affected by an excavation that should have been marked pursuant to Section 4216.3 but was not.

(f) Nothing in this section shall be construed to do any of the following:

(1) Affect claims including, but not limited to, third-party claims brought against the excavator or operator by other parties for damages arising from the excavation.

(2) Exempt the excavator or operator from his or her duty to mitigate any damages as required by common or other applicable law.

(3) Exempt the excavator or operator from liability to each other or third parties based on equitable indemnity or comparative or contributory negligence.

(g) This section shall become inoperative on July 1, 2020, and shall be repealed on January 1, 2021.

(Amended by Stats. 2017, Ch. 26, Sec. 48. Effective June 27, 2017. Inoperative July 1, 2020. Repealed as of January 1, 2021, by its own provisions. See later operative version added by Sec. 49 of Stats. 2017, Ch. 26.)

4216.7.

(a) If a subsurface installation is damaged by an excavator as a result of failing to comply with Section 4216.2, 4216.4, or 4216.10 or subdivision (b) of Section 4216.3, or as a result of failing to comply with the operator's requests to protect the subsurface installation as specified by the operator before the start of excavation, the excavator shall be liable to the operator of the subsurface installation for resulting damages, costs, and expenses to the extent the damages, costs, and expenses were proximately caused by the excavator's failure to comply.

(b) If an operator has failed to become a member of, participate in, or share in the costs of, a regional notification center, that operator shall forfeit his or her claim for damages to his or her subsurface installation arising from an excavation against an excavator who has complied with this article to the extent damages were proximately caused by the operator's failure to comply with this article.

(c) If an operator of a subsurface installation without a reasonable basis, as determined by a court of competent jurisdiction, has failed to comply with the provisions of Section 4216.3, including, but not limited to, the requirement to field mark the appropriate location of subsurface installations within two working days of notification, as defined by subdivision (v) of Section 4216 and subdivision (b) of Section 4216.2, has failed to comply with subdivision (c) of Section 4216.2, or has failed to comply with subdivision (b) of Section 4216.4, the operator shall be liable for damages to the excavator who has complied with Section 4216.2, subdivisions (b) and (d) of Section 4216.3, and Section 4216.4, including liquidated damages, liability, losses, costs, and expenses, actually incurred by the excavator, resulting from the operator's failure to comply with these specified requirements to the extent the damages, costs, and expenses were proximately caused by the operator's failure to comply.

(d) An excavator who damages a subsurface installation due to an inaccurate field mark by an operator, or by a third party under contract to perform field marking for the operator, shall not be liable for damages, replacement costs, or other expenses arising from damages to the subsurface installation if the excavator complied with Section 4216.10 or Sections 4216.2 and 4216.4.
This section is not intended to create any presumption or to affect the burden of proof in any action for personal injuries or property damage, other than damage to the subsurface installation, nor is this section intended to affect, create, or eliminate any remedy for personal injury or property damage, other than damage to the subsurface installation.

(e) For the purposes of this section, “inaccurate field mark” means a mark, or set of markings, made pursuant to Section 4216.3 or 4216.10, that did not correctly indicate the approximate location of a subsurface installation affected by an excavation and includes the actual physical location of a subsurface installation affected by an excavation that should have been marked pursuant to Section 4216.3 but was not.

(f) Nothing in this section shall be construed to do any of the following:

(1) Affect claims including, but not limited to, third-party claims brought against the excavator or operator by other parties for damages arising from the excavation.

(2) Exempt the excavator or operator from his or her duty to mitigate any damages as required by common or other applicable law.

(3) Exempt the excavator or operator from liability to each other or third parties based on equitable indemnity or comparative or contributory negligence.

(g) This section shall become operative on July 1, 2020.

(Repealed (in Sec. 48) and added by Stats. 2017, Ch. 26, Sec. 49. Effective June 27, 2017. Section operative July 1, 2020, by its own provisions.)

4216.8.

This article does not apply to any of the following persons:

(a) An owner of real property who contracts for an excavation project on the property, not requiring a permit issued by a state or local agency, with a contractor or subcontractor licensed pursuant to Article 5 (commencing with Section 7065) of Chapter 9 of Division 3 of the Business and Professions Code.

(b) An owner of residential real property, not engaged as a contractor or subcontractor licensed pursuant to Article 5 (commencing with Section 7065) of Chapter 9 of Division 3 of the Business and Professions Code, who as part of improving his or her principal residence or appurtenances thereto is performing or having performed excavation work not requiring a permit issued by a state or local agency.

(c) Any person or private entity that leases or rents power operated or power-driven excavating or boring equipment, regardless of whether an equipment operator is provided for that piece of equipment or not, to a contractor or subcontractor licensed pursuant to Article 5 (commencing with Section 7065) of Chapter 9 of Division 3 of the Business and Professions Code, if the signed rental agreement between the person or private entity and the contractor or subcontractor contains the following provision:

“It is the sole responsibility of the lessee or renter to follow the requirements of the regional notification center law pursuant to Article 2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code. By signing this contract, the lessee or renter accepts all liabilities and responsibilities contained in the regional notification center law.”

(Amended by Stats. 2004, Ch. 77, Sec. 3. Effective January 1, 2005.)

4216.9.

(a) A permit to excavate issued by any local agency, as defined in Section 4216, or any state agency, shall not be valid unless the applicant has been provided an initial ticket by a regional notification center pursuant to Section 4216.2. For purposes of this section, “state agency” means every state agency, department, division, bureau, board, or commission, including the Department of Transportation.

(b) This article does not exempt any person or corporation from Sections 7951, 7952, and 7953 of the Public Utilities Code.

(Amended by Stats. 2016, Ch. 809, Sec. 9. Effective January 1, 2017.)

4216.10.

(a) In lieu of the notification and locate and field mark requirements of Sections 4216.2 and 4216.3, an excavator may contact a regional notification center to request a continual excavation ticket for an area of continual excavation. The regional notification center shall provide a ticket to the person who contacts the center pursuant to this section and shall notify any member if known, who has a subsurface installation in the area of continual excavation. The ticket provided to the excavator shall include the contact information for notified operators.

(b) An operator shall respond the excavator pursuant to subdivision (a) of Section 4216.3.

(c) (1) When the area of continual excavation includes, or is within 10 feet of, a high priority subsurface installation, the operator of the high priority subsurface installation shall notify the excavator of the existence of the high priority subsurface installation to set up an onsite meeting prior to the legal excavation start date and time or at a mutually agreed upon time to determine actions or activities required to verify the location and to prevent damage to the high priority subsurface installation during the continual excavation time period. The onsite meeting shall be used to develop a mutually agreed upon plan for excavation activities that may be conducted within 25 feet of each side of the subsurface installation. Additional onsite meetings should also be held following unexpected occurrences or prior to excavation

activities that may create conflicts with subsurface installations. As part of the meeting, the excavator shall discuss with the operator the method and tools that will be used during the excavation and the information the operator will provide to assist in verifying the location of the subsurface installation. The excavator shall not begin excavating until after the completion of the onsite meeting and information has been provided describing the activities that can be safely conducted to prevent damage to the high priority subsurface installation.

(2) When the area of continual excavation includes a subsurface installation but does not include, or is not within 10 feet of, a high priority subsurface installation, the excavator or the operator may request an onsite meeting at a mutually agreed upon time to determine actions or activities required to verify the location and to prevent damage to the subsurface installation during the continual excavation period. The onsite meeting may be used to develop a plan for excavation activities that may be conducted within five feet of each side of the subsurface installation. The operator and excavator may mutually agree to conduct additional onsite meetings following unexpected occurrences or prior to excavation activities that may create conflicts with subsurface installations. As part of the meeting, the excavator may discuss with the operator the method and tools that will be used during the excavation and the information the operator will provide to assist in verifying the location of the subsurface installation. If an onsite meeting is requested prior to the legal excavation start date and time, the excavator shall not begin excavating until after the completion of the onsite meeting and information has been provided describing the activities that can be safely conducted to prevent damage to the subsurface installation.

(3) The excavator and operator shall maintain records regarding the plan of excavation, any locate and field mark and standby activities, and any other information deemed necessary by the excavator and operator. Excavation activities outside the scope of the plan shall be undertaken subsequent to notification pursuant to Section 4216.2.

(d) A ticket for an area of continual excavation shall be valid for one year from the date of issuance. The excavator may renew the ticket within two working days either by accessing the regional notification center's Internet Web site or by calling "811."

(e) The board shall, in consultation with the regional notification centers, develop through regulation a process by which the renewal requirement for a continual excavation ticket may be modified or eliminated for areas of continual excavation in which no subsurface installations are present.

(f) This section shall become operative on July 1, 2020.

(Amended by Stats. 2017, Ch. 26, Sec. 50. Effective June 27, 2017. Section initially operative July 1, 2020, by its own provisions.)

4216.11.

On or before January 1, 2020, the board shall 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 Section 4616.10 for managing an area of continual excavation.

(Added by Stats. 2017, Ch. 26, Sec. 51. Effective June 27, 2017.)

4216.12.

(a) The California Underground Facilities Safe Excavation Board is hereby created under and shall be assisted by the staff of, the Office of the State Fire Marshal.

(b) The board shall perform the following tasks:

(1) Coordinate education and outreach activities that encourage safe excavation practices, as described in Section 4216.17.

(2) Develop standards, as described in Section 4216.18.

(3) Investigate possible violations of this article, as described in Section 4216.19.

(4) Enforce this article to the extent authorized by subdivision (e) of Section 4216.6.

(c) Notwithstanding any other law, on and after January 1, 2020, the board shall be subject to review by the appropriate policy committees of the Legislature.

(Amended by Stats. 2017, Ch. 26, Sec. 52. Effective June 27, 2017.)

4216.13.

(a) The board shall be composed of nine members, of which seven shall be appointed by the Governor, one shall be appointed by the Speaker of the Assembly, and one shall be appointed by the Senate Committee on Rules.

(b) The seven members appointed by the Governor shall be appointed, as follows:

(1) Three members shall have knowledge and expertise in the operation of subsurface installations. Of those three members, one shall have knowledge and expertise in the operation of the subsurface installations of a municipal utility. At least one of the three members shall have knowledge and experience in the operation of high priority subsurface installations.

(2) Three members shall have knowledge and experience in contract excavation for employers who are not operators of subsurface installations. Of the three members, one member shall be a general engineering contractor, one member shall be a general building contractor, and one member shall be a specialty contractor. For the purposes of this section, the terms “general engineering contractor,” “general building contractor,” and “specialty contractor” shall have the meanings given in Article 4 (commencing with Section 7055) of Chapter 9 of Division 3 of the Business and Professions Code.

(3) One member shall have knowledge and expertise in performing or managing agricultural operations in the vicinity of subsurface installations.

(c) The member appointed by the Speaker of the Assembly shall have knowledge and expertise in representing in safety matters the workers employed by contract excavators.

(d) The member appointed by the Senate Committee on Rules shall have knowledge and expertise in subsurface installation location and marking and shall not be under the direct employment of an operator.

(e) The board may invite two directors of operations or other appropriate representatives of regional notification centers to be nonvoting ex officio members of the board.

(Amended by Stats. 2017, Ch. 26, Sec. 53. Effective June 27, 2017.)

4216.14.

(a) The term of a member of the board is four years. Of the first members of the board, four members, determined by lot, shall serve for two years so that the terms of the members shall be staggered.

(b) A member shall not be appointed for more than two consecutive full terms.

(c) To the extent possible, the appointing power shall fill any vacancy in the membership of the board within 60 days after the vacancy occurs.

(d) Upon the recommendation of the board, the Governor may remove a member appointed by the Governor for incompetence or misconduct.

(e) The board shall select a chairperson from among its members at the first meeting of each calendar year or when a vacancy in the chair exists.

(f) Subject to subdivision (g), the manner in which the chairperson is selected, and the chairperson's term of office shall be determined by the board.

(g) A member of the board shall not serve more than two consecutive years as the chairperson of the board.

(Added by Stats. 2016, Ch. 809, Sec. 13. Effective January 1, 2017.)

4216.15.

The board shall meet at least once every three months. The board shall hold meetings in Sacramento and Los Angeles, and in other locations in the state, it deems necessary.

(Added by Stats. 2016, Ch. 809, Sec. 14. Effective January 1, 2017.)

4216.16.

The board may obtain funding for its operational expenses from:

(a) A federal grant.

(b) A fee charged to members of the regional notification centers not to exceed the reasonable regulatory cost incident to enforcement of this article. The board shall apportion the fee in a manner consistent with formulas used by the regional notification centers. Revenues derived from the imposition of this fee shall be deposited in the Safe Energy Infrastructure and Excavation Fund.

(c) Any other source.

(d) The board shall not charge a fee to a person for notifying the regional notification center to obtain a ticket or to renew a ticket.

(Added by Stats. 2016, Ch. 809, Sec. 15. Effective January 1, 2017.)

4216.17.

(a) The board shall annually convene a meeting for the following purposes:

(1) To understand the existing needs for education and outreach, including to those groups with the highest awareness and education needs, including, but not limited to, homeowners.

(2) To facilitate discussion on how to coordinate existing education and outreach efforts with state and local government agencies, California operators, regional notification centers, and trade associations that fund outreach and education programs that encourage safe excavation practices.

(3) To determine the areas in which additional education and outreach efforts may be targeted through use, upon appropriation by the Legislature, of the money in the Safe Energy Infrastructure and Excavation Fund pursuant to subdivision (c).

(b) In addition to state and local government agencies, California operators, regional notification centers, and trade associations that fund outreach and education programs that encourage safe excavation practices, the meeting pursuant to subdivision (a) shall include representatives of groups that may be the target of those outreach and education efforts.

(c) Upon appropriation by the Legislature, the board shall grant the use of the money in the Safe Energy Infrastructure and Excavation Fund to fund public education and outreach programs designed to promote excavation safety around subsurface installations and targeted towards specific excavator groups, giving priority to those with the highest awareness and education needs, including, but not limited to, homeowners.

(Added by Stats. 2016, Ch. 809, Sec. 16. Effective January 1, 2017.)

4216.18.

The board shall develop a standard or set of standards relevant to safety practices in excavating around subsurface installations and procedures and guidance in encouraging those practices. When possible, standards should be informed by publicly available data, including, but not limited to, that collected by state and federal agencies and by the regional notification centers pursuant to subdivision (g) of Section 4216.6, and the board should refrain from using data about facility events not provided either to a state or federal agency or as statewide information, as defined in paragraph (2) of subdivision (h) of Section 4216.6. The standard or set of standards are not intended to replace other relevant standards, including the Best Practices of the Common Ground Alliance, but are to inform areas currently without established standards. The standard or set of standards shall address all of the following:

(a) Evidence necessary for excavators and operators to demonstrate compliance with Sections 4216.2, 4216.3, 4216.4, and 4216.10.

(b) What constitutes reasonable care, as required by paragraph (1) of subdivision (a) of Section 4216.4, in using hand tools around subsurface installations within the tolerance zone, considering the need to balance worker safety in trenches with the protection of subsurface installations. As part of determining the reasonable care, the board shall

consider the appropriate additional excavating depth an excavator should make if either of the following occur:

(1) The subsurface installation is delineated within the tolerance zone, but it is not in conflict with the excavation.

(2) The location of a subsurface installation is determined, but additional subsurface installations may exist immediately below the located subsurface installation.

(c) What constitutes reasonable care, as required by paragraph (1) of subdivision (a) of Section 4216.4, in grading activities on road shoulders and dirt roads which may include standards for potholing.

(Amended by Stats. 2017, Ch. 26, Sec. 54. Effective June 27, 2017.)

4216.19.

(a) The board shall investigate possible violations of this article.

(b) The board may investigate reports of incident events, as defined in paragraph (1) of subdivision (h) of Section 4216.6 and complaints from affected parties and members of the public.

(c) In determining whether to pursue an investigation, the board shall consider whether the parties have settled the matter and whether further enforcement is necessary as a deterrent to maintain the integrity of subsurface installations and to protect the safety of excavators and the public.

(d) If the board, upon the completion of an investigation, finds a probable violation of the article, the board shall transmit the investigation results and any recommended penalty to the state or local agency pursuant to subdivision (c) or (d) of Section 4216.6.

(e) Sanctions shall be graduated and may include notification and information letters, direction to attend relevant education and financial penalties. When considering the issuance of citations and assessment of penalties, the board shall consider all of the following:

(1) The type of violation and its gravity.

(2) The degree of culpability.

(3) The operator’s or excavator’s history of violations.

(4) The operator’s or excavator’s history of work conducted without violations.

(5) The efforts were taken by the violator to prevent violation and, once the violation occurred, the efforts taken to mitigate the safety consequences of the violation.

(f) This section shall become operative on July 1, 2020.

(Amended by Stats. 2017, Ch. 26, Sec. 55. Effective June 27, 2017. Section initially operative July 1, 2020, by its own provisions.)

4216.21.

(a) For an investigation that the board undertakes as a result of a complaint of a violation of Section 4216.2, 4216.3, or 4216.4, the complainant shall not file an action in court for damages based on those violations until the investigation is complete, or for 6 months after the investigation begins, whichever comes first, during which time, applicable statutes of limitation shall be tolled.

(b) If a complainant files an action in court against a person for damages based upon violations of Section 4216.2, 4216.3, or 4216.4, after the completion of a board investigation in which the person was found not to have violated the article, the complainant shall also notify the board when the action is filed.

(c) This section only applies to a claim for damages to a subsurface installation.

(d) This section shall become inoperative on July 1, 2020, and shall be repealed on January 1, 2021.

(Amended by Stats. 2017, Ch. 26, Sec. 56. Effective June 27, 2017. Inoperative July 1, 2020. Repealed as of January 1, 2021, by its own provisions. See later operative version added by Sec. 57 of Stats. 2017, Ch. 26.)

4216.21.

(a) For an investigation that the board undertakes as a result of a complaint of a violation of Section 4216.2, 4216.3, 4216.4, or 4216.10, the complainant shall not file an action in court for damages based on those violations until the investigation is complete, or for 6 months after the investigation begins, whichever comes first, during which time, applicable statutes of limitation shall be tolled.

(b) If a complainant files an action in court against a person for damages based upon violations of Section 4216.2, 4216.3, 4216.4, or 4216.10, after the completion of a board investigation in which the person was found not to have violated the article, the complainant shall also notify the board when the action is filed.

(c) This section only applies to a claim for damages to a subsurface installation.

(d) This section shall become operative on July 1, 2020.

(Repealed (in Sec. 56) and added by Stats. 2017, Ch. 26, Sec. 57. Effective June 27, 2017. Section operative July 1, 2020, by its own provisions.)

4216.22.

Consistent with all laws of this state, the board may prescribe rules and regulations as may be necessary or proper to carry out the purposes and intent of this act and to exercise the powers and duties conferred upon it by this act.

(Added by Stats. 2016, Ch. 809, Sec. 20. Effective January 1, 2017.)

4216.23.

(a) Notwithstanding Section 10231.5, the board shall report to the Governor and the Legislature on or before February 1, 2018, and each year thereafter, on the activities of the board and any recommendations of the board.

(b) A report to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795.

(Added by Stats. 2016, Ch. 809, Sec. 21. Effective January 1, 2017.)

4216.24.

The Safe Energy Infrastructure and Excavation Fund is hereby established in the State Treasury. Money deposited into the fund shall be used, upon appropriation by the Legislature, to cover the operational expenses of the board and for the purposes specified in subdivision (b) of Section 4216.17, except that revenues derived from penalties imposed pursuant to Section 4216.6 shall not be used for operational expenses.

(Added by Stats. 2016, Ch. 809, Sec. 22. Effective January 1, 2017.)

California Underground Facilities
Safe Excavation Board

Item #6f-i

Agenda Item – Resolution

DATE: January 9, 2018

TO: Members, Underground Facilities Safe Excavation Board

FROM: Tony Marino, Executive Officer

SUBJECT: Board Policies: Organization

BACKGROUND:
Statements of mission, vision, and values have roles in providing guidance for action, expressing the organization's character to outside stakeholders, and assisting in strategic planning processes.

DISCUSSION:
Policies that express the image an organization has of itself can rally internal stakeholders around goals the organization sets for itself and sets expectations of external stakeholders in their interaction with the organization. For this reason, such statements play a fundamental role in the creation of direction and can be particularly powerful in a new organization, such as the California Underground Facilities Safe Excavation Board, which has little historical baggage to create inertia against change.

A mission statement explains an organizations reason for existence and communicates purpose to employees and other stakeholders. A vision statement describes aspirational state of the world that the organization hopes to create—or what the world will look like when the organization is no longer needed. A values statement describes how the organization will operate to achieve its goals and usually pledges to follow applicable ethics and transparency laws at minimum but also goes beyond to express the ways in which the organization expresses respect for its environment and the persons in it. It serves as a set of expectation for employees and a clear message to outside stakeholders about what types of behaviors are encouraged and what types are not acceptable.

Mission, vision, and values statements have a special purpose in strategic planning. Often implicit in strategic planning is the need for a change in direction, and mission, vision, and values statements can provide the many employees responsible for making changes (and convincing others to go along with those changes) a commonly-understood direction unified across the organization.

Developing a values-led organization can be difficult if the intent is to change an existing culture. The Board, however, is new, and making statements such as these can assist in creating the culture the Board aspires to have.

Values play an important role in organizations with a safety mission. A safety-focused organization must develop of safety management processes, but such an organization must also develop a culture conducive to the promotion of safety. A poor safety culture can impede effective hazard reporting, collaborative root-cause analysis, and the development of risk mitigations. Conversely, the International Civil Aviation Organization (ICAO) attributes much of civil aviation's outstanding safety record to a continuous learning process based on the development and free exchange of safety information.[1]

This free exchange cannot, however, be viewed as selective, especially if it is selective against the general public. As Peter Sandman explains, the traditional view of the public from an industry point of view had been "Ignore people if you can, mislead them if you must, lie to them in extremis, but for heaven's sake don't level with them because they will screw it up."[2] This view appears to be changing, as the American Petroleum Institute's Recommended Practice 1173 ("Pipeline Safety Management Requirements") requires gas and electric pipeline operators to maintain processes for two-way communication with external stakeholders.

Exclusion need not be based on the selective withholding of information, but can happen if information is not available to people not already immersed in the jargon and technical nature of an industry. As the National Research Council notes,

> "citizens of a democracy expect to participate in debate about controversial political issues and about the institutional mechanisms to which they sometimes delegate decision-making power. A problem formulation that that appears to substitute technical analysis for political debate, or to disenfranchise people who lack technical training, or to treat technical analysis as more important to decision making than the clash of values and interests is bound to elicit resentment from a democratic citizenry."[3]

The Board's expression of such values of openness can signal to stakeholders that it is not solely the Board's responsibility to act consistent with these values, but that an idea a stakeholder provides that is unnecessarily inaccessible may not receive the weight of argument it might otherwise achieve were it understandable but other stakeholders and thus subject to the crucible of public debate.

RECOMMENDATION:
Adopt attached policies regarding the history, mission, vision, and values.

ATTACHMENTS:

1) Resolution

[1] Doc 9859, "Safety Management Manual," ICAO, Third Edition, 2013, 4-App 5-1.
[2] Peter Sandman, *Responding to Community Outrage: Strategies for Effective Risk Communication*. American Industrial Hygiene Association, 1993, p. 4.
[3] National Research Council, Improving Risk Communication, National Academy Press, 1989, p. 20.

2) Organization B-01: History
3) Organization B-02: Mission
4) Organization B-03: Vision
5) Organization B-04: Values

CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD

RESOLUTION No. _____

A RESOLUTION OF THE CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD ADOPTING POLICIES REGARDING ORGANIZATIONAL STATEMENTS AND SYMBOLS OF PURPOSE

Whereas statements of purpose play a fundamental role in the creation of direction and can be particularly powerful in a new organization, such as the California Underground Facilities Safe Excavation Board; and

Whereas mission, vision, and values statements will likely play an important role in future strategic planning efforts; and

Whereas the statements explaining the Board's values of respect, inquiry, accessibility, integrity, and commitment to a culture of continuous learning will signal to stakeholders the Board's expectations for interaction with the Board;

Be it resolved that the Board adopts as policies B-01 ("History"), B-02 ("Mission"), B-03 ("Vision"), and B-04 ("Values").

I certify that this resolution was adopted by the California Underground Facilities Safe Excavation Board at its business meeting on January 9, 2018, the following Members approving it:

_____

ANTHONY R. MARINO
Executive Officer

Category:	**Organization**	Policy Number:	B-01
Title:	**History**		
Adopted:	DRAFT	Resolution:	
Revision:			

The California Underground Facilities Safe Excavation Board was created by the Dig Safe Act of 2016 (Chapter 809, Statutes of 2016) to investigate accidents, develop excavation safety standards, and coordinate education and outreach programs.[1]

[1] Senate Floor concurrence statement of Senator Jerry Hill for SB 661, August 31, 2016, 10:35pm:
"Thank you Madame President. SB 661 revamps the state's 'Call-Before-You-Dig' law for the first time since 1989 and is part of the Governor's PUC reform package. The bill creates a stakeholder board in charge of investigating accidents, developing excavation safety standards, and coordinating education and outreach programs. SB 661 is the culmination of a multi-year stakeholder process involving gas and electric utilities, telecommunications companies, labor, agriculture, contractors, landscapers, county governments, petroleum companies, and others. I respectfully ask for your 'aye' vote members. Thank you."

Monitoring Method: Board
Frequency: Biennial

Category:	**Organization**	Policy Number:	B-02
Title:	**Mission**		
Adopted:	DRAFT	Resolution:	
Revision:			

The California Underground Facilities Safe Excavation Board improves public and worker safety by facilitating communication and learning among excavators and the operators of subsurface installations and by investigating accidents to determine their causes. The California Underground Facilities Safe Excavation Board strives to be a model regulatory and investigatory board for other states to emulate.

Monitoring Method: Board
Frequency: Annual

Category:	**Organization**		Policy Number:	B-03
Title:	**Vision**			
Adopted:	DRAFT	Resolution:		
Revision:				

The California Underground Facilities Safe Excavation Board seeks to effect a California in which the state's excavators and subsurface installation owners know and understand

- how to identify the locations of subsurface installations,
- how to protect against dangerous contact with those installations, and
- how to resolve unexpected situations that may arise, and

in which the state's excavators and subsurface installation owners exercise that knowledge and understanding to promote a culture of mutual respect and dedication to the cause that everyone goes home safe.

Monitoring Method: Board
Frequency: Annual

Category:	**Organization**	Policy Number:	B-04
Title:	**Values**		
Adopted:	DRAFT	Resolution:	
Revision:			

The actions and decisions of the Underground Facilities Safe Excavation Board members and staff will be guided and informed by their commitments to:

- Respect for and attentiveness to the expression of differing backgrounds and perspectives of the board's members, the public, and stakeholders, as well as for the missions of excavators, operators of subsurface installations, and other federal, state, and local agencies.

- A culture of continuous learning based on the development and free exchange of safety information.

- Inquiry into the facts of and context behind accidents, near misses, and latent safety-related conditions in the field.

- Accessibility to the public and stakeholders, within the bounds of the law, constitutional principles of due process, and ethical conduct.

- Integrity in serving in the public interest and devotion to maintaining the public's trust.

Monitoring Method: Board
Frequency: Annual

California Underground Facilities
Safe Excavation Board

Item #6k-o

Agenda Item – Resolution

DATE: January 9, 2018

TO: Members, Underground Facilities Safe Excavation Board

FROM: Tony Marino, Executive Officer

SUBJECT: Board Policies: Responsibilities and Accountabilities

BACKGROUND:
Many state and federal agencies have responsibilities for the safety of excavation in the vicinity of subsurface installations. The California Underground Facilities Safe Excavation Board is accountable to the Governor, the Legislature, and the people of California through a number of mechanisms.

DISCUSSION:
Several state and federal agencies have responsibility for safe excavation around buried infrastructure. The California Underground Facilities Safe Excavation Board (Board) is expected to play a central role in the coordination of activities to fulfil this responsibility.

- The federal Pipeline and Hazardous Materials Safety Administration (PHMSA, under the Department of Transportation) and Occupational Health and Safety Administration (OSHA, under the Department of Labor) have promulgated regulations and each have vested some of their authority with the states. Congress has authorized PHMSA to certify state pipeline safety programs[1] and OSHA to approve state plans for standard development and enforcement.[2] The CPUC and OSFM each have certified state pipeline safety programs, and the Division of Occupational Safety and Health under the Department of Industrial Relations (Cal/OSHA) exercises its jurisdiction through an approved state plan. Cal/OSHA develops consensus standards through the Occupational Safety & Health Standards Board (OSHSB) and adopts those standards through regulation. OSHA and Cal/OSHA develop training programs and guidance documents to specific types of activities, such as excavation.

- The state's Department of Consumer Affairs exists to protect consumers by providing a safe and fair marketplace through oversight, enforcement, and licensure of professions. The department houses 41 boards including the

[1] 49 USC 60105.
[2] 29 USC 667.

Contractors' State License Board (CSLB) licenses and regulates the state's construction industry.

- The state's two regional notification centers, though incorporated as 501(c)(6) non-profit corporations, have responsibility outlined in statute to accept excavation notifications from excavators and forward the information to subsurface installation operators. These one-call centers also have data retention requirements.

- The California Underground Facilities Safe Excavation Board (Board) has statutory responsibility to investigate accidents, developed subsurface facility-specific excavation safety standards, and coordinate the state's education and outreach programs for safe excavation work around subsurface facilities. The Board also has a statutory obligation to make recommendations to the Legislature.

To coordinate the efforts of these actors, a safe dig implementation team may need to be organized with representatives of these entities. Coordination would likely be manifest through policy documents such as memoranda of understanding.

Other, non-governmental entities also participate in the excavation safety space. Several industry groups set standards:

1. Common Ground Alliance (Best Practices)
2. American Petroleum Institute (Recommended Practice 1162: Public Awareness Programs for Pipeline Operators)
3. National Utility Locators Association (Professional Competence Standards for Locating Technicians)
4. American Society of Civil Engineers (ASCE 38-02: Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data)

Additionally the California Regional Common Ground Alliance is a 501(c)(6) non-profit organization dedicated to promoting effective underground damage prevention practices in California.

A number of entities have oversight responsibility for the state's program for safe excavation around subsurface installations.

- The Governor, Senate Rules Committee, and Speaker of the Assembly oversee the Board, CPUC, CSLB, OSFM, and OSHSB though their appointments.

- The Legislature has multiple relevant standing and select committees with jurisdiction. The Board is subject to legislative review beginning January 1, 2020.[3]

[3] GOV § 4216.12(c).

- PHMSA annually determines the effectiveness of state damage prevention programs.

RECOMMENDATION:
Adopt attached policies regarding the Board and executive officer responsibilities and accountabilities.

ATTACHMENTS:

1) Resolution
2) Responsibilities and Accountabilities A-01: Responsibilities of the Board
3) Responsibilities and Accountabilities A-02: Responsibilities of Board Members
4) Responsibilities and Accountabilities A-03: Responsibilities of the Executive Officer
5) Responsibilities and Accountabilities A-04: Accountability to the Legislature
6) Responsibilities and Accountabilities A-05: Coordination with State and Federal Agencies

CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD

RESOLUTION No. _____

A RESOLUTION OF THE CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD ADOPTING POLICIES REGARDING THE BOARD AND EXECUTIVE OFFICER RESPONSIBILITIES AND ACCOUNTABILITIES

Whereas several state and federal agencies have responsibility for safe excavation around buried infrastructure and the California Underground Facilities Safe Excavation Board is expected to play a central role in the coordination of activities to fulfil this responsibility; and

Whereas the Board is accountable to the Governor and Legislature by a number of mechanisms; and

Whereas safety objectives can only be accomplished with the clear assignment of responsibilities to actors who will carry them out and clear lines of accountability;

Be it resolved that the Board adopts as policies A-01, A-02, A-03, A-04, and A-05, outlining Board and executive officer responsibilities and accountabilities.

I certify that this resolution was adopted by the California Underground Facilities Safe Excavation Board at its business meeting on January 9, 2018, the following Members approving it:

_____

ANTHONY R. MARINO
Executive Officer

Category:	**Responsibilities and Accountabilities**	Policy Number:	A-01
Title:	**Responsibilities of the Board**		
Adopted:	DRAFT	Resolution:	
Revision:			

Pursuant to its authority granted by the Legislature of the State of California, the California Underground Facilities Safe Excavation Board serves as a governing body for Board staff as well as a policy and regulatory body.

- Improve the safety of excavation around subsurface installations within the state consistent with legislative direction, which charged the Board with all of the following:
    - Coordinate the state's education and outreach activities that encourage safe excavation practices.
    - Develop standards relevant to safety practices in excavating around subsurface installations and procedures and guidance in encouraging those practices.
    - Investigate complaints and accidents to determine their causes.
    - Enforce safe excavation laws and regulations, or refer investigations to state and local agencies with authority to enforce them.
- Periodically review the state of safety in excavation around subsurface installations in California and the resources available to staff and stakeholders to address identified problems, and determine objectives and actions for improvement.
- Using the Board's processes for periodic review, set clear performance expectations for staff and monitor staff's efforts to accomplish objectives.
- Make recommendations to the Legislature for improving the safety of excavation around subsurface installations through the Legislature's power of legislation, budget action, and oversight.
- Evaluate the performance of the Executive Officer.

Monitoring Method: Board
Frequency: Annual

Category:	**Responsibilities and Accountabilities**	Policy Number:	A-02
Title:	**Responsibilities of Board Members**		
Adopted:	DRAFT	Resolution:	
Revision:			

California Underground Facilities Safe Excavation Board members are public officials as defined by the California Constitution and are appointed by the Governor, Senate, or Assembly to serve in the interest of the state's residents. The responsibilities of each Board member are as follows:

- Prepare for, attend, and participate in the Board's regular business meetings and other public functions that the Board uses to conduct its business.
- Be informed about the Board's policies, processes, and program activities.
- Review agenda and supporting materials prior to board meetings.
- Lead or co-lead policy inquiries on behalf of the Board.
- Inform others about the organization.
- Protect the public's interest by maintaining compliance with the word and spirit of ethics and transparency laws, including the Political Reform Act and the Bagley-Keene Open Meeting Act.
- Represent the Board to the California Legislature, to the public, and to groups with an interest in the Board's actions.

Monitoring Method: Board
Frequency: Annual

Category:	**Responsibilities and Accountabilities**	Policy Number:	A-03
Title:	**Responsibilities of the Executive Officer**		
Adopted:	DRAFT	Resolution:	
Revision:			

The Executive Officer is appointed by the Governor and executes Board direction through management of Underground Facilities Safe Excavation Board staff. The Executive officer shall:

- Conduct his or her work in compliance with the law, in a fair, competent and inclusive manner, and with the purpose of maximizing the value of the Board to Californians.

- Achieve the results established by the Board within the appropriate and ethical standards of business conduct set by the Board.

- Exercise prudent judgment in the use of resources allocated to the Board.

- Interact with other government agencies and the public pursuant to policies and decisions adopted by the Board.

- Have authority to act expeditiously and in coordination with other agencies of the State of California and United States in emergencies endangering the public health, safety, and the environment.

- Oversee the preparation of the Annual Report to the Governor and Legislature.

- Have the authority to represent the Board before the Legislature.

- Establish further policies, make decisions, take actions, establish practices, and develop activities in accordance with statutory authority, Board policies, and Board decisions.

Monitoring Method: Board
Frequency: Annual

Category:	**Responsibilities and Accountabilities**	Policy Number:	A-04
Title:	**Accountability to the Legislature**		
Adopted:	DRAFT	Resolution:	
Revision:			

The authority of the California Underground Facilities Safe Excavation Board comes from the people of California through their representatives in the Legislature. The Board is accountable to the Legislature in the following ways:

- Senate and Assembly appointees are accountable to their respective appointing houses to exercise the professionalism and good judgment befitting their positions.

- The annual Budget Act, which determines the authorized funding for the Board.

- Periodic legislative review, such as scheduled for January 1, 2020, or after by subdivision (c) of Government Code § 4216.12.

- The Annual Report to the Governor and Legislature, pursuant to Government Code § 4216.23.

- An inquiry by standing, sub-, and select committees with jurisdiction over the Board's activities, and inquiry by individual members. The inquiry may take the form of meeting requests, written requests for information, and informational and oversight hearings. The inquiry may come at any time and with little notice.

Monitoring Method: Staff
Frequency: Biennial

Category:	**Responsibilities and Accountabilities**	Policy Number:	A-05
Title:	**Coordination with State and Federal Agencies**		
Adopted:	DRAFT	Resolution:	
Revision:			

The California Underground Facilities Safe Excavation Board must collaborate with other state and federal agencies to advance its mission. In particular, the Board communicates with the following agencies:

- The Contractors' State License Board, the California Public Utilities Commission, and the Office of the State Fire Marshal in the enforcement of the state's laws for safe excavation around subsurface installations. Additionally, the Board assists the California Public Utilities Commission, and the Office of the State Fire Marshal in their oversight of the federally-mandated damage prevention programs natural gas and hazardous liquid pipeline operators. The Board will explore areas of further collaboration with these agencies.

- The Division of Occupational Safety and Health (Cal/OSHA) within the Department of Industrial Relations, as well as the Occupational Safety and Health Standards Board.

- The federal Pipeline and Hazardous Materials Safety Administration, who sets minimum natural gas and hazardous liquid pipeline safety requirements, delegates oversight of those requirements to the California Public Utilities Commission, and the Office of the State Fire Marshal, and evaluates state damage prevention programs for purposes of awarding federal funding to state programs.

The Board will seek areas of beneficial cooperation with these and other federal, state, and local agencies and will respect their policies and decisions.

Monitoring Method: Board
Frequency: Annual

California Underground Facilities
Safe Excavation Board

Item #6o

Agenda Item – Resolution

DATE: January 9, 2018

TO: Members, Underground Facilities Safe Excavation Board

FROM: Tony Marino, Executive Officer

SUBJECT: Board Policies: Compliance

BACKGROUND:
The Underground Facilities Safe Excavation Board, as an entity in California government, is subject to many statutory, regulatory, and control agency policies that exist to promote fairness, transparency, fiscal accountability, and ethical behavior.

DISCUSSION:
Board policy may at times appear inconsistent with some compliance requirements. For instance, confidential employee reporting programs have been used to facilitate employee reporting of safety issues that they otherwise may not be comfortable doing for fear of reprisal. The California Public Records Act, on the other hand, can make the withholding of reporting documents difficult or impossible. In cases where there is a conflict between an action proposed to implement a Board policy and a compliance requirement placed on the Board, the Board shall comply.

Nonetheless, while there may at times be conflicts between Board policy and a compliance requirement, there is often, given enough time and effort, a means to accomplish the policy without running afoul of the Board's legal compliance obligations.

RECOMMENDATION:
Adopt attached policy regarding compliance with legislative and administrative process requirements.

ATTACHMENTS:

1) Resolution
2) Compliance C-01: Compliance with Legislative and Administrative Process Requirements

CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD

RESOLUTION No. _____

A RESOLUTION OF THE CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD ADOPTING POLICIES REGARDING COMPLIANCE WITH LEGISLATIVE AND ADMINISTRATIVE REQUIREMENTS

Whereas the California Underground Facilities Safe Excavation Board is subject to legislative and administrative process requirements; and

Whereas such requirements exist to promote fairness, transparency, fiscal accountability, and ethical behavior; and

Whereas such requirements may challenge, if not conflict, with actions proposed to implement Board policy;

Be it resolved that the Board adopts as a policy C-01 (“Compliance with Legislative and Administrative Process Requirements”).

I certify that this resolution was adopted by the California Underground Facilities Safe Excavation Board at its business meeting on January 9, 2018, the following Members approving it:

_____

ANTHONY R. MARINO
Executive Officer

Category:	**Compliance**	Process Number:	C-01
Title:	**Compliance with Legislative and Administrative Process Requirements**		
Adopted:	Draft	Resolution:	
Revision:			

The policies and processes adopted by the Underground Facilities Safe Excavation Board are built upon the superstructure of existing legislative and administrative requirements which include, but are not limited to, the rulemaking and adjudication provisions of the Administrative Procedures Act, the Bagley-Keene Open Meeting Act, accounting and budgetary provisions of the State Administrative Manual, hiring and personnel requirements of the Department of Personnel Management, and the implementation of these various processes by the Department of Forestry and Fire Protection.

Monitoring Method: Staff
Frequency: Annual

California Underground Facilities
Safe Excavation Board

Item #6p-t

Agenda Item – Resolution

DATE: January 9, 2018

TO: Members, Underground Facilities Safe Excavation Board

FROM: Tony Marino, Executive Officer

SUBJECT: Board Policies: Governance

BACKGROUND:
The Underground Facilities Safe Excavation Board must have procedures in place to operate as a body. Many of these procedures can be adopted by incorporating Robert's Rules of Order by reference, but others must be made explicit.

DISCUSSION:
Legislative bodies adopt procedures to promote decorum, protect the rights of members to exercise speech and action while allowing the body to conduct business, confine debate to merits of question, and provide for clarity of record. Some procedures are defined in statute,[1] but most are provide through adoption of a parliamentary procedure manual. Robert's Rules of Order remains the most popular manual for California boards and commissions. Still other procedures must be adopted specifically as standing rules.

As Robert's Rules is expansive, comprising several hundred pages, it offers different options for performing similar tasks based on the type of body and type of meeting, leading to potential ambiguities in application. For some procedures, however—such as the election of the chair, the role of the chair, the replacement of the executive officer, and recommendations to the Governor and Legislature—clarity is critical. The Board may choose to express those procedures explicitly in policy documents.

RECOMMENDATION:
Adopt attached policies regarding procedures for meeting governance.

ATTACHMENTS:

1) Resolution
2) Governance G-01: Parliamentary Procedure
3) Governance G-02: Election of Board Chair
4) Governance G-03: Role of the Board Chair

[1] For instance, Government Code (GOV) § 11123 requires votes made during a teleconferenced meeting shall be by roll call, GOV § 11128.5 allows bodies with less than a quorum to adjourn, and GOV 87105 sets procedures by which a member of a specified public body must recuse him- or herself.

5) Governance G-04: Replacement of the Executive Officer
6) Governance G-05: Recommendations to the Governor and Legislature

CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD

RESOLUTION No. _____

A RESOLUTION OF THE CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD ADOPTING POLICIES REGARDING BOARD GOVERNANCE PROCEDURES

Whereas the California Underground Facilities Safe Excavation Board must adopt procedures to govern conduct during meetings; and

Whereas the 11th Edition of Roberts Rules of Order has flexibility and is in widespread use in California state boards and commissions; and

Whereas procedures specific to the election and role of the Board Chair, the replacement of the executive officer, and recommendations to the Governor and Legislature would provide necessary clarity not found in Robert's Rules of Order;

Be it resolved that the Board adopts as a policies procedures for meeting governance G-01 ("Parliamentary Procedure"), G-02 ("Election of Board Chair"), G-03 ("Role of Board Chair"), G-04 ("Replacement of Executive Officer"), and G-05 ("Recommendations to the Governor and Legislature").

I certify that this resolution was adopted by the California Underground Facilities Safe Excavation Board at its business meeting on January 9, 2018, the following Members approving it:

_____

ANTHONY R. MARINO
Executive Officer

Category:	**Governance**	Process Number:	G-01
Title:	**Parliamentary Procedure**		
Adopted:	DRAFT	Resolution:	
Revision:			

Parliamentary procedure shall be conducted as follows. Any question of procedure not addressed in the governance provisions of this manual shall be addressed using the 11th Edition of Robert's Rules of Order.

- Procedures for small boards identified in the 11th Edition of Robert's Rules of Order shall apply, including, but not limited to, the following:
    - Motions need not be seconded.
    - There shall be no limit to the number of times a member may speak to a debatable question.
    - Informal discussion of a subject is permitted while no motion is pending.
- A quorum shall be five members.

Monitoring Method: Staff
Frequency: Biennial

Category:	**Governance**	Process Number:	G-02
Title:	**Election of Board Chair**		
Adopted:	DRAFT	Resolution:	
Revision:			

The Board shall elect each year a chair to preside at Board meetings under the following terms and conditions:

1. The Chair shall be elected upon a vote of a majority of board members appointed to office voting in approval.

2. The terms of the Chair shall be for a period of one year or until such time as a successor has been selected pursuant to these rules.

3. Pursuant to Government Code § 4216.14, a member of the Board shall not serve as Chair for more than two successive years.

4. In the absence of the Chair, the members present shall select one of their number to act as Chair pro tem.

5. A new Chair may be elected at any time during a business meeting.

Monitoring Method: Board
Frequency: Biennial

Category:	**Governance**	Process Number:	G-03
Title:	**Role of the Board Chair**		
Adopted:	DRAFT	Resolution:	
Revision:			

The Chair of the Board and any Board member acting in the role of Chair of the Board shall assure the integrity of the Board's processes. Specifically, the Chair shall:

1. Preside over Board meetings.

2. Ensure the orderly dispensation of the Board's agendas.

3. Ensure that the Board behaves consistently with its own rules and policies.

4. Solicit the engagement of all members of the Board in the development of policies consistent with the Board's statutory directive.

5. Ensure that discussion during meetings is fair, open, and thorough and complies with the notice requirements of the Bagley-Keene Open Meeting Act.

6. Solicit volunteers and appoint members to lead and present the results of workshops, committee meetings, and other aspects of the Board's policy and enforcement duties.

Monitoring Method: Board
Frequency: Biennial

Category:	**Governance**	Process Number:	G-04
Title:	**Replacement of the Executive Officer**		
Adopted:	DRAFT	Resolution:	
Revision:			

The Executive Officer is appointed by and serves at the pleasure of the Governor of California. The Board may, with an affirmative vote of a majority of the members appointed, recommend to the Governor the replacement of the Executive Officer.

Monitoring Method: Board
Frequency: Biennial

Category:	**Governance**	Process Number:	G-05
Title:	**Recommendations to the Governor and Legislature**		
Adopted:	DRAFT	Resolution:	
Revision:			

Section 4216.23 of the Government Code requires the Board to submit any recommendations it may have to the Governor and Legislature in its annual report. The Board may make recommendations to the Governor, the Legislature, or any other government entity at any time of its choosing through a resolution approved at a voting meeting.

Monitoring Method: Board
Frequency: Biennial