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***APPROVED* MINUTES OF MEETING**  
**CALIFORNIA LAW REVISION COMMISSION**  
**SEPTEMBER 22, 2016**  
**SACRAMENTO**

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A meeting of the California Law Revision Commission was held in Sacramento on September 22, 2016.

**Commission:**

*Present:* Susan Duncan Lee, Chairperson  
Thomas Hallinan, Vice Chairperson  
Diane F. Boyer-Vine, Legislative Counsel  
Damian Capozzola  
Taras Kihiczak  
Jane McAllister  
Crystal Miller-O'Brien

*Absent:* Assembly Member Ed Chau  
Senator Richard D. Roth  
Victor King

**Staff:** Brian Hebert, Executive Director  
Barbara Gaal, Chief Deputy Counsel  
Kristin Burford, Staff Counsel  
Steve Cohen, Staff Counsel

**Other Persons:**

James Acres, Acres Bonusing  
Allison Andersen, Community Associations Institute, California Legislative Action Committee  
Jacqueline Serna Anguiano, Consumer Attorneys of California  
David Bess, California Department of Fish and Wildlife  
Charlie Born, Frontier Communications  
Lawrence Doyle, Conference of California Bar Associations  
Paul Dubow, California Dispute Resolution Council  
Daniel Felizzatto, Los Angeles District Attorney's Office  
Robert Flack  
Cassandra Glanville, Herring Law Group  
Donn Hoffman, Los Angeles District Attorney's Office  
Ron Kelly  
Jeff Kichaven  
David Miller, ADR Services

Elizabeth Dietzen Olsen, Senate Office of Research  
Ken Von Helmolt, Los Angeles District Attorney’s Office  
John S. Warnlof, California Dispute Resolution Council  
Stephanie L. Williams

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#### APPROVAL OF ACTIONS TAKEN

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Unless otherwise indicated, the Commission decisions noted in these Minutes were approved by all members present at the meeting. If a member who was present at the meeting voted against a particular decision, abstained from voting, or was not present when the decision was made, that fact will be noted below.

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#### MINUTES OF JULY 22, 2016, COMMISSION MEETING

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Memorandum 2016-40 presented a draft of the Minutes of the July 22, 2016, Commission meeting. The Commission approved the Minutes as submitted. *(Commissioners Hallinan and Kihiczak were not present when this decision was made.)*

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#### ADMINISTRATIVE MATTERS

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##### **Report of Executive Director**

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The Executive Director reported that the reappointment of Commissioners Hallinan, King, Lee, and McAllister was approved by the Senate.

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##### **Commissioner Suggestions**

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No new Commissioner suggestions were made.

1 **Election of Officers**

2 The Commission considered Memorandum 2016-41, relating to the election of  
3 Commission officers. The Commission elected Susan Duncan Lee as Chairperson  
4 and Thomas Hallinan as Vice Chairperson, for terms commencing immediately  
5 and ending August 31, 2017.

6 **Tribal Consultation Policy**

7 The Commission considered Memorandum 2016-42 and its First Supplement,  
8 proposing the adoption of a tribal consultation policy. The Commission  
9 approved the following policy, for inclusion in its Handbook of Practices and  
10 Procedures and transmission to the Governor's Office of the Tribal Advisor:

11 **Tribal Consultation Policy**

12 Consistent with Executive Order B-10-11, the Commission shall  
13 take all practicable steps to encourage early and frequent  
14 communication and consultation with California Native American  
15 Tribes, including all of the following:

- 16 (1) Before the Commission begins a new study, it shall send  
17 notice to Tribes explaining the scope and nature of the study,  
18 inviting consultation regarding the study, and offering to  
19 add Tribes to the distribution list for materials prepared as  
20 part of the study. This notice shall be sent by the  
21 Commission's Chair or Executive Director.
- 22 (2) If an official of a Tribe wishes to address the Commission at  
23 one of its public meetings, the Commission shall set aside  
24 time for that purpose.
- 25 (3) The Executive Director shall be available for consultation  
26 with representatives of Tribes on their request.

27 In addition, the Commission directed the staff to send notice to Tribes  
28 advising them of the Commission's currently active studies and inviting  
29 consultation regarding those studies.

30 *(Commissioners Hallinan and Kihiczak were not present when these decisions were*  
31 *made.)*

32 **2016 LEGISLATIVE PROGRAM**

33 The Commission considered Memorandum 2016-43, discussing the status of  
34 its 2016 Legislative Program. No Commission action was required or taken.

1 STUDY D-1200 — RECOGNITION OF TRIBAL AND FOREIGN COURT MONEY JUDGMENTS

2 The Commission considered Memorandum 2016-44, presenting a draft  
3 recommendation and public comment on the tentative recommendation.

4 The Commission approved the draft as a final recommendation for printing  
5 and submission to the Governor and Legislature. (*Commissioner Boyer-Vine was*  
6 *not present when this decision was made.*)

7 STUDY G-301 — GOVERNMENT INTERRUPTION OF COMMUNICATION SERVICES

8 The Commission considered Memorandum 2016-46 and its First Supplement,  
9 presenting a draft recommendation regarding government interruption of  
10 communication services.

11 The Commission directed the staff to prepare a revised draft  
12 recommendation, for presentation at the December meeting, with the following  
13 changes:

- 14 • Delete the definitions of “electronic communication” and  
15 “communication service” in proposed Penal Code Section 11470(a)  
16 and (b), and replace them with the existing definition of  
17 “communication service” provided in Public Utilities Code Section  
18 7908(a)(1).
- 19 • Delete the proposed reforms of Business and Professions Code  
20 Sections 149 and 7099.10 and Public Utilities Code Sections 5322  
21 and 5371.6.
- 22 • Delete the definitions of “general interruption of communication  
23 service” and “specific interruption of communication service” in  
24 proposed Penal Code Section 11470(c) and (h), and make  
25 conforming revisions to the proposed provisions that used those  
26 terms. To the extent practicable, the conforming revisions should  
27 use language drawn from Public Utilities Code Section 7908.
- 28 • Delete the exception for “incidental interruption” in proposed  
29 Penal Code Section 11481(a)(7) and replace it with an exception for  
30 an interruption caused by the execution of a search warrant.
- 31 • Standardize the use of the plural and singular with regard to the  
32 term “communication service” and similar terms.

1                   STUDY H-859 — COMMON INTEREST DEVELOPMENTS:  
2                   MECHANICS LIENS AND COMMON AREA

3           The Commission considered Memorandum 2016-45, presenting a draft  
4 recommendation relating to the application of mechanics lien law to common  
5 interest developments.

6           The Commission directed the staff to prepare a revised draft  
7 recommendation, for presentation at the December meeting, with the following  
8 changes:

- 9           • Require that an association use “individual delivery” methods  
10           when giving members notice of receipt of a claim of lien.
- 11           • Expressly authorize the use of a lien release bond in Civil Code  
12           Section 4615(c).

13                   STUDY K-402 — RELATIONSHIP BETWEEN MEDIATION CONFIDENTIALITY AND  
14                   ATTORNEY MALPRACTICE AND OTHER MISCONDUCT

15           The Commission considered Memorandum 2016-49 and its First Supplement,  
16 relating to specialist certificates of merit. The Commission also considered  
17 Memorandum 2016-50 and its First Supplement, relating to public comment on  
18 this study.

19           The Commission made the following decisions:

- 20           (1) The Commission will not further pursue the idea of requiring a  
21           specialist certificate of merit for a legal malpractice case that  
22           alleges mediation misconduct.
- 23           (2) The Commission will not further pursue self-certification or any  
24           other mechanism for preliminary filtering of a legal malpractice  
25           case that alleges mediation misconduct.
- 26           (3) The staff should begin drafting the proposed legislation for the  
27           Commission’s tentative recommendation, along the lines  
28           previously decided.
- 29           (4) The staff should also prepare a memorandum that discusses the  
30           possibility of including additional reforms in the tentative  
31           recommendation, either as complements to the proposed new  
32           mediation confidentiality exception or as possible alternatives.

33           *(Commissioner Kihiczak was not present for any of the decisions relating to this study.)*



1 The Commission also generally indicated that the approach described above  
2 should probably be used in any future technical clean-up project.

3 **“Game” as a Modifier**

4 The Commission considered the Second, Third, and Fifth Supplements to  
5 Memorandum 2016-47, discussing the use of the term “game” as a modifier.

6 For the purposes of a tentative recommendation, the Commission made the  
7 following decisions:

- 8 • No changes should be made to a use of the term “game” that is  
9 unambiguous on its face.
- 10 • Provisions that govern “domesticated game breeders” should be  
11 revised to use the term “game” consistently.
- 12 • The tentative recommendation should include proposed revisions  
13 along the following lines, with Commission Notes inviting public  
14 comment on the merits of the revisions:

15 **Fish & Game Code § 307. Population decline**

16 307. (a) Whenever after due investigation the commission finds  
17 that game fish, resident ~~or~~ game birds, migratory game birds, game  
18 mammals, ~~or~~ fur-bearing mammals, game amphibians, or game  
19 reptiles have decreased in numbers in an area, district, or portion of  
20 an area or district to the extent that a scarcity exists, the commission  
21 may reduce the daily bag limit and the possession limit on those  
22 game fish, birds, mammals, amphibians, or reptiles that are in  
23 danger of depletion, for a period of time that the commission may  
24 specify, or until new legislation addressing the scarcity becomes  
25 effective.

26 ...

27 **Fish & Game Code § 2003. Contests**

28 2003. (a) Except as specified in subdivisions (b), (c), and (d), it is  
29 unlawful to offer a prize or other inducement as a reward for the  
30 taking of a game bird, or the taking of any mammal, fish, reptile, or  
31 amphibian in an individual contest, tournament, or derby.

32 (b) The department may issue a permit to a person authorizing  
33 that person to offer a prize or other inducement as a reward for the  
34 taking of a game fish, as defined by the commission by regulation,  
35 if it finds that there would be no detriment to the resource. The  
36 permit is subject to regulations adopted by the commission. The  
37 application for the permit shall be accompanied by a fee in the  
38 amount determined by the department as necessary to cover the  
39 reasonable administrative costs incurred by the department in  
40 issuing the permit. However, the department may waive the permit  
41 fee if the contest, tournament, or derby is for persons who are  
42 under 16 years of age or have a physical or mental disability, and

1 the primary purpose of the contest, tournament, or derby is to  
2 introduce those anglers to or educate them about fishing. All  
3 permits for which the fee is waived pursuant to this subdivision  
4 shall comply with all other requirements set forth in this section.

5 (c) This section does not apply to a person conducting what is  
6 generally known as a frog-jumping contest, or, in waters of the  
7 Pacific Ocean, what is generally known as a fish contest.

8 (d) This section does not apply to a person conducting an  
9 individual contest, tournament, or derby for the taking of a game  
10 bird or game mammal, if the total value of all prizes or other  
11 inducements is less than five hundred dollars (\$500) for the  
12 individual contest, tournament, or derby.

### 13 **Fish & Game Code § 3080. Donations**

14 3080. (a) For the purposes of this section, “donor intermediary”  
15 means a recipient who receives a game bird, or game mammal, or  
16 fur-bearing mammal from a donor to give to a charitable  
17 organization or charitable entity.

18 (b) A person may possess a game bird, or game mammal, or fur-  
19 bearing mammal during a period other than the open season for  
20 that game bird or mammal, up to the possession limit allowed for  
21 that game bird or mammal during the open season, in any of the  
22 following circumstances:

23 (1) The person possesses a hunting license and a validated tag  
24 or tags for the species possessed, or a copy of the license and tag or  
25 tags. The license and tag or tags shall have been issued to that  
26 person for the current or immediate past license year.

27 (2) The person is a donor intermediary who received the game  
28 bird, or game mammal, or fur-bearing mammal from a donor  
29 described in paragraph (1), and has a written confirmation of the  
30 donation that is signed and dated by the donor, and a photocopy of  
31 the donor’s hunting license and the applicable validated tag or tags  
32 from the current or immediate past license year.

33 (3) The person is a donor intermediary who received the game  
34 bird, or game mammal, or fur-bearing mammal from a donor  
35 described in paragraph (1), and has a written confirmation of the  
36 donation signed and dated by the donor, which includes the  
37 donor’s name, address, hunting license number, and applicable tag  
38 numbers for the species possessed. The license and tag or tags shall  
39 be for the current or immediate past license year.

40 (c) The documentation required by subdivision (b) shall be  
41 made available to the department as described in Section 2012.  
42 There is no required format for the documentation. Any written  
43 documentation containing the required information shall be  
44 deemed to comply with this section. A charitable organization or  
45 charitable entity receiving and distributing a game bird, or game  
46 mammal, or fur-bearing mammal for a charitable or humane  
47 purpose shall maintain the documentation described in paragraph  
48 (2) or (3) of subdivision (b) for one year from the date of disposal.

1 (d) This section does not authorize the possession of a game  
2 bird contrary to regulations adopted pursuant to the federal  
3 Migratory Bird Treaty Act (16 U.S.C. Sec. 703 et seq.).

4 (e) On or before January 1, 2015, and subject to the requirements  
5 of subdivision (d), the commission shall recommend legislation or  
6 adopt regulations to clarify when a possession limit is not violated  
7 by processing into food lawfully taken game birds, ~~or game~~  
8 mammals, or fur-bearing mammals.

9 **Fish & Game Code § 3086. Stored game**

10 3086. Cold storage plants and frozen food locker plants shall  
11 make and keep a complete detailed record of all game birds, ~~or~~  
12 game mammals, or fur-bearing mammals stored in such plants. A  
13 record of each game bird ~~or game mammal, or fur-bearing mammal~~  
14 shall be made at the time it is received at the plant for storage.

15 The record shall be open for inspection at all times by wardens  
16 of the department.

- 17 • The tentative recommendation should propose no changes to the  
18 use of the term “game” in Fish and Game Code Sections 1502 and  
19 3003. Commission Notes following those sections should ask for  
20 public comment on whether revisions should be made.
- 21 • A definition of “game fish, amphibian, and reptile” should be  
22 included in the tentative recommendation, along the lines  
23 proposed on pages 12 and 13 of the Second Supplement to  
24 Memorandum 2016-47.

25 **Tribal Fishing and Hunting**

26 The Commission considered Memorandum 2016-48, discussing a request that  
27 the Commission defer action on tribal fishing and hunting issues. The staff  
28 reported that the Commission had just received a letter from Cher-Ae Heights  
29 Indian Community of the Trinidad Rancheria, which is attached to the First  
30 Supplement to Memorandum 2016-48.

31 The Commission will postpone consideration of those issues, to provide  
32 additional time for public comment and discussions between interested groups.