

# **FORT ORD REUSE AUTHORITY**

## **MASTER RESOLUTION**

**Adopted March 14, 1997**

**Amended November 20, 1998** [Addition of Chapter 8 and  
Amend §1.01.050, Definitions]

**Amended February 19, 1999** [Update §2.03, Committees;  
Clarify and Add text to §1.02.010(b)(4), Conflict of Interest; and  
Amend §2.09.020(a), Responsibilities for Enforcement  
(Addition of City of Del Rey Oaks  
Police Chief as an enforcement officer)]

**Amended January 21, 2000** [Amend §2.03.040, Legislative Advisory Committee, and  
§2.03.050, Finance Advisory Committee (Redefine membership)]

**Amended January 18, 2002** [Amend §2.03.051, Finance Advisory Committee Duties  
(Delete the word “monthly” in reference to Finance Committee meetings)]

**Amended February 8, 2002** [Amend §2.03.040, Legislative Advisory Committee (Increase  
Legislative Committee membership from 6 to 8 and define voting and ex-officio members)  
and Amend §2.03.041, Legislative Advisory Committee Duties  
(Delete text that Authority Counsel should attend meetings)]

**Amended April 16, 2004** [Amend Chapter 8 by the addition of Sections 8.02.020(t) and  
8.02.030(a)(8), which address the jobs/housing balance in consistency determinations]

**Amended February 9, 2007** [§2.02.010(a) (start time of board meetings)  
and §2.03.051 (duties of the Finance Advisory Committee)]

**Amended March 9, 2007** [Repeal of §3.03.100 (Developers of Property Pursuant to  
Agreements with FORA), amendment to §3.03.090 (Prevailing Wages), and amendment to  
§1.01.050 (addition of definition of “First Generation Construction”)]

**Amended March 12, 2010** Minor amendments to clarify and correct errata

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## **Chapter 1. GENERAL PROVISIONS**

### **Article 1.01. THE MASTER RESOLUTION**

#### **1.01.010. SHORT TITLE.**

This Master Resolution may be known and may be cited as the “Fort Ord Reuse Authority Master Resolution” or the “Authority Master Resolution.”

#### **1.01.015. EXISTING LAW CONTINUED.**

The provisions of this Master Resolution, insofar as such provisions are substantially the same provisions of ordinances relating to the same subject matter and existing at the time of the adoption of this Master Resolution, are continued as restatements and continuations of ordinances in existence at the time of the adoption of this Master Resolution and are not considered new enactments.

#### **1.01.020. THE EFFECTS OF PENDING ACTIONS AND ACCRUED RIGHTS.**

The adoption of this Master Resolution as well as the provisions of this Master Resolution in no way affect the legality or enforceability of any action or proceeding commenced before this Master Resolution takes effect or any right which accrued before this Master Resolution takes effect. All procedures taken after adoption of this Master Resolution conform to the provisions of this Master Resolution so far as possible.

#### **1.01.030. RIGHTS UNDER EXISTING LICENSES AND CERTIFICATES.**

No rights given by any license, permit or certificate under prior actions of any predecessor or governmental entities are affected by the enactment of this Master Resolution; however, such rights are exercised according to this Master Resolution from the effective date of this Master Resolution.

#### **1.01.040. HEADINGS OF PROVISIONS.**

The headings of the part, title, chapter, section, and subsections contained in this Master Resolution are intended to indicate the contents of such provisions and are not deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of such provisions.

#### **1.01.050. DEFINITIONS.**

(a) In the interpretation and construction of this Master Resolution, the following definitions and rules of construction will be observed, unless they are inconsistent with the manifest intent of the Authority Board or the context clearly required otherwise:

“Affected territory,” means property within the Fort Ord Territory that is the subject of a legislative land use decision or an application for a development entitlement and such additional territory within the Fort Ord Territory that may be subject to an adjustment in density or intensity of allowed development to accommodate development on the property subject to the development entitlement.

“Army urbanized footprint” means the Main Garrison Area and the Historic East Garrison Area as such areas are described in the Reuse Plan.

“Augmented water supply” means any source of potable water in excess of the 6,600 acre-feet of potable water from the Salinas Basin as allowed under the Reuse Plan.

“Authority” means the Fort Ord Reuse Authority (“FORA”), an independent governmental and public entity, organized under the laws of the State of California pursuant to the Authority Act.

“Authority Act” means the provisions of the Fort Ord Reuse Authority Act, Title 7.85, Section 67650, *et seq.*, (also known as Senate Bill 899, Chapter 64 of the 1994 California Statutes) of the California Government Code, as may be amended from time to time.

“Authority Board” or “Board” or “Board of Directors” means the governing body of the Authority as established pursuant to the Authority Act.

“Authority Offices” means the facilities located at 100 12<sup>th</sup> Street, Buildings 2900, 2901, 2902, 2903, 2880, 2881, 2882, 2883, 2861, and 2862, and offices located at the Imjin Office Park in Marina California.

“Authority Officers” means the officers, officials, agents, employees, departments, and agencies of the Authority.

“Computation of time” The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded.

“County” or “this County” means the County of Monterey.

“Day” A day is the period of time between any midnight and the midnight following.

“Daytime” means the period of time between sunrise and sunset. The word “nighttime” means the period of time between sunset and sunrise.

“Development entitlements” includes but is not limited to tentative and final subdivision maps, tentative, preliminary, and final parcel maps or minor subdivision maps, conditional use permits, administrative permits, variances, site plan reviews, and building permits. The term “development entitlement” does not include the term “legislative land use permits” as that term is defined in this Master Resolution. In addition the term “development entitlement” does not include:

- (1) Construction of one single-family house, or one multiple family house not exceeding four units, on a vacant lot within an area appropriately designated in the Reuse Plan.
- (2) Improvements to existing single-family residences or to existing multiple family residences not exceeding four units, including remodels or room additions.
- (3) Remodels of the interior of any existing building or structure.
- (4) Repair and maintenance activities that do not result in an addition to, or enlargement of, any building or structure.
- (5) Installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and development approved pursuant to the Authority Act.

- (6) Replacement of any building or structure destroyed by a natural disaster with a comparable or like building or structure.
- (7) Final subdivision or parcel maps issued consistent with a development entitlement subject to previous review and approval by the Authority Board.
- (8) Building permit issued consistent with a development entitlement subject to previous review by the Authority Board.

“Enforcement” means the making of investigations as may be required; demanding and signing criminal complaints or civil declarations; appearing as a witness in any prosecution or proceeding when so required; and generally doing all things necessary and proper to enforce and obtain compliance with the provisions of this Master Resolution.

“Entitlement” means any license, permit, authorization, or grant, which is issued, granted, or given by the Authority or any of its officers, officials, agents, employees, departments, or agencies to any person.

“Executive Officer” means and includes the appointed official of the Authority who occupies the position of Executive Officer of the Authority pursuant to the Authority Act or any person designated by the Executive Officer to perform certain duties pursuant to this Master Resolution under the direction of the Executive Officer.

“Ex-Officio Members” means the persons or entities designated in the Authority Act as ex-officio members or such persons or entities as the FORA Board may designate as ex-officio members. Ex-Officio Members include the Monterey Peninsula Community College District, the Monterey Peninsula Unified School District, the Member of Congress from the 17<sup>th</sup> Congressional District, the Senator from the 15<sup>th</sup> Senate District, the Assembly Member from the 27<sup>th</sup> District, the United States Army, the Chancellor of the California State University, the President of the University of California, the Transportation Agency of Monterey County, the Monterey-Salinas Transit Authority and Marina Coast Water District.

“First Generation Construction” means construction performed during the development and completion of each parcel of real property contemplated in a disposition or development agreement at the time of transfer from each member agency to a developer(s) or other transferee(s) and until issuance of a certificate of occupancy by the initial owners or tenants of each parcel.

“Fort Ord Territory” means all territory within the jurisdiction of the Authority.

“Goods” means personal property.

“Habitat Management Plan”, means the Fort Ord Installation-Wide Multi-Species Habitat Management Plan dated April 1997.

“Land use agency” means a member agency with land use jurisdiction over territory within the jurisdiction of the Authority Board.

“Legislative land use decisions” means general plans, general plan amendments, redevelopment plans, redevelopment plan amendments, zoning ordinances, zone district maps or amendments to zone district maps, and zoning changes.

“Master Resolution” or “this Master Resolution” means the Authority Master Resolution.

“Member Agencies” means the Cities of Carmel-by-the-Sea, Del Rey Oaks, Marina, Monterey, Pacific Grove, Salinas, Sand City, and Seaside and the County of Monterey.

“Month” means a calendar month.

“Noticed public hearing” means a public hearing noticed in the following manner:

- (1) Notice of the public hearing will be posted on the public meeting room at the FORA office at least 10 days before the date of the hearing; and
- (2) Notice of the public hearing will be mailed or delivered at least 10 days prior to the affected land use agency, to any person who has filed an appeal, and to any person who has requested special notice; and
- (3) Notice of the public hearing will be published at least 10 days before the date of the hearing in at least one newspaper of general circulation within the area that the real property that is the subject of the public hearing is located.

“Oath” means and includes an affirmation.

“Officers, officials, departments, and other agencies” individually and collectively means officers, officials, departments, board, commissions, and employees referred to in this Master Resolution who serve as the officers, officials, departments, boards, commissions, and employees of the Authority unless the context clearly indicated otherwise.

“Official” means any officer, official, agent, or employee of the Authority whose duties are specifically delineated in this Master Resolution.

“Official time” means whenever certain hours are named in this Master Resolution, they mean Pacific Standard Time or Daylight Saving Time, as may be in current use in the Authority.

“Operate” means and includes carry on, keep, conduct, or maintain.

“Owner” applied to a building or land, means and includes any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety of the whole or of a part of such building or land.

“Person” means and includes any person, firm, association, organization, partnership, business trust, corporation or company, and any municipal, political or governmental corporation, district, body or agency other than this Authority.

“Personal property” means and includes every species of property, except real property.

“Preceding” and “following” mean next before and next after, respectively.

“Property” means and includes real and personal property.

“Real Property” means and includes lands, tenements, and hereditaments.

“Reuse Plan” means the plan for reuse and development of the territory within the jurisdiction of the Authority, as amended or revised from time to time, and the plans, policies, and programs of the Authority Board, including the Master Resolution.

“Sale” means and includes any sale, exchange, barter or offer for sale.

“Week” A week consists of seven consecutive days.

“Writing” means and includes any form of recorded message capable of comprehension by ordinary visual means.

“Year” means a period of 365 days, except where otherwise provided. The added day of a leap year, and the day immediately preceding if they occur in any such period, will be reckoned together as one day.

(b) Words and phrases are to be construed according to the context and the approved usage of the language. Technical words and phrases, and such other terms as may have acquired a peculiar and specific meaning in the law, or are specifically defined herein, are to be construed in accordance with such peculiar and specific meaning or definition.

#### **1.01.060. TERRITORIAL LIMITATION.**

This Master Resolution refers only to the omission or commission of acts within the territorial limits of the Authority and to that territory outside of the Authority over which the Authority has jurisdiction or control by virtue of the state constitution, any state law, the Authority Act, or by reason of ownership or control of property.

#### **1.01.070. DISTRIBUTION AND MAINTENANCE OF THE MASTER RESOLUTION.**

(a) Not less than one copy of this Master Resolution will be filed for use and examination by the public in the office of the Executive Officer. Copies thereof will be distributed to the members of the Authority Board, the alternates, the member agencies, and the ex-officio members.

(b) The Executive Officer will keep and maintain this Master Resolution together with all amendments as may be adopted by the Authority Board. The Executive Officer on a timely and recurring basis will publish and distribute such amendments.

#### **1.01.080. NOTICES – SERVICE PROCEDURE.**

(a) Notice required to be given under this Master Resolution, unless different provisions are otherwise specifically made in this Master Resolution, may be given by:

- (1) personal delivery to the person to be notified, or
- (2) electronic mail if FORA conventionally communicates with the recipient by electronic mail, or
- (3) deposit in the United States mail in a sealed envelope, postage prepaid, addressed to the person to be notified, at such person’s last known business or residence address, as such address appears in the public records of the Authority or other records pertaining to the matter to which the notice is directed. Service by mail will be deemed to have been completed at the time of deposit in the United States mail.

(b) Proof of giving any notice required by this Master Resolution may be made by the certificate of any officer or employee of the Authority or by affidavit or declaration of any person over the age of 18 years, which shows service in conformity with this Master Resolution or other provisions of law applicable to the subject matter of the notice.

**1.01.090. HOLD HARMLESS CLAUSE FOR LICENSES AND PERMITS.**

(a) Every entitlement is subject to the condition that the person receiving the entitlement agrees to save, indemnify, and keep harmless the Authority and Authority Officers against all liabilities, judgments, costs, and expenses which may in any manner or granting of an entitlement or in consequence of the use or occupancy of any sidewalk, street, or other public place, or the occupancy of any property or facility owned or leased by the Authority. The person receiving an entitlement also agrees to strictly comply with the conditions of the entitlement and with this Master Resolution and all ordinances, rules, and regulations of the Authority relating to the entitlement.

(b) Whenever it is administratively proper, the Executive Officer will print, type, or write the Condition Statement above into every entitlement form substantially as it appears in this section.

**1.01.100. INTERPRETATION, CONSTRUCTION, AND SEVERABILITY.**

(a) This chapter contains the minimum requirements of the protection of the public convenience, safety, health, and general welfare.

(b) Any reference in this Master Resolution to any portion of any statute includes amendments and additions to such statute.

(c) Any reference in this Master Resolution to an ordinance of the Authority or provision of this Master Resolution includes all amendments and additions to such ordinance or provision. Reference to any section of this Master Resolution includes the penalty provisions specified in this chapter, unless otherwise expressly provided.

(d) The act or omission of an act which is made unlawful under this Master Resolution includes causing, allowing, permitting, aiding, abetting, suffering, or concealing the fact of such act or omission. Whenever any act or omission is made unlawful, it includes causing, permitting, aiding, abetting, suffering, or concealing such act or omission.

(e) Powers or duties granted to, or imposed upon, an Official may be performed by a person authorized to act for the Official.

(f) The provisions of this Master Resolution and all proceedings under this Master Resolution are to be construed so as to give effect to the objectives of the Authority Act, this Master Resolution, and the promotion of justice.

(g) The parts of this Master Resolution are severable. Any declaration of unconstitutionality of any phrase, clause, sentence, paragraph, or section

of this Master Resolution or any amendment to this Master Resolution by the valid judgment or decree of a court of competent jurisdiction does not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Master Resolution or any amendment to this Master Resolution.

**1.01.110. GRAMMATICAL INTERPRETATION.**

- (a) General Rules.
  - (1) Any gender includes the other gender.
  - (2) The singular number includes the plural, and the plural includes the singular.
  - (3) Words used in the present tense include the past and the future tenses and vice versa.
  - (4) The word “or” may be read “and” and the word “and” may be read “or” if the sense requires it.
  - (5) Words and phrases used in this Master Resolution that are not specifically defined will be construed according to the context and approved usage of the language. The provisions of Section 13 and 1645 of the Civil Code of the State of California are adopted in the interpretation of words and phrases, unless otherwise provided in this Master Resolution.
- (b) Specific Rules.
  - (1) It is the policy of the Authority Board that the legal documents of this Authority, including all ordinances, resolutions, and contracts, should be gender neutral.
  - (2) It is the policy of the Authority Board that the legal documents of this Authority including all ordinances, resolutions, and contracts, should be written in “plain English.”

**Article 1.02. ENFORCEMENT OF MASTER RESOLUTION**

**1.02.010. RESPONSIBILITIES FOR ENFORCEMENT.**

- (a) Whenever the enforcement of any provision of this Master Resolution is imposed upon or delegated to a specific official, such official is primarily responsible for the enforcement of such provision. In the absence of any specific impositions or delegation or enforcement responsibility, the Executive Officer is primarily responsible for enforcing the provisions of this Master Resolution.
- (b) Enforcing Officers Generally.
  - (1) The Sheriff and all peace officers employed by the Sheriff’s Department are hereby empowered to enforce any and all provisions of this Master Resolution or any other ordinance of the Authority, including the power to

arrest for such violations in accordance with the laws of the State of California, together with such other powers as are conferred upon them by the County, within that portion of the Authority's jurisdiction that is within the unincorporated area of the County.

- (2) The Police Chief of the City of Marina and all peace officers employed by the City of Marina are empowered to enforce any and all provisions of this Master Resolution or any ordinance of the Authority, including the power to arrest for such violations in accordance with the laws of the State of California, together with such other powers as are conferred upon them by the City of Marina, within that portion of the Authority's jurisdiction that is within the jurisdictional limits of the City of Marina.
- (3) The Police Chief of the City of Seaside and all peace officers employed by the City of Seaside are empowered to enforce any and all provisions of this Master Resolution or any ordinance of the Authority, including the power to arrest for such violations in accordance with the laws of the State of California, together with such other powers as are conferred upon them by the City of Seaside, within that portion of the Authority's jurisdiction that is within the jurisdictional limits of the City of Seaside.
- (4) The Police Chief of the City of Del Rey Oaks and all peace officers employed by the City of Del Rey Oaks are empowered to enforce any and all provisions of this Master Resolution or any ordinance of the Authority, including the power to arrest for such violations in accordance with the laws of the State of California, together with such other powers as are conferred upon them by the City of Del Rey Oaks, within that portion of the Authority's jurisdiction that is within the jurisdictional limits of the City of Del Rey Oaks.
- (5) The Police Chief of the City of Monterey and all peace officers employed by the City of Monterey are empowered to enforce any and all provisions of this Master Resolution or any ordinance of the Authority, including the power to arrest for such violations in accordance with the laws of the State of California, together with such other powers as are conferred upon them by the City of Monterey, within that portion of the Authority's jurisdiction that is within the jurisdictional limits of the City of Monterey.

(c) Compliance with the permit requirements of this Master Resolution are the responsibility of the Official authorized to grant the permit to which such requirements apply, except that when the permit is granted by the Authority Board, the Executive Officer is the responsible officer.

(d) Whenever an Official primarily responsible for enforcing any provision of this Master Resolution fails, neglects, or refuses to perform such duty and such failure, neglect, or refusal is brought to the attention of the Executive Officer, the Executive Officer will enforce such provision of law and initiate such penal and disciplinary action against the Official as may be warranted under the circumstances.

(e) Every Official may use administrative processes such as notices of violation, stop work orders, or warning letters in lieu of or prior to seeking judicial enforcement of any provision of this Master Resolution if the Official determines that the process may result in compliance with this Master Resolution at less cost to the Authority.

(f) Every Official is authorized to appear as a complaining witness in any criminal, civil, or administrative proceeding brought for an alleged violation of the Master Resolution or to abate any violation of this Master Resolution or enjoin any present or future violation of this Master Resolution.

(g) Every Official will consult with Authority Counsel in a timely manner prior to commencement of any proceeding or action to terminate, revoke, or deny any entitlement allowed or established pursuant to this Master Resolution, to ensure that such proceeding or action is undertaken in a lawful manner consistent with the laws of the United States, the State of California, and the Authority.

#### **1.02.020. INTERFERENCE WITH ENFORCING OFFICERS.**

(a) It is unlawful for any person to interfere or obstruct, or to attempt to interfere or obstruct, any Official in the performance of such Official's duties as specified in this Master Resolution or as may otherwise be received pursuant to the rules, regulations, or policies of the Authority or the Authority Board.

(b) No person will give, either orally or in writing, information to an Official which the person knows or has reason to know is false.

#### **1.02.030. VIOLATIONS OF THE MASTER RESOLUTION.**

(a) It is unlawful for any person to violate any provision, or to fail to comply with any of the requirements, of this Master Resolution. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Master Resolution is guilty of a misdemeanor unless:

- (1) The violation is classified as an infraction by the State Vehicle Code or this Master Resolution, in which case the person is guilty of an infraction; or

- (2) The violation is classified as a standing or parking traffic violation under the State Vehicle Code or this Master Resolution; or
- (3) The District Attorney files a complaint charging the offense as an infraction; or
- (4) A public officer designated in subsection (d) of this section issues a citation charging the offense as an infraction.

(b) Any person convicted of a misdemeanor under the provisions of this Master Resolution, unless provision is otherwise made in this Master Resolution, is punishable by a fine of not more than One Thousand Dollars (\$1,000) or by imprisonment in the Monterey County Jail for a period of not more than six months or by both such fine and imprisonment.

(c) Any person convicted of an infraction under the provisions of this Master Resolution, unless provision is otherwise made in this Master Resolution, is punishable upon a first conviction of a fine of not more than Two Hundred and Fifty dollars (\$250), and for a second conviction within a period of one year by a fine of not more than Five Hundred Dollars (\$500), and for a third or any subsequent conviction within a period of one year by a fine of not more than One Thousand Dollars (\$1,000).

(d) The Executive Officer has the authority to cite violations for infractions or civil violations in the enforcement of the provisions of this Master Resolution within the Executive Officer's regulatory responsibilities.

#### **1.02.040. CIVIL PENALTIES.**

Any person who is found to have violated any provision of this Master Resolution, specifically subject to civil remedies, will pay the civil fees listed in the Authority Fee Resolution for the violation including the penalty and all collection costs. All such violations will be processed by the Executive Officer.

#### **1.02.050. OFFENSES.**

Every person convicted of a misdemeanor or infraction under the provisions of this Master Resolution is guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Master Resolution is committed, continued, or permitted by such person and will be punished accordingly.

#### **1.02.060. SAME OFFENSE PUNISHABLE BY DIFFERENT SECTIONS OF THE MASTER RESOLUTION.**

In all cases where the same offense is made punishable or is created by different clauses or sections of this Master Resolution, the District Attorney may elect under which to proceed; but not more than one recovery may be had against the same person for the same offense. The provisions of this section apply only to criminal sanctions pursuant to Section 1.02.040 of this Master Resolution. Nothing in this section is construed as limiting or prohibiting the Executive Officer or the Authority from securing

compliance with the provisions of the Master Resolution through the civil remedies provisions authorized pursuant to Section 1.02.040 or Sections 1.02.070, 1.02.080, and 1.02.090 of this Master Resolution.

**1.02.070. PUBLIC NUISANCES; CONTINUING OFFENSES.**

Any condition caused or permitted to exist in violation of any of the provisions of this Master Resolution is deemed a public nuisance and may be abated as such in a manner consistent with law. Each and every day during which such condition is allowed to exist may be deemed a separate offense and may be abated accordingly.

**1.02.080. ABATEMENT AND ENJOINMENT OF PUBLIC NUISANCES.**

Any violation of any provision of this Master Resolution is unlawful and a public nuisance. The District Attorney or the Authority Counsel, or their respective designees, may commence such actions or proceedings for the abatement, removal, and enjoinder in the manner provided by law and may take such other steps and initiate such judicial proceedings as the District Attorney or Authority Counsel deems necessary or appropriate to abate and restrain such violation. The remedies provided in this section are cumulative and not exclusive.

**1.02.090. REIMBURSEMENT OF COSTS AND CIVIL PENALTIES.**

(a) Any person, firm, or corporation who creates or maintains a public nuisance in violation of this Master Resolution will be liable for the cost of abatement, which will include, but not be limited to:

- (1) Cost of Investigation;
- (2) Court costs;
- (3) Attorneys' fees; and
- (4) Costs of monitoring compliance.

(b) Upon continuation of a public nuisance after notice from the Authority to cease the nuisance, any person, firm, or corporation will be liable for the costs of abatement set forth in Subsection (a) of this section plus a civil penalty of fifty percent (50%) of those costs payable to the Authority in addition to any other costs of enforcement imposed by the court or such other amount as may be specified in the Authority Fee Resolution. Penalties imposed pursuant to the provisions of this subsection are in addition to any civil penalties that may be imposed pursuant to Section 1.02.040.

**1.02.100. REMEDIES CUMULATIVE.**

Unless otherwise expressly provided, the remedies provided in this Article or other provisions of this Master Resolution are cumulative and not exclusive. Nothing in this Master Resolution bars any legal, equitable, administrative, or summary remedy to which any aggrieved person, the Authority, or any Official may otherwise be entitled. Paying a fine or serving a jail sentence will not relieve any persons from the responsibility for correcting any condition, which violates any provision of this Master Resolution, or paying any civil penalties that may be imposed pursuant to the provisions of this Article.

**1.02.110. IMMUNITY OF ENFORCING OFFICIALS.**

Nothing in this Master Resolution is intended or shall be deemed or construed to impose liability upon the Authority or any Official for any injury to persons or damage to property alleged to result from any act or omission by the Authority or any Official beyond the liability expressly imposed by the laws of the State of California or the United States. Nothing in this Master Resolution or any other Authority enactment is intended or shall be deemed or construed to impose a mandatory duty upon the Authority or any Official for the purpose of determining entitlement to equitable relief or liability for any injury to persons or damage to property alleged to result from the failure of the Authority or any Official to discharge a mandatory duty imposed by an Authority enactment.

**Article 1.03. AUTHORITY SEAL**

**1.03.010. ADOPTED; FORM AND CONTENTS.**

(a) The Authority seal is nine-sided in shape, bearing the name of the Authority and of such additional design as established or approved by the Authority Board from time to time.

(b) The only form of corporate seal for use by or for the Authority is the form of seal established by the Authority Board, as provided in this section.

(c) The Executive Officer has the official custody of the official seal of the Authority.

**1.03.020. DESIGNATION OF UNLAWFUL USES.**

It is unlawful for any person to make or use the seal of the Authority, or any cut, facsimile or reproduction of the seal, or to make or use any seal or any design which is an imitation of the seal, or of the design thereof, which may be mistaken for the seal of the Authority, or the design thereof, for any purpose other than for Authority purposes, or for the purposes of any board, officer, or department thereof.

**1.03.030. DISPLAY ON PRIVATELY OWNED VEHICLES.**

It is unlawful for any person to display or place either temporarily or permanently, the official seal of the Authority, or any facsimile or representation or near representation thereof, on any privately owned vehicle, unless express written permit first has first been obtained from the Authority Board to do so. If any such permit is so granted by the Authority Board, it is unlawful for any person to place or display such seal in any manner or at any time contrary to or in violation of the provisions of such permit.

**Article 1.04. TIME LIMITATIONS FOR ADMINISTRATIVE  
MANDAMUS PROCEEDINGS**

**1.04.010. TERM "DECISION" DEFINED.**

As used in this Article, the term "decision" means an adjudicatory administrative decision made, after a hearing required by law to be given, suspending,

demoting or dismissing an officer or employee, revoking or denying an application for any entitlement, or denying application for any retirement benefit or allowance.

**1.04.020.                    SECTION 1094.6 OF THE CODE OF CIVIL PROCEDURE  
ADOPTED.**

The provisions of the Code of Civil Procedure Section 1094.6 is applicable to decisions of the Authority Board and of any board or commission of the Authority authorized to render a final adjudicatory administrative decision where no right of appeal to the Authority Board exists. Notice of such right of appeal will be given in the resolution effecting such decision.

## **Chapter 2. AUTHORITY OFFICES AND GENERAL REGULATIONS**

### **Article 2.01. AUTHORITY BOARD**

#### **2.01.010. MEMBERSHIP.**

(a) The Authority is governed by a thirteen (13) member Board of Directors consisting of three (3) members of the Monterey County Board of Supervisors, two (2) city council members from each of the Cities of Marina and Seaside, and one (1) city council member from each of the Cities of Carmel-by-the-Sea, Del Rey Oaks, Sand City, Monterey, Pacific Grove, and Salinas.

(b) The legislative body of each member agency may appoint an alternate member for its respective positions on the Board of Directors. Each alternate member has all the same rights, responsibilities and privileges as a Board member when serving in a Board member's place. Board members and alternates serve at the pleasure of the legislative body of the member agency making the appointment.

(c) Each member and each alternate serves at the pleasure of the legislative body making the appointment. Each member and each alternate is a member of the legislative body making the appointment, except that alternates appointed by the Board of Supervisors of Monterey County are members of the Board of Supervisors or County staff.

#### **2.01.020. EX-OFFICIO MEMBERSHIP.**

(a) A representative of each of the ex-officio members may serve as nonvoting members of the Board of Directors. Ex-officio members are not counted to establish a quorum.

(b) The Board of Directors may appoint or remove additional ex-officio nonvoting members at its pleasure. Each ex-officio member may participate in public meetings and hearings of the Authority. For the purpose of this Master Resolution, the term "participate in public meetings and hearings" includes, but is not limited to, the ability to make motions, request the placement of matters on the Authority's agenda, serve on committees, and to participate in all discussions regarding any matter which may come before the Authority in public session. The term "participate in public meetings and hearings" does not include the ability to cast a vote under Section 2.02.040 of this Master Resolution, nor does it include the ability to meet with the Authority Board in closed session.

#### **2.01.030. APPOINTMENT.**

Each Board member, alternate, and ex-officio member appointed by a governmental entity must be appointed by a member agency or such other appointing authority as provided in the Authority Act and this Master Resolution. Minute action or a resolution making the required appointment must be presented to the Executive Officer

before the Board member, alternate, or ex-officio member may participate in Authority Board meetings.

**2.01.040. SELECTION OF OFFICERS.**

(a) The Authority's officers will be elected from the Board and will serve a term of one year and may be reelected for no more than one consecutive additional term in the same office. Election of officers takes place at the close of the Authority's first regular January meeting.

(b) The officers of the Authority will be a Chair, a First Vice-Chair, and a Second Vice-Chair. It is the policy of the Board that the officers of the Authority rotate on a regular basis among the members of the Board with the First Vice-Chair succeeding the Chair and the Second Vice-Chair succeeding the First Vice-Chair as vacancies occur. Such other officers as may be deemed necessary may be appointed by the Authority Board.

**2.01.050. AUTHORITY OF CHAIR AND VICE-CHAIRS.**

The Chair presides at all meetings of the Authority Board and may make or second any motion and present and discuss any matter as a member of the Board. If the Chair is absent or unable to act, the First Vice-Chair will serve until the Chair returns or is able to act and has all of the powers and duties of the Chair. If both the Chair and First Vice-Chair are absent or unable to act, the Second Vice-Chair will serve until the Chair or First Vice-Chair returns or is able to act and has all of the powers and duties of the Chair. If the Chair, First Vice-Chair, and Second Vice-Chair are absent or unable to act, Board will choose one of its number as the presiding officer.

**2.01.060. ADDITIONAL DUTIES.**

The officers of the Authority may perform such other duties as may be required by resolution or other action of the Authority.

**Article 2.02. MEETINGS OF THE AUTHORITY BOARD**

**2.02.010. MEETINGS – TIME AND PLACE.**

(a) The regular meetings of the Authority Board are held on the second Friday of each and every month at the Authority Offices, commencing at the hour of 3:30 pm, except as otherwise provided in this section.

(b) If any regular meeting day falls upon a holiday, the regular meeting of the Board will be held at the same place on the next Friday, which is not a holiday commencing at the same hour, in which event all hearings, applications, petitioners, and other matters before the Board are deemed to be and are automatically continued to the same hour on such Friday which is not a holiday.

(c) All meetings of the Authority Board are held in places accessible to persons, including persons with physical handicaps or disabilities.

**2.02.020. MEETINGS – PROCEDURES.**

(a) The proceedings of the Board are governed by the provisions of law applicable thereto and, except as otherwise provided in this Article, by Robert's Rules of Order, newly revised. Provided further, that the failure to follow the Rules of Order or these rules do not invalidate any action taken. The Authority Counsel acts as parliamentarian and gives parliamentary advice when appropriate.

(b) The Authority Board may adopt such rules of order for the conduct of its business as it deems appropriate, and may amend same, by resolution; provided, however, that no ordinance, resolution or other action taken by the Board is invalidated or the legality or effect thereof otherwise affected by the failure or omission of the Board to observe or follow such rules.

**2.02.030. NOTICE AND CALL OF MEETINGS.**

(a) Meetings of the Authority Board and all standing committees or subcommittees of the Board, will be called and noticed in accordance with state law, including, but not limited to the Ralph M. Brown Act, Sections 54950 *et seq.* of the California Government Code, as said Act may be amended by subsequent legislation and augmented by rules of the Board of Directors not consistent therewith. Except as otherwise provided or permitted by law, all meetings of the Authority are open and public.

(b) Special meetings may be called at any time by the Chair or by the majority of the members of the Authority by delivering personally or by mail written notice thereof to each member of the Authority at least 24 hours before the time of such meeting as specified in the notice. Said notice will specify the time and place of such meeting and the business to be transacted. No other business will be considered at such meeting. Such notice may be dispensed with as to any member of the Authority who at or prior to the time the meeting convenes, files with the secretary a written waiver of notice. Such written notice will be given to such local newspapers or radio or television stations that request in writing such notice.

(c) The voting members of the Authority may meet in closed session in accordance with state law.

(d) The Authority Chair, in consultation with the Executive Officer, may cancel any regular meeting if no items are presented that require the Authority's immediate attention.

(e) The Authority Agenda will be prepared by the Authority staff and will be approved by the Executive Committee eight (8) working days before the regular Board meeting. Any member may request in writing an item to appear on the agenda. The request must be made by the agenda deadline and any supporting papers must be furnished by that time or be readily available.

(f) The Authority members, alternates, and committees receive the Agenda and pertinent back-up material. The Authority Agenda and pertinent back-up

material will also be supplied to other governmental agencies on written request, renewable annually. The Authority agenda, minutes and the agenda packet, including back-up material, will be available, at a cost of furnishing these materials, to the public by mail upon written request renewable annually. The Authority agenda will be available for review at the Authority office a minimum of two days before Authority meetings.

**2.02.040. QUORUM AND VOTING.**

(a) A majority of the voting members of the Authority constitutes a quorum for the transaction of business, but a lesser number may convene from time to time.

(b) A resolution, ordinance, or other action of the Board will not be approved or adopted sooner than 72 hours after its introduction, unless approved by unanimous vote of all members present at the time of consideration. Except as otherwise provided in this section, any action taken by the Board requires the affirmative vote of a majority of the appointed members of the Board.

(c) Voting on all formal resolutions, matters relating to any federal, state, county or city and on such other matters as may be requested by the majority of members of the Authority, will be by roll call and the ayes and noes will be entered in the minutes of the meeting.

**2.02.050. LEGISLATIVE ACTIONS.**

(a) Actions of the Authority Board may be taken in the form of Resolutions or Ordinances. All resolutions and ordinances of the Authority will be in writing and will be numbered consecutively in the order of their adoption. Wherever feasible, action of the Authority may be by "minute" resolution where the action and the vote on the action are recorded in the minutes of the Authority Board meeting. All ordinances and resolutions are filed in the office of the Authority's Secretary and will thereupon be copied into a permanent, loose-leaf bound volume, which is kept and maintained as a public record.

(b) The minutes of the Authority are "action" minutes that will accurately reflect actions of the Authority and the vote taken on such actions and are not verbatim minutes of all matters discussed and comments made at meetings of the Authority Board.

(c) Authority Counsel will prepare a summary of each ordinance prior to submission of such ordinance to the Authority Board. The Executive Officer is authorized to publish such summary in the manner provided by law in lieu of publishing the verbatim text of such ordinance.

(d) Except as provided in Section 2.02.040(b), all ordinances and resolutions may be adopted at the meetings at which such ordinances and resolutions were introduced or otherwise placed on the agenda.

**2.02.060.**

**CHAIR – POWERS AND DUTIES.**

(a) The Chair possesses the powers and performs the duties prescribed in this section.

- (1) Have general direction over the Board Room and assign seats for the use of Board members and members of the Authority;
- (2) Preserve order and decorum; prevent demonstrations; order removed from the Board Room any person whose conduct he or she deems objectionable; and order the Board Room cleared whenever he or she deems it necessary;
- (3) Allocate the length of time for public discussion of any matter in advance of each discussion, with the concurrence of the Board;
- (4) Allocate equal time to opposing sides insofar as possible, taking into account the number of persons requesting to be heard on any side;
- (5) Limit the amount of time that a person may address the Board during a public discussion period in order to accommodate those persons desiring to speak and to facilitate the business of the Board;
- (6) Execute such documents on behalf of the Authority as may be required by state or federal law;
- (7) Perform ceremonial duties, including the representation of the Authority before other agencies;
- (8) Other powers as may be prescribed by the Board.

(b) The Chair will order removed from the Board Room any person who commits any one of the acts specified in this section with respect to a regular or special meeting of the Authority Board.

- (1) Disorderly, contemptuous or insolent behavior toward the Board or any member thereof, tending to interrupt the due and orderly course of said meeting;
- (2) A breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the due and orderly course of said meeting;
- (3) Disobedience of any lawful order of the chairperson, which includes an order to be seated or to refrain from addressing the Board;
- (4) Any other unlawful interference with the due and orderly course of said meeting.

(c) Any person so removed will be excluded from further attendance at the meeting from which the person has been removed, unless permission to attend is granted upon motion adopted by a majority vote of the Board, and such

exclusion will be effected by an appropriate peace officer upon being so directed by the Chair.

**2.02.070. NOTICE OF ABSENCE.**

If any member of the Board is unable to attend a meeting, that Board member will, if possible, notify the Executive Officer prior to the meeting.

**2.02.080. VACATION PERIOD.**

The Authority Board determines by resolution each calendar year vacation periods during which no regular meetings will be held.

**Article 2.03. COMMITTEES**

**2.03.010. PURPOSE.**

Committees and subcommittees may be established, as the Authority may deem appropriate to provide the Board with options, critique, analysis, and other information as the Board may request from time to time.

**2.03.020. EXECUTIVE COMMITTEE.**

The Executive Committee is comprised of not more than five (5) members of the Board. The Committee is comprised of the Chair, First Vice-Chair, Second Vice-Chair, a Past Chair, and one representative member appointed by the Board. If the Past Chair position is vacant, the Board may appoint another representative. The Executive Committee will provide such duties as the Board may assign. If any designated representative is unable to serve on the Executive Committee, the Board may fill such vacancy with another member of the Board.

**2.03.021. EXECUTIVE COMMITTEE DUTIES.**

The Executive Committee meets on a date and time the Committee determines is convenient or necessary. The Executive Officer and Authority Counsel attends the meetings of the Executive Committee. The duties of the Executive Committee are:

(a) Review and approve all agendas of all regular and special meetings of the Board of Directors;

(b) Provide initial performance evaluation of the Executive Officer and make recommendations to the Board of Directors regarding employment and personnel matters relating to the Authority staff; and

(c) Perform such other duties as the Board of Directors may direct.

**2.03.030. ADMINISTRATIVE COMMITTEE.**

The chief administrative officer, county administrative officer, or city manager of each member agency, or designee, may serve on an administrative subcommittee to the Board to provide advice, analysis and recommendations to the

Board as the Board may request from time to time according to the responsibilities listed in the Authority Act.

**2.03.040. LEGISLATIVE ADVISORY COMMITTEE.**

The Legislative Advisory Committee shall not exceed a total of eight (8) members. The committee members will be appointed by the Chair of the Authority, subject to confirmation by the Board of Directors, and is comprised of up to five (5) voting members and three (3) ex-officio members to be the 17<sup>th</sup> Congressional District member, the 15<sup>th</sup> California State Senate District member, and the 27<sup>th</sup> California State Assembly District member or their respective representatives. Committee members serve for a period of one year.

**2.03.041. LEGISLATIVE ADVISORY COMMITTEE DUTIES.**

The Legislative Advisory Committee is an advisory committee to the Authority Board and meets at the Authority Offices on date and time convenient or as necessary. The Executive Officer attends these meetings. The Legislative Advisory Committee's duties will be as follows:

(a) Review and evaluate the impact of proposed federal or state legislation with respect to the Authority's obligations under state law to implement reuse activities on the former Fort Ord;

(b) Advise and inform the Authority Board, when requested or on its own initiative, regarding pending legislation and noting its potential impact on the activities of the Authority. The Committee will develop recommendations to the Authority Board for actions associated with its advice and information responsibilities;

(c) Recommend an annual legislative agenda.

(d) Plan, schedule, and conduct an annual Legislative Session with the sitting representatives of the 27<sup>th</sup> Assembly District, the 15<sup>th</sup> Senatorial District, and the 17<sup>th</sup> Congressional District (individually or collectively as schedules permit).

**2.03.050. FINANCE ADVISORY COMMITTEE.**

The Finance Advisory Committee ("FAC") shall not exceed a total of six (6) members. The committee members will be appointed by the Chair of the Authority, subject to confirmation by the Board of Directors, and is comprised of voting members and no more than three (3) ex-officio members. Committee members serve for a period of one year.

**2.03.051. FINANCE ADVISORY COMMITTEE DUTIES.**

The Finance Advisory Committee is an advisory committee to the Authority Board and meets at the Authority Offices on date and time convenient or as necessary. The Executive Officer and/or the Controller of the Authority attends these meetings. The Finance Advisory Committee's duties will be as follows:

(a) Review and evaluate the annual budget of the Authority as presented by the Controller. Recommend action to the Executive Committee and the Authority Board, including parameters to staff compensation budgets.

(b) Review and evaluate the scope of services for the selection of the Authority auditor as prepared by the Controller. Comment, as appropriate, on modifications to the scope of services. Serve as an advisory selection committee to the Authority Board on the selection of the auditor. Review and evaluate the annual audit of the Authority financial statements as presented by the selected auditor.

(c) Consult with the Authority Administrative Committee, the Executive Officer, the Controller and/or Director of Planning and Finance, and advise and inform the Authority Board on proposed financing mechanisms to fund the obligations of the Authority. The Finance Advisory Committee will develop recommendations to the Authority Board for actions associated with its advice and information responsibilities.

## **Article 2.04. EXECUTIVE OFFICER**

### **2.04.010. OFFICE CREATED.**

The office of the Executive Officer is created and established, as provided in the Authority Act. The Executive Officer is appointed by the Authority Board wholly on the basis of his or her administrative and executive ability and qualifications and holds office for and during the pleasure of the Authority Board.

### **2.04.020. BOND.**

The Executive Officer will furnish a corporate surety bond to be approved by the Authority Board in such sum as may be determined by the Authority Board, and will be conditioned upon the faithful performance of the duties imposed upon the Executive Officer and as prescribed in this Article. Any premium for such bond will be a proper charge against the Authority.

### **2.04.030. COMPENSATION.**

The Executive Officer receives such compensation as the Board from time to time determines. In addition, the Executive Officer is reimbursed for all actual and necessary expenses incurred by him in the performance of his official duties.

### **2.04.040. POWERS AND DUTIES OF THE EXECUTIVE OFFICER.**

(a) The Executive Officer is the administrative head of the Authority under the direction and control of the Authority Board except as otherwise provided in this Master Resolution. The Executive Officer is responsible for the efficient administration of all the affairs of the Authority, which are under the control of the Executive Officer. In addition to general powers of the Executive Officer as administrative head, and not as a limitation thereon, it is the duty of the Executive Officer and the Executive Officer has the powers set forth in the Authority Act and in the following sections.

(b) The Executive Officer has the following powers and duties:

- (1) To plan, organize, and direct all Authority activities under the policy direction of the Authority Board;
- (2) To enforce strict compliance with the approved annual budget and approve only expenditures authorized in the approved budget;
- (3) To hire and manage such staff as necessary to carry out the provisions of the Authority Act and this Master Resolution;
- (4) To make recommendations to and requests of the Authority Board concerning all of the matters which are to be performed, done, or carried out by the Authority Board;
- (5) To have charge of, handle, or have access to any property of the Authority, and make an inventory of all Authority property;
- (6) To make all books and records of the Authority in the Executive Officer's hands open to inspection at all reasonable times by members of the Authority Board or their representatives;
- (7) To execute agreements, contracts, and documents on behalf of the Authority;
- (8) To prepare the agenda for each meeting of the Authority Board; and
- (9) To chair the Administrative Committee described in Section 2.02.030 of this Master Resolution.

**2.04.050. LAW ENFORCEMENT.**

It is the duty of the Executive Officer to enforce all laws and ordinances of the Authority and to see that all franchises, contracts, permits, and privileges granted by the Authority Board are faithfully observed.

**2.04.060. AUTHORITY OVER EMPLOYEES.**

It is the duty of the Executive Officer to enforce all laws and ordinances of the Authority and to see that all franchises, contracts, permits, and privileges granted by the Authority Board are faithfully observed.

**2.04.070. POWER OF APPOINTMENT AND REMOVAL.**

It is the duty of the Executive Officer to, and the Executive Officer will appoint, remove, promote, demote and discipline any and all officers and employees of the Authority, except those officers and employees appointed by the Authority Board.

**2.04.080. ADMINISTRATIVE REORGANIZATION OF OFFICES.**

It is the duty and responsibility of the Executive Officer to conduct studies and effect such administrative reorganization of offices, positions, or units under the Executive Officer's direction as may be indicated in the interest of efficient, effective, and economical conduct of the Authority's business.

**2.04.090. ORDINANCES.**

It is the duty of the Executive Officer to recommend to the Authority Board adoption of such measures and ordinances as the Executive Officer deems necessary.

**2.04.100. ATTENDANCE AT BOARD MEETINGS.**

It is the duty of the Executive Officer to attend all meetings of the Authority Board unless the Executive Officer is excused by the Chair individually or the Authority Board, except when the Executive Officer's removal is under consideration.

**2.04.110. FINANCIAL REPORTS.**

It is the duty of the Executive Officer to keep the Authority Board at all times fully advised as to the financial condition and needs of the Authority.

**2.04.120. BUDGET.**

It is the duty of the Executive Officer to prepare and submit the proposed annual budget and the proposed annual salary plan to the Authority Board.

**2.04.130. EXPENDITURE CONTROL AND PURCHASING.**

It is the duty of the Executive Officer to see that no expenditures be submitted or recommended to the Board except on approval of the Executive Officer. The Executive Officer is responsible for the purchase of all supplies for the Authority.

**2.04.140. INVESTIGATIONS AND COMPLAINTS.**

It is the duty of the Executive Officer to make investigations into the affairs of the Authority and any contract or the proper performance of any obligation to the Authority.

**2.04.150. FACILITIES.**

It is the duty of the Executive Officer to exercise general supervision over all public facilities and all other public property, which are under the control and jurisdiction of the Authority Board.

**2.04.160. CLERK TO THE BOARD.**

The Executive Officer performs all duties associated with the legal function of the Clerk to the Board position as provided in the Authority Act. The Executive Officer may designate a Clerk. However, the Executive Officer retains all responsibility for the duties of the clerk position.

**2.04.170. ADDITIONAL DUTIES.**

It is the duty of the Executive Officer to perform such other duties and exercise such other powers as may be delegated to the Executive Officer from time to time by ordinance or resolution or other official action of the Authority Board.

**2.04.180. INTERFERENCE WITH THE ADMINISTRATIVE SERVICE.**

The Authority Board and its members deal with the administrative services of the Authority only through the Executive Officer, except for the purpose of inquiry, and neither the Board nor any member thereof will give orders or instructions to any subordinates of the Executive Officer. The Executive Officer will take orders and instructions from the Authority Board only when sitting in a duly convened meeting of the Board and no individual member of the Authority will give any orders or instructions to the Executive Officer.

**2.04.190. REMOVAL.**

The removal of the Executive Officer may be effected with or without cause, but only by a majority vote of the whole Authority Board as then constituted, convened in a regular Board meeting. The Executive Officer shall be afforded at least 30 days written notice of the effective date of termination.

**2.04.200. AGREEMENTS ON EMPLOYMENT.**

Nothing in this Article is construed as a limitation on the power or authority of the Authority Board to enter into any agreement with the Executive Officer delineating additional terms and conditions of employment not inconsistent with any provisions of this Article, nor is this Article construed as limiting the power or authority of the Authority Board to enter into any agreement with any person or legally existing entity to provide the services of the Executive Officer as provided in the Authority Act and this Article.

**Article 2.05. PERSONNEL**  
(Reserved)

**Article 2.06. POLITICAL ACTIVITIES OF AUTHORITY EMPLOYEES**  
(Reserved)

**Article 2.07. BOARDS AND COMMISSIONS**  
(Reserved)

**Article 2.08. ADDITIONAL OFFICERS AND STAFF**

**2.08.010. TREASURER.**

(a) The Authority Board may appoint a Treasurer to serve at its pleasure.

(b) The Treasurer of the Authority will be a depositor and have custody of all the money of the Authority from whatever source. The Treasurer of the Authority will comply strictly with the provisions of state law relating to the duties of Treasurers of Joint Powers Authorities.

(c) The Treasurer ensures that all available cash on hand is at all times invested in a cash management program and investment portfolio pertaining

thereto and ensure that efficient liquidity is maintained to meet the Authority's cash disbursement needs.

(d) The Chair may designate an Assistant Treasurer to act on behalf of the Treasurer in fiscal matters and to act on behalf of the Authority during any absence of the Treasurer.

(e) The Treasurer will furnish a corporate surety bond to be approved by the Authority Board in such sum as may be determined by the Authority Board and is conditioned upon the faithful performance of the duties imposed upon the Treasurer. Any premium for such bond is a proper charge against the Authority. This provision may be waived if a person serving as the Treasurer for a member agency serves as the Treasurer of the Authority.

#### **2.08.020. FISCAL AGENT.**

(a) The Authority Board may appoint a Fiscal Agent of the Authority to serve at its pleasure. The Fiscal Agent advises the Authority Board in connection with any accounting, budgetary, monetary, or other financial matters relating to the Authority. The duties and responsibilities of the Fiscal Agent include, but are not limited to those duties set forth in the Authority Act and include the following:

- (1) Establish with Authority Board approval of the annual budget format, accounts, and documentation pertaining to the budget and which most nearly reflect the objectives of the Authority;
- (2) Establish and maintain the particular funds and accounts as required by generally accepted accounting practices applicable to public entities and which most accurately and appropriately record and report the operations of the Authority as represented by the annual budget document;
- (3) Enforce strict compliance with the approved annual budget and approve only expenditures authorized in the approved budget;
- (4) Make all books and records of the Authority in the Controller's hands open to inspection at all reasonable times by the members of the Authority Board or their representatives;
- (5) Sign all warrants for the payment of money from the funds of the Authority and pay and disburse such money on direction of the Board.

(b) The Fiscal Agent will furnish a corporate surety bond to be approved by the Authority Board in such amount as may be determined by the Authority Board and is conditioned upon the faithful performance of the duties of the Fiscal Agent. Any premium for such bond is a proper charge against the Authority. This provision may

be waived if a person serving as the Auditor-Controller for a member agency serves as the Fiscal Agent of the Authority.

**2.08.030. AUTHORITY COUNSEL.**

The Authority Board will appoint Authority Counsel to serve at the pleasure of the Authority Board. The Authority Board may appoint additional counsel to assist Authority Counsel or provide special services as may be required by the Authority Board. Authority Counsel attends meetings of the Authority Board and the Executive Committee as required to advise the Authority Board in connection with any legal matters relating to the Authority.

**2.08.040. AUTHORITY STAFF.**

The Authority Staff consists of the Executive Officer, Authority Counsel, and such other staff as authorized in the Authority budget and approved by the Authority Board. The cost of all staff is borne solely by the Authority.

**2.08.050. AGREEMENTS FOR SERVICES OF OFFICIALS AND STAFF.**

Nothing in this Article is construed as limiting the power or authority of the Authority Board to enter into any agreement with any legally existing person or entity to provide the services of any or all of the officers or staff described in this Article as provided in the Authority Act and this Article. In addition, the Authority Board in its sole discretion may designate one person to hold one or more of the officer positions designated in this chapter.

**Article 2.09. CONFLICT OF INTEREST CODE.**

**2.09.010. PURPOSE AND EFFECT.**

The terms of Title 2, Division 6 of the California Code of Regulation (Section 18730, *et seq.*), and any amendments thereto duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the following sections in which officials and employees are designated and disclosure categories are set forth, constitute the conflict of interest code for the Authority. This Article constitutes the "Appendix" to Title 2, Division 6 of the California Code of Regulations Section 18730, *et seq.*

**2.09.020. DESIGNATED POSITIONS; DISCLOSURE CATEGORIES.**

(a) Each employee filling a designated position, and any employee filling a designated position on a temporary or acting basis for more than thirty consecutive calendar days, will disclose all of the information set forth in all disclosure Categories A through H on such form as the Fair Political Practices Commission may designate. Designated positions are set forth below:

- (1) Board Members
- (2) Alternates to Board Members
- (3) Executive Officer
- (4) Assistant Executive Officer, if any
- (5) Treasurer, if any

- (6) Accounting/Finance Officer, if any
- (7) Controller, if any
- (8) Authority Counsel
- (9) Assistant Authority Counsel, if any
- (10) Planning Services Manager
- (11) Director of Planning and Redevelopment
- (12) Director of Engineering
- (13) Contract Specialist

(b) Each consultant, as defined in the California Code of Regulations Section 18700, will disclose all of the information set forth in all disclosure categories A through H on such form as the Fair Political Practices Commission may designate. The Executive Officer may determine in writing that a particular consultant, although a “designated position,” is hired to perform a range of duties that are limited in scope and thus are not required to fully comply with the disclosure requirements of this section. Such written determination will include a description of the consultant’s duties and, based upon that description, a statement of the extent of disclosure requirements. The determination of the Executive Officer is a public record and will be retained for public inspection in the same manner and location as this conflict of interest code.

**2.09.030. PLACE AND TIME OF FILING.**

(a) All officials and employees filling designated positions file statements of financial interest with the Executive Officer who receives such statements on behalf of the Authority Board. Unless otherwise required by state law, all statements of financial interest are deemed timely filed only when received by the Executive Officer on or before the following deadlines;

(b) Annual statements must be filed on or before April 1 of each calendar year. Such statements cover the period of the preceding calendar year or from the date of filing such statement as otherwise required by this Master Resolution.

(c) Initial statements must be filed within thirty days after assuming office-disclosing interests held on the date of assuming office.

(d) Leaving office statements must be filed within thirty days of leaving office. Such statements cover the period between the closing date of the last statement required to be filed and the date of leaving office.

**2.09.040. CONFLICT WITH OTHER LAWS.**

Nothing contained herein is intended to modify or abridge the provisions of the Political Reform Act of 1974 (Government Code Section 81000, *et seq.*). The provisions of this Article are in addition to Government Code Section 87100 and other laws pertaining to conflicts of interest, including, but not limited to, Government Code Section 1090, *et seq.*

## **Chapter 3. PROCUREMENT CODE**

### **Article 3.01. GENERAL PROVISIONS**

#### **3.01.010. GENERAL PROVISIONS.**

This chapter of the Fort Ord Reuse Authority Master Resolution will be known and may be cited as the "Procurement Code of the Fort Ord Reuse Authority."

#### **3.01.020. DEFINITIONS.**

As used in this chapter the following terms have the following meanings, unless the context clearly indicates that a different meaning is intended:

"Area" means Monterey County, San Benito County, and Santa Cruz County.

"Construction" means the process of building, altering, repairing, improving, or demolishing any structure or building owned or leased by the Authority or other improvements of any kind to any real property owned or maintained by the Authority or within any public right-of-way or easement within the jurisdictional limits of the Authority.

"Contractor" means any person, firm, corporation (including nonprofit), partnership, joint venture, association, or enterprise having a contract or attempting to obtain a contract with the Authority.

"Procurement" means the buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supplies, services, or construction, including description of requirements, selection and solicitation of sources, preparation, and award of contracts, and all phases of contracting administration.

"Public project" means a project for construction.

"Resident" means a person who: (1) Maintains a domicile within the Area and such domicile is a person's true, fixed, established principal and permanent home; (2) Has no claim of residency elsewhere; and (3) Intends to remain in the Area indefinitely.

"Subcontractor" means any person, firm, corporation, partnership, joint venture, association, or enterprise that has or seeks to have a contract with a contractor to perform work required as part of a contract or agreement between a contractor and the Authority.

#### **3.01.030. WAIVER.**

The Board, in an appropriate circumstance as determined by the Board, may waive any provision of this chapter when deemed in the best interests of the Authority.

## **Article 3.02. PURCHASING SYSTEM**

### **3.02.010. ADOPTION.**

In order to establish efficient procedures for the purchase of supplies and equipment at the lowest possible cost, commensurate with quality needed to exercise positive financial control over purchases, to clearly define authority for the purchasing function, and to ensure the quality of purchases, a purchasing system is adopted.

### **3.02.020. SCOPE.**

The procedures established by this Article apply only to the purchase of supplies, equipment, and services, and do not apply to public projects.

### **3.02.030. AUTHORITY OF THE EXECUTIVE OFFICER.**

(a) In addition to the duties of the Executive Officer specified in Article 2.04 of this Master Resolution, the Executive Officer has the authority to:

- (1) Purchase or contract for supplies and equipment required by any using agency in accordance with purchasing procedures prescribed by this Article, such administrative regulations as the Executive Officer adopts for the internal management and operation of purchasing division and such other rules and regulations as prescribed by the Board or Executive Officer.
- (2) Negotiate and recommend execution of contracts for the purchase of supplies and equipment.
- (3) Act to procure for the Authority the needed quality in supplies and equipment at least expense to the Authority.
- (4) Discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases.
- (5) Prepare and recommend to the Board rules governing the purchase of supplies and equipment for the Authority.
- (6) Prepare and recommend revisions and amendments to the purchasing rules.
- (7) Keep informed of current developments in the field of purchasing, prices, market conditions and new products.
- (8) Prescribe and maintain such forms as are reasonably necessary for the operation of this chapter and other rules and regulations.
- (9) Supervise the inspection of all supplies and equipment purchased to ensure conformance with specifications.
- (10) Recommend the transfer of surplus or unused supplies and equipment between departments as needed.

- (11) Maintain an approved vendors' list, vendors' catalog file and records needed for efficient performance of the duties of the Executive Officer.

**3.02.040. PURCHASING REGULATIONS.**

The Executive Officer is responsible for determining that the regulations and procedures in this chapter are carried out.

**3.02.050. PURCHASE ORDERS.**

Purchase of supplies and equipment are made only by purchase orders. Except as otherwise provided in this chapter, no purchase order will be issued unless the prior approval of the Executive Officer or his designated representative has been obtained.

**3.02.060. ENCUMBRANCE OF FUNDS.**

Except in cases of emergency, the Executive Officer will not issue any purchase order for supplies or equipment unless there exists an unencumbered appropriation in the fund account against which the purchase is to be charged.

**3.02.070. INSPECTION AND TESTING.**

The Executive Officer will, in the discretion of the Executive Officer, inspect supplies and equipment delivered to the Authority to determine conformance with the specifications set forth in the purchase order. The Executive Officer has the authority to require chemical and physical tests of samples submitted with bids and samples of deliveries, which are necessary to determine their quality and conformance with specifications.

**3.02.080. FORMAL BID REQUIREMENTS.**

(a) Except as otherwise provided in this Article, purchases of supplies and equipment of an estimated value greater than \$25,000.00 will be awarded to the lowest responsible bidder pursuant to the formal bid procedure prescribed in this section.

(b) Notices inviting formal bids include a general description of the Article or service desired, state where bid documents and specifications may be secured, and the time and place for opening bids.

(c) Notices inviting formal bids will be published at least ten (10) days prior to the date of opening of the bids. Notices will be published at least once in a newspaper regularly circulated in the Authority and also on the Authority website.

(d) The Executive Officer will also solicit formal sealed bids from responsible suppliers whose names are on the approved vendors' list, or who have made written request that their names be added thereto.

(e) Where deemed necessary by the Executive Officer, formal bids will be accompanied by security, either cash, cashier's check, certified check, or surety bond, in a sum equal to ten percent of the total aggregate of the bid, and be designated in the notice inviting bids. Bidders are entitled to the return of bid security; provided, however, that a successful bidder forfeits the bid security upon his refusal or failure to execute the contract within ten days after the notice of award of contract has been mailed, unless the Authority is solely responsible for the delay in executing the contract. The Board or Executive Officer may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest responsible bidder who is willing to execute the contract, or may reject all bids and re-advertise.

(f) The Executive Officer has the authority to require a faithful performance bond or other bonds before entering into a contract other than a public project contract. If bonds are required, the form and amount thereof will be designated in the notice inviting bids.

(g) Sealed bids must be submitted to the Executive Officer and identified as bids on the envelope. The purchasing officer, or designee, will publicly open all bids at the time and place stated in the public notices. A tabulation of all bids received will be available for public inspection in the purchasing office during regular business hours for a period of not less than 30 calendar days after the bid opening.

(h) In its discretion, the Authority Board or Executive Officer may reject any and all bids presented and may cause re-advertising for bids pursuant to the procedure prescribed in this Article. However, when all bids exceed the authorized budgeted amount, the Executive Officer may authorize rejection of all bids and authorize re-bidding based upon the original specifications or as they may be modified, in accordance with procedures prescribed in this Article.

(i) Except as otherwise provided in this Article, formal bid contracts will be awarded by the Authority Board to the lowest responsible bidder. The determination of lowest responsible bidder is at the discretion of the Authority Board pursuant to findings and recommendations presented by the Executive Officer at the time of award of contract.

(j) Subject to the provisions of Section 3.02.090, if two or more formal bids received are for the same total amount or unit price, quality and service being equal and if the public interest will not permit the delay of re-advertising for bids, the Authority Board may in its discretion accept the one it chooses or accept the lowest bid made by and after negotiation with the tie bidders at the time of the bid opening or award of contract.

### **3.02.090. PREFERENCE FOR LOCAL SUPPLIERS.**

(a) Each local supplier providing goods or supplies funded in whole or in part by Authority funds, or funds which the Authority expends or administers, is eligible for a local preference as provided in this section.

(b) Each local supplier who is within five percent of the lowest responsible bid is provided the opportunity to reduce the local supplier's bid to the amount equal to the amount of the lowest responsible bid. The opportunity to reduce bid amounts is provided first to the lowest eligible local bidder and, if not accepted by such bidder within five business days of the opening of bids, then to each successive eligible bidder in ascending order of the amount of bids. In the event an eligible local supplier reduces the bid to the amount of the lowest responsible bid, the eligible local supplier will be deemed to have provided the lowest responsible bid and will be awarded the contract.

(c) For the purpose of this section, the term "local supplier" means a business or resident doing business as a supplier in the jurisdiction of the Authority for the past five years.

**3.02.100. RECYCLED MATERIALS; COPYING.**

The Authority encourages the use of recycled paper and materials in response to all bids for services and supplies to the Authority. Wherever possible, preference will be given to those vendors, suppliers, and consultants providing supplies and services to the Authority who utilize recycled materials, including recycled paper products. In addition, documents submitted for Authority use must be presented with front to back copying in order to minimize the amount of file space necessary for the maintenance of such documents, as well as to reduce the amount of paper required in the provision of governmental services.

**3.02.110. NO FORMAL BIDS.**

When no formal bids or no responsive bids are received, the Executive Officer is authorized to negotiate for written proposals, and the award, if any, will be made in accordance with applicable provisions prescribed in this Article.

**3.02.120. OPEN MARKET OR INFORMAL BID PROCEDURE.**

(a) Purchases of supplies and equipment of an estimated value in the amount of \$25,000.00 or less may be made by the Executive Officer in the open market without observing the procedure prescribed in Sections 3.02.080. Open market purchases will, wherever possible, be based on at least three informal bids and will be awarded to the bidder offering the most advantageous bid to the Authority, in the opinion of the Executive Officer, after consideration of price, quality, durability, servicing, delivery time, standardization, location of vendor, and other factors.

(b) The Executive Officer will solicit informal bids by written requests to prospective vendors, or by telephone, or by public notice posted on a public bulletin board at the Authority offices. The Executive Officer will keep a written record of all open market purchases and informal bids for a period of two years. This record, while so kept, is open to public inspection.

**3.02.130. EXCEPTIONS TO COMPETITIVE BIDDING REQUIREMENT.**

(a) Notwithstanding any provision of this Article to the contrary, the competitive bidding procedures and requirements may be dispensed with in any of the following instances:

- (1) When the estimated amount involved is less than \$25,000.00.
- (2) When the commodity can be obtained from only one vendor.
- (3) When the Board finds that the commodity is unique and not subject to competitive bidding.
- (4) The Board may authorize the purchase of materials, supplies, equipment, and services where an emergency is deemed to exist and it is determined that service involving the public health, safety, or welfare would be interrupted if the normal procedure were followed.
- (5) Any agreement involving acquisition of supplies, equipment, or service entered into with another governmental entity.

(b) Contracts for personal services, for professional and consultant services, and for other, non-public projects and contractual services may be executed without observing the bidding procedures provided in this Article. The Executive Officer is authorized to enter into such contracts where the amount of the contract does not exceed \$25,000.00, provided there exists an unencumbered appropriation in the fund account against which the expense is to be charged. Where the amount of the contract exceeds \$25,000.00, the contract will be approved by the Authority Board. In the case of professional services, qualifications and experience to the benefit of the Authority will receive first consideration. Upon determination of these factors, a price or fee may be negotiated.

**3.02.140. REGULATIONS REGARDING SELECTION OF CONTRACT SERVICES.**

The Executive Officer will, by resolution, prescribe procedures, rules, and regulations, governing the solicitation, selection and award of proposals or bids for the furnishing of personal services or professional or consulting services or for other contractual services, the contracts for which may be awarded without observing the bidding procedures provided for in this chapter. Such procedures, rules and regulations have as one purpose: the obtaining of contractual services of the highest quality together with cost effectiveness.

## **Article 3.03. PUBLIC WORKS CONTRACTS**

### **3.03.010. PROCEDURE-TYPE DESIGNATED FOR CERTAIN PURCHASES.**

Public projects of less than \$25,000.00 may be let to contract by informal bidding procedures. All other public projects with a value greater than \$25,000.00 will, in all instances, be let to contract by formal bidding procedure.

### **3.03.020. PROCEDURE-INFORMAL.**

(a) The notice inviting informal bids will be by published notice and may, in addition, be supplemented by mailed notice and noticing on the Authority website. The Executive Officer may cause the notice to be printed as display advertising in such form and style as the Executive Officer deems appropriate. The notice will describe in general terms the project to be done and state the closing date for submission of such informal bids. Publication of notice pursuant to this section will be in a newspaper of general circulation printed and published within the jurisdiction of the Authority. Notice will be published in accordance with Section 6061 of the Government Code and will be completed at least twenty-four hours before the time scheduled for opening of the bids.

(b) In addition to notice published in a newspaper of general circulation, or mailed, pursuant to this section, the Executive Officer may also publish notice inviting bids in a trade publication.

(c) Bids will be opened, examined, and declared by the Executive Officer at a public meeting called by the Executive Officer in accordance with the notice inviting bids. The results of the bidding will be reported to the Authority Board at the next regular meeting after said bid opening.

### **3.03.030. PROCEUDRE-FORMAL.**

(a) The notices inviting formal bids will state the time and place for the receiving and opening of sealed bids and distinctly state the project to be done. The first publication or posting of the notice will be at least ten days before the date of opening the bids. Notice will be published at least twice, not less than five days apart, in a newspaper of general circulation, printed and published in the jurisdiction of the Authority. The newspaper notice will include a description of the equipment or services to be purchased, will state where bid blanks and specifications may be secured, and the time and place for opening bids. In addition, the Executive Officer may also publish notice inviting bids in a trade publication.

(b) When deemed necessary by the Board, bid deposits will be described in the public notices inviting bids. Unsuccessful bidders are entitled to the return of each required security.

(c) Bids must be submitted sealed to the Executive Officer and identified as bids on the envelope. Bids will be opened, examined, and declared by the

Executive Officer at a public meeting called by the Executive Officer in accordance with the notice inviting bids. A tabulation of all bids received will be provided to all bidders.

(d) The results of the bidding will be reported to the Authority Board at the next regular meeting after said bid opening.

(e) The Board has the authority to reject all bids, or parts of all bids for any one or more components included in the proposed contract, when the public interest will be served thereby.

(f) The Board has the authority to award contracts within the purview of this Master Resolution. Contracts will be awarded to the lowest responsible bidder, with the exception of professional services only. In determining the lowest responsible bidder, the following may be considered, in addition to price if such factors are included in the bid specifications:

- (1) The quality of the work or construction offered;
- (2) The ability, capacity, and skill of the bidder to perform the contract;
- (3) Whether the bidder can perform the contract promptly, or within the time specified, without delay or interference;
- (4) The sufficiency of the bidder's financial resources and the effect thereof on the bidder's ability to perform the contract;
- (5) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- (6) The quality of bidder's performance on previous contracts for the Authority;
- (7) Litigation by the bidder on previous contracts with the Authority;
- (8) The previous and existing compliance by the bidder with laws and ordinances relating to the subject of the contract;
- (9) The ability of the bidder to provide future maintenance and service where such maintenance and service is essential.

(g) When the award is not given to the lowest bidder, a full and complete statement of the reasons therefore will be prepared by the Executive Officer and filed with the other papers related to the award of the contract.

### **3.03.040. LOCAL PREFERENCE.**

(a) Each Contractor performing construction funded in whole or in part by Authority funds, or funds which, in accordance with a federal grant or otherwise, the Authority expends or administers, and to which the Authority is a signatory to the

construction contract, will be eligible for a local preference as provided in the subsection, if such Contractor meets each of the following minimum requirements:

- (1) The Contractor must be licensed by the State of California and be a business, employer, or resident doing business in the Area for the past five years.
- (2) The Contractor must be a business, employer, or resident who has been adversely affected by the closure of the Fort Ord military base.
- (3) Eighty percent (80%) of the work force of the Contractor must be residents of the Area and fifty percent (50%) of the Subcontractors must be residents of the Area.

(b) Each Contractor who is within five percent of the lowest responsible bid and who is eligible for a local preference under this subsection, will be provided the opportunity to reduce the Contractor's bid to an amount equal to the amount of the lowest responsible bid. The opportunity to reduce bid amounts will be provided first to the lowest eligible bidder and, if not accepted by such bidder within five business days of the opening of bids, then to each successive eligible bidder in ascending order of the amount of the bids. In the event an eligible Contractor reduces the bid to the amount of the lowest responsible bid, the eligible Contractor will be deemed to have provided the lowest responsible bid and will be awarded the contract.

(c) In the event there is no available and qualified resident of the Area who can fill a specified position, vacancy, or job classification sought to be filled by the Contractor, or by a Subcontractor of the Contractor, the Contractor may request an exemption for the worker hours performed by a person who fills such position, vacancy, or job classification in computing the percentage of total worker hours performed by residents of the Area for the purpose of determining whether the Contractor has met the minimum requirements specified in this subsection. A Contractor seeking such an exemption must file a written application therefore with the Executive Officer on a form provided by the Executive Officer no later than ten days after the position, vacancy, or job classification for which the exemption is sought is filled by a nonresident of the Area. Such application must include a detailed written statement under oath describing the efforts and action taken by the Contractor, or the Contractor's Subcontractor, in attempting to hire a resident of the Area for the position, vacancy, or job classification for which the exemption is sought, and such further and additional information as may be requested by the Executive Officer.

(d) The provisions of this subsection will expire and will no longer be in force or effect on December 31, 1999, unless otherwise extended by the Board prior to such date.

### **3.03.050. REJECTION OF BIDS.**

In its discretion, the Authority Board may reject any bids presented. If, after the first invitation for bids, all bids are rejected, after re-evaluating its cost

estimates of the project, the Authority Board may abandon the project or re-advertise for bids in the manner prescribed by this Article. If, after re-advertising, the Authority Board rejects all bids presented, the Authority Board may proceed with the project by use of Authority personnel or may re-advertise. If two or more bids are the same and the lowest, the Authority Board may accept the one it chooses, subject to the limitations contained in Section 3.02.040. If no bids are received, the Authority Board may have the project done without further complying with this chapter.

**3.03.060. LOWER NEGOTIATED PRICE OR PERFORMANCE BY AUTHORITY PERSONNEL.**

Notwithstanding the provisions of Section 3.02.050, if after the first invitation for bids, all bids are rejected, the Authority Board may, after re-evaluating its cost estimates of the project, pass a resolution by a four-fifths vote of its Board declaring that the project can be performed more economically by Authority personnel, or that in its opinion a contract to perform the project can be negotiated at a lower price than that in any of the bids. Upon adoption of the resolution, it may have the project done in the manner stated without further complying with this chapter.

**3.03.070. PLANS AND SPECIFICATIONS.**

The Authority Board adopts plans, specifications, and working details for all public projects the expenditure for which exceeds \$25,000. Such plans, specifications, and working details may be approved at the time the notice is authorized or at the time the Authority Board approves a contract.

**3.03.080. (Reserved)**

**3.03.090. PREVAILING WAGES.**

(a) Not less than the general prevailing rate of wages for work of a similar character in Monterey County, as determined by the Director of the Department of Industrial Relations under Division 2, Part 7, Chapter 1 of the California Labor Code, will be paid to all workers employed on the First Generation Construction performed on parcels subject to the Fort Ord Base Reuse Plan. This subsection applies to work performed under Development Entitlements as defined in §1.01.050 of this Master Resolution and by contract with a FORA member or a FORA member agency including their transferees, agents, successors-in-interest, developers or building contractors.

This policy is limited to “First Generation Construction” work, which is defined in §1.01.050 of this Master Resolution. In addition to the exceptions enumerated in the definition of Development Entitlements found in §1.01.050 of this Master Resolution, this policy does not apply to:

- (1) construction work performed by the Authority or a member jurisdiction with its own workforce;
- (2) construction work performed by paid, full-time employees of the developer, unless the developer is performing the

work of a contractor as defined in California Business and Professions Code §7026;

- (3) construction improvements following issuance of an occupancy permit;
- (4) affordable housing when exempted under California state law; and
- (5) construction of facilities to be used for eleemosynary non-commercial purposes when owned in fee by a non-profit organization operating under §501(c)(3) of the Internal Revenue Code.

(b) Member agencies must include language in all of their contracts and deeds for the conveyance, disposition and/or development of former Fort Ord property to give notice of and assure compliance with the policy set forth above in subsection 3.03.090(a).

(c) FORA determines compliance by member agencies with this section at the time of and as part of FORA's consistency determination under Chapter 8 of this Master Resolution.

**3.03.100 DEVELOPERS OF PROPERTY PURSUANT TO AGREEMENTS WITH FORA. [Section repealed 3/9/07 by Resolution #07-4]**

**3.03.110. MINORITY, FEMALE, AND HANDICAPPED-OWNED BUSINESSES.**

The rules and regulations, as amended, promulgated by the Department of Transportation of the State of California pursuant to Section 10115 of the Public Contract Code for the certification and establishment of specified preferences applicable to minority, female, and handicapped-owned businesses are applicable to contracts for construction awarded by FORA.

**Chapter 4. DISPOSAL OF AUTHORITY PROPERTY  
(reserved)**

## **Chapter 5. FINANCES AND CLAIMS**

### **Article 5.01. CLAIMS AGAINST THE AUTHORITY.**

#### **5.01.010. FILING REQUIREMENT.**

All claims against the Authority must be filed with the Clerk to the Authority. The Clerk to the Authority Board will transmit copies of all such claims to the Executive Officer. For the purpose of this Article, the term "Executive Officer" means a person designated by the Executive Officer, including the Executive Officer, and such person may include a contractor of the Authority who performs risk management or claims adjustment duties for the Authority.

#### **5.01.020. PROCESSING OF CLAIMS AGAINST THE AUTHORITY.**

(a) The Executive Officer will evaluate the sufficiency and form of all claims against the Authority and give notices relative to any deficiency of such claims to the claimant. The Executive Officer will have all such claims investigated and will prepare an investigative report and a recommendation relating to each such claim. The Executive Officer, with the concurrence of the Authority Counsel, may approve for payment any claim within the jurisdictional limits of a municipal court in the State of California, deny any claim amounting to \$50,000 or less, or compromise any claim in an amount less than the jurisdictional limits of a municipal court in the State of California. The Executive Officer is responsible for immediately notifying the claimant of such decision and expediting payment of any claim, which has been approved or compromised.

(b) For all claims not disposed of pursuant to Subsection (a) or of this section, the Authority Counsel will prepare and submit, as soon as practicable, a report to the Authority Board either in open session or in closed session, at the Authority Counsel's election, together with a recommendation that such claim be approved, compromised, or denied. The Authority Counsel will advise the Executive Officer of the Board's decision in the matter. The Executive Officer will thereupon notify the claimant, in writing, of the decision and expedite payment of any claim, which has been approved or compromised.

(c) Notwithstanding the above provisions, the Executive Officer will notify and send copies of all claims which are determined by the Executive Officer to be covered by insurance to the insurance carrier which provides coverage to the Authority, and is the Authority liaison with such carriers for the purpose of any claim involvement.

(d) In order to protect the best interest of the Authority and the officers, employees, and agents of the Authority with regard to the investigation, defense, or adjustment of applicable claims incurred against the Authority or its officers, employees, and agents, the Executive Officer and the Authority Counsel are directed to establish and maintain necessary administrative procedures and incident report forms to ensure the confidential coordination of case facts and related information. The

procedures and forms will ensure reasonable use of the principle of privileged client-attorney communication for confidentiality in the defense or adjustment of all claims as provided by law.

(e) The legal defense of claims filed against the Authority, which are not covered by insurance, is the responsibility of the Authority Counsel or a legal firm or firms designated by the Authority Board. Authorized legal defense costs in conjunction with the defense of such claims are paid from appropriate Authority funds as designated by the Authority Board from time to time.

**5.01.030. PROCEDURE FOR COLLECTION, COMPROMISE, AND WRITE-OFF OF CLAIMS OF THE AUTHORITY AGAINST OTHERS.**

(a) Claims of the Authority against other persons or entities will be handled according to the procedures designated in this section.

(b) The Executive Officer is authorized to pursue collection of any claims of the Authority against others. The Executive Officer may, in furtherance of such claims collection, accept a promissory note to repay the claim over a period of time, file a small claims court action to secure a judgment when the amount of the claim does not exceed the small claims court jurisdictional limit, or assign the claim, promissory note, or judgment to a collection agency. When the Executive Officer determines it is in the best interest of the Authority to do so, considering the cost of collection and the merits of the claim, the Executive Officer may:

- (1) Accept a compromise settlement and write-off the balance of the claim as uncollectible, where the amount of the write-off does not exceed the small claims court jurisdictional limit;
- (2) File an action in small claims court and write-off any amount in excess of such court's jurisdiction, where the amount of the write-off does not exceed the small claims court jurisdictional limit, or
- (3) Write off the claim in full where the amount of the write-off does not exceed the small claims court jurisdictional limit.

(c) Any claim, which cannot be collected in full or disposed of in accordance with this subsection, will be sent to Authority Counsel for collection.

(d) The Authority Counsel will pursue collection and may, in furtherance of such collection, accept a promissory note to repay the claim over a period of time, file an action in the appropriate court to secure a judgment, or assign the claim, promissory note, or judgment to a collection agency. When the Authority Counsel determines it is in the best interest of the Authority to do so, considering the cost of collection and the merits of the claim, the Authority Counsel may:

- (1) Authorize the Executive Officer to accept a compromise settlement and write off the balance of the claim as uncollectible where the amount of the write-off does not exceed the municipal court jurisdictional limit; or
- (2) Authorize the Executive Officer to file an action in small claims court and write off any amount in excess of such court's jurisdiction, where the amount of the write-off does not exceed the municipal court jurisdictional limit; or
- (3) Authorize the Controller to write off the claim in full where the amount of the write-off does not exceed the municipal court jurisdictional limit.

(e) When the Authority Counsel determines it is in the best interest of the Authority to accept a compromise settlement of the claim and write off the balance as uncollectible, or to write off the claim in full as uncollectible, the Authority Counsel will submit the matter to the Authority Board for approval where the amount of the write-off exceeds the municipal court jurisdictional limit.

## **Chapter 6. AUTHORITY FEE REGULATIONS**

### **Article 6.01. GENERAL**

#### **6.01.010. ESTABLISHMENT OF FEE REGULATIONS.**

Except as otherwise provided in this Master Resolution, all fees, penalties, refunds, reimbursements, and charges of any kind collected by the Authority may be adopted by resolution or may be designated in this chapter of the Master Resolution, as amended by the Authority Board from time to time. Whenever applicable throughout the Master Resolution, reference may be made to this chapter in lieu of any reference to specific fee amounts.

**Chapter 7. PUBLIC WORKS  
(reserved)**

## **Chapter 8. BASE REUSE PLANNING AND CONSISTENCY DETERMINATIONS**

### **Article 8.01 GENERAL PROVISIONS**

#### **8.01.010. REUSE PLAN.**

(a) The Authority Board will prepare, adopt, review, revise from time to time, and maintain a Reuse Plan for the use and development of the territory within the jurisdiction of the Authority. Such plan contains the elements mandated pursuant to the Authority Act and such other elements, policies, and programs as the Authority Board may, in its sole discretion, consider and adopt.

(b) The Reuse Plan, including all elements, policies and programs adopted in conjunction with the Reuse Plan, and any amendments thereto, is the official and controlling plan for the reuse of the Fort Ord Territory for the purposes specified or inferred in the Authority Act.

(c) All general and specific plans, redevelopment plans, and all other community and local plans regardless of title or description, and any amendments thereto, and all policies and programs relating to the land use or the construction, installation, or maintenance of capital improvements or public works within the Fort Ord Territory, must be consistent with the Reuse Plan of the Authority and the plans and policies of the Authority, including the Master Resolution. The Authority will make a determination of consistency as provided pursuant to the provisions of the Authority Act and, after the effective date hereof, this chapter.

(d) A revision or other change to the Reuse Plan which only affects Fort Ord Territory and only one of the member agencies may only be adopted by the Authority Board if one of the following conditions is satisfied:

- (1) The revision or other change was initiated by resolution adopted by the legislative body of the affected land use agency and approved by at least a majority affirmative vote of the Authority Board; or
- (2) The revision or other change was initiated by the Authority Board; or any entity other than the affected land use agency and approved by at least a two-thirds affirmative vote of the Authority Board.

(e) All property transferred from the federal government to any user or purchaser, whether public or private, will only be used in a manner consistent with the Reuse Plan, with the following exceptions:

- (1) Property transferred to California State University or the University of California and such property is used for educationally related or research oriented purposes; or
- (2) Property transferred to the California State Parks and Recreation Department.

(f) No land use agency or any local agency may permit, approve, or otherwise allow any development or other change of use, or approve any development entitlement, for property within the territory of the Authority that is not consistent with the Reuse Plan.

(g) No land use agency may issue, approve, or otherwise allow any building permit until all applicable permits, development entitlements, and approvals required under law have been approved, including, but not limited to, the approvals and permits described and enumerated in Section 3.7 of the Final Environmental Impact Report for the Reuse Plan.

(h) The Reuse Plan will be reviewed periodically at the discretion of the Authority Board. The Authority Board will perform a full reassessment, review, and consideration of the Reuse Plan and all mandatory elements as specified in the Authority Act prior to the allocation of an augmented water supply, or prior to the issuance of a building permit for the 6001<sup>st</sup> new residential dwelling unit (providing a total population of 35,000 persons) on the Fort Ord Territory or by January 1, 2013, whichever event occurs first. No more than 6000 new dwelling units will be permitted on the Fort Ord Territory until such reassessment, review, and consideration of the Reuse Plan has been prepared, reviewed, and adopted pursuant to the provisions of the Authority Act, the Master Resolution, and all applicable environmental laws. No development will be approved by FORA or any land use agency or local agency after the time specified in this subsection unless and until the water supplies, wastewater disposal, road capacity, and the infrastructure to supply these resources to serve such development have been identified, evaluated, assessed, and a plan for mitigation has been adopted as required by California Environmental Quality Act ("CEQA"), the Authority Act, the Master Resolution, and all applicable environmental laws.

(i) The failure of any persons or entity to receive notice given pursuant to this chapter does not constitute grounds for any court to invalidate the action on any legislative act or development entitlement pursuant to this chapter for which required notice was given.

(j) The Authority will record a notice on all property in the Fort Ord Territory advising all current and future owners of property of the existence of the Reuse Plan and that development of such property is limited by the Reuse Plan, the policies and programs of the Authority, including the Master Resolution, and/or the constraints on development identified in the Reuse Plan, including lack of available water supply, wastewater and solid waste disposal capacity, and inadequate transportation and other services and infrastructure.

(k) In the event the Authority receives, purchases, or acquires, by any means, fee interest title to property within the Fort Ord Territory, the Authority will record a covenant running with the land advising all future owners of such property that development and use of the property is subject to the Reuse Plan and that development of such property is limited by the Reuse Plan, the policies and programs of the Authority,

including the Master Resolution, and/or constraints on development identified in the Reuse Plan, including lack of available water supply, wastewater and solid waste disposal capacity, and inadequate transportation and other services and infrastructure.

**8.01.020. PROCEDURES FOR CONSISTENCY DETERMINATIONS FOR LEGISLATIVE LAND USE DECISIONS.**

(a) Each land use agency will submit all legislative land use decisions affecting property in the territory of the Authority to the Executive Officer for review and processing.

(b) All submissions regarding a legislative land use decision must include:

- (1) A complete copy of the legislative land use decision, including related or applicable text, maps, graphics, and studies;
- (2) A copy of the resolution or ordinance of the legislative body approving the legislative land use decision, adopted at the conclusion of a noticed hearing certifying that the portion of a legislative land use decision applicable to the Fort Ord Territory is intended to be carried out in a manner fully in conformity with the Reuse Plan and the Authority Act;
- (3) A copy of all staff reports and materials presented or made available to the legislative body approving the legislative decision, or any advisory agency relating to the legislative land use decision;
- (4) A copy of the completed environmental assessment related to the legislative land use decision;
- (5) A statement of findings and evidence supporting the findings that the legislative land use decision is consistent with the Reuse Plan, the Authority's plans and policies, including the Master Resolution, and is otherwise consistent with the Authority Act; and
- (6) Such other materials as the Executive Officer deems necessary or appropriate and which have been identified within fifteen (15) days of the receipt of the items described in subsection (b) of this Section.

(c) Within ninety (90) days of the receipt of all of the items described in subsection (b) above, or from the date the Executive Officer accepts the submission as complete, whichever event occurs first, the Authority Board will conduct a noticed public hearing, calendared and noticed by the Executive Officer, to certify or refuse to certify, in whole or in part, the portion of the legislative land use decision applicable to Fort Ord Territory. The Authority Board will adopt a resolution making findings in support of its decision, such decision will be rendered within the time frame described in this section, and such decision will be final. In the event the Authority Board

fails, within the time frames described in this section, to conduct a public hearing or take action on determining whether the land use decision is consistent with the Plan and the Authority Act, the land use agency may file, upon ten (10) days notice, a request with the Executive Officer to have the matter placed on the next Board agenda for a noticed public hearing to take action to consider the consistency finding and the Board will take action at such noticed public hearing and such decision will be final.

(d) In the event the Authority Board finds, on the basis of substantial evidence supported on the record, that the legislative act is consistent with the Reuse Plan and this chapter, the Authority Board will certify the legislative act pursuant to the provisions of the Authority Act.

(e) In the event the Authority Board refuses to certify the legislative land use decision in whole or in part, the Authority Board's resolution making findings will include suggested modifications which, if adopted and transmitted to the Authority Board by the affected land use agency, will allow the legislative land use decision to be certified. If such modifications are adopted by the affected land use agency as suggested, and the Executive Officer confirms such modifications have been made, the legislative land use decision will be deemed certified. In the event the affected land use agency elects to meet the Authority Board's refusal or certification in a manner other than as suggested by the Authority Board, the legislative body of the affected land use agency must resubmit its legislative land use decision to the Executive Officer and follow the procedures contained in this section.

(f) No legislative land use decision will be deemed final and complete, nor will any land use entitlement be issued for property affected otherwise permitted by such legislative land use decision unless it has been certified pursuant to the procedures described in this section.

(g) The Authority Board may only refuse to certify zoning ordinances, zoning district maps, or other legislative land use decision on the grounds that such actions do not conform with, or are inadequate to carry out, the provisions of the general plan, certified as consistent with the Reuse Plan pursuant to the provisions of this section, applicable to the affected property.

(h) Nothing in this section or in this chapter will apply to be or construed as adversely affecting any consistency determination previously obtained by a land use agency and certified by the Authority Board pursuant to the Authority Act.

#### **8.01.030. REVIEW OF DEVELOPMENT ENTITLEMENTS.**

(a) After the portion of a general plan applicable to Fort Ord Territory has become effective, development review authority within such portion of territory will be exercised by the land use agency with jurisdiction lying within the area to which the general plan applies. Each land use agency may issue or deny, or conditionally issue, development entitlements within their respective jurisdictions so long as the land use agency has a general plan certified pursuant to Section 8.01.020 and the

decisions issuing, denying, or conditionally issuing development entitlements are consistent with the adopted and certified general plan, the Reuse Plan, and is in compliance with CEQA and all other applicable laws.

(b) All decisions on development entitlements of a land use agency affecting property within the territory of the Authority may be reviewed by the Authority Board on its own initiative, or may be appealed to the Authority Board, subject to the procedures specified in this Section. No development entitlement will be deemed final and complete until the appeal and review procedures specified in this Section and Sections 8.01.040 and 8.01.050 of this chapter have been exhausted.

(c) The land use agency approving a development entitlement within the jurisdiction of the Authority must provide notice of approval or conditional approval to the Executive Officer. Notice of approval or conditional approval of a development entitlement must include:

- (1) A complete copy of the approved development entitlement, including related or applicable text, maps, graphics, and studies.
- (2) A copy of all staff reports and materials presented or made available to any hearing body that reviewed the development entitlement.
- (3) A copy of the completed environmental assessment related to the development entitlement.

#### **8.01.040. REVIEW OF DEVELOPMENT ENTITLEMENTS BY INITIATIVE OF THE AUTHORITY BOARD.**

Within thirty-five (35) days of the receipt of all of the notice materials described in Subsection (c) of Section 8.01.030, the Authority Board, on its own initiative, may consider a resolution setting a hearing on a development entitlement affecting Fort Ord Territory. The Authority Board may continue the matter of setting a hearing once for any reason. In the event the Authority Board does not act to set the matter for hearing within the thirty-five (35) day time period or at the continued meeting, whichever event is last, the decision of the land use agency approving the development entitlement will be deemed final and will not be subject to review by the Authority Board pursuant to this section. Nothing in this section will be construed as abrogating any rights that any person may have to appeal development entitlements to the Authority Board pursuant to Section 8.01.050. In the event the Authority Board sets the matter for hearing, such hearing will commence at the first regular meeting of the Authority Board following the date the Authority Board passed its resolution setting the matter for hearing or at a special hearing date prior to such regular meeting. The Authority Board may continue the matter once. In the event the Authority Board fails to take action on the development entitlement within such time period, the development entitlement will be deemed approved.

#### **8.01.050. REVIEW OF DEVELOPMENT ENTITLEMENTS BY APPEAL TO AUTHORITY BOARD.**

(a) Within ten (10) days of a land use agency approving a development entitlement, any person aggrieved by that approval and who participated

either orally or in writing, in that agency's hearing on the matter, may file a written appeal of such approval with the Executive Officer, specifically setting forth the grounds for the appeal, which is limited to issues raised at the hearing before the land use agency. The person filing the appeal will pay a filing fee in an amount equal to the fee for appeal of combined development permits as established by the Monterey County Board of Supervisors for the cost of processing the appeal. The Executive Officer will set, schedule, and notice a public hearing before the Authority Board. In the event the Authority Board fails to act on the development entitlement within the time periods specified in this section to conduct a public hearing and take action within sixty (60) days on determining whether the development entitlement is consistent with the Reuse Plan and the Authority Act, the land use agency may file, upon ten (10) days notice, a request with the Authority Board to have the matter placed on the next Board agenda for a noticed public hearing to take action to consider the development entitlement.

(b) At the time and place noticed by the Executive Officer, the Authority Board will conduct a hearing on the development entitlement. The Authority Board may continue the matter once for any reason.

(c) Said continued hearing must be rescheduled to a date that is not later than thirty-five (35) days from the date of the initial hearing date. In the event the Authority Board determines the development entitlement is not consistent with the Reuse Plan, the development will be denied and the Authority Board's decision will be final. In the event the Authority Board determines the development entitlement is consistent with the Reuse Plan, the Authority Board will approve the development entitlement.

#### **8.01.060. SUPERCESSION.**

In the event of a conflict or inconsistency between this chapter of the Master Resolution and the Reuse Plan, the Development and Resource Plan, and other adopted FORA policies and procedures in regards to legislative land use decisions and/or development entitlements affecting lands within the affected territory, the provisions of this chapter govern.

#### **8.01.070. FORA AS RESPONSIBLE AGENCY UNDER CEQA.**

In taking action on all legislative land decisions and for review of all development entitlements, the Authority Board acts as a responsible agency under CEQA.

#### **8.01.080. ADMINISTRATIVE APPEALS.**

Any administrative decision made by the Executive Officer may be appealed to the Authority Board within fifteen (15) days by completing and filing a notice of appeal at the Office of the Executive Officer.

## **Article 8.02. CONSISTENCY DETERMINATION CRITERIA**

### **8.02.010. LEGISLATIVE LAND USE DECISION CONSISTENCY.**

(a) In the review, evaluation, and determination of consistency regarding legislative land use decisions, the Authority Board may disapprove any legislative land use decision for which there is substantial evidence supported by the record, that:

- (1) Provides a land use designation that allows more intense land uses than the uses permitted in the Reuse Plan for the affected territory;
- (2) Provides for a development more dense than the density of uses permitted in the Reuse Plan for the affected territory;
- (3) Is not in substantial conformance with applicable programs specified in the Reuse Plan and Section 8.02.020 of this Master Resolution;
- (4) Provides uses which conflict or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property or which conflict or are incompatible with open space, recreational, or habitat management areas within the jurisdiction of the Authority;
- (5) Does not require or otherwise provide for the financing and/or installation, construction, and maintenance of all infrastructure necessary to provide adequate public services to the property covered by the legislative land use decision; and
- (6) Does not require or otherwise provide for implementation of the Fort Ord Habitat Management Plan.

(b) FORA will not preclude the transfer of intensity of land uses and/or density of development involving properties within the affected territory as long as the land use decision meets the overall intensity and density criteria of Sections 8.02.010(a)(1) and (2) above as long as the cumulative net density or intensity of the Fort Ord Territory is not increased.

(c) The Authority Board, in its discretion, may find a legislative land use decision is in substantial compliance with the Reuse Plan when the Authority Board finds that the applicant land use agency has demonstrated compliance with the provisions specified in this section and Section 8.02.020 of this Master Resolution.

### **8.02.020. SPECIFIC PROGRAMS AND MITIGATION MEASURES FOR INCLUSION IN LEGISLATIVE LAND USE DECISIONS.**

(a) Prior to approving any development entitlements, each land use agency must act to protect natural resources and open spaces on Fort Ord Territory

by including the open space and conservation policies and programs of the Reuse Plan, applicable to the land use agency, into their respective general, area, and specific plans.

(1) Each land use agency must review each application for a development entitlement for compatibility with adjacent open space land uses and require suitable open space buffers to be incorporated into the development plans of any potentially incompatible land uses as a condition of project approval.

(2) When buffers are required as a condition of approval adjacent to Habitat Management areas, the buffer must be designed in a manner consistent with those guidelines set out in the Habitat Management Plan.

Roads are not allowed within the buffer area adjacent to Habitat Management areas except for restricted access maintenance or emergency access roads.

(b) Each land use agency must include policies and programs in their respective applicable general, area, and specific plans that will ensure consistency of future use of the property within the coastal zone through the master planning process of the California Department of Parks and Recreation, if applicable. All future use of such property must comply with the requirements of the Coastal Zone Management Act and the California Coastal Act and the coastal consistency determination process.

(c) Monterey County must include policies and programs in its applicable general, area, and specific plans that will ensure that future development projects at East Garrison are compatible with the historic context and associated land uses and development entitlements are appropriately conditioned prior to approval.

(d) Each land use agency must include policies and programs in their respective applicable general, area, and specific plans that limit recreation in environmentally sensitive areas, including, but not limited to, dunes and areas with rare, endangered, or threatened plant or animal communities to passive, low intensity recreation, dependent on the resource and compatible with its long term protection. Such policies and programs will prohibit passive, low-density recreation if the Board finds that such passive, low-density recreation will compromise the ability to maintain an environmentally sensitive resource.

(e) Each land use agency will include policies and programs in their respective applicable general, area, and specific plans that encourage land uses that are compatible with the character of the surrounding districts or neighborhoods and discourage new land use activities which are potential nuisances and/or hazards within and in close proximity to residential areas. Reuse of property in the Army urbanized footprint should be encouraged.

(f) Each land use agency with jurisdiction over property in the Army urbanized footprint must adopt the cultural resources policies and programs of the Reuse Plan concerning historic preservation, and provide appropriate incentives for historic preservation and reuse of historic property, as determined by the affected land use agency, in their respective applicable general, area, and specific plans.

(g) The County of Monterey must amend the Greater Monterey Peninsula Area Plan and designate the Historic East Garrison Area as an historic district in the County Reservation Road Planning Area. The East Garrison will be planned and zoned for planned development mixed uses consistent with the Reuse Plan. In order to implement this aspect of the plan, the County must adopt at least one specific plan for the East Garrison area and such specific plan must be approved before any development entitlement is approved for such area.

(h) Each land use agency will include policies and programs in their respective applicable general, area, and specific plans that support all actions necessary to ensure that sewage treatment facilities operate in compliance with waste discharge requirements adopted by the California Regional Water Quality Control Board.

(i) Each land use agency must adopt the following policies and programs:

- (1) A solid waste reduction and recycling program applicable to Fort Ord Territory consistent with the provisions of the California Integrated Waste Management Act of 1989, Public Resources Code Section 40000 *et seq.*
- (2) A program that will ensure that each land use agency carries out all actions necessary to ensure that the installation of water supply wells comply with State of California Water Well Standards and well standards established by the Monterey County Health Department; and
- (3) A program that will ensure that each land use agency carries out all actions necessary to ensure that distribution and storage of potable and non-potable water comply with State Health Department regulations.

(j) Each land use agency must include policies and programs in their respective applicable general, area, and specific plans to address water supply and water conservation. Such policies and programs must include the following:

- (1) Identification of, with the assistance of the Monterey County Water Resources Agency and the Monterey Peninsula Water Management District, potential reservoir and water impoundment sites and zoning of such sites for watershed use, thereby precluding urban development;

- (2) Commence working with appropriate agencies to determine the feasibility of development of additional water supply sources, such as water importation and desalination, and actively participate in implementing the most viable option or options;
- (3) Adoption and enforcement of a water conservation ordinance which includes requirements for plumbing retrofits and is at least as stringent as Regulation 13 of the Monterey Peninsula Water Management District, to reduce both water demand and effluent generation;
- (4) Active participation in support of the development of “reclaimed” or “recycled” water supply sources by the water purveyor and the Monterey Regional Water Pollution Control Agency to ensure adequate water supplies for the territory within the jurisdiction of the Authority;
- (5) Promotion of the use of on-site water collection, incorporating measures such as cisterns or other appropriate improvements to collect surface water for in-tract irrigation and other non-potable use;
- (6) Adoption of policies and programs consistent with the Authority’s Development and Resource Management Plan to establish programs and monitor development of territory within the jurisdiction of the Authority to assure that it does not exceed resource constraints posed by water supply;
- (7) Adoption of appropriate land use regulations that will ensure that development entitlements will not be approved until there is verification of an assured long-term water supply for such development entitlements;
- (8) Participation in the development and implementation of measures that will prevent seawater intrusion into the Salinas Valley and Seaside groundwater basins; and
- (9) Implementation of feasible water conservation methods where and when determined appropriate by the land use agency, consistent with the Reuse Plan, including; dual plumbing using non-potable water for appropriate functions; cistern systems for roof-top run-off; mandatory use of reclaimed water for any new golf courses; limitation on the use of potable water for golf courses; and publication of annual water reports disclosing water consumption by types of use.

(k) Each land use agency must include policies and programs in their respective applicable general, area, and specific plans that will require new development to demonstrate that all measures will be taken to ensure that storm water

runoff is minimized and infiltration maximized in groundwater recharge areas. Such policies and programs must include:

- (1) Preparation, adoption, and enforcement of a storm water detention plan that identifies potential storm water detention design and implementation measures to be considered in all new development, in order to increase groundwater recharge and thereby reduce potential for further seawater intrusion and provide for an augmentation of future water supplies.
- (2) Preparation, adoption, and enforcement of a Master Drainage Plan to assess the existing natural and man-made drainage facilities, recommend area-wide improvements based on the approved Reuse Plan, and develop plans for the control of storm water runoff from future development. Such plans for control of storm water runoff must consider and minimize any potential for groundwater degradation and provide for the long term monitoring and maintenance of all storm water retention ponds.

(l) Each land use agency must adopt policies and programs that ensure that all proposed land uses on the Fort Ord Territory are consistent with the hazardous and toxic materials clean-up levels as specified by state and federal regulation.

(m) Each land use agency must adopt and enforce an ordinance acceptable to the California Department of Toxic Substances Control ("DTSC") to control and restrict excavation or any soil movement on those parcels of the Fort Ord Territory, which were contaminated with unexploded ordnance, and explosives. Such ordinance must prohibit any digging, excavation, development, or ground disturbance of any type to be caused or otherwise allowed to occur without compliance with the ordinance. A land use agency must not make any substantive change to such ordinance without prior notice to and approval by DTSC.

(n) Each land use agency must include policies and programs in their respective applicable general, area, and specific plans that will help ensure an efficient regional transportation network to access the territory under the jurisdiction of the Authority, consistent with the standards of the Transportation Agency of Monterey County. Such policies and programs must include:

- (1) Establishment and provision of a dedicated funding mechanism to pay for the "fair share" of the impact on the regional transportation system caused or contributed by development on territory within the jurisdiction of the Authority; and
- (2) Support and participate in regional and state planning efforts and funding programs to provide an efficient

regional transportation effort to access Fort Ord Territory.

(o) Each land use agency must include policies and programs in their respective applicable general, area, and specific plans that ensure that the design and construction of all major arterials within the territory under the jurisdiction of the Authority will have direct connections to the regional network consistent with the Reuse Plan. Such plans and policies must include:

- (1) Preparation and adoption of policies and programs consistent with the Authority's Development and Resource Management Plan to establish programs and monitor development to assure that it does not exceed resource constraints posed by transportation facilities;
- (2) Design and construction of an efficient system of arterials in order to connect to the regional transportation system; and
- (3) Designate local truck routes to have direct access to regional and national truck routes and to provide adequate movement of goods into and out of the territory under the jurisdiction of the Authority.

(p) Each land use agency must include policies and programs in their respective applicable general, area, and specific plans to provide regional bus service and facilities to serve key activity centers and key corridors within the territory under the jurisdiction of the Authority in a manner consistent with the Reuse Plan.

(q) Each land use agency must adopt policies and programs that ensure development and cooperation in a regional law enforcement program that promotes joint efficiencies in operations, identifies additional law enforcement needs, and identifies and seeks to secure the appropriate funding mechanisms to provide the required services.

(r) Each land use agency must include policies and programs in their respective applicable general, area, and specific plans that ensure development of a regional fire protection program that promotes joint efficiencies in operations, identifies additional fire protection needs, and identifies and seeks to secure the appropriate funding mechanisms to provide the required services

(s) Each land use agency must include policies and programs in their respective applicable general, area, and specific plans that will ensure that native plants from on-site stock will be used in all landscaping except for turf areas, where practical and appropriate. In areas of native plant restoration, all cultivars, including, but not limited to, manzanita and ceanothus, must be obtained from stock originating on Fort Ord Territory.

(t) Each land use agency must include policies and programs in their general, area, and specific plans that will ensure compliance with the 1997 adopted FORA Reuse Plan jobs/housing balance provisions. The policies and programs for the provision of housing must include flexible targets that generally correspond with expected job creation on the former Fort Ord. It is recognized that, in addressing the Reuse Plan jobs/housing balance, such flexible targets will likely result in the availability of affordable housing in excess of the minimum 20% local jurisdictional inclusionary housing figure, which could result in a range of 21% - 40% below market housing. Each land use agency should describe how their local inclusionary housing policies, where applicable, address the Reuse Plan jobs/housing balance provisions.

- (1) Agencies submitting consistency determination requests to FORA should identify and describe, where applicable, any factors that impact production of housing. These factors may include, without limitation, public financing, water resources, land use regulations, and environmental conditions. Each jurisdiction should consider but not be limited to, the following in establishing its Reuse Plan jobs/housing balance policies and programs:
  - (a) Earmarking of tax increment housing set aside funds for housing programs, production, and/or preservation linked to jobs;
  - (b) Development and/or preservation of ownership or rental housing linked to jobs;
  - (c) Incorporation of job creation targets in project specifications;
  - (d) Linkage of existing housing resources with jobs created;
  - (e) Development of agreements with such jurisdictions for Reuse Plan-enhancing job creation or housing programs, production, and/or preservation; and
  - (f) Granting of incentives to increase additional below-market housing productions to meet job creation needs.
- (2) As a reference and guide for determining income limits and housing affordability levels, each land use agency should use measures established by the U.S. Department of Housing and Urban Development, the California Department of Housing and Community Development, and/or the Association of Monterey Bay Area Governments when determining compliance for very low, low, median, moderate affordability and comparable affordability factors for below-market housing up to 180% of median as approved as FORA

policy guidelines at the January 9, 2004 FORA Board meeting.

**8.02.030. DEVELOPMENT ENTITLEMENT CONSISTENCY.**

(a) In the review, evaluation, and determination of consistency regarding any development entitlement presented to the Authority Board pursuant to Section 8.01.030 of this Resolution, the Authority Board will withhold a finding of consistency for any development entitlement that:

- (1) Provides an intensity of land uses, which is more intense than that provided for in the applicable legislative land use decisions, which the Authority Board has found consistent with the Reuse Plan;
- (2) Is more dense than the density of development permitted in the applicable legislative land use decisions which the Authority Board has found consistent with the Reuse Plan;
- (3) Is not conditioned upon providing, performing, funding, or making an agreement guaranteeing the provision, performance, or funding of all programs applicable to the development entitlement as specified in the Reuse Plan and in Section 8.02.020 of this Master Resolution and consistent with local determinations made pursuant to Section 8.02.040 of this Resolution.
- (4) Provides uses which conflict or are incompatible with uses permitted or allowed in the Reuse Plan for the affected property or which conflict or are incompatible with open space, recreational, or habitat management areas within the jurisdiction of the Authority.
- (5) Does not require or otherwise provide for the financing and installation, construction, and maintenance of all infrastructure necessary to provide adequate public services to the property covered by the applicable legislative land use decision.
- (6) Does not require or otherwise provide for implementation of the Fort Ord Habitat Management Plan.
- (7) Is not consistent with the Highway 1 Scenic Corridor design standards as such standards may be developed and approved by the Authority Board.
- (8) Is not consistent with the jobs/housing balance requirements developed and approved by the Authority Board as provided in Section 8.02.020(t) of this Master Resolution.

**8.02.040. ADOPTION OF REQUIRED PROGRAMS.**

No development entitlement will be approved or conditionally approved within the jurisdiction of any land use agency until the land use agency has taken appropriate action, in the discretion of the land use agency, to adopt the programs specified in the Reuse Plan, the Habitat Management Plan, the Development and Resource Management Plan, the Reuse Plan Environmental Impact Report Mitigation and Monitoring Plan and this Master Resolution applicable to such development entitlement.

**Article 8.03. ENVIRONMENTAL QUALITY**

**8.03.010. ENVIRONMENTAL QUALITY AND PURPOSE.**

The purposes of this Article are to provide guidelines for the study of proposed activities and the effect that such activities would have on the environment in accordance with the requirements of the CEQA.

**8.03.020. DEFINITIONS.**

Except as otherwise defined in this section, words and phrases used in this Article have the same meaning given them by Chapter 2.5 of the California Environmental Quality Act and by Article 20 of the State CEQA Guidelines.

**8.03.030. STATE CEQA GUIDELINES ADOPTED.**

The Authority hereby adopts the State CEQA Guidelines ("Guidelines") as set forth in Title 14, Section 15000 *et seq.* of the California Administrative Code and as may be amended from time to time. This adoption is not construed so as to limit the Authority's ability or authority to adopt additional implementing procedures in accordance with Section 15022 of such Guidelines, or to adopt other legislative enactments the Board may deem necessary or convenient for the protection of the environment.

**8.03.040. EXECUTIVE OFFICER'S RESPONSIBILITY.**

- (a) The Executive Officer will, consistent with FORA obligations:
  - (1) Generate and keep a list of exempt projects and report such list to the Board.
  - (2) Conduct initial studies.
  - (3) Prepare negative declarations.
  - (4) Prepare draft and final environmental impact reports.
  - (5) Consult with and obtain comments from other public agencies and members of the public with regard to the environmental effect of projects, including "scoping" meetings when deemed necessary or advisable.
  - (6) Assure adequate opportunity and time for public review and comment on a draft environmental impact report or negative declaration.

- (7) Evaluate the adequacy of an environmental impact report or negative declaration and make appropriate recommendations to the Board.
- (8) Submit the final appropriate environmental document to the Board who will approve or disapprove a project. The Board has the authority to certify the adequacy of the environmental document.
- (9) File documents required or authorized by CEQA and the State Guidelines.
- (10) Collect fees and charges necessary for the implementation of this Article in amounts as may be specified by the Board by resolution and as may be amended from time to time.
- (11) Formulate rules and regulations as the Executive Officer may determine are necessary or desirable to further the purposes of this Article.

**8.03.050. COMPLETION DEADLINES.**

(a) Time limits for completion of the various phases of the environmental review process must be consistent with CEQA and Guidelines and those time limits are incorporated in this Article by reference. Reasonable extensions to these time limits may be allowed upon consent by any applicant.

(b) Time limits set forth in this section do not apply to legislative actions.

(c) Any time limits set forth in this section will be suspended during an administrative appeal.

**8.03.060. PUBLIC NOTICE OF ENVIRONMENTAL DECISION.**

(a) Notice of the decision of whether to prepare an environmental impact report, negative declaration, or declare a project exempt will be available for public review at the Office of the Executive Officer. Notices of decisions will be provided in a manner consistent with CEQA and the Guidelines.

(b) Notice that the Authority proposes to adopt a negative declaration will be provided to the public at least ten (10) days prior to the date of the meeting at which consideration of adoption of the negative declaration will be given.

(c) Notice of decisions to prepare an environmental impact report, negative declaration, or project exemption will be given to all organizations and individuals that have previously requested such notice. Notice will also be given by publication one time in a newspaper of general circulation in Monterey County.

**8.03.070. APPEAL OF ENVIRONMENTAL DECISION.**

(a) Within fifteen (15) days after the Executive Officer provides notice of a decision, any interested person may appeal the decision to the Board by completing and filing a notice of appeal at the Office of the Executive Officer.

(b) The appellant will pay a fee in the amount as specified in Section 8.01.050(a) of this Resolution.

(c) The Board will hear all appeals of decisions on any environmental issue. The hearing will be limited to considerations of the environmental or procedural issues raised by the appellant in the written notice of appeal. The decision of the Executive Officer will be presumed correct and the burden of proof is on the appellant to establish otherwise. The Board may uphold or reverse the environmental decision, or remand the decision back to the Executive Officer if substantial evidence of procedural or significant new environmental issues is presented.

(d) The decision of the Board will be final.

**8.03.080. CONFLICT DETERMINATIONS.**

This Article establishes procedural guidelines for the evaluation of the environmental factors concerning activities within the jurisdiction of the Authority and in accordance with State Guidelines. Where conflicts exist between this Article and State Guidelines, the State Guidelines prevail except where this Article is more restrictive.