

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Agreement is made this 30 day of November, 1998, by and between Petitioner SIERRA CLUB and Respondent FORT ORD REUSE AUTHORITY.

Recitals

A. On July 16, 1997, Petitioner SIERRA CLUB, a California non-profit corporation, filed a Petition for Writ of Mandamus against Respondent FORT ORD REUSE AUTHORITY ("FORA"), a governmental entity organized under the laws of the State of California, challenging actions of FORA in approving the Fort Ord Reuse Plan and the Reuse Plan's concomitant Environmental Impact Report. The Petition for Writ of Mandamus was filed in Monterey County Superior Court and is identified in the official records of the court as Case No. 112014.

B. Pursuant to the provisions of the California Environmental Quality Act, the Petitioner and Respondent have met on numerous occasions over many months in an attempt to resolve the dispute in an amicable and constructive manner.

C. Without admitting liability or guilt, all parties desire to resolve this litigation and avoid incurring further cost, expense, and disruption incident to the litigation. The parties further desire to achieve a full and complete settlement of all claims and causes of action with reference to each other.

D. Settlement of the dispute involves FORA adoption of a legislative action in the form of an amendment to FORA's "Master Resolution." This legislative action has been identified as "Chapter 8 to the Fort Ord Reuse Authority Master Resolution, relating to Base Reuse Planning and Consistency Determinations" and the proposed legislative action has been subject to public hearings and discussions. The most recent draft of this legislative action reflects the results of this hearing process and it is attached to this agreement as Exhibit "A." The form of the deed restriction and notice required by Section 8.01.010 (j) and (k) of Chapter 8 are attached to this agreement as Exhibits "B" and "C." The Sierra Club has reviewed Exhibits "A", "B" and "C" and the Sierra Club has approved these documents and supports the FORA Board of Directors' adoption of this legislation in its current form.

Terms

The parties hereby agree, warrant, and represent as follows:

1. FORA adopted Chapter 8 to the Fort Ord Reuse Authority Master Resolution in substantially the form contained in Exhibit "A" to this Agreement, subject to Sierra Club

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executing a settlement agreement in this litigation agreeing to dismiss the litigation. The deed restriction and notice required by Section 8.01.010 (j) and (k) of Chapter 8 shall be approved and recorded in the form contained in Exhibits "B" and "C" to this agreement.

2. With FORA adoption of Chapter 8 in the form described in Paragraph 1 as an implementation measure for the Reuse Plan, the SIERRA CLUB endorses and supports the Reuse Plan and acknowledges the Reuse Plan as a constraint driven plan that requires that development of Fort Ord as planned in the Reuse Plan will only occur within the resource constraints within Fort Ord and that any new development will be obligated to pay its fair share to regional improvements and infrastructure necessary to serve Fort Ord.

3. In a form acceptable to Authority Counsel of FORA, the SIERRA CLUB will dismiss the litigation referenced in the recitals, with prejudice.

4. FORA agrees that in the event FORA considers any amendment to Chapter 8 of the FORA Master Resolution, FORA shall perform an environmental assessment consistent with the provisions of the California Environmental Quality Act ("CEQA") and the rules and regulations promulgated thereunder prior to consideration of approval of any such amendment. In addition, FORA shall provide the SIERRA CLUB and its attorney of record at least 30 days notice of the preparation of such environmental assessment, which shall include an opportunity to comment on such assessment, and at least 15 days notice of any hearing on any proposed amendment of Chapter 8. The parties further agree that each amendment to Chapter 8 will be reviewed under CEQA as a new project not be subject to the environmental review limitations of Public Resources Code Section 21166.

5. FORA shall forthwith upon the execution of this agreement contribute the amount of \$ _____ directly to the SIERRA CLUB'S attorneys towards the total cost the SIERRA CLUB'S attorneys fees and legal costs in the preparation and filing of the Petition and in the negotiation of the settlement of this dispute, including the review and comment on the proposed Chapter 8 and the preparation of this agreement. Except as otherwise provided in this paragraph, the parties agree that each party shall be responsible respectively for the payment of their own costs, attorneys' fees, and all other expenses incurred in connection with the above action or any matter or thing respecting the released claims.

6. In consideration of the covenants mutually and individually undertaken in this agreement and except as expressly provided in this agreement, the SIERRA CLUB, its agents, assigns, successors-in-interest, and any other person acting by, through, under or in concert with any of them hereby irrevocably and unconditionally releases FORA, it's members, and any and all

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of FORA's or its members' agents, assigns, attorneys, executives, managers, officers, trustees, employees, successors-in-interest, including any and all employees of FORA, its members, and any other person acting by, through, or in concert with them, from any and all charges, complaints, claims, allegations, actions, causes of action, liabilities, obligations, costs (other than as set forth above), controversies, damages, rights, of any nature whatsoever, known or unknown, suspected or unsuspected, which SIERRA CLUB has or might have had, or which SIERRA CLUB at any time heretofore had or might have had, claimed to have or may claim to have, against FORA, its members, or any or all of FORA's or its members' agents, assigns, attorneys, managers, executives, officers, employees, successors-in-interest, or any other person at FORA or its members acting by, through, under, or in concert with any of them, which were raised or might have been raised in this litigation arising out of the preparation of the Reuse Plan and the Environmental Impact report prepared in conjunction with the Reuse Plan. This release shall not apply to future actions taken by FORA to amend the Reuse Plan or Chapter 8.

7. Each party expressly waives and relinquishes any and all rights and benefits afforded by California Civil Code Section 1542, which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Each of the parties hereby expressly waives the provisions of California Civil Code Section 1542, and each party further expressly waives any right to invoke said provisions now or at any time in the near future.

8. The parties recognize and acknowledge that factors which have induced them to enter into this Agreement may turn out to be incorrect or to be different from what they had previously anticipated, and the parties hereby expressly assume any and all of the risks thereof and further expressly assume the risks of waiving the rights provided by California Civil Code Section 1542.

9. Each party represents that in executing this Agreement, the party does not rely upon and has not relied upon any representation, promise, or statement not expressly contained herein and that party has conferred with his, her, or its own attorneys with regard to the basis or effect of this Agreement.

10. Each party denies any wrongdoing in this matter, and the payment of any sums of money in the matter is not to be deemed an admission of guilt or liability. The parties understand

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and agree that this settlement is made to bring an end to the contested and complex litigation which has resulted from the filing of the Monterey County Superior Court Case Number 112014.

11. This Agreement is executed and delivered in the State of California, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with the laws of the State of California.

12. This Settlement Agreement and General Release is the complete agreement between the parties, and supersedes any prior agreements or discussions between the parties.

13. This Agreement may be executed by the parties in any number of counterparts, which are defined as duplicate originals, all of which taken together shall be construed as one document.

14. Time is of the essence.

15. The parties agree that they have separately and independently thoroughly discussed all aspects of this Agreement with their legal counsel, and that they have carefully read and fully understand all of the provisions contained in this Agreement.

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PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

SIERRA CLUB


DATED: Dec. 6, 1998.

By: Gillian Taylor
Title: Chapter Chair

SETTLEMENT AGREEMENT AND GENERAL RELEASE

FORT ORD REUSE AUTHORITY

DATED: 12/6/, 1998.

By: 
Title: EXECUTIVE OFFICER

Approved as to Form and Content:

By: 
Authority Counsel

By: 
Attorney for Sierra Club

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EXHIBIT A

**A RESOLUTION OF THE FORT ORD REUSE AUTHORITY, AMENDING SECTION
1.01.050 AND ADDING CHAPTER 8 TO THE FORT ORD REUSE AUTHORITY
MASTER RESOLUTION, RELATING TO BASE REUSE PLANNING AND
CONSISTENCY DETERMINATIONS**

Section 1. Section 1.01.050 of the Fort Ord Reuse Authority Master Resolution is amended by adding the following definitions to such section in alphabetical order:

“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.

“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.

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

"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.

"Noticed public hearing" means a public hearing noticed in the following manner

1. Notice of the public hearing shall 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 shall 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 shall 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.

"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.

Section 2. Chapter 8 is added to the Fort Ord Master Resolution to read:

**CHAPTER 8.
BASE REUSE PLANNING AND CONSISTENCY DETERMINATIONS.**

Article 8.01. GENERAL PROVISIONS.

8.01.010. REUSE PLAN

(a) The Authority Board shall 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 shall contain 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, shall be 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, shall be consistent with the Reuse Plan of the Authority and the plans and policies of the Authority, including the Master Resolution. The Authority shall 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, shall 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 shall 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 shall 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 shall be reviewed periodically at the discretion of the Authority Board. The Authority Board shall 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 6001st 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 shall 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 shall 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 CEQA, the Authority Act, the Master Resolution, and all applicable environmental laws.

(i) The failure of any person or entity to receive notice given pursuant to this Chapter shall 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 shall 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 shall be 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 shall 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 shall be 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 shall 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 shall 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 15 days of the receipt of the items described in subsection (b) of this Section.

(c) Within 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 shall 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 shall adopt a resolution making findings in support of its decision, such decision shall be rendered within the time frame described in this section, and such decision shall 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 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 shall take action at such noticed public hearing and such decision shall 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 shall 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 shall 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 shall be deemed certified. In the event the affected land use agency elects to meet the Authority Board's refusal of certification in a manner other than as suggested by the Authority Board, the legislative body of the affected land use agency shall resubmit its legislative land use decision to the Executive Officer and follow the procedures contained in this Section.

(f) No legislative land use decision shall be deemed final and complete, nor shall 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 shall apply to or be 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 shall 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 shall 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 shall provide notice of approval or conditional approval to the Executive Officer. Notice of approval or conditional approval of a development entitlement shall 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 35 days of the receipt of all of the notice materials described in subsection (d) 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 35 day time period or at the continued meeting, whichever event is last, the decision of the land use agency approving the development entitlement shall be deemed final and shall not be subject to review by the Authority Board pursuant to this Section. Nothing in this section shall 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 shall 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 shall be deemed approved.

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

(a) Within 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 shall be limited to issues raised at the hearing before the land use agency. The person filing the appeal shall 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 shall 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 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 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 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 shall be denied

and the Authority Board's decision shall be final. In the event the Authority Board determines the development entitlement is consistent with the Reuse Plan, the Authority Board shall 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 shall 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 shall act 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 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 shall 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 a development more dense than the density of use 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 shall 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 shall 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 shall 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 shall be designed in a manner consistent with those guidelines set out in the Habitat Management Plan. Roads shall not be allowed within the buffer area adjacent to Habitat Management areas except for restricted access maintenance or emergency access roads.

(b) Each land use agency shall 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 shall comply with the requirements of the Coastal Zone Management Act and the California Coastal Act and the coastal consistency determination process.

(c) Monterey County shall 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 shall include policies and programs in their respective applicable general, area, and specific plans that shall 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 shall 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 shall include policies and programs in their respective applicable general, area, and specific plans that shall 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 shall adopt the cultural resources policies and programs of the Reuse Plan concerning historic preservation, and shall 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 shall 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 shall 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 shall adopt at least one specific plan for the East Garrison area and such specific plan shall be approved before any development entitlement shall be approved for such area.

(h) Each land use agency shall include policies and programs in their respective applicable general, area, and specific plans that shall 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 shall 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 action 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 shall include policies and programs in their respective applicable general, area, and specific plans to address water supply and water conservation. Such policies and programs shall 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 developing 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 the 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 at 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.
- (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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall not make any substantive change to such ordinance without prior notice to and approval by DTSC.

(n) Each land use agency shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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, shall be obtained from stock originating on Fort Ord territory.

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 shall 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.

8.02.040. ADOPTION OF REQUIRED PROGRAMS.

No development entitlement shall 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 is 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 California Environmental Quality Act ("CEQA").

8.03.020. DEFINITIONS.

Except as otherwise defined in this section, words and phrases used in this article shall 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 shall not be 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 shall, 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 shall be consistent with CEQA and Guidelines and those time limits are incorporated in this article by reference. Reasonable extensions to these time limits shall be allowed upon consent by any applicant.

- (b) Time limits set forth in this section shall not apply to legislative actions.
- (c) Any time limits set forth in this section shall 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 shall be available for public review at the Office of the Executive Officer. Notices of decisions shall be provided in a manner consistent with CEQA and the Guidelines.

(b) Notice that the Authority proposes to adopt a negative declaration shall 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 shall be given.

(c) Notice of decisions to prepare an environmental impact report, negative declaration, or project exemption shall be given to all organizations and individuals who have previously requested such notice. Notice shall 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 shall pay a fee in the amount as specified in Section 8.01.050 (a) of this Resolution.

(c) The Board shall hear all appeals of decisions on any environmental issue. The hearing shall 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 shall be presumed correct and the burden of proof shall be 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 are 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 shall prevail except where this article is more restrictive.

Section 3. This resolution shall become effective upon adoption.

PASSED AND ADOPTED this ___ day of _____, 1998, upon motion of Member _____, seconded by Member _____, and carried by the following vote:

AYES:

NOES:

ABSENT:

EXHIBIT B

DEED RESTRICTION AND COVENANTS

This Deed Restriction and Covenants is made this ____ day of _____, 199__, by the Fort Ord Reuse Authority ("Owner"), a governmental public entity organized under the laws of the State of California, with reference to the following facts and circumstances:

A. Owner is the owner of the real property described in Exhibit "A" to this Deed Restriction and Covenants ("the property"), by virtue of a conveyance of the property from the United States Government and/or the United States Department of the Army to Owner in accordance with state and federal law, the Fort Ord Base Reuse Plan ("the Reuse Plan"), and the policies and programs of the Fort Ord Reuse Authority.

B. Future development of the property is governed under the provisions of the Reuse Plan and other applicable general plan and land use ordinances and regulations of the local governmental entity on which the property is located consistent with the Reuse Plan.

C. The Reuse Plan provides that the property can only be used and developed in a manner consistent with the Reuse Plan.

D. The Reuse Plan recognizes that development of all property conveyed from FORA is constrained by limited water, sewer, transportation, and other infrastructure services and by other residual effects of a former military reservation, including unexploded ordnance.

E. It is the desire and intention of Owner, concurrently with its acceptance of the conveyance of the property, to recognize and acknowledge the existence of these development constraints on the property and to give due notice of the same to the public and any future purchaser of the property.

F. It is the intention of the Owner that this Deed Restriction and Covenants is irrevocable and shall constitute enforceable restrictions on the property.

NOW, THEREFORE, Owner hereby irrevocably covenants that the property subject to this Deed Restriction and Covenants is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following restrictions and covenants on the use and enjoyment of the property, to be attached to and become a part of the deed to the property. The Owner, for itself and for its heirs, assigns, and successors in interest, covenants and agrees that:

1. Development of the property is not guaranteed or warranted in any manner. Any development of the property will be and is subject to the provisions of the Reuse Plan, the policies and programs of the Fort Ord Reuse Authority, including the Authority's Master Resolution, and other applicable general plan and land use ordinances and regulations of the local governmental entity on which the property is located and compliance with CEQA.

2. Development of the property will only be allowed to the extent such development is consistent with applicable local general plans which have been determined by the Authority to be consistent with the Reuse Plan, including restraints relating to water supplies, wastewater and solid waste disposal, road capacity, and the availability of infrastructure to supply these resources and services, and does not exceed the constraint limitations described in the Reuse Plan and the Final Program Environmental Impact Report on the Reuse Plan.

3. _____

4. This Deed Restriction and Covenants shall remain in full force and effect immediately and shall be deemed to have such full force and effect upon the first conveyance of the property from FORA, and is hereby deemed and agreed to be a covenant running with the land binding all of the Owner's assigns or successors in interest.

5. If any provision of this Deed Restriction and Covenants is held to be invalid or for any reason becomes unenforceable, no other provision shall be thereby affected or impaired.

6. Owner agrees to record this Deed Restriction and Covenants as soon as possible after the date of execution.

IN WITNESS WHEREOF, the foregoing instrument was subscribed on the day and year first above written.

OWNER

-----ACKNOWLEDGMENT-----

EXHIBIT C

NOTICE OF APPLICATION OF PLAN AND DEVELOPMENT LIMITATIONS

This Notice of Plan Application and Development Limitations is made this ____ day of _____, 199__, by the Fort Ord Reuse Authority ("Authority"), a governmental public entity organized under the laws of the State of California, with reference to the following facts and circumstances:

A. Authority, consistent with its charge and obligations under the Fort Ord Reuse Authority Act, Title 7.85, Section 67650, et seq., of the California Government Code, has prepared and adopted a Fort Ord Reuse Plan (the "Reuse Plan") as the controlling planning document regulating and limiting development of property within the territory of the former Fort Ord Military Reservation.

B. Future development of the property is governed under the provisions of the Reuse Plan, the policies and programs of the Authority, including the Authority's Master Resolution, and other applicable general plan and land use ordinances and regulations of the local governmental entity on which the property is located.

C. The Reuse Plan provides that the property can only be used and developed in a manner consistent with the Reuse Plan.

D. The Reuse Plan recognizes that development of all property conveyed from FORA is constrained by limited water, sewer, transportation, and other infrastructure services.

E. It is the desire and intention of Authority to give due notice of the existence of these development constraints on the property within the territory of the former Fort Ord Military Reservation to the public and any future purchaser of the property.

NOW, THEREFORE, Authority hereby gives notice to the public and any and all future owners of property located on territory within the boundaries of the former Fort Ord Military Reservation, that

1. Development of the property is not guaranteed or warranted in any manner. Any development of the property will be and is subject to the provisions of the Reuse Plan, the policies and programs of the Fort Ord Reuse Authority, including the Authority's Master Resolution, and other applicable general plan and land use ordinances and regulations of the local governmental entity on which the property is located and compliance with CEQA.

2. Development of the property will only be allowed to the extent such development is consistent with applicable local general plans which have been determined by the Authority to be consistent with the Reuse Plan, including restraints relating to water supplies, wastewater and solid waste disposal, road capacity, and the availability of infrastructure to supply these resources and services, and does not exceed the constraint limitations described in the Reuse Plan and the Final Program Environmental Impact Report on the Reuse Plan.

3.

IN WITNESS WHEREOF, the foregoing instrument was subscribed on the day and year first above written.

Authority

ACKNOWLEDGMENT :

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