

Chapter 7.00
Regulation of Rights of Way and Property

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Section 7.00.010 **Purpose**

(a) The Authority exists to provide each of its member public agencies with adequate supplies of water to meet their expanding and increasing needs and to provide other necessary services. In furtherance of the full exercise of its statutory purpose, the Authority has acquired and will acquire real property and interests therein, and has acquired or constructed and will acquire and construct, and control, operate, maintain and use works and facilities necessary or convenient to the full exercise of its powers. This chapter is intended to establish regulations, policies and procedures in order to protect and preserve the Authority's property, property interests, works and facilities of the Authority.

(b) The Authority's Board of Directors finds and determines that the Authority's property, property interests, works and facilities must be protected and preserved against unauthorized use. The Board further finds and determines that uses of the Authority's rights of way which interfere with, hinder, delay or obstruct the Authority's ability to immediately construct, reconstruct, install, repair, maintain, remove, inspect, replace, relocate, and operate its works and facilities are detrimental to the Authority, to the public health, safety and welfare and to the Authority's regional public water conveyance system and water supplies. Such uses are incompatible with the Authority's use and ownership of its property, property interests, works and facilities. This chapter has been adopted to prohibit such incompatible uses.

(c) The Authority's Board of Directors also finds and determines that certain uses by other public agencies, public utilities, owners of adjoining, adjacent or underlying property, or the public generally are compatible with the Authority's use and ownership of its property, property interests, works and facilities or may be compatible under certain conditions and subject to certain restrictions. This chapter has been adopted to establish regulations for authorizing compatible uses or uses that may be compatible under certain conditions and subject to certain restrictions.

(d) Nothing in this chapter is intended to grant, alter, expand, or limit any title or interest in or to any Authority property or property interest.

(e) No permit issued pursuant to this chapter is intended to grant any title or interest in Authority property or create any agency or independent contractor relationship between the Authority and any person.

Section 7.00.020 **General Authorization**

(a) This chapter is adopted pursuant to Section 5, paragraph (4) and Section 13, subdivision (b) of the County Water Authority Act.

(b) Except as authorized by Section 7.00.140, when the Authority's interest in property is a fee, leasehold or other possessory interest, no person shall use or occupy such property except as specifically authorized by a duly executed deed (including an easement deed), lease, license, contract or other written instrument approved by the board or General Manager.

1. Unless authorized by paragraph 2 of this subdivision, all deeds, leases, licenses, contracts or other written instruments shall be approved by the board.
2. The General Manager is authorized to approve leases, licenses, contracts or other written instruments where the consideration paid for the interest is \$250,000 or less, and the term of the use is 10 years or less.
3. Except as otherwise approved by the board, a deed, lease, license, contract or other written instrument shall be on terms and conditions governing use that are substantially similar to those established by this chapter for major encroachment permits and shall include a requirement for consideration based upon fair market value or fair market rent, as appropriate, for the interest conveyed.

Section 7.00.030 **Definitions**

The following words and phrases whenever used in this chapter shall have the meaning defined in this section.

"Abatement" means action as may be necessary to remove, terminate or alleviate a nuisance, including but not limited to demolition or removal of property.

“Abatement notice” means a notice issued by the General Manager which requires a responsible person to abate a public nuisance.

“Applicant” means the person that has submitted an application to the Authority for any permit, license, or other authorization to use the Authority’s right of way.

“Detrimental use” means any use of right of way or property which interferes with, impedes, hinders, delays or obstructs the Authority’s ability to immediately construct, reconstruct, install, repair, maintain, inspect, remove, replace, relocate, and operate its works and facilities.

“Encroachment” means a physical occupation in, on, over, across, under or upon Authority right of way or property. Encroachment also means any radio or similar telecommunication transmissions that interfere with the operation of Authority works.

“Facility” means any aqueduct, dam, reservoir, pipeline, pump, generator, diversion structure, vault, manhole, meter, valve, flow control device, air release and air vacuum valve, alarms, erosion control device, blow-off, pump well, power transmission and communication line or equipment, underground anode, anode well or other related facility for cathodic protection of pipes and any other structure necessary or convenient to the full exercise of the Authority’s rights and purposes.

“Joint Use Agreement” means an agreement between the Authority and one or more government agency or public utility to use Authority’s right of way or property to install facilities for streets, sewer, water, cable, electric or gas subject to Authority’s superior rights.

“Owner” means a person having an estate in land encumbered by an Authority easement or other interest in property. Owner also means a person entitled to exercise a reserved right pursuant to Sections 7.00.050 or 7.00.060.

“Permittee” mean a person who holds or has received, pursuant to this chapter, a permit, license or other authorization to use Authority right of way or property, and includes any agent, contractor or employee of the permittee.

“Person” means any natural person, firm, association, business, trust, organization, corporation, partnership, company, or any other entity, which is recognized by law as the subject of rights or duties. Person includes a public utility or a public or governmental agency.

“Parallel encroachment” means an encroachment by a surface or subsurface pipeline, conduit, channel, aqueduct or similar structure, overhead electrical or telecommunication wires and surface street improvements, which has an alignment parallel to an Authority pipeline.

“Public nuisance” means any encroachment caused, maintained or allowed to exist in violation of this Chapter. A public nuisance also has the same meaning as defined in California Civil Code Section 3479.

“Public utility” means a person providing public gas, electric, water or communication service pursuant to a franchise, certificate or permit issued by the State or a local government and subject to regulation by the California Public Utilities Commission.

“Reserved right” means a property right owned by others to make joint use of Authority right of way, existing by virtue of a limitation or condition of the deed, order of condemnation or other instrument by which the Authority acquired title to specific right of way.

“Responsible person” means the person committing a violation. Responsible person also means an owner or manager of a business or property who directs or permits a violation of this Chapter to be done by any other person in the course or apparent course of business of the owner or manager or on the property of the owner. A “responsible person” is a responsible party as defined in section 1.12.030 of this Code.

“Right-of-way” means and includes any land, easement, franchise, or other interest in real property held, owned, leased or otherwise belonging to the Authority.

“Structure” means anything constructed or put together and includes, without limitation, a building, or building part, manufactured or mobile home, fence, gate or chain, post, wall, pipe, foundation, concrete or asphalt formation, driveway or pad, and other similar physical constructions.

“Use” includes any use of property and placing, causing or permitting an encroachment. Use also includes any structure or thing constructed, placed, or maintained in furtherance of a use. Use includes, without limitation, excavation, grading, filling and similar earth movement activity.

“Works” means any facility or improvement to real property necessary or convenient to the full exercise of the Authority’s statutory purpose. Works includes, without limitation, improved or unimproved access roads, wetlands, uplands and other lands set aside for habitat or natural resource preservation.

Section 7.00.040 **Prohibited Uses**

(a) Use of Authority right of way by any person except the Authority or the Authority’s officers, employees, agents or contractors for Authority purposes is prohibited except as otherwise authorized by this chapter. Whenever an exemption or exception from the provisions or requirements of this chapter is claimed by any person under the terms of a franchise, agreement, deed, statute, governmental regulation or legal ground the burden shall be on the person claiming the exemption to establish the authority, scope and extent of the exemption to the reasonable satisfaction of the Authority.

(b) The following detrimental uses are prohibited in Authority’s rights of way:

1. Telecommunication antennas or towers, or satellite dishes on permanent foundations, except receive-only or “ham” radio antenna of the owner property subject to Authority right of way;
2. Any use or structure that blocks or restricts free Authority access to a right of way, work or facility;
3. Encroachment by a building, any portion of a building, a building foundation, or any part of a foundation or anything supported by a slab or a footing;
4. Electric fencing;
5. Gates or access barriers made of cable, rope, chain, barbed or ribbon wire;
6. Swimming pools, ponds, spas or hot tubs, infiltration basins, bioretention basins, dry wells, and other similar structures;
7. Retaining walls, structural walls or walls containing mortar or reinforcement bar;
8. Private sewage treatment systems including septic tank and leach field systems;
9. Dumping, depositing, casting, placing, or stockpiling any waste, rock, dirt or other materials, including without limitation, abandoned vehicles;
10. Dumping, depositing, casting, placing, handling, stockpiling or storing of hazardous, toxic or explosive materials;
11. Corrals or pens for animals except as allowed under section 7.00.050 (c) 1;
12. Water wells;
13. Water tanks over 1,500 gallons in capacity;
14. Water pipeline valves, thrust blocks, backflow preventers, and flow sensors, except as specifically authorized by the Authority when no alternate location outside of the Authority's right of way is feasible;
15. Fertilizer injection systems;
16. Apiaries, whether permanent or temporary;
17. Unrestrained dogs, horses, cattle or other animals that are not under the immediate physical control of the owner;
18. Utility pole anchors;

19. Columns made of concrete, concrete block, rock or any combination of these;
20. Solar electrical generation or water heating systems, including solar panels.

(c) No person shall install, construct, or maintain, or cause to be installed, constructed or maintained any parallel utility in the Authority's right of way except as otherwise specifically authorized pursuant to this chapter.

(d) No person shall trespass on the Authority's right of way or property in violation of any sign prohibiting trespass.

(e) No person shall damage, deface, destroy, modify, alter or mark any Authority facility or work except as otherwise specifically authorized pursuant to this chapter.

(f) No person shall grade, dig, excavate, fill, or trench any Authority right of way except as otherwise specifically authorized pursuant to this chapter.

(g) Any encroachment or use done, constructed, installed, or maintained in violation of any subdivision of this section is a public nuisance and may be abated pursuant to this chapter or other law. The General Counsel is authorized to enforce this section by civil action to enjoin or abate a public nuisance.

(h) No person shall blast within 400 feet of an Authority facility, except as specifically permitted by the Authority and subject to all applicable State and local laws.

Section 7.00.050 Uses Allowed Without a Permit – Notice to Authority

(a) The Board finds and declares that underlying owners of land may have reserved rights to use Authority right of way under the deed or final order of condemnation pursuant to which the Authority holds title to its right of way. The purpose of this section is to provide owners having reserved rights with guidelines, terms, and conditions for the exercise of reserved rights in a manner that will not be incompatible with or detrimental to the Authority's property or property rights. Subject to the provisions of this section, an underlying owner may exercise a reserved right for a use without obtaining a permit from the Authority, except that owner shall give Authority a minimum of 10 calendar days' notice before exercising any reserved right. The notice shall be in writing and filed with the Director of Engineering.

(b) The following is a list of uses and structures generally allowed as an exercise of a reserved right subject to the provisions of this section:

1. Vegetable and flower gardens, lawns and ground cover (such as low growing vegetation, mulch, bark or crushed rock).
2. Bushes and shrubs, but not trees. Bushes and shrubs must be maintained so as not to obstruct visual inspection of the right of way. Hedges shall be trimmed to a height of thirty-six inches (36") or less.

3. Mortarless unreinforced walls thirty-six inches (36") or less in height for landscape purposes. Such walls shall be set back at least ten feet from the closest edge of an Authority pipeline.
4. Low voltage/decorative lighting (12 volt / 75 watt maximum).
5. Storage or parking of operational vehicles, trailers, or mobile equipment authorized for travel on public streets subject to the following weight and spacing limits. Single vehicles not exceeding sixteen thousand pounds or a combination of adjacent vehicles within a thirty-foot square having a combined weight that does not exceed sixteen thousand pounds. Vehicles weighing more than fourteen thousand pounds shall be spaced not less than sixty feet (60') apart.
6. Moveable garden or storage sheds, and gazebos, constructed of wood, sheet-metal or plastic, with a maximum size of eight feet wide by ten feet long by eight feet high (8' x 10' x 8') with no electrical, gas or water utilities. Such sheds shall be set back at least ten feet from the closest edge of any Authority pipeline.
7. Playground equipment, trellises and similar yard or landscape structures, provided that support posts do not extend beyond twelve inches deep and are not secured by concrete or other permanent method. Such uses shall be set back at least ten feet from the closest edge of an Authority pipeline.
8. Asphalt paving or unreinforced concrete driveways, walkways, and pads six inches (6") or less in thickness and requiring no grade modifications.
9. Water lines to provide potable or non-potable water service (except reclaimed sewage or sewer water) to the property to which the reserved right is attached provided the lines are two inches (2") or less in diameter, have a minimum depth of twenty-four inches (24") at crossings under patrol or access roads, are installed above the Authority's pipeline and have a minimum vertical separation of eighteen inches (18") from bottom of line to top of the Authority's pipeline, and are installed such that crossings of the Authority's pipelines are at right angles or as close to a right angle as possible. If pipelines will be installed below ground, the notice required by subdivision (a) shall be accompanied by a plan showing the proposed location of all subsurface facilities. The notice required by subdivision (a) shall be accompanied by a plan showing the location of all shut-off valves. The owner shall file a written update plan showing any changes in location of subsurface facilities or shut-off valves. Shut-off valves shall be located at the edge of the Authority's right of way.
10. Pipes, conduit, wires and cables to provide electric, gas, sewer, and communications service ("utility facilities") to the property to which the reserved right is attached. Subsurface utility facilities shall be installed above the Authority's pipelines and shall have a minimum vertical separation of eighteen inches (18") from bottom of utility to top of the Authority's pipeline and be

installed such that crossings of the Authority's pipelines are at right angles or as close to a right angle as possible. Conductor clearances for overhead electrical and telephone lines shall conform to California Public Utilities Commission General Order 95 for Overhead Electrical Line Construction or at a greater clearance if required by the Authority. The clearance shall not be less than thirty-five feet (35'). Overhead lines shall be located a minimum of thirty feet (30'), measured laterally, away from all aboveground facilities on the pipelines. When underground electric lines provide service at 120 volts (nominal) or greater, conduits shall be encased in a minimum of three inches (3") of red concrete. Aboveground warning signs shall be placed at the right of way lines where subsurface utility facilities enter and exit the right of way. Non-metallic gas lines shall be placed with a twelve-gauge (12 gauge) tracer wire a minimum of twelve inches (12") above the buried utility, terminating in an Authority-approved junction box. If utility facilities will be installed below ground, the notice required by subdivision (a) shall be accompanied by a plan showing the proposed location of all subsurface facilities. The notice required by subdivision (a) shall be accompanied by a plan showing the location of all shut-off switches or valves. The owner shall file a written update plan showing any changes in location of subsurface facilities or shut-off switches or valves. Shut-off switches or valves shall be located to provide easy access by Authority personnel using the Authority's right of way. Septic systems and leach fields are not permitted. Utility poles are not permitted except pursuant to a major encroachment permit or joint use agreement.

11. Storage of boxed landscape trees may be allowed under the following conditions: (a) the boxes must be no larger than 24 inches on each side, (b) the box must have a bottom, (c) the tree, including the box, must not exceed 15 feet in height, and (d) the trees can be stored no closer than 8 feet apart measured from the edges of the boxes. Boxed trees shall be set back at least 10 feet from the closest edge of an Authority pipeline.
12. Any other use or structure not otherwise prohibited by Section 7.00.040 that the Director of Engineering determines in writing not to be incompatible with or detrimental to the Authority's property or property rights. The Director of Engineering shall keep a log of written determinations made pursuant to this paragraph on file in the Engineering Department and with the Clerk of the Board. The log shall be a public record.

(c) Fences are authorized in accordance with this subdivision and subject to the provisions of subdivision (d).

1. Fences constructed of wood, plastic or metal, and pre-fabricated portable corrals, may be permitted no closer than ten feet (10') from the centerline of a pipeline or access or patrol road, and twenty feet (20') from the edge of any surface or above-ground facility; however, the setback from the centerline of a pipeline may be reduced upon approval by the Director of Engineering to allow a fence on a

property line or right-of-way boundary that is within the ten foot setback area. Fences of concrete, stone, or similar materials, are considered walls and not permitted under this subdivision.

2. Fence posts may be secured in concrete or similar material that is poured into the post hole.
3. When a fence is located in a manner that obstructs direct access to an Authority right of way, pipeline or other structure, or between an Authority pipeline or other structure and the Authority's regular patrol road, the Director shall require that a fence be constructed to include installation of a gate that meets the requirements of the Authority. Fences must permit visibility through the fence beginning at a height of thirty-six inches (36") to the top of the fence, and such visibility must be unobstructed at any angle of viewing.
4. The Director may permit a fence that crosses a pipeline if the fence (i) meets the requirements of paragraph 5 of this subdivision, and (ii) has posts that are constructed to minimize interference with the Authority's works and have a minimum of eighteen inches (18") of vertical separation from bottom of the post hole to the top of pipe. Fences include, without limitation, prefabricated portable corrals.
5. Any fence that crosses the Authority's right of way shall include a gate within the right of way as specified by the Director of Engineering. Gateposts shall be installed in accordance with the provisions of this chapter governing fence posts. Gates must not swing to the open or closed position uncontrollably, unless constructed with a latching mechanism to control undesired movement of the gate. Gates shall have reflective caution signs or markings easily visible from a distance of one hundred (100) yards. Gate attachment/locking device shall provide space for an Authority lock that works independently of any lock installed by the permittee. Chains may be used as a locking mechanism for gates. If a gate is located adjacent to a public or private roadway that crosses the right of way, then the gate shall be set back, whenever feasible, as follows: (i) if the gate opens towards the roadway, the setback shall be a minimum of forty feet (40') from the closest edge of the roadway, (ii) if the gate opens away from the roadway, the setback shall be a minimum of thirty (30') feet from the closest edge of the roadway. Subject to the provisions of this chapter, fencing or other material to deter access around the gate may be placed in the right of way as specified by the Director of Engineering.

(d) The exercise of any reserved right within an Authority right of way as authorized by this section is subject to the following:

1. Any structure or use shall be set back a minimum of twenty (20') feet from the edge of any Authority surface facility, unless otherwise provided in subdivisions (b) or (c). The setback from rights of way used for access or patrol road purposes shall be 10 feet from the centerline of the road. The Director of Engineering may

reduce or eliminate the setback requirement for a use if the Director finds that the reduction will not be detrimental to the Authority.

2. The Authority shall not be liable for any damage or injury caused by or attributable to the exercise of a reserved right.
3. Any exercise of a reserved right shall at all times be subject to the paramount right of the Authority to use its property and property rights as necessary or convenient to the full exercise of the Authority's powers according to the terms of the Authority's document of title.
4. No person shall exercise a reserved right in a manner that creates a nuisance or causes a dangerous condition of property.
5. Any structures or uses placed are maintained pursuant to this section are subject to immediate removal by the Authority as may be necessary or convenient for the Authority's purposes. The Authority shall not be liable for costs of damage to or replacement of structures or uses it removes. The Authority may require the owner to remove or relocate a structure or use at the owner's expense.
6. Excavation over the Authority's pipelines shall be done with hand tools only.
7. The owner shall be responsible for compliance with all applicable zoning, building, grading and other laws relating to the use of property.
8. Before performing any excavation in the Authority's right of way the owner shall contact the Director of Engineering for a determination whether a Pothole License Agreement is required pursuant to Section 7.00.150.

Section 7.00.060 **Encroachment Permits – Required – Minor Encroachments**

(a) The Board finds and declares that underlying owners of land may have reserved rights to use the Authority's right of way under the deed or final order of condemnation pursuant to which the Authority holds title to its right of way. The purpose of this section is to provide owners with an expedited process for obtaining a permit from the Authority when a proposed use or structure, appropriately located and conditioned, is or may be compatible with the Authority's property rights or interests. This section is intended to apply to uses proposed by owners that are accessory to or necessary for the owner's primary use of the parcel subject to the Authority's right of way. It is not intended for use in connection with construction of improvements for subdivision or other development of property or for uses that benefit others; rather, those uses are subject to issuance of a major encroachment permit as provided in Section 7.00.070. Except as specifically authorized pursuant to Section 7.00.050 uses of the Authority's rights of way by persons other than the Authority are generally incompatible with or detrimental to the Authority's property or property rights, but, unless otherwise prohibited by Section 7.00.040, such uses may be made compatible and authorized upon compliance with certain requirements and conditions set forth in this section and in the encroachment permit issued by the Director of Engineering after an evaluation of the facts and circumstances of the use. Subject to the

provisions of this section an underlying owner may exercise a reserved right upon obtaining an encroachment permit from the Authority.

- (b) The following requirements apply to uses authorized pursuant to this section:
1. Addition, alteration, modification or demolition of a permitted use is itself a use subject to permit.
 2. The Director of Engineering may establish conditions limiting the time, duration and method of construction. In addition to any other condition authorized by this section, the Director of Engineering may establish conditions for use that are consistent with the requirements for use established by Section 7.00.050.
 3. Any use or structure shall be set back a minimum of twenty feet (20') from the edge of any Authority surface facility unless otherwise provided in this section. The setback from rights of way used for access or patrol road purposes shall be 10 feet from the centerline of the road. The Director of Engineering may reduce or eliminate the setback requirement for a use if the Director finds that the reduction will not be detrimental to the Authority. The reasons for and conditions of the reduction or elimination shall be stated in the permit issued for the use.
 4. No use shall be permitted that would create an unacceptable load on a pipeline or subsurface structure as determined by the Director of Engineering.
 5. Grading, including both excavation and fill, shall be permitted only if the Director of Engineering determines that the proposed grading will not pose a hazard to the integrity of the pipeline, cause an impediment to its maintenance, result in an unacceptable increase or reduction in cover, or cause ponding or erosion within the easement. Grading requiring a permit from another government agency is not allowed unless both the permit of the other agency and the permit of the Authority are obtained.
 6. Avocado, citrus and other similar fruit trees, so long as the trunks are no closer than five (5') feet from the centerline of any Authority pipeline. Shallow-rooted trees that grow no higher than twenty-five feet (25') and have a mature root spread of no more than twenty feet (20') may be permitted provided the trees are planted no closer than twenty-five feet (25') from the closest edge of any of the Authority's pipelines. Deep-rooted trees are prohibited.
 7. Conductor clearances for overhead electrical and telephone lines shall conform to the California State Public Utilities Commission, General Order 95, for Overhead Electrical Line Construction or at a greater clearance if required by Authority. Clearance shall not be less than thirty-five feet (35'). Overhead lines shall be located at least thirty feet (30'), measured laterally, away from all aboveground structures on the pipelines. Utility poles are not permitted except pursuant to a major encroachment permit or joint use agreement.

8. When underground electric lines provide service at one hundred twenty (120) volts (nominal) or greater, conduits shall be encased in a minimum of three inches (3") of red concrete. Above-ground warning signs shall be placed at the right of way lines where the conduits enter and exit the right of way.
 9. Hard-surface, sports courts shall be of asphalt or unreinforced concrete, six inches (6") or less in thickness, with a 10-foot setback from the centerline of an access or patrol road and a 10-foot setback from the centerline of the pipeline. Fencing of sport courts shall comply with the provisions of this subdivision applicable to fences.
 10. Playground equipment may be permitted within 10 feet (10') from the centerline of the pipeline and from the centerline of an access or patrol road. Playground equipment may be anchored to the ground in the same manner as fence posts.
 11. Paved parking lots may be approved subject to conditions controlling loading to pipelines, landscaping, type of light standards, depth and location of light standard foundations, drainage, access and other aspects of design and improvement.
 12. The Director shall not approve a permit for a reclaimed or recycled water line unless the applicant has obtained Department of Health approval.
 13. Water tanks less than 1,500 gallons in capacity and not anchored to the ground may be permissible with a setback from an Authority facility as determined by the Director of Engineering.
- (c) Encroachment permits issued under this section shall be processed as provided in this subdivision.
1. An owner may file an application for a minor encroachment permit with the Director of Engineering. The Director may establish and make available guidelines for submission of applications.
 2. The application shall contain such information as the Director deems appropriate for complete review of the application, and shall include the address to which correspondence regarding the application shall be mailed.
 3. Within thirty calendar days following submission of an application, the Director shall notify the applicant that the application is complete or the nature and extent of additional information that is required to make the application complete. If the Director determines that the proposed use poses a significant risk to the Authority's right of way or facilities, the Director may also advise the applicant that the application will be processed as an application for a major encroachment permit subject to the provisions of this chapter applicable to major encroachment permits.

4. If the applicant submits additional information, the Director shall have thirty calendar working days to notify the applicant that the application is complete or whether further additional information is required.
5. Within thirty calendar days after the Director has determined and notified the applicant that the application is complete, the Director shall approve, conditionally approve or deny a permit. In addition to the information contained in the application, the Director may consider any of the following: topography, soils, drainage, access or other characteristics of the property and adjacent property; community characteristics; location, condition, or nature of existing or reasonably foreseeable future works of the Authority. The Director's determination shall be in writing delivered to the applicant by personal delivery or first class mail.
6. An applicant may appeal the denial of a permit or any condition imposed on a permit to the General Manager by filing a written notice of appeal with the Director within thirty calendar days after the date of mailing or of personal service. The notice shall specify the particular reasons for the appeal. Within fifteen calendar days after filing, the General Manager shall decide the appeal based on the application, the written determination of the Director, the notice of appeal and any written response to the notice of appeal submitted by the Director. The decision of the General Manager shall be made in writing and delivered to the applicant by personal delivery or first class mail. The decision of the General Manager is final, except for judicial review.
7. Applications, correspondence, decisions and other permit records are public records and shall be kept in the Engineering Department.

(d) The following provisions apply to all uses and structures authorized by an encroachment permit issued pursuant to this section:

1. Any use shall be located, constructed and maintained according to the terms and conditions of the minor use permit issued pursuant to this section.
2. The Authority shall not be liable for any damage or injury caused by or attributable to the use or structure.
3. Any use shall at all times be subject to the paramount right of the Authority to use its property and property rights as necessary or convenient to the full exercise of the Authority's rights according to the terms of the Authority's document of title.
4. The owner shall not allow the use or structure to create a nuisance or cause a dangerous condition of property.
5. Any structures or uses placed or maintained pursuant to this section are subject to immediate removal by the Authority as may be necessary or convenient for the

Authority's purposes. The Authority shall not be liable for costs of damage to or replacement of structures or uses it removes. The Authority may require the owner to remove or relocate a structure or use at the owner's expense.

6. The Authority may, at the Owner's expense, cause the encroachment permit to be recorded in the Office of the County Recorder.
7. The owner shall be responsible for compliance with all applicable zoning, building, grading and other laws relating to the use of property.
8. The Authority and its officers and employees shall not be liable for any damages resulting from the issuance, denial, revocation or enforcement of an encroachment permit. The owner shall be responsible for the accuracy and completeness of the permit application and any plans, specifications or other information required by the Director pursuant to this Chapter.

Section 7.00.070 **Encroachment Permits – Required – Major Encroachments**

(a) Except for an owner using the Authority's right of way pursuant to a reserved right as authorized by Section 7.00.050 or 7.00.060 no person shall use, or cause others to use, Authority right of way except pursuant to a current, unexpired major encroachment permit issued pursuant to this chapter. Except as may be authorized pursuant to a joint use agreement under Section 7.00.150, a major encroachment permit shall be required for any building, public or private street, public or private utility, public or private drainage facility or other permanent surface or subsurface use. For facilities of a public agency or a public utility the General Manager may require a license agreement, construction permit and owner agreement, construction and maintenance agreement or other similar document as approved by the General Counsel in lieu of, or in conjunction with an encroachment permit.

(b) A major encroachment permit may be issued subject to any condition or requirement the Director of Engineering, or the General Manager on appeal, determines appropriate to protect the Authority's works, facilities, property and property interests.

(c) The General Manager may promulgate rules and regulations consistent with this chapter for the administration of major encroachment permits. The rules and regulations shall include provisions for issuance of annual master encroachment permits to repetitive users. A "repetitive user" is any public agency or public utility that contemplates repetitive facility installations in the Authority's rights of way and property.

(d) The Director of Engineering may issue a minor encroachment permit instead of a major use permit if the Director determines that all of the following circumstances exist: the use or structure is minor in nature; issuance of a minor encroachment permit would not negatively impact the ability of the Water Authority to construct, operate or maintain facilities; and the procedures for issuance of a major encroachment permit would be unduly burdensome on the applicant and the Water Authority staff.

Section 7.00.080 **Encroachment Permits – Mandatory Requirements – Major Encroachments**

All major encroachment permits and any use or structure within an Authority right of way requiring a major encroachment permit are subject to the following mandatory requirements:

1. Any use shall be located, constructed and maintained according to the terms and conditions of the major use permit issued pursuant to this chapter.
2. The Authority shall not be liable for any damage or injury caused by or attributable to the exercise of major encroachment permit. The Director may require the permittee to obtain and maintain insurance, at the permittee's expense, which insurance shall be provided by an insurer approved by the Authority and authorized to do business in the State of California and which names the Authority as an additional insured. Public agencies may satisfy insurance requirements through coverage under joint power insurance or similar agreements or defense and indemnification agreements approved by the Authority. The permittee shall not be responsible to indemnify the Authority for liability caused by the sole negligence of the Authority or the Authority's officers, employees or agents.
3. The use or structure shall at all times be subject to the paramount right of the Authority to use its property and property rights as necessary or convenient to the full exercise of the Authority's powers according to the terms of the Authority's title.
4. The owner shall not allow the use or structure to create a nuisance or cause a dangerous condition of property.
5. Any structures or uses placed or maintained pursuant to this section are subject to immediate removal by the permittee upon demand of the Authority, or by the Authority at the permittee's cost, as may be necessary or convenient for Authority purposes. The Authority shall not be liable for costs of damage to or replacement of structures or uses it removes. The Authority may require the owner to remove or relocate a structure or use at the permittee's expense. A permittee shall also be required to pay for the cost of relocating other previously permitted encroachments when necessary to accommodate the work of the Authority.
6. The Authority may, at the permittee's expense, cause the major encroachment permit to be recorded in the Office of the County Recorder.
7. The permittee's performance of the requirements, terms or conditions of a major use permit shall be secured by one or more of the following, at the discretion of the permittee, subject to approval of the Authority:

- (A) A bond or bonds by one or more duly authorized corporate sureties authorized to do business in the State of California;
- (B) A deposit with the Authority of money or negotiable bonds of the kind approved for securing deposits of public moneys;
- (C) An irrevocable letter of credit from one or more financial institutions subject to regulation by the State of California or federal government and authorized to do business in the State;
- (D) An agreement by a licensed contractor of the permittee which agreement is secured by one or more of the securities listed in paragraphs (A), (B) and (C).

Security may be waived for major encroachment permits issued to public agencies or public utilities and performed by employees of the agency or utility. The Director of Engineering may require the security of performance to include security for payment of laborers and materials suppliers, which may be in the form of a separate security. The Director may release security upon successful performance of secured obligations.

- 8. The permittee shall be responsible for compliance with all applicable zoning, building, grading, subdivision and other laws.
- 9. The Authority and its officers and employees shall not be liable for any damages resulting from the issuance, denial, revocation or enforcement of an encroachment permit. The applicant shall be responsible for the accuracy and completeness of the permit application and any plans, specifications or other information required by the Director pursuant to this Chapter.
- 10. The Director shall not issue a permit for any encroachment that presents a material risk of harm to Authority works or facilities.
- 11. Issuance of a permit does not constitute a representation by the Authority that subsurface conditions are accurately reflected in the records of the Authority. Each permittee assumes the risk and responsibility for damage to previously installed permitted encroachments and facilities. Each permittee shall be responsible for repair or reimbursement for damage to or for relocating previously installed encroachment or facilities, when caused or necessitated by the installation of its encroachment. The permittee shall notify the Authority and any affected prior permittee(s) when relocation may become necessary. Relocation of a previously approved and permitted encroachment will be subject to review and approval pursuant to this Chapter.
- 12. Except as to those matters preempted by state or federal statute or regulation of the Public Utilities Commission, the Federal Communications Commission, or other state or federal agency, the Authority shall have the authority to coordinate

and prescribe conditions for the installation, use, duration and removal of the encroachment and other encroachments by the permittee. These conditions may include submittal of record drawings, U.S.A. “Dig-alert” subscription, joint trench cost sharing, screening of aboveground utility cabinets, coordination of construction with other agencies or Authority projects, and full cost reimbursement for Authority inspection services during construction. The permittee is responsible for reviewing Authority and other public records, and contacting existing Authority permittees and public utility companies to determine the location of existing facilities that will impact upon or be impacted by the proposed encroachment, and provide any necessary assurances or provisions regarding noninterference with prior permitted encroachments. If determined appropriate by Director, the permittee shall pay the reasonable costs of hiring a qualified construction inspector and/or construction supervisor to protect the Authority’s interests during construction pursuant to an encroachment permit.

Section 7.00.090 **Encroachment Permits – Process – Major Encroachments**

(a) An application for a major encroachment permit may be submitted by an owner of an estate in land, easement or other interest in property subject to Authority right of way or by a public agency or public utility. An application for a major encroachment permit shall be filed with the Director of Engineering and be accompanied by a processing fee in an amount established pursuant to resolution of the Board. The Director may establish and make available to owners guidelines for submission of applications, including but not limited to requirements for submission of improvement or construction plans. The application shall contain such information as the Director deems appropriate for complete review of the application, and shall include the address to which correspondence regarding the application shall be mailed.

(b) The Director of Engineering shall refer the application to the Director of Operation and Maintenance for initial review as to completeness. Within forty-five calendar days following submission of an application, the Director of Engineering shall notify the applicant that the application is complete or the nature and extent of additional information that is required to make the application complete. If the applicant submits additional information, the Director shall have an additional thirty calendar days to notify the applicant that the application is complete or whether further additional information is required. If the application requires environmental review under the provisions of the California Environmental Quality Act, the application shall not be deemed complete until completion of the environmental review process.

(c) After the application is determined to be complete, the Director of Engineering shall refer the application to the Director of Operation and Maintenance for a report and recommendation. The Director of Operation and Maintenance has ninety calendar days from the date the application is determined to be complete to make a report and recommendation. After receipt of the report and recommendation from the Director of Operation and Maintenance, the Director of Engineering may approve, conditionally approve or deny a permit. In addition to the information contained in the application and the report, the Director may consider any of the following: topography, soils, drainage, access or other characteristics of the property; community

characteristics; location, condition, or nature of existing or foreseeable future works of the Authority. The Director's determination shall be in writing delivered to the applicant by personal delivery or first class mail.

(d) An applicant may appeal the denial of a permit or any condition imposed on a permit to the General Manager by filing a written notice of appeal with the Director within thirty calendar days after the date of mailing or of personal service. The notice shall specify the particular reasons for the appeal. Within fifteen calendar days after filing, the General Manager shall decide the appeal based on the application, the written determination of the Director, the notice of appeal and any written response to the notice of appeal submitted by the Director. The decision of the General Manager shall be made in writing and delivered to the applicant by personal delivery or first class mail. The decision of the General Manager is final, except for judicial review.

(e) Applications, correspondence, decisions and other permit records are public records and shall be kept in the Engineering Department.

Section 7.00.100 **Authority of Director of Engineering**

(a) The Director of Engineering, or General Manager on an appeal, shall deny an application for an encroachment permit unless the Director finds that the encroachment as proposed or subject to terms and requirements imposed as a condition of approval meets all of the following:

1. The proposed encroachment will not be detrimental to the Authority's facilities or works;
2. The proposed encroachment will not materially interfere with the Authority's use of right of way;
3. The applicant has complied with the requirements of this chapter and all applicable local, state and federal laws;
4. The applicant has agreed to abide by all requirements, terms and conditions of the permit including without limitation the provision requirement that the permittee indemnify, defend and hold harmless the Authority, its officers, agents, and employees from all liability occasioned from or caused by the issuance of the encroachment permit or by the construction, installation, maintenance or operation of the encroachment.

(b) In addition to other requirements, the Director may impose conditions for approval of a major encroachment permit as follows:

1. Traffic and pedestrian safety measures;
2. Environmental impact mitigation measures;

3. Limits on construction times, noise, duration and method;
4. Limits on duration and requirements for removal of an encroachment;
5. Coordination of construction with other existing encroachments or reasonably anticipated encroachments, other existing or reasonably anticipated construction pursuant to encroachment permits issued to others, and existing or reasonably anticipated Authority projects.

Section 7.00.110 Assignment of Encroachment Permit

A permittee shall not assign rights or delegate obligations of a minor or major encroachment permit without the prior written consent of the Authority. Any assignment or delegation in violation of this section shall constitute abandonment of the permit and relinquishment of any rights thereunder. The Authority may condition any assignment or delegation as necessary to protect the Authority's interests, including without limitations, imposition of conditions to assure faithful performance of the obligations imposed by the permit by the person assuming responsibility under the assignment or delegation.

Section 7.00.120 Encroachment Permits – Revocation – Penalty for Violation of Terms

(a) The Director of Engineering is authorized to revoke an encroachment permit upon determining that the permittee has failed to comply with one or more of the material terms, conditions or restrictions incorporated in the permit or has provided materially false or misleading information regarding the encroachment or its installation. Upon the revocation of an encroachment permit, the permittee shall immediately discontinue any work and cease and desist from further encroaching upon the Authority's right of way or property. The permittee shall restore the site to an as-near original condition as shall be feasible under the supervision and direction of the Authority in accordance with code and legal requirements in effect at the time of restoration. Installed encroachments shall be removed, unless authorized to be disabled and abandoned in place when determined to be feasible by the Authority. Except in cases where immediate revocation is necessary to protect Authority works or facilities, the Director shall not revoke a permit except upon fifteen-calendar days written notice to the permittee. Such notice may be given by first class mail to the permittee at the address stated in the permit application or such other more recent address as provided by the permittee and on file with the Director of Engineering. The notice shall advise the permittee of the permittee's right to file a written statement of good cause why the permit should not be revoked within ten days following the date of the notice. A determination of revocation shall be in writing and shall state the grounds for the revocation. The determination shall be delivered to the permittee by personal delivery or mailed to the permittee by first class mail.

(b) Any permittee who violates any of the terms, conditions or restrictions of an encroachment permit and thereby materially and adversely affects the public health and safety shall be ineligible to receive another encroachment permit from the Authority for a period of one year following the date of such determination, unless this restriction is waived by the General Manager.

(c) Any person who has received a determination of revocation of an encroachment permit may appeal the revocation to the General Manager. The appeal shall be in writing and filed within ten days following the date of the determination of revocation. The appeal shall state grounds upon which the appeal is based. Within twenty working days after filing, the General Manager shall decide the appeal based on the application, the written determination of the Director, the notice of appeal and any written response to the notice of appeal submitted by the Director. The decision of the General Manager shall be made in writing and delivered to the applicant by personal delivery or first class mail. The decision of the General Manager is final, except for judicial review.

Section 7.00.130 **Nonexclusive Use of Right of Way**

(a) Encroachment permits are nonexclusive. Any permit issued by the Authority pursuant to this Chapter which permits the applicant to excavate, construct or remove improvements or encroachments, or grade or encroach within any public right of way also permits the Authority or other Authority permittee to utilize the right of way for its own public purposes during the same time period as the applicant's use. The Authority may extend the time period of the applicant's proposed use of the right of way to suit the Authority's own public purposes.

(b) Permittees shall not interfere with encroachments installed under prior permits, unless arrangements satisfactory to the Authority and the prior permittee are made to protect or relocate the prior encroachments at the expense of the subsequent permittee. Notwithstanding, the Authority shall have the right to remove, relocate or displace any previously allowed or permitted encroachment without liability to a permittee when necessitated by public emergency or the Authority's exercise of its rights.

Section 7.00.140 **Joint Use Agreements**

(a) In lieu of an encroachment permit, public agencies and public utilities desiring to use Authority's rights of way and property for construction, operation and maintenance of compatible public facilities may apply to the Authority for a Joint Use Agreement. The Director of Engineering is authorized to execute Joint Use Agreements on behalf of the Authority.

(b) Application for Joint Use Agreements shall be submitted to the Director of Engineering and shall be evaluated on a case-by-case basis to determine whether such joint use is compatible with the work of the Authority. The applicant shall be advised of the type of joint use, if any, which will be authorized. If it is determined that joint use will not be authorized, a notice of denial shall be mailed to the applicant which explains the reason for the denial.

(c) The Joint Use Agreement shall specify the requirements, terms and conditions of construction, operation and maintenance of the compatible public facilities. Except as otherwise specifically authorized by the Board, a Joint Use Agreement shall include the following requirements:

1. The public agency or public utility shall defend, indemnify and hold the Authority harmless from any damage or injury to Authority works or facilities. The public agency or public utility shall defend, indemnify and hold the Authority harmless from any claim, cause of action, suit, proceeding, or liability of or to any person resulting from the construction, reconstruction, repair, maintenance, operation, condition or existence of any work or facility of the public agency or public utility, or from the acts or omissions of the public agency or public utility or its officers, employees, agents or contractors, except for liabilities resulting from the sole negligence of the Authority or the Authority's officers, employees or agents.
2. Any compatible public agency or public utility use shall at all times be subject to the paramount right of the Authority to use its property and property rights as necessary or convenient to the full exercise of the Authority's statutory purposes and rights according to the terms of the Authority's documents of title.
3. Any structures or uses placed or maintained pursuant to a Joint Use Agreement are subject to removal or relocation by the permittee upon reasonable demand by the Authority, or by the Authority at the permittee's cost, as may be necessary or convenient for Authority purposes. The Authority shall not be liable for costs of damage to or replacement of structures or uses it removes. The Authority may require the permittee to remove or relocate a structure or use at the permittee's expense. A permittee shall also be required to pay for the cost of relocating other previously permitted encroachments when necessary to accommodate the work of the Authority.
4. Performance of the requirements, terms or conditions of a Joint Use Agreement by a contractor shall be secured by one or more of the following, at the discretion of the permittee, subject to approval of the Authority:
 - (A) A bond or bonds by one or more duly authorized corporate sureties authorized to do business in the State of California;
 - (B) A deposit with the Authority of money or negotiable bonds of the kind approved for securing deposits of public moneys;
 - (C) An irrevocable letter of credit from one or more financial institutions subject to regulation by the State of California or federal government and authorized to do business in the State.
5. A Joint Use Agreement shall not constitute a representation by the Authority that subsurface conditions are accurately reflected in the records of the Authority. The party requesting the agreement assumes the risk and responsibility for damage to previously installed permitted encroachments and facilities.

(d) Plans for installation of joint user's facilities including protection of Authority's facilities shall be approved by the Authority in advance of construction. Notice of construction of such facilities shall be provided to Authority at least two weeks in advance.

(e) An applicant denied an agreement may, within 60 days after a notice of denial is mailed, appeal in writing to the Board of Directors. The Board shall consider the information presented in the appeal, comments from the General Manager, and other such data considered appropriate. The denial will be upheld unless it is determined by the Board of Directors that it was arbitrary, or inconsistent with this Chapter.

Section 7.00.150 **Pothole License**

Before commencing any excavation work, except work using hand-tools, in Authority's rights of way or on Authority's property, a person shall obtain a Pothole License from the Director of Engineering. The Pothole License shall be issued solely to authorize limited excavation as necessary to determine the vertical depth and horizontal location of the Authority's subsurface works. The Director of Engineering may approve, conditionally approve or deny a Pothole License. Performance of work pursuant to a Pothole License constitutes consent and agreement by the licensee to be bound by, and perform all work in accordance with, all terms and conditions of the Pothole License. The Director may require a Pothole License prior to or in connection with any encroachment permit application, issuance of an encroachment permit or any joint use agreement. The Director may establish a standard form Pothole License.

Section 7.00.160 **Guidelines for Parallel Encroachments**

(a) Public agencies and public utilities may request authorization to place a parallel encroachment in the Authority's right of way. A permit or approval for a parallel encroachment shall be issued only if the applicant has demonstrated good cause for the parallel encroachment to the satisfaction of the Authority official authorized to permit or approve the encroachment.

(b) An applicant for a parallel encroachment may demonstrate good cause based on any of the following grounds:

1. Other possible alignments would have a severe economic impact on the applicant which impact would be substantially reduced or avoided by the parallel encroachment.
2. Other feasible alignments would result in significant environmental impacts which cannot be feasibly mitigated to a level of insignificance and which would be avoided by the parallel encroachment.
3. Other feasible alignments would require the relocation of a substantial number of businesses or residences or have a severe and extended negative impact on business operations or residents.

4. Other feasible alignments would have severe economic or operational impact, or both, on the applicant which impact or impacts would be substantially reduced or avoided by the parallel encroachment.
 5. The parallel encroachment will provide a direct and substantial benefit to the Authority that outweighs the adverse impact of the encroachment.
- (c) The following facilities are prohibited as parallel encroachments:
1. Sewer, storm water or non-potable water pipelines except that on a case-by-case basis the following facilities may be authorized:
 - (A) Pipelines which transport recycled water meeting at a minimum Title 22 of the California Code of Regulations tertiary standards and which satisfy the pipeline separation requirements set forth in the American Water Works Association Guidelines for the Distribution of Non-Potable Water, and is approved by the California Department of Health Services;
 - (B) Pipelines which transport brine from a water treatment plant;
 - (C) Storm drain pipes 18 inches in diameter or less.
 2. Electric transmission lines.
 3. Gas transmission pipelines.
 4. Petroleum transmission pipelines.
- (d) Parallel encroachments shall be subject to the following requirements:
1. Except street pavement, they shall not be located within an area designated by the Director of Engineering as the probable trench zone in event of an emergency. The probable trench zone is generally an area along the path of the pipeline determined using a slope ratio of two feet horizontal to one foot vertical (2:1 slope), starting at a point five feet from the outside edge and at the bottom of the Authority pipeline and ending at a point on the surface of the right of way. Parallel encroachments, except street pavement, shall be installed in a location as close to the edge of the right of way as possible, and it must be demonstrated that the Authority can excavate its pipelines without disruption to the encroachment;
 2. They shall not be located between or over Authority pipelines;
 3. Isolation or other shut-off valves or switches shall be located at the entry and exit points of the Authority's right of way and at such other locations as may be determined appropriate by the Authority. Valves or switches shall be readily accessible to the Authority;

4. All of the requirements applicable to encroachment permits or joint use agreements;
5. A property use payment shall be made to the Authority in an amount to be determined by the Authority for use or injury to property or property rights, increased maintenance and repair costs, and all other costs or expense associated with the parallel use;
6. The Authority reserves the right, but not the obligation, to repair, restore service and backfill prior to the encroaching utility undertaking similar efforts for the interrupted parallel encroachment in the event of a simultaneous interruption to the operation of an Authority work and a parallel encroachment;
7. The applicant is to be responsible for obtaining, providing and authenticating all necessary plans, profile, and other drawings from the Authority's Engineering Department and shall be responsible to make all the necessary calculations prior to submittal for review by the Authority;
8. Such other terms and conditions as may be imposed on issuance of the encroachment permit or joint use agreement for the parallel encroachment.

Section 7.00.170 Violations and Enforcement

(a) Each day a violation of this chapter exists is a separate violation, and each violation may be charged as a separate offense. Violations may be enforced by civil or administrative measures, or a combination, as provided for in this Chapter and Chapter 1.12 of this Code.

(b) Notwithstanding subdivision (a), violations of this chapter constitute a public nuisance and may be enjoined or abated as provided in subdivision (g) of Section 7.00.040.

Section 7.00.180 Statement of Enforcement Policy

For the purposes of administration of this chapter, the Authority establishes the following enforcement priority:

1. The first priority for enforcement of this chapter shall be those encroachments placed after September 26, 2002 and those encroachments existing before September 26, 2002 within 40 feet of the centerline of any pipeline.
2. The next priority for enforcement shall be those encroachments existing before September 26, 2002 within remaining portions of the right of way.

Section 7.00.190 **Leases for Right of Way Management**

The General Manager may execute a lease for right of way management purposes when all of the following circumstances exist:

1. The lessee is the record owner of land that adjoins the Authority property;
2. The lease establishes terms and conditions for use of the leased property consistent with the provisions of this chapter;
3. The rent is not less than the fair market rent as determined by the Director of Engineering;
4. The lease term does not exceed 10 years.