

**ORDINANCE NO. 18  
OF THE  
BETHEL ISLAND MUNICIPAL IMPROVEMENT DISTRICT**

Be it ordained by the Board of Directors of the Bethel Island Municipal Improvement District, as follows:

**Article 1. General Provisions.**

**Section 1. Citation.**

This ordinance may be cited as the "Variance Ordinance" of the Bethel Island Municipal Improvement District.

**Section 2. Definitions.**

(A) In order to provide for the efficient use of this ordinance, certain terms shall be defined, as hereinafter specified in this section. A defined term may, but is not required to, appear in all capital letters within this ordinance.

(B) For the purposes of this ordinance, unless otherwise apparent from the context, certain terms and words are defined as follows:

- (a) The term "DISTRICT" shall mean the Bethel Island Municipal Improvement District.
- (b) The term "DISTRICT MANAGER" shall mean the District Manager of the Bethel Island Municipal Improvement District.
- (c) The term "DISTRICT PERMIT" shall mean any written document from the DISTRICT which grants to the applicant the DISTRICT's permission to perform an act within the DISTRICT, or otherwise allows the applicant to perform an act within the DISTRICT. The term "DISTRICT PERMIT" shall also include a written document from the DISTRICT which approves a plan, even if another governmental agency must issue a NON-DISTRICT PERMIT or otherwise approve that plan before acts can be undertaken pursuant to that plan.
- (d) The terms "BOARD" and "BOARD OF DIRECTORS" shall mean the Board of Directors of the DISTRICT.
- (e) The term "BIMID ACT" shall mean Chapter 22 of the Statutes of 1960, First Extraordinary Session, as amended.

- (f) The term "DITCH" shall mean a trench dug in the earth, within the DISTRICT, in which DRAINAGE WATER is collected and/or transported for eventual pumping from the ISLAND, and includes a canal.
- (g) The term "DRAINAGE WATER" shall include seepage, non-potable ground water, storm water, irrigation return flow, and water from any other source contributing to the drainage of the ISLAND.
- (h) The term "GRADING" shall mean the alteration of the surface of the land by the addition and/or removal of soil, sand, rock and/or peat, even if such materials come from, or are removed to, another location on the same property, and includes, but is not limited to excavating, filling, stockpiling, terracing, road building, leveling and/or bulldozing on any property.
- (i) The term "ISLAND" shall mean Bethel Island in Contra Costa County, California.
- (j) The term "LEVEE" shall mean the entirety of the embankment which surrounds Bethel Island, which retains the waters of the San Joaquin-Sacramento River Delta, including, but not limited to, Piper Slough, Taylor Slough, Sand Mound Slough, Dutch Slough, and Big and Little Frank's Tracts.
- (k) The term "NON-DISTRICT PERMIT" shall mean any written document from a governmental agency, other than the DISTRICT, which grants to the applicant that agency's permission to perform an act, or otherwise allows the applicant to perform an act.
- (l) The term "OWNER" shall mean the owner or owners of record of a PARCEL OF LAND as shown on the latest equalized assessment role of Contra Costa County, or as otherwise known to the DISTRICT by more recent and reliable information.
- (m) The term "PARCEL OF LAND" shall mean a lot, parcel or other division of land as shown as a separate parcel on the most recent editions of the Contra Costa County Assessor's maps.
- (n) The term "PERSON" shall mean any individual, company, firm, partnership, limited liability company, joint venture, association, corporation, governmental body or other legal entity.
- (o) The term "PROJECT" shall include: (i) the demolition of, construction of, alteration to and/or addition to, any STRUCTURE on a PARCEL OF LAND within the DISTRICT; and (ii) any GRADING on a PARCEL OF LAND within the DISTRICT.

- (p) The term “ADMINISTRATIVE ASSISTANT” shall mean the Administrative Assistant of the Bethel Island Municipal Improvement District.
- (q) The term “STRUCTURE” shall mean anything built or constructed, (except GRADING), including but not limited to a dwelling, mobile home, office building, commercial building, meeting hall, warehouse, garage, shed, dock, wharf, landing, gang plank, wooden or concrete walkway, gate, fence, gazebo, swimming pool, hot tub, deck, bulkhead, wall, pipeline, conduit, vault and pole.

**Section 3. Purpose.**

The purpose of this ordinance is to prescribe the procedure for the relaxation of any substantive provision of DISTRICT’s ordinances, regulations or standards, under specified conditions, so that the public welfare is secured and substantial justice done most nearly in accord with the intent and purposes of the DISTRICT’s ordinances, regulations and standards. The procedure in this ordinance shall apply to all proposals to vary the strict requirements of the DISTRICT’s ordinances, regulations and/or standards.

**Section 4. Interpretation.**

(A) As used in this ordinance, the term "shall" indicates a mandatory direction, while the term "may" indicates a permissive, but not mandatory, grant of authority.

(B) As used in this ordinance, the singular form of a defined term shall include the plural form of that term.

(C) In this ordinance, a reference to either the masculine, feminine or neuter gender shall include the other genders.

**Section 5. Findings re: Existing Facts.**

The Board finds and declares as follows:

- (a) The strict application of the DISTRICT’s ordinances, regulations and/or standards could cause undue hardship to PERSONS seeking to comply with such ordinances, regulations and/or standards.
- (b) The strict application of the DISTRICT’s ordinances, regulations and/or standards could caused undue hardship to people living in the vicinity of a PROJECT.
- (c) It is in the best interests of the DISTRICT to provide a procedure whereby a variance, from the strict application of the DISTRICT’s ordinances, regulations and/or standards, can be applied for and either granted, conditionally granted, or denied by the BOARD OF DIRECTORS.

**Section 6. Authority.**

This ordinance is enacted pursuant to the authority conferred upon the DISTRICT through Sections 34, 41 and 96 of the BIMID ACT, as amended.

**Section 7. Ordinance to be a Regulation.**

The terms of this ordinance shall constitute a regulation of the DISTRICT governing the supplying of storm water and reclamation service.

**Section 8. Finding re: Relation to Zoning.**

The BOARD OF DIRECTORS finds and declares that the ordinances of the DISTRICT are not zoning ordinances. As such, the variances issued under this ordinance are not “variances from the terms of the zoning ordinances” as such term is used in the California Government Code.

**Article 2. Applications for a Variance.**

**Section 9. General Provisions for Seeking Variance.**

Any PERSON may seek a variance from the strict application of the DISTRICT’s ordinances, regulations and/or standards by filing an application with the DISTRICT on a form provided for that purpose.

**Section 10. Form and Contents of Variance Application.**

(A) The application for a variance shall contain such information as the DISTRICT MANAGER shall deem necessary or advisable. The DISTRICT MANAGER shall prepare a form of application for a variance and make the same available to members of the public. Such form may be amended from time to time as the DISTRICT MANAGER deems necessary. The BOARD OF DIRECTORS may, from time to time, review, approve and/or direct that changes be made to any such form.

(B) The application for a variance shall be accompanied by such information as may be necessary to facilitate the review of the proposal in the context of the findings required by Section 17 of this ordinance, including, but not limited to, site and building plans, drawings and elevations, and operational data.

(C) A PERSON seeking a variance pursuant to this ordinance shall file the completed application for a variance and any accompanying documents with the ADMINISTRATIVE ASSISTANT.

(D) If the variance involves a specific PARCEL OF LAND within the DISTRICT, the application shall be signed by all PERSONS who are OWNERS of that PARCEL OF LAND.

## **Section 11. Variance Application filed with other Applications.**

(A) An application for a variance may be submitted with any other application.

(B) If an application is received for a DISTRICT PERMIT, involving a PROJECT, under any DISTRICT ordinance or regulation, and a determination is made by the DISTRICT MANAGER that, from a review of that proposed PROJECT, a variance under this ordinance will be required, the applicant shall be notified of such determination and the DISTRICT shall cease to process the application for a DISTRICT PERMIT until a completed application for a variance is filed, unless the DISTRICT MANAGER, for good cause, determines otherwise.

(C) If the variance application is part of a PROJECT for which one or more other applications have been submitted, all applications for the PROJECT, including the variance application, shall be processed together by the DISTRICT unless the DISTRICT MANAGER, for good cause, determines otherwise.

## **Section 12. Fees.**

From time to time the BOARD OF DIRECTORS may set the fees to be collected for processing an application for a variance. If such fees have been set, the ADMINISTRATIVE ASSISTANT shall collect those fees from the applicant for a variance. Such fees may be in the form of a deposit against which the DISTRICT's actual costs of processing the application for a variance will be deducted.

## **Section 13. Review of Application for Completeness; Additional Information.**

(A) Within a reasonable time after the filing of an application for a variance, the ADMINISTRATIVE ASSISTANT shall forward it to the DISTRICT MANAGER, who shall review the same for completeness.

(B) The DISTRICT MANAGER may, for good cause, require that additional information and/or documents be filed with the DISTRICT before the application is deemed complete. Such additional information and/or documents may include: (a) data on possible impacts that would result, directly or indirectly, from a granting of the variance; (b) data on possible measures to mitigate any direct or indirect impacts that would result from a granting of the variance; (c) a proposal from the applicant to mitigate any direct or indirect impacts that would result from a granting of the variance, or a statement from the applicant that the applicant has no such proposal; (d) written consents from adjacent or nearby property OWNERS, or a statement that such consents cannot be reasonably obtained; and/or (e) any other data or information as may be necessary to facilitate the review of the proposal in the context of the findings required by Section 17 of this ordinance.

## **Article 3. Hearings on Variance Applications; Determinations.**

### **Section 14. Setting a Date for the Hearing on the Application.**

Within a reasonable time after the DISTRICT MANAGER has determined that the application for a variance is complete, the DISTRICT MANAGER shall request that the ADMINISTRATIVE ASSISTANT set the application for a hearing before the BOARD OF DIRECTORS at a regular or

special meeting. When setting the hearing, all reasonable efforts shall be made to set the hearing within 60 days after the DISTRICT MANAGER has determined that the application is complete.

**Section 15. Matters that may be Considered at Hearing on Application for a Variance.**

(A) At the hearing on the application for the variance, the BOARD OF DIRECTORS may consider any relevant matter in determining what action should be taken on the application. If the variance involves a PROJECT, the following are some of the matters that may be considered by the BOARD OF DIRECTORS, depending upon the circumstances of the particular application:

- (a) The direct and indirect impacts that the variance would have on the LEVEE, including: (i) the compression of peat soil due to the weight of any STRUCTURE or other improvement to be constructed as a direct or indirect result of the variance; (ii) the compression of peat soil due to the lack of hydration caused by impervious surfaces constructed as a direct or indirect result of the variance; and (iii) the potential that any STRUCTURE or other improvement to be constructed as a direct or indirect result of the variance, will induce seepage under or through the LEVEE.
- (b) The direct and indirect impacts that the variance would have on any DITCH and/or the flow of DRAINAGE WATER to a DITCH, including: (i) the compression of peat soil due to the weight of any STRUCTURE or other improvement to be constructed as a direct or indirect result of the variance; (ii) the compression of peat soil due to the lack of hydration caused by impervious surfaces constructed as a direct or indirect result of the variance; (iii) the potential that any STRUCTURE or other improvement to be constructed as a direct or indirect result of the variance, will change the flow path of existing DRAINAGE WATER; (iv) the potential that any STRUCTURE or other improvement to be constructed as a direct or indirect result of the variance, will induce seepage under or through the LEVEE, which seepage must then be conveyed to a DITCH; and (v) the potential that any STRUCTURE or other improvement to be constructed as a direct or indirect result of the variance, will cause DRAINAGE WATER to accumulate on adjacent or nearby properties.
- (c) The direct and indirect impacts that the variance would have on the DISTRICT's ability to inspect, maintain and/or improve the LEVEE, including: (i) any impairment to the visibility of the LEVEE for inspection purposes; (ii) the ability to access the LEVEE for inspection purposes; and (iii) the ability to access the LEVEE with maintenance and/or construction equipment such as backhoes, excavators and dump trucks.
- (d) The direct and indirect impacts that the variance would have on the DISTRICT's ability to inspect, maintain and/or improve any DITCH, including: (i) any impairment to the visibility of any DITCH, for inspection purposes; (ii) the ability to access any DITCH for inspection purposes; and (iii) the ability to access any DITCH with maintenance and/or construction equipment such as backhoes and excavators.

- (e) The direct and indirect impacts that the variance would have on the DISTRICT's ability to plan for future improvements to the LEVEE and/or any DITCH.
- (f) The direct and indirect impacts that the variance would have on the DISTRICT's ability to obtain funding from the State and/or Federal Governments.
- (g) The direct and indirect impacts that the variance would have in times of an emergency, (such as a LEVEE failure or other flood), including: (i) any danger that materials may be swept by flood waters onto other lands to the injury of others; (ii) any danger to life and property if there were to be flooding; (iii) the susceptibility, to flood damage, of any proposed STRUCTURE or other improvements to be constructed as a direct or indirect result of the variance, and any contents therein; (iv) the effect of flood damage on the existing individual OWNER and future OWNERS of the PARCEL OF LAND; (v) the availability of alternative locations for any proposed improvements, if such alternate locations are less likely to be damaged by flood waters; (vi) the relationship of any proposed improvements to any comprehensive flood plan and/or floodplain management program for the ISLAND; (vii) the relationship of any proposed STRUCTURE or other improvements to the DISTRICT's LEVEE system; (viii) the relationship of any proposed STRUCTURE or other improvements to DISTRICT's drainage system; (ix) any impairment to the visibility of any emergency evacuation route; (x) the safety of access to the PARCEL OF LAND in time of emergency for ordinary and emergency vehicles; (xi) the expected heights, velocity, duration, rate of rise, and sediment transport of any flood waters expected at the PARCEL OF LAND; (xii) the costs of providing governmental services during and after an emergency, including maintenance and repair of public utilities and public facilities at the PARCEL OF LAND; and (xiii) any increased costs to the DISTRICT, during an emergency, resulting directly or indirectly from the grant of the variance.
- (h) Any increased cost to the DISTRICT resulting directly or indirectly from the grant of the variance.
- (i) The importance of any services, to the community, provided by any proposed STRUCTURE or other improvements to be constructed as a direct or indirect result of the variance.
- (j) The necessity that the STRUCTURE or other improvements to be constructed as a direct or indirect result of the variance be located at, or near to, the waters surrounding the ISLAND.
- (k) The compatibility of the STRUCTURE or other improvements to be constructed as a direct or indirect result of the variance, with existing and anticipated storm water and/or reclamation facilities in the area.

(B) At the hearing on the application for the variance, the BOARD OF DIRECTORS may consider both direct and indirect consequences that are likely to result from the grant of the variance. An activity or event that indirectly results from the grant of the variance can be considered even though no variance would otherwise be required for such activity or event. (By way of example, a variance which allows the LEVEE to be used as an access road may directly result in conflicts between pedestrians and vehicles, but may indirectly result in a garage being built near the LEVEE; the garage can be considered as an indirect result, even if no variance is required for the garage.)

(C) If the variance is for part of a proposed PROJECT, there shall be a rebuttable presumption that the portion of the PROJECT for which no variance is required, will be constructed as an indirect result of the grant of the variance. The burden shall be on the applicant to rebut this presumption at the hearing on the variance application.

### **Section 16. Action to be Taken at Hearing on Application for a Variance.**

At the hearing on the application of the variance, the BOARD OF DIRECTORS may take any of the following actions:

- (a) Continue the hearing for good cause;
- (b) Continue the hearing and require the applicant to submit additional information and/or documentation reasonably necessary for a proper review of the application by the BOARD OF DIRECTORS;
- (c) Continue the hearing so as to give the applicant an opportunity to submit, or make changes to, any plans, to reduce any direct or indirect adverse impacts of the requested variance;
- (d) Continue the hearing so as to allow one or more experts, selected by the DISTRICT, to review any plans and/or any direct or indirect adverse impacts that may result from the requested variance;
- (e) Grant the variance, in whole or in part, pursuant to Section 17 of this ordinance, without imposing any conditions;
- (f) Grant the variance, in whole or in part, pursuant to Section 17 of this ordinance, subject to reasonable conditions;
- (g) Indicate a willingness to grant the variance, in whole or in part, pursuant to Section 17 of this ordinance, subject to reasonable conditions, but continue the hearing in order to allow the DISTRICT MANAGER to draft the language of the specific conditions to be imposed and/or the findings to support any conditions;
- (h) Deny, in whole or in part, the variance; or



- (i) Indicate a willingness to deny the variance, in whole or in part, but continue the hearing in order to allow the DISTRICT MANAGER to draft the language of the findings to support any such denial.

**Section 17. Granting the Variance; Findings.**

A variance can only be granted, in whole or in part, and with or without conditions, if, from the facts before the BOARD OF DIRECTORS, the BOARD OF DIRECTORS makes all of the following findings:

- (a) There is good cause to grant, or partially grant, the variance;
- (b) The strict application of the provisions of the DISTRICT's ordinances, regulations and/or standards would result in practical difficulties or unnecessary hardships, inconsistent with the general purpose of the ordinances, regulations and standards of the DISTRICT;
- (c) If the variance involves a PROJECT: There are exceptional circumstances or restrictions applicable to the PROJECT or the PARCEL OF LAND where the PROJECT is located that do not apply generally to other PROJECTs that have taken place in, or other PARCELS OF LAND located in, the same neighborhood; and
- (d) The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the neighborhood in which the activities authorized by the variance will take place.

**Section 18. Conditions Imposed Upon Granting the Variance; Consent to Conditions.**

(A) The BOARD OF DIRECTORS may impose reasonable conditions upon the granting of the variance, in order to: (i) mitigate any direct or indirect adverse impacts that would likely result if the variance were to be granted without conditions; and/or (ii) be able to make the finding, pursuant to section 17 of this ordinance, that the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the neighborhood in which the activities authorized by the variance will take place.

(B) The BOARD OF DIRECTORS may impose: (i) a condition which must be complied with before commencing a particular activity (such as construction of a PROJECT); and/or (ii) a condition which must be complied with during a particular activity; and/or (iii) a condition which must be complied with prior to a set date or certain event; and/or (iv) a condition which must be complied with before completion of a particular activity (such as completion of a PROJECT).

(C) If a variance does not involve a PROJECT, and conditions have been imposed upon the granting of the variance, the variance shall not become effective until all of the conditions are agreed to, in writing, by the applicant.

(D) If the variance involves a PROJECT, and conditions have been imposed upon the granting of the variance, the variance shall not become effective until all of the conditions are agreed to, in writing, by the applicant and all OWNERS of that PARCEL OF LAND.

(E) If the applicant and/or all OWNERS of the PARCEL OF LAND fail to execute and deliver to the ADMINISTRATIVE ASSISTANT any agreements required by subsections (C) or (D) of this section within forty-five (45) days after being requested to do so by the DISTRICT, the variance application shall be deemed to have been abandoned. For good cause, the DISTRICT MANAGER may extend such forty-five day time limit, but not beyond a total of six (6) months from the date of the request.

(F) If the BOARD OF DIRECTORS should fail to specify when a particular condition must be performed, and it is not clear from the context when it must be performed, then it shall be performed within one (1) year from the grant of the variance. For good cause, the DISTRICT MANAGER may grant one or more extensions to such one year time limit, but no single extension shall be for more than six (6) months.

#### **Section 19. Condition Requiring Recording of Variance and Related Documents.**

(A) The BOARD OF DIRECTORS may impose a condition upon the granting of a variance that the variance, and any conditions imposed thereon, be memorialized in a document recorded against the title to the PARCEL OF LAND involved in the variance. If such a requirement is imposed: (i) the DISTRICT MANAGER shall cause a recordable document to be prepared and executed by the President of the BOARD OF DIRECTORS; (ii) all OWNERS of the PARCEL OF LAND involved shall execute such document and have their signatures notarized thereon; and (iii) the DISTRICT shall cause the document to be recorded with the Contra Costa County Recorder.

(B) The document referred to in subsection (A) of this section shall contain, to the extent reasonably possible, all of the following:

- (a) the names of the OWNERS of the PARCEL OF LAND involved;
- (b) a description of the PARCEL OF LAND involved;
- (c) a description of the variance;
- (d) if the variance is for a STRUCTURE on a particular portion of the PARCEL OF LAND, a general description of where the STRUCTURE is located on the PARCEL OF LAND;
- (e) any conditions imposed upon the granting of the variance, together with a statement that the OWNERS of the PARCEL OF LAND covenant and agree to comply with such conditions;
- (f) a statement, consistent with section 22 of this ordinance, as to the duration of the variance;

- (g) if applicable, a statement, consistent with section 22 of this ordinance, that the variance runs with the land and will bind and inure to the benefit of all future owners of such land until such time as it becomes null and void under the circumstances prescribed in said section;
- (h) the signatures of all OWNERS of the PARCEL OF LAND involved in the variance, duly notarized; and
- (i) the signature of the President of the BOARD OF DIRECTORS, duly notarized, countersigned by the District Secretary.

(C) If all OWNERS of the PARCEL OF LAND fail to execute, have notarized, and deliver to the ADMINISTRATIVE ASSISTANT the document required by subsection (A) of this section within forty-five (45) days after being requested to do so by the DISTRICT, the variance application shall be deemed to have been abandoned. For good cause, the DISTRICT MANAGER may extend such forty-five day time limit, but not beyond six (6) months.

**Section 20. Interpretation of Findings Re: Conditions.**

(A) All findings made by the BOARD OF DIRECTORS regarding the granting of a variance shall be liberally construed to uphold the grant.

(B) All findings made by the BOARD OF DIRECTORS regarding the imposition of a condition on the granting of a variance shall be liberally construed to uphold the condition.

(C) All findings made by the BOARD OF DIRECTORS regarding the denial or partial denial of a variance shall be liberally construed to uphold the denial.

(D) All findings adopted by the BOARD OF DIRECTORS regarding a variance shall be construed as a whole.

**Article 4. Modifications, Re-submissions, Duration and Record Keeping .**

**Section 21. Application to Modify Condition Imposed Upon Variance.**

If, after a condition imposed upon a variance has been agreed to by the applicant and/or the OWNER of the PARCEL OF LAND pursuant to Section 18 of this ordinance, the applicant or the OWNER of the PARCEL OF LAND desires to have the condition modified, such PERSON may apply to the DISTRICT to modify the condition. Any application seeking the modification of a condition shall be treated like an application for an initial variance.

**Section 22. Variance Duration; Events Terminating Variance; Application for Extension.**

(A) If the variance does not involve a PROJECT, the BOARD OF DIRECTORS may impose a time limit on the variance, after which the variance will be null and void. If the variance does not involve a PROJECT, and the BOARD OF DIRECTORS fails to specify a time limit on the variance,

then the variance shall expire one (1) year after it is granted. After expiration of such a variance, no further acts shall be undertaken by the applicant pursuant to the authority conferred by the variance.

(B) If the variance involves a PROJECT, it shall be valid for so long as the STRUCTURE or other improvements being constructed as a direct or indirect result of the variance shall exist, except as provided in subsection (C) of this section and/or as provided in Article 5 of this ordinance. Any variance which involves a PROJECT shall run with the land, and will bind and inure to the benefit of all future owners of such land, until such time as it may become null and void pursuant to the provisions of subsection (C) of this section, and/or as provided in Article 5 of this ordinance.

(C) If the variance involves a PROJECT, the variance shall become null and void if any of the following occur: (i) the PROJECT is not commenced within one year after the variance is granted; (ii) the PROJECT is abandoned after it is commenced, but before it is completed; or (iii) the STRUCTURE or other improvements being constructed as a direct or indirect result of the variance are destroyed in excess of fifty percent (50%) of their fair market value. A PROJECT shall be deemed to have been abandoned under this section if no work has been performed for six (6) consecutive months and/or any NON-DISTRICT PERMIT for the PROJECT has expired before the PROJECT is completed.

(D) If a condition has been imposed upon the granting of the variance, and such condition is the type that would normally be performed after the variance becomes effective (rather than a condition that must be performed before the applicant may take action based upon the grant of the variance), any noncompliance with such condition shall subject the variance to possible termination in accordance with Article 5 of this ordinance.

(E) Applications for extensions of the time limits specified in this section shall be treated like applications for initial variances.

### **Section 23. Effect of Expired, Voided or Terminated Variance.**

Any variance which expires, becomes null and void, or is terminated by the BOARD OF DIRECTORS pursuant to Article 5 of this ordinance, shall subject the PERSON formerly holding the variance, and that PERSON's successors in interest, to those provisions from which the variance was granted.

### **Section 24. Limitation on Re-submission.**

(A) Except as provided in subsection (B) of this section, whenever an application for a variance has been denied by the BOARD OF DIRECTORS, no such application for essentially the same proposal, or any portion thereof, shall be filed within one year after the date of denial. If the variance involves a construction PROJECT, the term "essentially the same proposal" shall mean essentially the same proposal on the same PARCEL OF LAND.

(B) This section shall not apply in instances where the applicant can show, on the face of any subsequent application, changed circumstances sufficient to justify a rehearing.

**Section 25. Records.**

(A) The ADMINISTRATIVE ASSISTANT shall maintain the records of all variances applied for.

(B) After the BOARD OF DIRECTORS has rendered its decision on a variance application, the ADMINISTRATIVE ASSISTANT may destroy any duplicate copies and/or superceded copies of any drawings, blueprints and other plans related to the variance application, so that only one, final, set remains in the DISTRICT's files. Thereafter, any retained final set of drawings, blueprints and other plans related to the variance application may be destroyed by the ADMINISTRATIVE ASSISTANT upon direction of the BOARD OF DIRECTORS, acting by resolution.

(C) If the variance application was denied by the BOARD OF DIRECTORS, the ADMINISTRATIVE ASSISTANT may destroy all drawings, blueprints and other plans related to the variance application after one year from the date of such denial.

**Article 5. Formal Revocation of Variance.**

**Section 26. Grounds for Revocation of Variance.**

The following shall constitute grounds for formal revocation of a variance issued under this ordinance:

- (A) A violation, at the PROJECT or on the PARCEL OF LAND where the PROJECT is located, of any of the provisions of the DISTRICT's ordinances, regulations or standards, (other than the provisions thereof relaxed by the grant of the variance);
- (B) A failure to comply with any condition of approval imposed upon the variance; or
- (C) The variance has become null and void under subsection (C) of Section 22 of this ordinance.

**Section 27. Variance Revocation at Public Hearing.**

In the event grounds exist to revoke a variance, the BOARD OF DIRECTORS may, after holding a public hearing as hereinafter provided, revoke the variance.

**Section 28. Notice of Variance Revocation Hearing.**

(A) Notice of the variance revocation hearing shall be given by posting and mailing a written notice at least ten (10) calendar days before the date set for the hearing. The ADMINISTRATIVE ASSISTANT shall post such a notice on, or within thirty (30) feet of, the PARCEL OF LAND involved, if any. The ADMINISTRATIVE ASSISTANT shall also mail, first class postage pre-paid, or deliver in person, such a notice to the following:

- (a) the PERSON who applied for the variance;

- (b) if the variance involves a specific PARCEL OF LAND within the DISTRICT, then to at least one OWNER of that PARCEL OF LAND; and
- (c) the holder of the variance, if different from the PERSONs described in (a) and (b) of this section.

(B) Any mailing under this section shall be to the PERSON's last known address, as ascertained from the DISTRICT's records and the records of the County Assessor. If there is no last known address for the PERSON, then it shall be sufficient to mail it to the PERSON at General Delivery, Bethel Island, California.

### **Section 29. Hearing and Decision.**

(A) All variance revocation hearings conducted by the BOARD OF DIRECTORS under this Article shall be conducted at a location within the DISTRICT. Unless a different location within the DISTRICT is specified by the ADMINISTRATIVE ASSISTANT, the DISTRICT's office shall be the location of any variance revocation hearing.

(B) The variance revocation hearing may be scheduled to take place at a regular or special meeting of the BOARD OF DIRECTORS in accordance with the DISTRICT's procedures.

(C) At the conclusion of the variance revocation hearing, the BOARD OF DIRECTORS shall render a decision. The decision of the BOARD OF DIRECTORS, including any findings, shall be either: (i) entered into the minutes of the meeting of which the hearing is a part; or (ii) memorialized in a written and signed document separate and apart from any minutes.

(D) The variance revocation hearing may be combined with any other hearing under this ordinance or with any hearing under any nuisance procedure adopted by the DISTRICT.

### **Section 30. Mailing of Decision to Revoke; Finality of Decision.**

(A) If the BOARD OF DIRECTORS revokes the variance at the variance revocation hearing, the ADMINISTRATIVE ASSISTANT shall mail, first class postage pre-paid, a copy of the minutes or other document containing the BOARD's decision, to the following PERSONs:

- (a) the PERSON who applied for the variance;
- (b) if the variance involves a specific PARCEL OF LAND within the DISTRICT, then to at least one OWNER of that PARCEL OF LAND;
- (c) the holder of the variance, if different from the PERSONs described in (a) and (b) of this section; and
- (d) to each PERSON appearing at the variance revocation hearing on behalf any PERSON described in (a), (b) or (c) of this section.

(B) Any mailing under this section shall be to the PERSON's address, as supplied to the DISTRICT at the variance revocation hearing, and if no such address was supplied, then to the PERSON's last known address. If there is no last known address for the PERSON, then it shall be sufficient to mail it to the PERSON at General Delivery, Bethel Island, California.

(C) The decision of the BOARD OF DIRECTORS shall be final when mailed by the ADMINISTRATIVE ASSISTANT in accordance with this section.

### **Section 31. Limitation of Actions After Decision to Revoke.**

Any court action or proceeding to attack, review, set aside, void or annul the decision of the BOARD OF DIRECTORS to revoke a variance shall be commenced within thirty (30) calendar days after the minutes or other document containing the BOARD's decision has been mailed pursuant to Section 30 of this ordinance. Thereafter, all PERSONs are barred from commencing any such action or proceeding and from asserting any defense of invalidity or unreasonableness of such decision, proceeding, act or determination.

### **Section 32. Recording of Notice of Revocation of Variance.**

(A) Concurrent with, or after, any decision by the BOARD OF DIRECTORS to revoke a variance, the BOARD OF DIRECTORS may direct that the DISTRICT MANAGER record a Notice of Revocation of Variance with the County Recorder indicating that the variance has been revoked.

(B) The document referred to in subsection (A) of this section shall contain, to the extent reasonably possible, all of the following:

- (a) the names of the present OWNERS of the PARCEL OF LAND involved;
- (b) if the variance was recorded, the names of the PERSONs who were the OWNERS of the PARCEL OF LAND involved, at the time the variance was granted;
- (c) a description of the PARCEL OF LAND involved;
- (d) a description of the variance;
- (e) if the variance is for a STRUCTURE on a particular portion of the PARCEL OF LAND, a general description of where the STRUCTURE is located on the PARCEL OF LAND;
- (f) a statement that the DISTRICT, acting through its BOARD OF DIRECTORS, and after a public hearing on the matter, has revoked the variance; and

- (g) the signature of the President of the BOARD OF DIRECTORS, duly notarized, countersigned by the District Secretary.

**Section 33. Revocation Remedy is in Addition to Other Remedies.**

(A) The revocation procedure provided in this Article is in addition to any other remedy available to the DISTRICT.

(B) With regard to a variance that has become null and void pursuant to subsection (C) of Section 22 of this ordinance, the revocation procedure provided in this Article is not a prerequisite to the variance becoming null and void. Instead, with regard to such a variance, the revocation procedure provided in this Article is to be used if the DISTRICT desires, in the discretion of the BOARD OF DIRECTORS, to formally revoke the variance.

**Article 6. Declaration of Nuisance After Failure to Comply with a Condition.**

**Section 34. Nuisance Procedure After Failure to Comply with a Condition.**

(A) If a variance has been granted with a condition that requires an act to be performed within the DISTRICT, and the applicant and/or all OWNERS of the PARCEL OF LAND have agreed to the condition pursuant to Section 18 of this ordinance, the DISTRICT shall have the right to institute proceedings under any nuisance procedure established by the DISTRICT, if the act described in the condition has not been performed and non-performance of such act is one that has resulted in, or could result in, a threat to public health and safety.

(B) If a variance has been granted with a condition that requires that an act not be performed within the DISTRICT, and the applicant and/or all OWNERS of the PARCEL OF LAND have agreed to the condition pursuant to Section 18 of this ordinance, the DISTRICT shall have the right to institute proceedings under any nuisance procedure established by the DISTRICT, if the act described in the condition has been performed and such act is one that has resulted in, or could result in, a threat to public health and safety.

(C) If a variance has been granted with a condition that requires that a thing not be allowed to occur within the DISTRICT, and the applicant and/or all OWNERS of the PARCEL OF LAND have agreed to the condition pursuant to Section 18 of this ordinance, the DISTRICT shall have the right to institute proceedings under any nuisance procedure established by the DISTRICT, if the thing has been allowed to occur and such thing is one that has resulted in, or could result in, a threat to public health and safety.

(D) The nuisance procedure referred to in subsections (A), (B) and (C) of this section may include physical abatement and imposition of a lien for the DISTRICT's costs to abate, as more particularly set forth in any nuisance procedure established by the DISTRICT. Any hearing pursuant to any such nuisance procedure may be combined with any other hearing under this ordinance.



**Section 35. Nuisance Remedy is in Addition to Other Remedies.**

The nuisance remedy provided for in this Article is in addition to any other remedy available to the DISTRICT when there has been a failure to comply with any condition of approval imposed upon a variance.

**Article 7. Recording of Notice of Violation.**

**Section 36. Notice of Violation.**

If there is a failure to comply with any condition of approval imposed upon a variance involving a PARCEL OF LAND, the DISTRICT may record a Notice of Violation with the County Recorder in accordance with the procedure of this Article.

**Section 37. Public Hearing Prior to Recording of Notice of Violation.**

In the event the DISTRICT MANAGER, for good cause, believes that there has been a failure to comply with any condition of approval imposed upon a variance involving a PARCEL OF LAND, the BOARD OF DIRECTORS may, after holding a public hearing as hereinafter provided, direct that a Notice of Violation be recorded with the County Recorder.

**Section 38. Notice of Hearing Prior to Recording of Notice of Violation.**

(A) Notice of the hearing on whether to record a Notice of Violation shall be given by posting and mailing a written notice at least ten (10) calendar days before the date set for the hearing. The ADMINISTRATIVE ASSISTANT shall post such a notice on, or within thirty (30) feet of, the PARCEL OF LAND involved. The ADMINISTRATIVE ASSISTANT shall also mail, first class postage pre-paid, or deliver in person, such a notice to the following:

- (a) the PERSON who applied for the variance;
- (b) at least one OWNER of that PARCEL OF LAND; and
- (c) the holder of the variance, if different from the PERSONs described in (a) and (b) of this section.

(B) Any mailing under this section shall be to the PERSON's last known address, as ascertained from the DISTRICT's records and the records of the County Assessor. If there is no last known address for the PERSON, then it shall be sufficient to mail it to the PERSON at General Delivery, Bethel Island, California.

**Section 39. Hearing and Decision.**

(A) All hearings on whether to record a Notice of Violation, conducted by the BOARD OF DIRECTORS under this Article, shall be conducted at a location within the DISTRICT. Unless a different location within the DISTRICT is specified by the ADMINISTRATIVE ASSISTANT, the DISTRICT's office shall be the location of any variance revocation hearing.

(B) The hearing on whether to record a Notice of Violation may be scheduled to take place at a regular or special meeting of the BOARD OF DIRECTORS in accordance with the DISTRICT's procedures.

(C) At the conclusion of the hearing on whether to record a Notice of Violation, the BOARD OF DIRECTORS shall render a decision. The decision of the BOARD OF DIRECTORS, including any findings, shall be either: (i) entered into the minutes of the meeting of which the hearing is a part; or (ii) memorialized in a written and signed document separate and apart from any minutes.

(D) The hearing on whether to record a Notice of Violation may be combined with any other hearing under this ordinance or with any hearing under any nuisance procedure adopted by the DISTRICT.

**Section 40. Mailing of Decision to Record Notice of Violation; Finality of Decision.**

(A) If the BOARD OF DIRECTORS determines that there has been a failure to comply with any condition of approval imposed upon a variance involving a PARCEL OF LAND, and directs that a Notice of Violation be recorded with the County Recorder, the ADMINISTRATIVE ASSISTANT shall mail, first class postage pre-paid, a copy of the minutes or other document containing the BOARD's decision, to the following PERSONS:

- (a) the PERSON who applied for the variance;
- (b) at least one OWNER of that PARCEL OF LAND;
- (c) the holder of the variance, if different from the PERSONs described in (a) and (b) of this section; and
- (d) to each PERSON appearing at the hearing on behalf any PERSON described in (a), (b) or (c) of this section.

(B) Any mailing under this section shall be to the PERSON's address, as supplied to the DISTRICT at the hearing on whether to record a Notice of Violation, and if no such address was supplied, then to the PERSON's last known address. If there is no last known address for the PERSON, then it shall be sufficient to mail it to the PERSON at General Delivery, Bethel Island, California.

(C) The decision of the BOARD OF DIRECTORS shall be final when mailed by the ADMINISTRATIVE ASSISTANT in accordance with this section.

**Section 41. Limitation of Actions After Decision to Record Notice of Violation.**

Any court action or proceeding to attack, review, set aside, void or annul the decision of the BOARD OF DIRECTORS to record a Notice of Violation under this Article shall be commenced within thirty (30) calendar days after the minutes or other document containing the BOARD's decision has been mailed pursuant to Section 40 of this ordinance. Thereafter, all PERSONs are barred from commencing any such action or proceeding and from asserting any defense of invalidity or unreasonableness of such decision, proceeding, act or determination.

**Section 42. Recording of Notice of Violation.**

(A) If the BOARD OF DIRECTORS has directed that a Notice of Violation be recorded pursuant to this Article, the DISTRICT MANAGER shall record a Notice of Violation with the County Recorder.

(B) The document referred to in subsection (A) of this section shall contain, to the extent reasonably possible, all of the following:

- (a) the names of the present OWNERS of the PARCEL OF LAND involved;
- (b) if the variance was recorded, the names of the PERSONS who were the OWNERS of the PARCEL OF LAND involved, at the time the variance was granted;
- (c) a description of the PARCEL OF LAND involved;
- (d) a description of the variance;
- (e) if the variance is for a STRUCTURE on a particular portion of the PARCEL OF LAND, a general description of where the STRUCTURE is located on the PARCEL OF LAND;
- (f) a statement that the DISTRICT, acting through its BOARD OF DIRECTORS, and after a public hearing on the matter, has determined that there has been a failure to comply with a condition of approval imposed upon a variance issued by the DISTRICT; and
- (g) a description of the condition of approval imposed upon the variance and any acts constituting a failure to comply with such condition;
- (h) a statement that the PARCEL OF LAND is in violation of the DISTRICT's ordinances;
- (i) a statement that the DISTRICT may remove the Notice of Violation from the public records upon compliance with the condition, or upon compliance with the DISTRICT's procedure for removal of such a notice;
- (j) the signature of the President of the BOARD OF DIRECTORS, duly notarized, countersigned by the District Secretary.

### **Section 43. Removal of Notice of Violation from Public Records; Conditions and Fees.**

(A) Upon compliance with the condition described in the recorded Notice of Violation, the OWNER of the PARCEL OF LAND affected by the Notice of Violation may request that the DISTRICT withdraw or otherwise remove the Notice of Violation from the public records. If the BOARD OF DIRECTORS determines that there has, in fact, been compliance with such condition, the BOARD shall direct that a document be executed and recorded with the County Recorder which withdraws or otherwise removes such notice from the public records.

(B) If there has not been compliance with the condition described in the recorded Notice of Violation, the OWNER of the PARCEL OF LAND affected by the Notice of Violation may, for good cause, request that the DISTRICT withdraw or otherwise remove the Notice of Violation from the public records. If the BOARD OF DIRECTORS determines that there is good cause for allowing the Notice of Violation to be removed without compliance with such condition, the BOARD shall direct that a document be executed and recorded with the County Recorder which withdraws or otherwise removes such notice from the public records. The BOARD may impose reasonable conditions on the DISTRICT's execution of such document, which may include new and different conditions in lieu of the condition that was not complied with.

(C) From time to time the BOARD OF DIRECTORS may set the fees to be collected for processing a request to withdraw or otherwise remove a Notice of Violation from the public records. If such fees have been set, the ADMINISTRATIVE ASSISTANT shall collect those fees from the OWNER of the PARCEL OF LAND affected by the Notice of Violation. Such fees may be in the form of a deposit against which the DISTRICT's actual costs of processing the request will be deducted.

(D) The BOARD OF DIRECTORS may require that, prior to the DISTRICT's execution of the document withdrawing or otherwise removing the Notice of Violation from the public records, the OWNER of the PARCEL OF LAND affected by such notice pay to the DISTRICT an amount sufficient to cover any or all of the following:

- (a) All of the DISTRICT's costs associated with the hearing on whether to record a Notice of Violation, including but not limited to the cost of outside consultants such as engineers and attorneys;
- (b) To the extent not included in a fee collected under subsection (C) of this section, all of the DISTRICT's costs associated with the hearing or other proceeding to determine if a document withdrawing or otherwise removing the Notice of Violation from the public records should be recorded, including but not limited to the cost of outside consultants such as engineers and attorneys;
- (c) All of the DISTRICT's costs associated with the preparation, execution, notarization and/or recording of the Notice of Violation, including but not limited to the cost of outside consultants such as attorneys;

- (d) All of the DISTRICT's costs associated with the preparation, execution, notarization and/or recording of the document withdrawing or otherwise removing the Notice of Violation from the public records;
- (e) All reasonable costs and damages directly incurred and/or suffered by the DISTRICT as a result of the failure to comply with the condition of approval which was the subject of the Notice of Violation, including but not limited to: (i) the cost of outside consultants such as engineers and attorneys; and (ii) the cost of contractors.

**Section 44. Recording of Notice of Violation Remedy is in Addition to Other Remedies.**

The recording of a Notice of Violation pursuant to the procedure provided in this Article is in addition to any other remedy available to the DISTRICT.

**Article 9. Posting and Effective Date.**

After adoption by the Board, copies of this ordinance shall be posted in three separate places within the DISTRICT for one week. The ADMINISTRATIVE ASSISTANT shall post such copies in the manner specified. This ordinance shall become effective upon the expiration of said one week period.

\* \* \*

Adopted by the Board of Directors of the Bethel Island Municipal Improvement District at a regular meeting on April 20, 2006, by the following vote:

AYES: Directors Phippen, Lawry, Cameron and Goodson.  
 NOES: None.  
 ABSTENTIONS: None.  
 ABSENT: Director Gearhart.

/s/ Dan Phippen  
 Dan Phippen, President of the Board

ATTEST:

/s/ Marguerite Lawry  
 Marguerite Lawry, District Secretary

\* \* \*

AFFIDAVIT OF POSTING ORDINANCE  
AFTER ADOPTION BY BOARD OF DIRECTORS

I, the undersigned, hereby declare, under penalty of perjury under the laws of the State of California, that the following is true and correct:

(A) I am the Administrative Assistant of the Bethel Island Municipal Improvement District.

(B) On April 24, 2006, I posted copies of the Variance Ordinance of the Bethel Island Municipal Improvement District (also known as Ordinance 18) in three separate places within the District, as follows:

- (1) Bulletin Board outside BIMID Hall, 3085 Stone Road, Bethel Island CA .
- (2) Bulletin Board at the United States Post Office, Bethel Island, CA.
- (3) Telephone pole in front of Fire Station at 3045 Ranch Lane, Bethel Island, CA.

Dated: April 24, 2006.

/s/ Julie Hugel  
Julie Hugel, Administrative Assistant