

EXHIBIT 12-A

DRAFT

ORDINANCE NO. 187

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
(1) ESTABLISHING THE DEPARTMENT OF DEFENSE AS A JURISDICTION
AND ADDING A WATER USE CREDIT PROCESS SPECIFIC TO THE
DEPARTMENT OF DEFENSE, AND (2) AUTHORIZING
THE GENERAL MANAGER TO EXTEND WATER USE CREDITS
FOR ONE YEAR FOR JUSTIFIABLE CAUSE**

FINDINGS

1. The Water Management District is charged under the Monterey Peninsula Water Management District Law with the integrated management of the ground and surface water resources in the Monterey Peninsula area.
2. The Water Management District has general and specific power to cause and implement water conservation activities as set forth in Sections 325 and 328 of the Monterey Peninsula Water Management District Law.
3. District Regulations require a Water Permit before any Person connects to or modifies a Connection to a Water Distribution System regulated by the District, such Person shall obtain a written permit from the District, as described in District Rules 21, 23 and 24. The addition of any Connection and/or modification of an existing water Connection to any Water Distribution System regulated by the District requires a Water Permit.
4. Department of Defense projects do not require approvals from the Jurisdiction in which they are located as they are federally owned lands outside the local Jurisdiction's control. For this reason, it is prudent to establish the Department of Defense as a separate "Jurisdiction" as defined by Rule 11.
5. Existing District Regulations, set forth at Rule 25, allow Water Use Credits to be created, but limit their use on the originating site to a term not to exceed ten (10) years.
6. The modifications enacted by this ordinance are intended to facilitate Department of Defense project planning and implementation. Department of Defense project approval and financing processes are often complex, and the time required to implement a Department of Defense project can often exceed the ten (10) year life of a water credit set forth in Rule 25.
7. The Department of Defense has two important schools in the City. The Defense Language Institute is located at the Presidio of Monterey. It is the primary language instruction

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- facility for all branches of the military. The Naval Postgraduate School provides postgraduate degrees for military personnel and is a significant military research center.
8. The Department of Defense plays an important role in the Monterey Peninsula community. The armed forces comprise 18% of the City of Monterey's labor force according to the 2000 Census.
 9. The Department of Defense has extensive housing facilities for its employees, students, and their families. Renovations and expansions of these facilities have occurred as the result of Water Use Credit to offset the new uses.
 10. The Presidio undertook a number of retrofit projects and demolitions in the early 2000's in anticipation of receiving federal funding for various planned construction/reconstruction projects. Funding did not materialize, and those credits have expired or are about to expire. The projects are still in the Presidio of Monterey's Real Property Master Plan.
 11. The shortage of space at the Presidio of Monterey often results in the untimely demolition of buildings after construction of new ones, resulting in a post-project credit that cannot be applied to a previous project.
 12. The Presidio of Monterey's Master Plan lists planned projects that would have used Water Use Credits that were not funded during the District's current ten-year credit window. The former uses may have been prematurely extinguished in anticipation of federal funding approvals that did not occur.
 13. The success of the Presidio of Monterey's mission to train military linguists and the success of the Naval Postgraduate School depends on their ability to modernize and expand their training facilities. In order to do this, these Department of Defense Sites need to have enough water available to offset their projects so that they can comply with District law when a project moves forward.
 14. The Department of Defense Foreign Language Proficiency Enhancement Program changes the student-to-instructor ratio and will result in a greater population of students and instructors. The Presidio of Monterey needs to train more linguists for deployment throughout the world because current projections indicate a shortfall in personnel properly trained to interface with people of other nations. The existing facilities at the Presidio of Monterey neither meet current needs nor the projected requirements at the Defense Language Institute Foreign Language Center.¹
 15. A similar consideration was given to Redevelopment Agency Sites when the Board adopted Ordinance No. 121 on August 15, 2005, to extend credit for Redevelopment Projects for up to 20 years.

¹ Record of Decision for the Presidio of Monterey Real Property Master Plan Environmental Impact Statement, Monterey, CA (<https://www.federalregister.gov/documents/2014/01/09/2014-00153/record-of-decision-for-the-presidio-of-monterey-real-property-master-plan-environmental-impact>)

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16. This ordinance amends Rule 11 to add the Department of Defense to the definition of Jurisdiction to enable Allocations of future water to the Department of the Army, Department of the Navy and to the Coast Guard. At such time as new water supply is allocated, the needs of each branch can be considered and assigned separately.
17. This ordinance modifies the Water Use Credit expiration provision of District Rule 25.5 to extend the termination of Water Use Credits associated with Department of Defense properties. This ordinance shall also add a definition for the term “Department of Defense Sites” to Rule 11 and clarify the meaning of the term “Site” within that same Rule.
18. This ordinance reinstates Department of Defense Water Use Credits that expired less than twenty years ago. According to District records, this equates to between 16.5-24.5 Acre-Feet: The difference in the amount of potential reinstated credit is the result of an issued Water Permit for a barracks project at the Presidio of Monterey that could expire creating a Water Use Credit of eight Acre-Feet.
19. This ordinance requires a Memorandum of Agreement between two or more branches of the Department of Defense (i.e., Army, Coast Guard, Navy) to use a Department of Defense Water Use Credit at a Department of Defense location other than where the Water Use Credit originated. As the Department of Defense does not have a single, authoritative point of contact for the Department of Defense Jurisdiction as a whole, this reduces the potential for one branch to take another’s Water Use Credit without the originating branch’s consent.
20. This ordinance authorizes the General Manager to extend a Water Use Credit for up to one year for justifiable cause.
21. This ordinance shall amend and republish the Rules and Regulations of the Monterey Peninsula Water Management District.
22. CEQA finding..... (to be added prior to second reading)

NOW THEREFORE be it ordained as follows:

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ORDINANCE

Section One: **Short Title**

This ordinance shall be known as the 2021 Department of Defense Water Use Credit Ordinance of the Monterey Peninsula Water Management District.

Section Two: **Purpose**

This ordinance shall streamline water credit provisions to facilitate governmental planning and operations for Department of Defense Sites. This ordinance adds a definition for Department of Defense Site, and the ten (10) year limit for such credit shall be replaced with a maximum period of twenty (20) years and shall apply retroactively to previously documented Water Use Credits. This ordinance also adds the Department of Defense to the list of Jurisdictions defined in Rule 11 and authorizes the General Manager to extend an expiring Water Use Credit for up to one year for justifiable cause.

Section Three: **Amendment to Rule 11**

Rule 11 shall be amended as shown below in *bold italic* type face.

DEPARTMENT OF DEFENSE SITE - “Department of Defense Site” shall mean all facilities and properties owned by one or more branches of the United States Department of Defense that are located within the MPWMD and that are supplied water by California American Water.

JURISDICTION – “Jurisdiction” shall mean one of the following: (1) Carmel-by-the-Sea, (2) Del Rey Oaks, (3) Monterey City, (4) Monterey County, (5) Monterey Peninsula Airport District, (6) Pacific Grove, (7) Sand City, ~~or~~ (8) Seaside, ***or (9) Department of Defense.***

PARCEL – “Parcel” shall mean any unit of land which qualifies as a Parcel under the Subdivision Map Act, and shall include all units of land: (1) which are contiguous to any other Parcel (or are separated only by a road or easement), and (2) which have identical owners, and (3) have an identical present use; or (4) are an Accredited Institution of Higher Education Site, ***a Department of Defense Site***, a Jurisdiction Site, or a Public School District Site. The term “Parcel” shall be given the same meaning as the term “Site”.

SITE - “Site” shall mean any unit of land which qualifies as a Parcel under the Subdivision Map Act, and shall include all units of land: (1) which are contiguous to any other Parcel (or are separated only by a road or easement), and (2) which have identical owners, or (3) are an Accredited Institution of Higher Education Site, ***a Department of Defense Site***, a Jurisdiction Site, or a Public School District Site. The term “Site” shall be given the same meaning as the term “Parcel”.

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Section Four: Amendments to Rule 25.5

1. Rule 25.5 shall be amended to incorporate a new subparagraph. Rule 25.5-C shall be replaced with the text shown in *bold italic* type face.
 - C. A Water Use Credit may be applied to and shall allow future water use on that Site at any time within a period of ten years. *A one-year extension may be granted by the General Manager for justifiable cause.* Subsequently, any remaining unused Water Use Credit shall expire.

2. Rule 25.5 shall be amended to incorporate a new subparagraph. Rule 25.5-E shall be replaced with the text shown in *bold italic* type face. The remainder of Rule 25.5 shall be renumbered.
 - E. *A Water Use Credit at a Department of Defense Site shall expire after twenty (20) years.*

3. Rule 25.5 shall be amended to incorporate a new subparagraph Rule 25.5-I-4 as shown in *bold italic* type face.
 4. *Water Use Credits shall remain on the Department of Defense location where the credit originated unless there is a Memorandum of Agreement between two or more military departments (e.g., Army, Navy, and Coast Guard).*

Section Five: Retroactive Application

The amendment to Rule 25.5 shall apply retroactively to all Water Use Credits documented by the District at Department of Defense Sites as of the effective date of this ordinance. Water Use Credits that expired as a result of having ten years pass since the Abandonment of Use shall be reinstated with a Water Use Credit available for a total of twenty years from the date Permanent Abandonment of Use occurred.

Section Six: Publication and Application

The provisions of this ordinance shall cause the republication and amendment of the permanent Rules and Regulations of the Monterey Peninsula Water Management District.

Section Seven: Effective Date and Sunset

This ordinance shall take effect at 12:01 a.m. on the 30th day after it has been enacted on second reading. This Ordinance shall not have a sunset date.

Section Eight: Severability

If any subdivision, paragraph, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect

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the validity or enforcement of the remaining portions of this ordinance, or of any other provisions of the Monterey Peninsula Water Management District Rules and Regulations. It is the District's express intent that each remaining portion would have been adopted irrespective of the fact that one or more subdivisions, paragraphs, sentences, clauses, or phrases be declared invalid or unenforceable.

On motion by Director _____, and second by Director _____, the foregoing ordinance is adopted upon this _____ day of _____, 2021, by the following vote:

AYES:

NAYS:

ABSENT:

I, David J. Stoldt, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing is a full, true and correct copy of an ordinance duly adopted on the _____ day of _____ 2021.

Witness my hand and seal of the Board of Directors this _____ day of _____ 2021.

David J. Stoldt, District Secretary

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