

EXHIBIT 12-A

**ORDINANCE NO. 194
AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
AMENDING RULE 11 AND ADDING RULE 23.10
TO ESTABLISH A WATER ENTITLEMENT FOR
THE CITY OF SEASIDE**

FINDINGS

1. The Monterey Peninsula Water Management District (MPWMD or District) is charged under the Monterey Peninsula Water Management District Law with the integrated management of all ground and surface water resources in the Monterey Peninsula area.
2. The Monterey Peninsula Water Management District Law grants MPWMD general and specific powers to cause sufficient water to be available for present and future beneficial use or uses of lands or inhabitants within the District. MPWMD Rule 30 requires the District to establish a specific Allocation for each Jurisdiction and provides that the District also may establish Water Entitlements as necessary to manage water supplies throughout the District.
3. This ordinance establishes a Water Entitlement that is sourced from adjudicated groundwater rights that the City of Seaside (Seaside) possesses in the Seaside Groundwater Basin that California-American Water Company (Cal-Am) will convey through its Water Distribution System (WDS) to Water Use Permit and Water Permit holders.
4. Seaside is a general law city situated in the County of Monterey. Seaside produces groundwater from the Seaside Basin (1) for use on two city-owned golf courses that overly the Basin, and (2) for municipal water service to its residents.
5. Seaside holds adjudicated rights under the judgment issued in the Seaside Basin Groundwater Adjudication Decision (Amended Decision of the Monterey County Superior Court, Case No. M66343) to an Alternative Production Allocation of water totaling 540 Acre-Feet annually (AFA) from the Seaside Groundwater Basin for municipal use and irrigation of the two city-owned golf courses. Recent golf course irrigation is recognized at 450 AFA. On October 25, 2019, Judge Robert O'Farrell approved the In-Lieu Groundwater Storage Program proposed by the City of Seaside. As a result, Seaside has

been purchasing recycled water from Marina Coast Water District to irrigate the golf courses in lieu of using a portion of its Alternative Production Allocation. Under the program, Seaside may use the stored water credits or assign the credits to others to allow production of groundwater to serve other water demands.

6. A portion of the stored water credit is being assigned to Cal-Am for service to the Ascent Project (Benefited Properties) in the Seaside Groundwater Basin until the State Water Resources Control Board Cease and Desist Order and the California Public Utilities Commission moratorium are lifted. The Ascent Project is owned by Ascent Seaside LLC, a Delaware Limited Liability Company, and will consist of a ten-building workforce rental housing development at Broadway Avenue and Terrace Street (APNs: 012-191-001, -002, -003, -004, -030, -031, -033, -034, and -035).
7. Upon approval by the MPWMD of a Water Distribution System Amendment to the Cal-Am Production Limit as a result of the assignment of stored water credit from the Seaside golf courses to Cal-Am, the Cal-Am production limit from the Coastal Subareas of the Seaside Basin will be increased by 13.00 AFA to meet the water needs of the Benefited Properties. This is equivalent to metered sales (customer water consumption) of 12.09 AFA that will be approved via MPWMD Water Permits for use on the Benefited Properties, based on an assumed system loss factor (unaccounted for water) of seven percent (7%).
8. This ordinance shall allow for new Connections and modifications of existing Connections at the Benefited Properties.
9. This ordinance authorizes Seaside, on terms and conditions set forth in this ordinance, to separately sell and convey portions of the Water Entitlement established by this ordinance within the Cal-Am WDS supplied with water from Cal-Am Wells in the Seaside Groundwater Basin as is allowed by the Seaside Basin Groundwater Adjudication Decision.
10. This ordinance provides that water use authorized by the Water Use Permit issued under this ordinance shall be subject to the water efficiency and conservation rules of MPWMD under its Regulation XIV and the rationing rules of MPWMD under its Regulation XV.
11. This ordinance amends Rule 11 (Definitions) and adds Rule 23.10 (City of Seaside Water Entitlement) to the Rules and Regulations of the MPWMD.

12. MPWMD has followed those guidelines adopted by the State of California and published in the California Administrative Code, Title 14, Section 15000, *et seq.* Specifically, the MPWMD has determined that a Statutory Exemption applies as defined in CEQA Guidelines Section 15268 (Ministerial Projects), based on previous environmental determinations by the Courts. The Monterey County Superior Court concluded that its Adjudication Decision included environmental determinations related to the Seaside Basin and adjudication of the rights therein. The MPWMD action is also consistent with the May 11, 2009, Court Order as confirmed by the Sixth District Court of Appeal, which limits CEQA review of water-related issues to areas other than the Seaside Basin.

NOW THEREFORE, be it ordained as follows:

DRAFT

ORDINANCE

Section One: Short Title

This ordinance shall be known as the City of Seaside Water Entitlement Ordinance of the Monterey Peninsula Water Management District.

Section Two: Purpose

This ordinance establishes a Water Entitlement for Benefited Properties in the City of Seaside supplied by California-American Water Company (Cal-Am) from Wells located in the Coastal Subareas of the Seaside Groundwater Basin based on a temporary assignment of Seaside's banked water credits from its in-lieu groundwater storage program as recognized by the Seaside Watermaster and approved by the Monterey County Superior Court pursuant to the Seaside Basin Groundwater Adjudication Decision.

Section Three: Amendment of Rule 11, Definitions

The following definitions in Rule 11 shall be amended as shown in bold italics (*bold italics*) and strikeout (~~strikethrough~~).

WATER ENTITLEMENT HOLDER – “Water Entitlement Holder” shall refer to one of the following entities: The Pebble Beach Company (Ordinance Nos. 39 and 109), Hester Hyde Griffin Trust (Ordinance No. 39), Lohr Properties Inc. (Ordinance No. 39), the City of Sand City (Ordinance No. 132), Cypress Pacific Investors LLC (Water Distribution System Permit approved September 15, 2014), Malpaso Water Company LLC (Ordinance No. 165), ~~and~~ D.B.O. Development No. 30, a California Limited Liability Company (Ordinance No. 166), *and City of Seaside (Ordinance No. 194).*

Section Four: Addition of Rule 23.10, City of Seaside Water Entitlement

The following text shall be added as Rule 23.10 City of Seaside Water Entitlement:

RULE 23.10 – CITY OF SEASIDE WATER ENTITLEMENT

A. CITY OF SEASIDE WATER ENTITLEMENT

1. The City of Seaside (Seaside) Water Entitlement confers a Water Entitlement of 13.00 Acre-Feet annually (AFA) through the California-American Water Company (Cal-Am) Water Distribution System (WDS) for production from Cal-Am's Seaside Groundwater Basin Wells, less an assumed system loss factor of seven percent (7%). The water available for permitting purposes shall be 12.09 AFA.
2. The Seaside Water Entitlement shall be available for assignment to the Benefited Properties that are supplied with water from the Seaside Groundwater Basin and that are located within the Cal-Am WDS and the City of Seaside. Ascent Seaside LLC, a Delaware Limited Liability Company, owns the Benefited Properties consisting of Assessor's Parcel Numbers 012-191-001, -002, -003, -004, -030, -033, -034, and -035.
3. Seaside is authorized to separately sell, transfer, and convey to owners of Benefited Properties for such consideration and upon such terms and conditions as Seaside in its discretion may determine, such portions of the Seaside Water Entitlement as it may choose. Any portion of the Seaside Water Entitlement conveyed to the owner of a Benefited Property by an Assignment Document shall temporarily vest in the owner of the Benefited Property subject to the provisions of Rule 23.10-C.
4. The Seaside Water Entitlement shall be separate and distinct from any other Allocations provided in Rule 30. The existence of the Seaside Water Entitlement shall not affect any existing use of water in the County of Monterey or any City, or any existing Allocation to the County of Monterey or any City.
5. For purposes of collecting Capacity Fees and tracking the use of a Water Entitlement, the projected increase in Water Use Capacity of a Benefited Property shall be calculated in the manner set forth in Rule 24, as it may be amended from time to time.
6. Each Water Use Permit issued pursuant to this Rule shall represent a temporarily vested property interest upon issuance and shall be subject to Revocation or cancellation as expressly set forth in subparagraph C below.

7. The portion of the Seaside Water Entitlement granted by the Water Use Permit shall not be subject to reallocation pursuant to MPWMD Rule 30, nor shall the setting of meters by Cal-Am be terminated or diminished by reason of a water emergency, water moratorium, or other curtailment on the setting of meters with the exception of a water emergency or other curtailment that affects the use of water by all Cal-Am Users of the Coastal Subarea of the Seaside Groundwater Basin.

B. REPORTING REQUIRED

The City of Seaside will provide MPWMD with a copy of its monthly Recycled Water Reports at the same time Seaside provides such reports to the Watermaster to ensure compliance with this Rule.

C. REVOCAION, TERMINATION, OR MODIFICATION OF WATER USE PERMITS

Prior to sunset of this Ordinance, Seaside shall authorize a deduction of water from a Cal-Am Allocation for each Water Permit issued using this Entitlement and shall ensure conversion of all Water Permits from the Seaside Entitlement to a Seaside Allocation by issuance of an amended Water Permit that identifies the Allocation used.

D. SUNSET OF SEASIDE ENTITLEMENT

This Ordinance shall sunset following Cal-Am's filing of a Tier 1 advice letter transmitting the written concurrence of the Deputy Director of Water Rights of the State Water Resources Control Board with a finding that a permanent supply of water is ready to serve as a replacement for the unlawful diversion of Carmel River water and removing from its tariffs the special condition contained in Ordering Paragraph 1 of California Public Utilities Commission Decision 11-03-048. Sunset shall occur upon completion of the conversion of Water Permits from the Seaside Entitlement to a Seaside Allocation as set forth in subparagraph C above.

Section Five: Effective Date

This ordinance shall take effect at 12:01 a.m. on the 30th day after it has been enacted on second

reading and upon approval of a Water Distribution System Amendment to the California-American Water Company Water Distribution System to increase its Production Limit by 13.0 AFA.

Section Six: **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 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 _____, 2024 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 _____ 2024.

Witness my hand and seal of the Board of Directors this ___ day of _____ 2024.

David J. Stoldt, Secretary to the Board