EXHIBIT 4-A

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TO: Members of the Board; General Manager

FROM: David C. Laredo

RE: Review of MPMWD Rule 25.5; Definition of "Site"

This memo relates to the pending appeal by Las Villas Nogales Home Owner's Association regarding use of on-site water credits pursuant to District Rule 25.5. The Board of Directors requested, at its meeting of December 13, 2004, an investigation and report as to the meaning and contextual use of the term "site" as that term is used in the Rules and Regulations of the Monterey Peninsula Water Management District.

The pending appeal relates to use of an on-site water credit as allowed pursuant to District Rule 25.5, and does not relate to a water credit transfer as allowed pursuant to District Rule 28[1]. Accordingly, the on-site credit provisions of Rule 25.5 provide the sole means (absent a release of water from the Jurisdiction's water allocation) by which water credits could be made available for the proposed residential use by the Las Villas Nogales Home Owner's Association.

District Rule 25.5 was enacted by Water Management District by Ordinance No. 60 on June 15, 1992, and was thereafter amended by Ordinance No. 64 on October 5, 1992 and further amended by Ordinance No. 71 on December 20, 1993. Rule 25.5 allows on-site water credit use, stating in pertinent part:

> A Water Use Credit shall provide the basis for issuance of a permit for an Intensified Water Use ***on that Site*** provided (1) the credit is current (has not expired), and (2) provided the abandoned capacity (saved water) forming the basis for the Water Use Credit is determined not yet to have been used ***on that Site.*** [Emphasis added.]

Rule 25.5 A also provides,

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[1] Although District Rule 28 allows water use credits to be transferred from one location to another, this Rule provides that the water uses cannot originate from or be transferred to another property for Residential water use. Rule 28 B expressly provides, "Open space and residential water use shall not be transferred." In a parallel provision, Rule 25.5 provides, "Water Use Credits [derived from Rule 25.5] shall not be transferable ***to any other Site.***" [Emphasis added.]

> ... a Person may receive a Water Use Credit for the permanent abandonment of some or all of the prior water use on that Site by one of the methods set forth in this Rule. A Water Use Credit shall enable the later use of that water ***on that same Site***. [Emphasis added.]

Ordinance No. 60, through District Rule 11, makes it clear that a "Water Use Credit" means "a limited entitlement by a Person to use a specific quantity of water ***upon a specific Site***." [Emphasis added.]

Clearly, the residential water use proposed by the Las Villas Nogales Home Owner's Association is available exclusively under the on-site water credit rules set by District Rule 25.5. What then, is the meaning and scope of an "on-site" water credit?

District Rule 11, enacted by Ordinance No. 60, effective June 15, 1992, defines the term "site," as follows,

> SITE - shall mean any unit of land which qualifies as a parcel or lot 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) for which there is unity of ownership, and (3) which have an identical present use. The term "Site" shall be given the same meaning as the term "Parcel".

The term "Parcel" is defined in Rule 11 as a mirror image of the term "Site":

> PARCEL – "Parcel" shall mean any unit of land which qualifies as a parcel or lot 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) for which their is unity of ownership, and (3) which have an identical present use. The term "Parcel" shall be given the same meaning as the term "Site".

District Rules utilize the concept of "site" not only in relation to water credit rules, but also in connection with other aspects of District water use regulations. The term "capacity" is defined in Rule 11 as the "maximum potential water use which theoretically may occur ***on a specific Site***" [Emphasis added], as is the term "Intensified Water Use" which also refers to "water use which theoretically may occur ***on that Site***." [Emphasis added]

An extensive administrative record exists surrounding enactment of Ordinance No. 60, and adoption of the definition of for term "site." This record includes minutes of District committee meetings and a series of TAC and PAC meetings. Although ample discussion is set forth in this record as to the development and refinement of the on-site water credit rule, this record does not shed any additional light on the defined term. As such, the District Rules, and their use of the term "site," must be construed in accord with accepted principles of statutory construction.

The rules of statutory construction provide that the first source to determine statutory intent is to

turn "first to the words themselves for the answer." *People v. Knowles* (1950) 35 Cal.2d 175, 217 P.2d 1. These words are to be given "the usual, ordinary import of the language." *In re Alpine* (1928) 203 Cal. 731, 265 P. 947. "If possible, significance should be given to every word, phrase, sentence and part of an act in pursance of the legislative purpose." *Select Base Materials v. Board of Equalization* (1959) 51 Cal.2d 640, 335 P.2d 672. "A construction making some words surplusage is to be avoided." *Watkins v. Real Estate Commissioner* (1960) 182 C.A.2d 397, 6 C.R. 191. "When used in a statute [words] must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear. *Johnson v. Richardson* (1951) 103 C.A.2d 41, 229 P.2d 9. Also, "the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole. *Select Base Materials v. Board of Equalization,* supra. "Interpretive constructions which render some words surplusage, defy common sense, or lead to mischief or absurdity, are to be avoided." *Fields v. Eu.* (1976) 18 Cal.3d 322, 134 C.R. 367.

Applying these rules to the Rule 11 definition of the word "site," it is clear that several concepts are woven into this term of art:

- A site must qualify as a parcel or lot under the Subdivision Map Act, and
- A site can include land which is contiguous (or are separated only by a road or easement) to another parcel provided,
    - the parcel has "unity of ownership," and
    - the parcel is given one identical present use.

Neither the term "unity" nor the phrase "unity of ownership" are otherwise defined in the District Rules. A standard dictionary reference to the term "unity" includes in its defined meanings: "(1) the state of being one, oneness; (2) one single thing, something complete in itself... (4) the state or fact of being united or being combined into one, as of the parts of a whole; unification; (5) absence of diversity; unvaried or uniform character. Random House Dictionary of the English Language, Unabridged Edition (1967).

The Las Villas Nogales Home Owner's Association suggests the term "unity of ownership" should be construed to mean, for the purposes of its appeal, that land owned separately by individual owners can be considered part of a collective group, in the aggregate, and as such satisfy the contiguous site definition to enable use of on-site water credits pursuant to District Rule 25.5.

While it is theoretically possible to construe and apply this term in the manner requested by the Home Owner's Association, such a construction would not appear consistent with the rules of statutory construction referenced above. Such an application would deviate from "the usual, ordinary import of the language" and would appear to "ignore the nature and obvious purpose" of the Rule. Further, such a construction would fail to "harmonize" the various parts of the District Rules & Regulations, and could lead to mischief or absurdity.

If the Home Owner's Association land, together with property held in separate ownership by its

individual members, satisfies the term "unity of ownership," a similar claim can be made by any two (or more) owners of residential property who jointly purchase an adjacent vacant parcel. It appears such a construction would enable a massive loophole, allowing individuals and groups of non-related persons to work in concert to avoid the limitation in Rule 25.5 that provides, "Water Use Credits [derived from Rule 25.5] shall not be transferable ***to any other Site***." [Emphasis added.] Under this interpretation, an entire block – or indeed a whole neighborhood – could properly join together for the sole purpose of purchasing and developing an adjacent vacant lot.

Application of the term "site" in this manner would have a ripple effect beyond its use for Rule 25.5 credits, but this use of the term would also affect how the concepts of "capacity" and "intensified water use" are used, as each of these terms also refer to water use that may occur on a specific site. Such an interpretation would correspondingly affect District regulation and enforcement of water use, including water conservation and water rationing limits.

It is suggested that the words used to define the term "site" provide, themselves, the answer. Land should be considered to be held with "unity of ownership" only when the deed and title to all land comprising the "site" are substantially identical, are unvaried, have uniform character, and are devoid of diversity.

MPWMD/Con Memo/Site Definition