

## **ORDINANCE No. 87**

### **AN URGENCY ORDINANCE OF THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT ESTABLISHING A COMMUNITY BENEFIT ALLOCATION FOR THE PLANNED EXPANSION OF THE COMMUNITY HOSPITAL OF THE MONTEREY PENINSULA**

#### **FINDINGS**

1. On January 21, 1997, the City of Monterey granted various land use approvals to Community Hospital of the Monterey Peninsula ("CHOMP"), including a rezoning and a Planned Community Plan ("CHOMP Master Plan") for the modernization of hospital facilities at CHOMP. The CHOMP Master Plan will be implemented in two phases. The first phase involves modernization of the hospital's cancer treatment facilities and the relocation of these facilities into new and remodelled space on the north side of the existing Hospital. This will allow the replacement of existing equipment with state-of-the-art equipment and technology which requires additional space. The second phase involves the upgrading and relocation of the hospital's intensive/coronary care unit, relocation of the inpatient surgery rooms, relocation of the emergency department, and relocation of certain support facilities. The CHOMP Master Plan also includes design features, including improved backup utility systems and relocation of computer systems, which will provide for increased levels of emergency self-sufficiency and support which will enhance the ability of CHOMP to continue providing acute care services during a major disaster.
2. Implementation of the CHOMP Master Plan will result in an increase in water use of approximately 3.41 acre feet ("AF") for phase one and approximately 14.87 AF for phase two, for a combined total of approximately 18.28 AF. CHOMP and the City of Monterey have requested that the District create a special community reserve water allocation from the District for the implementation of the CHOMP Master Plan.
3. CHOMP, a non-profit public benefit corporation, is the sole provider of acute care hospital services on the Monterey Peninsula and provides important medical care services to the community and to residents of the Monterey Peninsula Water Management District ("District"). The implementation of the CHOMP Master Plan is essential to upgrade CHOMP facilities in a manner consistent with current technology and hospital standards, to improve the level of regional medical services available in the coming years, to meet the changing health care demands of the community, to enhance the efficiency of hospital operations, and to provide for additional beds in the hospital's intensive care/critical care unit. Compliance of the new facilities with current hospital construction codes and standards, including seismic standards, will enhance the ability of CHOMP to withstand earthquake damage from a major seismic event.

4. In addition to review by the City of Monterey, the CHOMP Master Plan is required to undergo review by two state agencies. Pursuant to state law applicable to construction of acute health care facilities, CHOMP has made an application to the Office of Statewide Health Planning and Development ("OSHPD"). The plans for the implementation of phase one of the CHOMP Master Plan have undergone their first review by OSHPD. In addition, the California Coastal Commission must approve issuance of a Coastal Development Permit ("CDP") before implementation of the CHOMP Master Plan can begin. Under the provisions of the California Coastal Act and the regulations promulgated thereunder, the Coastal Commission may require assurances of a water allocation before it will accept an application for a CDP. CHOMP is in the process of preparing the application for the CDP for submission to the Coastal Commission. OSHPD will not grant final approval for any phase of the CHOMP Master Plan until the availability of a water allocation is assured and may withhold approval until the Coastal Commission has issued a CDP. Because of the lengthy procedures required under state law to obtain the necessary approvals for improvements to hospital facilities such as those included in the CHOMP Master Plan, any delays in the process will postpone and possibly prevent the needed hospital improvements.
5. Timing of the phasing of the implementation of the CHOMP Master Plan is critical and must be carefully planned and carried out to avoid the interruption of daily hospital operations. Implementation of the first phase of the CHOMP Master Plan is scheduled to begin in the summer of 1997. Site preparation and foundation work for phase one must be completed in the summer to avoid problems and further delays which may occur if such work is delayed into the rainy season. In order for work to begin in the summer of 1997, CHOMP must commence the bid solicitation procedure and begin entering into construction contracts in the near future. CHOMP requires certainty of the availability of a water allocation before it begins the bid solicitation process and before further processing of the necessary permits and approvals can occur.
6. The timely implementation of the CHOMP Master Plan will provide a substantial public benefit to the community and is necessary for the protection of the public health and safety of the residents of the District. Delays in the implementation of the CHOMP Master Plan will result in the wasteful use of community health care resources by imposing additional costs on CHOMP, will postpone or prevent the modernization of hospital facilities, will postpone or prevent improvements in the level of health care service provided in the community, and will adversely affect the public health and safety of the residents of the District.
7. If this special community reserve allocation for the benefit of CHOMP is delayed, further approvals required for implementation of the CHOMP Master Plan will not occur in a timely manner and implementation of the CHOMP Master Plan would be seriously

jeopardized. Critical upgrading of hospital facilities and the resulting improvements in the level of medical care that would be available to the community in the future may never occur or may be delayed indefinitely. This would result in a substantial harm to the public health, safety and welfare. In addition, other important public benefits of the CHOMP Master Plan related to traffic circulation, habitat restoration, and open space preservation, will be lost.

8. The foregoing circumstances constitute a public urgency and an immediate allocation of water for the implementation of the CHOMP Master Plan is necessary to ensure timely implementation of the CHOMP Master Plan, to prevent the wasteful use of community health care resources, to preserve the public health, safety, and welfare, and to prevent the loss to the residents of the District of a substantial community benefit.
9. The District's enabling act gives the District the powers which are expressly granted by the act as well as such implied powers as are necessary and proper to carry out the objects and purposes of the District. The enabling act also grants additional powers to the District, including but not limited to the following powers:
  - a. to do any and every lawful act necessary in order that sufficient water may be available for any present and future beneficial use or uses of the residents of the District;
  - b. to establish rules and regulations to protect the public health in the operation of the works of the District;
  - c. to conserve and utilize water for any purpose useful to the District.
10. The District Board has established a goal of conserving 15 percent of the water demand projected for the year 2020. This translates to a long-term conservation goal of approximately 3,900 AF based on the 2020 water demand of 26,000 AF projected at the time the goal was established, though actual 2020 demand is now anticipated to be less than 26,000 AF. Since this goal was adopted, the District has conserved approximately one-half of the long term conservation goal, or approximately 1,800 AF ("Conservation Savings"). The amount of water necessary to meet the needs of the hospital project (18.25 AF) represents one percent of the Conservation Savings.
11. The purpose of the conservation goal is to conserve the District's water resources for implementation of measures to protect the public health, safety, and welfare. An allocation to CHOMP for implementation of its CHOMP Master Plan from the Conservation Savings is consistent with this purpose in that the allocation will permit the

timely implementation of the CHOMP Master Plan for the benefit of, and to protect, the health, safety and welfare of the residents of the District.

12. As part of its voluntary water conservation program, CHOMP has implemented or is considering implementation of measures to lower water use at CHOMP. CHOMP is seeking water credits from the District for these past and future retrofit and water conservation measures. These measures include an upgrade of the pumping and filtration system on the hospital's Koi pond, an upgrade in the hospital's walk-in cooler refrigeration system, and a cooling tower retrofit. These projects are expected to result in significant water savings. These measures may enable CHOMP to offset much of the water allocated to CHOMP by this special community reserve, but the achievement of these near-term conservation savings at the hospital is not certain or guaranteed.
13. CHOMP is also implementing a program to retrofit all bathroom and rest room fixtures, including toilets, showerheads and faucets, which will result in significant water savings. CHOMP will not be eligible for water credits for this program under current District regulations. This program is anticipated to be completed in 1998. While the amount of water to be saved is not subject to precise calculation at this time, water consumption of the new fixtures will be substantially less than that of existing fixtures. For example, toilets installed under this program will use approximately 54 percent less per flush than existing toilets. Under this program, there will be further substantial reductions in water use compared to existing water use at CHOMP, which will contribute to augmenting the conservation savings.
14. The special community benefit allocation approved by this ordinance will result in water use in the District which will not exceed the limits in water use determined by the District to be available without significantly depleting groundwater resources.
15. In acting on CHOMP's request for a special community reserve allocation, the District is acting in a very limited capacity. The District does not have land use approval jurisdiction with respect to the implementation of the CHOMP Master Plan. The land use approvals have been adopted by the City of Monterey, the jurisdiction with primary land use approval authority with respect to the CHOMP Master Plan. The District is vested with the authority to make an allocation from the Conservation Savings to ensure realization of the public benefit and protection of the public health, safety and welfare to be provided by implementation of the CHOMP Master Plan. As discussed in the following findings, the special community reserve allocation created by this ordinance will ensure the availability of water for modernization, replacement and reconstruction of existing CHOMP facilities where the new and renovated structures will be located on the same site as the structures or portions of structures being replaced and where the new structures will have substantially the same purposes and capacities as the structures replaced. Therefore, the

District has determined that its action with respect to this Ordinance is categorically exempt from the California Environmental Quality Act ("CEQA") as a Class 2 exemption under CEQA Guidelines section 15302.

16. California Public Resources Code section 21084 contains a legislative mandate that certain classes of activities shall be exempt from CEQA because they have been determined not to have a significant effect on the environment. Section 21984 requires the Secretary of the Resources Agency to include in the CEQA Guidelines a list of classes of projects which have been determined not to have a significant effect on the environment and which shall therefore be exempt from CEQA. As discussed CEQA Guidelines section 15300, the Secretary for Resources has responded to the mandate contained in section 21084 by expressly finding that certain classes of projects set forth in sections 15301 et seq. of the CEQA Guidelines are categorically exempt from the requirements of CEQA.
17. Section 15302 of the CEQA guidelines sets forth a Class 2 categorical exemption for projects which involve replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. Section 15302 includes as examples of Class 2 projects those involving replacement or reconstruction of existing schools and hospitals to provide earthquake resistant structures which do not increase capacity more than 50 percent and the replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity.
18. The CHOMP Master Plan will result in modernization, improvement, relocation, replacement and reconstruction of existing CHOMP facilities and services in new and existing structures on the CHOMP site and will result in facilities and structures with substantially the same purposes as existing CHOMP facilities. The replacement facilities will continue to provide the same health care services currently being provided by CHOMP, including cancer, heart, stroke, and emergency patient care, as well as support operations. However, the new facilities will be upgraded over existing facilities to meet the spatial demands of current health care technology and equipment and to meet current hospital construction codes and standards (including current seismic standards). The new facilities will also include improved backup utility systems which will enhance the ability of CHOMP to be self sufficient and to continue operation in a major emergency affecting public utilities. In addition, the existing hospital departments, facilities and services will be relocated and reconfigured to improve and enhance the efficiency of hospital operations and the delivery of the patient care. The cancer treatment facilities will be relocated to new and remodeled structures on the CHOMP site currently occupied by other hospital functions, including the Cardiopulmonary-Wellness Program, Payroll and Employee Health. The intensive care/coronary care unit, inpatient surgical suite and emergency department will be relocated from their current locations to the replacement structure

(South Pavilion) to be built during implementation of phase two of the CHOMP Master Plan. Diagnostic Radiology services will be consolidated from three separate locations to a single location in the space to be vacated by inpatient surgery, emergency and the intensive/coronary care unit. Existing parking spaces lost due to construction of the South Pavilion will be replaced by new parking capacity in the South Pavilion. Existing hospital functions will continue under the implemented CHOMP Master Plan without significantly increasing the number of patients to be served.

19. After implementation of the CHOMP Master Plan, the hospital will have substantially the same capacity as the existing hospital. Implementation of the CHOMP Master Plan will increase the hospital's current capacity of 174 beds by no more than 10 beds. These additional beds will result from the relocated intensive care/coronary care unit, which will contain a maximum of 10 beds more than the existing intensive care/coronary care unit. No other additional beds will result from implementation of the CHOMP Master Plan. There will be no increase in the number of surgery rooms in the relocated inpatient surgical suite. The relocated cancer treatment center will be larger to accommodate new equipment, but will still contain the same number of linear accelerators for treatment as the existing cancer facilities and will therefore not result in a substantial increase in patient capacity. The existing emergency department is undersized for efficient and comfortable accommodation of current patient flows. The relocated emergency department will be larger to allow it to better accommodate patient flow. This will improve the ability of CHOMP to serve emergency patients more comfortably, though a substantial increase in the number of patients to be served is not anticipated. This increase and the increase in beds in the intensive care/coronary care unit are the only increase in patient capacity which will result from implementation of the CHOMP Master Plan and are insignificant in comparison to existing patient flows at CHOMP. Under full implementation of the CHOMP Master Plan, an increase in staff of approximately 20 positions over existing staffing levels is anticipated, an increase of less than two percent. Implementation of the CHOMP Master Plan will result in an increase in total square footage of only 17,070 square feet for phase one and 74,360 square feet for phase two as compared to the total square footage of the existing hospital of 300,398 square feet. Only 51,000 square feet of the new space under the CHOMP Master Plan will constitute new clinical function space. Because the current medical technologies, techniques, and standards which the CHOMP Master Plan is designed to meet require greater floor area per patient than exist in the hospital's older construction, the increase in square footage does not correspond directly to an anticipated increase in capacity. For example, the area of each replacement operating room in the new surgery unit is required to be more than twice that of existing operating rooms. In addition, the replacement intensive care/coronary care unit will provide 650 square feet for each patient bed compared to 450 square feet per bed in the existing intensive care/coronary care unit.

20. As set forth in the previous findings, the improvements which this special allocation will serve involve the replacement and reconstruction of existing hospital facilities located on the same site as the facilities being replaced and the new facilities will have substantially the same purpose and capacity as the facilities being replaced. For these reasons, the District explicitly finds that approval of the special community reserve allocation for the benefit of CHOMP is exempt from CEQA as a Class 2 categorical exemption.
21. The District Board was presented with analysis and discussion of the allocation from the District's Conservation Savings. This analysis and discussion is contained in the Staff Report on this Ordinance. The District Board has reviewed and considered the information contained in the Staff Report and has concluded that this information is adequate for use by the District in considering this Ordinance.
22. The information and analysis contained in the Staff Report and the record supports the applicability of the Class 2 categorical exemption in accordance with CEQA and CEQA Guidelines.
23. Under Rule 22 of the District's meeting rules, adoption of this urgency ordinance requires the affirmative votes of five members of the Board. Rule 22 also requires the Board to review this urgency ordinance no later than one year from its effective date and to determine whether the ordinance should remain in effect without change, be amended, or be repealed. For the purpose of this ordinance, Rule 22 has been suspended and does not apply.
24. Creation of the special community reserve allocation of 18.28 AF for the benefit of CHOMP shall cause the annual production limit for the Cal-Am water system to be 17,640.81 AF per year (equivalent to metered sales of 16,405.95 AF per year). The non-Cal-Am production limit from the Monterey Peninsula Water Resource System shall remain unchanged at 3,045.71 AF per year.

NOW THEREFORE be it ordained as follows:

**URGENCY ORDINANCE**

**Section One: Statement of Purpose**

This ordinance shall create a special community reserve water allocation for the benefit of Community Hospital of the Monterey Peninsula ("CHOMP").

**Section Two: Special Community Reserve Water Allocation**

A special community reserve allocation of 18.28 acre-feet ("AF") of water shall be created exclusively for the benefit of CHOMP. This allocation shall be debited from the amount of water conserved to date under the District's Conservation Plan.

**Section Three: Conservation Requirements**

The creation of this special community reserve allocation for the benefit of CHOMP shall not be deemed to relieve CHOMP of any obligation to implement water conservation measures which it may have under any requirement of law. In addition, CHOMP shall take all reasonable steps necessary to investigate the feasibility and cost effectiveness of its planned walk-in refrigeration unit and cooling tower retrofit programs, and, if feasible and cost effective, to implement these measures to further reduce water use at CHOMP. Any reductions achieved by the implementation of either or both of these measures shall not be deemed to occur by reason of a District mandated or sponsored program for purposes of Rule 25.5(A)(1) of the District's Rules and Regulations.

**Section Four: Annual Production and Sales Limit**

Cal-Am's annual production limit shall be 17,640.81 AF. Of this, 16,405.95 AF shall be available for annual water sales to customers within the Cal-Am system due to system losses and unmetered consumption.

**Section Five: Effective Date**

This ordinance shall take effect at 12:01 a.m. on February 28, 1997, as an urgency ordinance necessary for the immediate preservation of the public peace, health and safety.

**Section Six: Sunset Provision and Review Requirement**

No later than one year from its effective date, the District Board shall review this Ordinance and shall determine whether the ordinance should remain in effect without change, be amended, or be repealed.

**Section Seven: Definitions**

The definitions of the terms used in this ordinance shall be those set forth in the District's Rules and Regulations. The term "District Reserve" in Rule 11 of the District's Rules and Regulations, and as that term is used elsewhere in the District's Rules and Regulations, shall mean the special community reserve allocation created by this ordinance.



**Section Eight: Publication and Application**

This Ordinance shall be read in conjunction with and compliment those provisions of the District's Rules and Regulations; provided however, that the provisions enacted by this measure shall take precedence and supersede any contradictory provisions of those rules. Section titles and captions are provided for convenience and shall not be construed to limit the application of the text.

**Section Nine: 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 or unenforceability shall not effect the validity or enforcement of the remaining portions of this Ordinance, or of any other provision 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 of Director Haddad, and seconded by Director Burkleo, the foregoing ordinance is adopted as an urgency ordinance this 27th day of February, 1997, by the following vote:

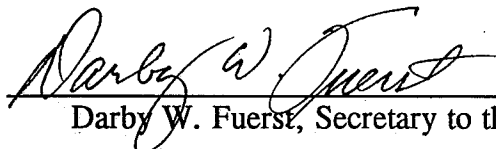
**AYES:** Directors Burkleo, Haddad, Pendergrass and Hughes

**NAYS:** Directors Ely and Ernst

**ABSENT:** Director Potter

I, Darby W. Fuerst, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing as a full, true and correct copy of an ordinance duly adopted this 27th day of February, 1997.

Witness my hand and seal of the Board of Directors this 27th day of March, 1997.

  
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Darby W. Fuerst, Secretary to the Board