



June 29, 2017

Mr. Brian True  
Capital Projects Manager  
Marina Coast Water District  
11 Reservation Road  
Marina, CA 93933

Subject: Letter supporting the Variance Request dated June 29, 2017

Dear Mr. True,

I would like to thank Marina Coast Water District for the opportunity to attempt to correct an inequity that has crept into the MCWD Water Code and for accepting this letter as the support for the attached Variance Request dated June 29, 2017. This letter is intended provide the supporting information (Part C) required by the Variance Request form as well as detailing the specific requests being made of MCWD and the MCWD Board (Part D). Both sections are identified below with the section-header information taken directly from the Variance Request Form.

### **PART C – EVIDENCE TO SUPPORT VARIANCE**

*Provide documentation to support you request. Documentation should concisely prove the need for a variance. Please list documents below and attach copies with your application. Original records will not be returned.*

The businesses leasing spaces within SKN Properties Dunes 1A Restaurant Parcel development area began requesting potable water meters from MCWD in the September, 2016 timeframe. At that time, the water capacity charges being assessed by MCWD-staff seemed exorbitant to me and the business owners but, because the businesses had objectives of opening as quickly as feasible, those capacity charges were paid and the water meters installed.

In December, 2016, I began engaging with MCWD-staff to figure out what was the root cause of the high capacity charges. It quickly became apparent to me that the MCWD Water Code, Appendix C Use-Types and Assigned Water Use Rates did not provide sufficient differences between types of restaurant land-uses to yield accurate – as in, commensurate with the actual water that would be consumed – water capacity charges. What seemed to be consistently happening was that the MCWD process relying on Appendix C information to estimate water use was drastically over-estimating that use relative to what the business owners and I have experienced for the water use by those business/restaurant types. Put another way, the restaurant businesses that were leasing space in my development were not typical, sit-down-with-a-waiter-to-serve-the-customer type of establishments with full service meals of a wide variety. Rather,





my restaurants are considered fast casual, with no dishware, have a strong element of take-out, and specific limited menus; thus, they use much less water than a fully service restaurant. Yet Appendix C had no way to differentiate this self-evident truth and so the businesses were overcharged when they paid their water capacity charges. At that time, MCWD-staff agreed to monitor the water consumption (via meter readings) for the businesses within my Restaurant Parcel development and to research how other water districts in the region dealt with differing restaurant types.

As 2017 began I pursued a conclusion on this matter more diligently because the water consumption data should have been showing that their estimated water use (which was the basis for their large water capacity charge payments) was drastically over-estimated. My understanding is that MCWD-staff will present information in this regard as this Variance Request is heard by the MCWD Board. As the lack of fairness became more and more evident to me, I submitted an original Variance Request on behalf of one of my business owners (Teriyaki Madness); however, based on the MCWD General Managers willingness to discuss the issues raised by my Request, that original Variance Request was withdrawn and a more precise Variance Request has been crafted. The General Manager and I met (along with other MCWD-staff members) on April 27, 2017 and charted specific requests and courses of action that would satisfy justice in this matter. After much machination, the process of providing a Variance Request that achieves the support of MCWD-staff such that they provide the MCWD Board with a recommendation to grant the Variance culminates with this submittal.

#### **PART D – REQUESTED ACTION**

*What specific action are you requesting that the Board take?*

This Variance Request makes several requests of MCWD as an organization with only a final-step in the overall process needing a variance from the MCWD Water Code. The requested actions that MCWD could take to satisfy the collective of restaurant business owners closely monitoring this matter are:

- 1) Re-evaluate the Type of Use categories and Assigned Water Use Rates within the MCWD Water Code, Appendix C – Capacity Charges. My understanding is that a mechanism exists within MCWD's Master Planning efforts to achieve this step. In particular, please evaluate defining a greater number of restaurant Type of Use categories and determine the basis (for example, Assigned Water Use Rates based on square footage or on a per seat basis). Not all restaurants are full-service sit-down establishments.
  
- 2) Ask the Board to accept the Master Plan document, thereby making the consultant and MCWD-staff recommendations on this matter contained therein MCWD-policy.





3) Develop and bring forward for the MCWD Board an Ordinance modifying the MCWD Water Code to reflect the current MCWD-policy regarding Appendix C.

4) Allow the businesses within my Dunes 1A Restaurant Parcel development area (and any other restaurant business within MCWD's service area that might be impacted by a changed Appendix C/policy) to submit information to MCWD-staff in order to have their Meter Applications/Cost-to-Connect evaluated under the new Appendix C information.

5) Use this Variance Request to ask the MCWD Board for future potential variances from the MCWD Water Code for those businesses proven eligible for such a variance by MCWD-staff based on the information the businesses provided (i.e. the action within request (4) above). The specific variance from the MCWD Water Code that they will need appears to be relief from Chapter 6.08.090.C which states:

*"A change in use following the existing use which results in a less intensive assigned water use shall not entitle the user to any refund of capacity charges previously paid."*

As determined by MCWD-staff and whatever changes occur within MCWD Water Code Appendix C, those businesses that over-paid their water capacity charges (based on the original Appendix C) are requested to be able to receive a refund of that over-payment. A list of businesses within my Dunes 1A Restaurant Parcel development project that might be eligible for a refund has been provided to MCWD-staff.

6) Finally, in order to provide improved flexibility to MCWD's process for determining water capacity charges for Commercial businesses and to assist in avoiding future actions such as this, I request that MCWD consider in their Ordinance process the inclusion in the MCWD Water Code of a Commercial Water Capacity Charge "True-up" Process. A "true-up" process would allow MCWD to, after some number of years of water consumption data can be observed, collect water capacity charges from a commercial business in exact proportion to the water consumed by that commercial business. I think that a "true-up" should include the following elements:

- All commercial connections moving forward may be eligible for a "true-up."
- Occurs one-time after 3-years of water meter/consumption data has been collected.
- Any value determined for water use that is within the brackets of 90-percent-to-110-percent of the original water use value is viewed as "close-enough" and no refund or payment would be due.

Sincerely,

SKN PROPERTIES

A handwritten signature in blue ink, appearing to read "Scott G. Negri", is written over the printed name.

Scott G. Negri  
General Partner





# Variance Request Form for Marina Coast Water District

Assigned _____
Reviewed _____
Granted / Denied _____
Account No. _____

## PART A – APPLICANT INFORMATION

**Requested Variance (include District Code Section)** Future potential relief from MCWD Water Code section 6.080.090.C, the operable sentence stating: "A change in use following the existing use which results in a less intensive assigned water use shall not entitle the user to any refund of capacity charges previously paid."

Date of Submittal of Variance Request June 29, 2017

Has applicant applied for the same or similar variance previously?  YES  NO  UNKNOWN

If YES, to above, please provide details \_\_\_\_\_

### Request:

Name of Applicant (Contact) Teriyaki Madness and Mr. Scott Negri of SKN Properties

Applicant Relationship to Owner Developer / Representative of Businesses on Parcel

Billing Name (if different from above) Dunes 1A Restaurant Parcel

Street/Mailing Address for Variance SKN Properties 540 El Dorado St. City Monterey State CA  
Zip 93940

Street/Mailing Address for Billing (if different) 110 General Stilwell Drive, Suite 102 City Marina  
State CA Zip 93933

Daytime Phone Number 831-886-7801 Fax Number \_\_\_\_\_

## PART B – BASIS OF VARIANCE REQUEST

1. The strict application of the code would result in unfair or unequal treatment, undue hardship, or an emergency condition exists which requires that the variance be granted; and,
2. Granting the variance will not cause a significant adverse effect on the water supply or on service to other persons served by the district; and,
3. The variance is in the best interests of the district.

This variance request may only be based on the above conditions. Please briefly describe the basis of your request and provide documentation of need in Part C. If further space is required in the completion of this form, provide a note of such and attach supporting documentation with application.

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Please sheet attached.

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**PART C – EVIDENCE TO SUPPORT VARIANCE**

Provide documentation to support you request. Documentation should concisely prove the need for a variance. Please list documents below and attach copies with your application. Original records will not be returned.

Please see letter attached.

**PART D – REQUESTED ACTION**

What specific action are you requesting that the Board take?

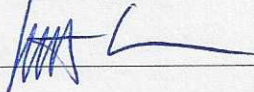
Please see letter attached.

*I understand that the application for a variance does not guarantee a variance will be granted.*

*I have contacted the owner and he has given his permission to process this application, or I am the property owner.*

Applicant: SKN Properties on behalf of Teriyaki Madness

Applicant's Name: Mr. Scott Negri

Applicant's Signature:  \_\_\_\_\_ Date: June 29, 2017



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**PART E – GENERAL MANAGER’S RECOMMENDATION (for internal use by Marina Coast Water District)**

- Having fully considered the above application for variance, I find that the Application has NOT proven by clear and convincing evidence that the requirements of Section 2.08 Variances have been met. Based on the foregoing, a VARIANCE IS NOT RECOMMENDED.
- Having fully considered the above application for variance, I find that the Applicant has proven by clear and convincing evidence that the requirements of Section 2.08 Variances have been met. Based on the foregoing, a VARIANCE IS RECOMMENDED.

This request will be on the Marina Coast Water District Board agenda currently scheduled for July 17, 2017. Please call the District to confirm this date.

Explanation \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of District General Manager

\_\_\_\_\_  
Date



## **PART B – BASIS OF VARIANCE REQUEST**

In compliance with MCWD Water Code, the MCWD Board must make three affirmative findings in order to grant a variance from the Water Code. This Variance Request suggests that the findings may be made as follows:

A. The strict application of the code in this case would result in unfair or unequal treatment, undue hardship or an emergency condition exists because The MCWD Water Code Appendix C does not provide for a nuanced selection of restaurant-related land-use categories and associated Assigned Water Use Rates which leads to a significant over-estimated water use for many types of restaurant businesses. This results in water capacity charge payments far in excess of what the actual water use by the restaurant business would indicate and this is both unfair and an undue hardship; and

B. Granting the variance will not cause a significant adverse effect on the water supply or on service to other persons served by the District because the Variance Request is related only to the potential refunding of already paid water capacity charges which does not have a material effect on the water supply or others not within the narrow confines of a restaurant business land-use category on the List of Eligible Businesses attached as part of the Resolution; and,

C. The variance is in the best interests of the District because it would provide for a potential update of the MCWD Water Code, Appendix C (which should be re-examined periodically to remain consistent with current industry practices and standards) as well providing an improved opportunity for small businesses within MCWD's jurisdiction to exist and be successful.