

ITEM: PUBLIC HEARING

13. CONSIDER REQUEST FOR VARIANCE FOR RAINWATER SYSTEM IN MIXED USE BUILDING AT 537 ANTHONY STREET, MONTEREY, APN 001-712-010, APPLICANT: MONTEREY DESIGN COLLECTIVE, LLC

Meeting Date: January 23, 2020 **Budgeted:** N/A

From: David Stoldt,
General Manager **Program/
Line Item No.:** N/A

Prepared By: Stephanie Kister **Cost Estimate:** N/A

General Counsel Approval: N/A

Committee Recommendation: N/A

CEQA Compliance: This action does not constitute a project as defined by the California Environmental Quality Act Guidelines section 15378.

SUMMARY: The Monterey Design Collective, LLC, represented by Matthew Kyler and Patrick McNeill, is requesting Board approval of a variance to allow a demand offset for the use of rainwater to flush toilets and wash clothes at 537 Anthony Street, Monterey (**Exhibit 13-A**). District Rule 90 allows the Board to consider variances “...from any provision of the standards incorporated into these Rules and Regulations whenever it finds: (a) that Special Circumstances exist in a particular case, and (b) that practical difficulties or Undue Hardship would result from the strict interpretation and enforcement of any such standard, and (c) that the granting of such a variance would not tend to defeat the purposes of these Rules and Regulations. The Board may place conditions upon such variances.”

The Board is considering a variance because Special Circumstances exist in this case as Rule 25.5 (**Exhibit 13-B**) allows Non-Residential Water Use Credits for Ultra-Low Consumption Technology, but the Rule does not address Water Credit for rainwater reuse in a Single-Family or Mixed-Use project. Adoption of Resolution 2020-01 on the January 23, 2020 Consent Calendar will create a Water Credit for rainwater reuse within a Residential use, but because the resolution will be considered earlier the same evening as this hearing, there is a possibility that the resolution will not be passed, and this variance will need to be considered on its own merits. If the resolution passes, this variance request does not need to be heard by the Board.

DISCUSSION: The Site currently consists of a 1,222 square-foot (sq ft) commercial warehouse building. The Water Use Capacity associated with the building is Group I use at 0.00007 AF/sqft totaling 0.086 Acre-Foot annually (AF). The project will convert the building into a “live-work” space with 611 sq ft office use in the front and approximately 611 sq ft two-Bathroom Residential unit in the rear. The amount of water required for this project is 0.144 AF, 0.058 AF short of what is available on Site. The roof area of the project Site has sufficient area to meet 140% of the project’s non-Potable Capacity.

Rule 25.5, Table 4: *High Efficiency Appliance Credits* was updated by Resolution 2019-09 in July 2019 to add a Water Credit for Rainwater/Graywater reuse systems in Multi-Family Dwellings. This credit is presently not available to single Dwelling Units.

The project will include a two-Bathroom apartment with one full-time resident and two half-time residents, and a 611 sq ft office with two full-time employees (40 hours a week), two half-time employees (20 hours a week), and two summer interns who work three months a year (40 hours a week). Rainwater storage would be required for an eight-month dry period, with periodic rainfall filling the tank during the remaining months. Assuming all 0.8 gallon-per-flush (GPF) toilets, toilet flushing would require approximately 3,433 gallons of water. A High Efficiency Clothes Washer at three loads per week would require 1,440 gallons over 8 months. Therefore, the 8,000-gallon tank proposed by the applicant would supply 140 percent of the demand.

All other water fixtures would be served by the Cal-Am Potable supply and were analyzed over a one-year period for the same occupancy rate listed above. Total water needed for showering, food prep/cleanup and handwashing is approximately 24,500 gallons or 0.075 AF. No landscaping will exist on the Site. This estimated use is less than the 0.086 AF of Water Credit associated with the Site.

Staff further reviewed the Water Use Capacity of the Site to see if the new estimated demand would fit within the current Site Capacity if a rainwater credit were applied. The Water Use Capacity associated with the building is Group I use at 0.00007 AF/sq ft totaling 0.086 Acre-Feet (AF). First, the Group 1 Water Use Factor may be reduced by 65 percent for the toilet water being supplied by rainwater. At 0.000024 AF/sq ft, the office space will use 0.015 AF per year for handwashing and food preparation. Applying all the possible High Efficiency Appliance Credits and applying a 75 percent reduction on the fixture unit value for toilets and clothes washing (consistent with the current credit for Multi-Family reuse), the Residential portion of the project will use 0.062 AF year. This brings the combined use to 0.077 AF per year, which is 0.009 AF less than the allocated Water Use Capacity for the Site.

RECOMMENDATION: Staff recommends approval of the Variance and adoption of the Findings of Approval (**Exhibit 13-C**) to authorize a rainwater reuse system to flush toilets and wash clothes to offset the proposed increase in use with the following conditions of approval:

- 1) Install an 8,000-gallon rainwater tank and roof conveyance system by Feb 15, 2020, to allow for immediate rainwater collection during the rainy season.
- 2) Obtain permits for the rainwater system from the City of Monterey and the Monterey County Health Department as required.
- 3) Meter the potable back-up supply where it enters the rainwater tank.
- 4) Meter the rainwater supply line as it exits the tank.
- 5) Submit annual reporting on all meter reads.

- 6) A Limitation on Use of Water on Property deed restriction shall be recorded on the property title making the rainwater reuse system a permanent requirement unless the condition is eliminated by an amended Water Permit.

EXHIBITS

13-A Application for Variance

13-B Rule 25.5

13-C Findings of Approval



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APPLICATION FOR VARIANCE REGARDING WATER CONNECTION PERMITS

Rule 24 of the District Rules and Regulations states that upon request an applicant may apply for a variance from standards incorporated in the District's rules and Regulations. Variances may be approved when: a) special circumstances exist, as defined in the Rules and Regulations; b) when strict interpretation and enforcement of any standard would cause undue hardship; and c) when the granting of such a variance will not tend to defeat the purpose of the Rules and Regulations. In order to be considered for a variance hearing, all applicants must submit a completed application with payment of a non-refundable processing fee \$900.00, (plus \$90.00 an hour for more than 10 hours of staff time), and any other information necessary to evaluate the case.

Applications must be received 5 weeks in advance of the next scheduled Board meeting in order to be considered for placement on the agenda. All applicants are required to provide the information requested on this form. This information will be used as the basis for finding on which the Board will support or deny your variance request. Submission of an incomplete application may constitute grounds for denial of your request.

APPLICANT INFORMATION

Applicant's Full Name: Monterey Design Collective, LLC
Mailing Address: 503 Pearl Street
City: Monterey State: CA Zip: 93940
Phone Number(s): Work (415) 264.2554 Home (831) 206.5665
E-Mail: matthewk@kylerengineering.com
Name of Agent(s) to Represent Applicant: Matthew Kyler & Patrick McNeill
Mailing Address: 503 Pearl Street
City: Monterey State: CA Zip: 93940
Phone Number(s): Work (415) 264.2554 Home (831) 206.5665
E-Mail: _____

PROPERTY INFORMATION

Full Name of Property Owner: Monterey Design Collective LLC
Mailing Address: 503 Pearl Street
City: Monterey State: CA Zip: 93940
Phone Number(s): Work (415) 264.2554 Home (831) 206.5665
E-Mail: matthewk@kylerengineering.com
Property Address: 537 Anthony Street
City: Monterey State: CA Zip: 93940
Assessor's Parcel Number: 001 - 712 - 010
Property Area: Acres: _____ Square Feet: 4000 Other: _____
Past Land Use: Commercial
Present Land Use: Vacant
Proposed Land Use: Mixed Use: office - 50% / residential rental - 50%
Existing buildings? Yes X No _____
Types of uses and square footage: Mixed Use: office/rental residential

(PLEASE PROVIDE 5 YEARS OF WATER RECORDS)

N/A - new owner has no access to previous owner's use history

EXHIBIT 13-A

Variance Application

Exhibit 1

Monterey Peninsula Water Management District Application for Variance Regarding Water Connection Permits – Exhibit 1 - Addendum

From which rule(s) are you requesting a variance:

Rule 24 and Rule 25

Current rules do not provide an achievable approval path for live/work office environments. In lieu of only allocating the water use capacity for the commercial square footage being converted to residential, calculations were performed to share the water use capacity between the residential apartment and the commercial office.

Please state the special circumstances which distinguish your application from all others which are subject to enforcement of this process.

1. Our overall project goal is in the spirit of the City of Monterey's goals of revitalizing an area of the Pearl Street District by introducing mixed use zoning, adding an additional unit to the housing inventory of the City, and encouraging Group 1 Office development.
2. Our project proposes to act as a proof of concept case study to document the feasibility for properties with limited water credits by using innovative technology to supply a clothes washer and flush toilets with captured and stored rainwater. This initiative provides the equivalent of 4 fixtures & 3.4 water credits, which itemizes as 2 UHET toilets in an apartment, 1 UHET toilet for a business office, and 1 high efficiency clothes washer (HEW).

What difficulties or hardships would result if your variance request was denied?

The high cost of real estate in the City of Monterey has rendered this property impractical for continued commercial uses that are compatible with downtown development. This led to the sale of the property. The new ownership proposes to revive a historical model of a business front and residential back. If the variance is denied, the property owner would have the expense of renting a home elsewhere and commuting to the property.

One of the LLC members is a forward-thinking engineer who would like to be able to demonstrate innovative technologies in action, in a real-world setting. The expense of first-of-a-kind demonstrations are prohibitive (approximately \$15,000) unless they yield real-time benefit. These benefits would include the intellectual capital gained and the working model to present to future clients and municipalities. If the variance were denied, the community would be deprived of a working model and the future water savings from mixed use projects incorporating the rainwater capture.

What specific action are you requesting that the Board take?

If the current system was used to allocate the water credits, the 611 square foot apartment would only be allocated 4.277 credits. This would not be sufficient credits to allocate a single bathroom with shower, kitchen, and clothes washer. Even if rainwater capture was used in this scenario, the allocated water credits would be 1.573 credits short of the minimum required to make a living space which would meet the building code minimums for fixtures required for occupancy.

The attached proposed floor plan and site plan would allocate the space in a cost effective and efficient manner; however, this layout will only work if the existing water allocation for the 1222 square foot building is distributed evenly.

The system will be designed by a licensed professional and inspected by the City of Monterey and by MPWMD. The conversion to Mixed Use zoning calls for 10.9 water credits. Using rainwater as described above, provides the equivalent of 3.4 credits. The resulting 8.350 credit demand on the potable water system would be 0.204 credits under the existing 8.554 credit eligibility.

Please indicate if you intend to make a statement at the variance hearing, and list the names of any other individuals who may speak on your behalf.

Two of the members of the Monterey Design Collective, LLC. intend to speak:

Matthew Kyler, P.E.

Patrick McNeill

VARIANCE APPLICATION

EXHIBIT 2

PROJECT INFORMATION

*If additional space is needed for response to any questions, please continue on a separate piece of paper and attach it to the back of this application.

Type of Project: _____ New Construction X Remodel/Addition

Proposed New Use: (Please refer to the District's current Fixture Unit/Use Category sheet for assistance with this question.)

 X Residential No. Dwellings 1 Total No. Fixture Units 8.15 (total)
 X Commercial/Industrial/Governmental
Type of Use: Office Square Footage: 611
____ Other (Specify): _____

Current Zoning Classification: PC/D - Planned Community/Downtown

Name of water company which services the property: Cal/Am

Do you feel this project will use less water than that calculated by the District? If so, please explain how much you believe the project will use, and the basis on which you make this assumption.

Yes, attached are calculations which show the rainwater captured on-site will supply the toilettes and clothes washer with diverted water.

Has this project been approved by the local jurisdiction? If so, please list or attach a copy of all conditions which have been imposed on the project. (Attach a copy of these conditions and approvals received.) Attached are emails which confirm project feasibility from:

- 1. Roger Van Horn, Monterey County Health Department
- 2. Chris Schmidt, City of Monterey Planning Division

Does the applicant intend to obtain a municipal or county building permit for the project within ninety (90) days following the granting of a water connection permit? If not, when will water be needed at the site? Yes

I declare under penalty of perjury that the information in the application and on accompanying attachments is correct to the best of my knowledge and belief.

Patricia McNeill
[Signature]
Signature of Applicant

12/20/2019
Date/Location

NOTE TO APPLICANT: You may attach written findings for the Board to review and consider in support of the action you have requested.

Fee Paid _____ Receipt No. _____ Staff Initials _____





537 Anthony rainwater

6 messages

Pat McNeill <pmcneill64@gmail.com>

Thu, Dec 19, 2019 at 9:28 AM

To: Roger Van Horn <vanhornrw@co.monterey.ca.us>

pmcneill64@gmail.com title 16?

Thanks!

Van-Horn, Roger 755-4763 <vanhornrw@co.monterey.ca.us>

Thu, Dec 19, 2019 at 11:35 AM

To: Pat McNeill <pmcneill64@gmail.com>

Hi Pat,

Go the California Plumbing Code Chapter 16 Non-potable Rainwater Catchment Systems. This section has all the requirements you will have to follow. EHB uses these requirement guidelines for our permitting of these types of systems. If you have any question please feel free and call me.

Roger

Roger Van Horn, R.E.H.S.
Supervisor Drinking Water Protection Service / Well Program
Monterey County Health Department,
Environmental Health Bureau
1270 Natividad, Rm 42B
Salinas, CA 93906
Phone: 831.755-4763
Fax: 831.755.8929

MC Health Department Website: <http://www.mtyhd.org>

Drinking Water Protection Services: <http://www.mtyhd.org/water>

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From: Pat McNeill <pmcneill64@gmail.com>

Sent: Thursday, December 19, 2019 9:29 AM

To: Van-Horn, Roger 755-4763 <vanhornrw@co.monterey.ca.us>

Subject: 537 Anthony rainwater

[CAUTION: This email originated from outside of the County. Do not click links or open attachments unless you recognize the sender and know the content is safe.]



Matthew Kyler <matthewk@kylerengineering.com>

537 Anthony - Intended Project Usage

Chris Schmidt <schmidt@monterey.org>
To: Matthew Kyler <matthewk@kylerengineering.com>

Fri, Dec 20, 2019 at 11:50 AM

Hi Matthew,

Thank you for your email.

The proposed conversion from commercial warehouse to mixed use (commercial office and a single unit, two-bedroom apartment) is permitted by right in the [Downtown Specific Plan](#) for the City of Monterey. The specific plan includes water storage under the definition for Major Utility and requires [Use Permit](#) approval. While I cannot give a final determination on whether staff will recommend approval of a water storage use permit, such a project may, upon review, be determined to be consistent with the [City's general plan](#) policies to encourage conservation and reduce potable water consumption (GP Policy m.1. and subsequent programs). Staff would likely support the PV-roofed carport, as it would provide the required parking for the project.

Please let me know if you have any other questions or comments; you may also refer MPWMD staff for any questions or concerns.

Thank you,
Chris

[Quoted text hidden]

--

Chris Schmidt
Senior Associate Planner
City of Monterey, Planning Office
[580 Pacific Street](#)
Monterey, CA 93940

(831) 646-3886
www.monterey.org



**Rainwater Supply - Proposed 5,000 gal Tank
8 Months Capacity**

Toilet

| Type of Person | # of people | Flushes/day | # days | toilet flush | % Adj | total gallons |
|---------------------|-------------|-------------|--------|--------------|-------|---|
| Full time Emp & Res | 1 | 7 | 240 | 0.8 | | 1344 |
| Child | 2 | 7 | 120 | 0.8 | 0.4 | 537.6 |
| Full time Emp | 1 | 4 | 176 | 0.8 | | 563.2 |
| PT Emp | 2 | 3 | 96 | 0.8 | | 460.8 |
| Summer Intern | 2 | 5 | 66 | 0.8 | | 528 |
| | | | | | | 3433.6 Gallons for toilet flushing |

Laundry **Gallons** **Loads** **96** **1440 Gallons for laundry (3 loads per week)**

4873.6 Gallons needed for 8 months

EXHIBIT 13-A

| Potable Supply | | 0.00007 | 1222 | 0.08554 | 27873.29454 | gallons expected based on GP1 Use | |
|---------------------|-------------|---------------|--------|-----------------|---------------|-----------------------------------|--|
| Shower | | | | | | | |
| Type of Person | # of people | Showers/day | # days | gallons per sho | total gallons | | |
| Full time Emp & Res | 1 | 1.5 | 365 | 18 | 9855 | | |
| Child | 2 | 1.5 | 183 | 18 | 9882 | | |
| | | | | | | 19737 | |
| Handwashing | | | | | | | |
| Type of Person | # of people | HandWashes/de | # days | gallons per wa: | total gallons | | |
| Full time Emp & Res | 1 | 5 | 365 | 0.5 | 912.5 | | |
| Child | 2 | 5 | 183 | 0.5 | 915 | | |
| Full time Emp | 1 | 3 | 269 | 0.5 | 403.5 | | |
| PT Emp | 2 | 3 | 165 | 0.5 | 495 | | |
| Summer Intern | 2 | 3 | 66 | 0.5 | 198 | | |
| | | | | | | 2924 | |
| Food Prep | | | | | | | |
| Type of Person | # of people | Meals Cooked | # days | gallons per Me | total gallons | | |
| Full time Emp & Res | 1 | 3 | 365 | 0.75 | 821.25 | | |
| Child | 2 | 2 | 183 | 0.75 | 549 | | |
| Full time Emp | 1 | 0.75 | 269 | 0.75 | 151.31 | | |
| PT Emp | 2 | 0.75 | 165 | 0.75 | 185.63 | | |
| Summer Intern | 2 | 1 | 66 | 0.75 | 99 | | |
| | | | | | | 1806.2 | |

24467 gallons used in 1 year period

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DISCLOSURE STATEMENT (EX PARTE COMMUNICATIONS)

Name or description of project, action, etc: Variance for Monterey Design Collective renovation

Names and addresses of all persons authorized to communicate with the Board of Directors on this matter:

Table with 2 columns: Name, Address. Rows include Matthew Kyle, Patrick McNeill, and Chris Schmidt.

This Disclosure Statement is completed in my capacity as [X] the Applicant for matter referenced in the first line, or as [] an authorized Agent of the Applicant.

I understand this Disclosure Statement is required to list the names and addresses of all persons authorized to communicate with the Directors of the Water Management District on this matter.

I understand and agree that failure to disclose the name of individuals who shall communicate with the District Board Members on behalf of the applicant shall subject the matter referenced above to immediate review and denial.

I declare the foregoing to be true and correct of my own personal knowledge. I have signed this form this 20 day of December, 2019.

City of Monterey, State of California. Name (print) Patrick McNeill, Matthew Kyle. Signature [Handwritten]

EXHIBIT 13-B

RULE 25.5 - WATER USE CREDITS AND WATER CREDITS

- A. Except where a Water Permit has been abandoned, expired, Revoked, Suspended, or canceled under these Rules, a Person may receive a Water Use Credit for the permanent abandonment of some or all prior water use on that Site by one of the methods set forth in this Rule. Water Use Credits shall be documented by written correspondence between the District and the property owner, and shall remain valid unless expired or prohibited by this Rule. Water Use Credits shall not be documented by notice on a property title, except as specified in Rule 25.5-H. Except as allowed by Rule 28, Water Use Credits shall not be transferable to any other Site.

- B. Water savings resulting from mandatory compliance with Regulation XIV, Water Conservation, shall not result in a Water Use Credit, with the exception of Table 4 retrofits. Such savings shall be set aside as permanent water conservation savings.

- 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. Subsequently, any remaining unused Water Use Credit shall expire.

- D. A Water Use Credit on a Redevelopment Project that was documented prior to February 1, 2012, may, in addition to the time limits and in the manner set forth above, have its expiration date extended for two (2) additional periods of 60 months each, to afford any such Redevelopment Project a maximum period of two hundred forty (240) months to use that credit.

- E. The following types of Permanent Abandonment of Capacity shall qualify for a Water Use Credit under this Rule:
 - 1. Demolition of a building or use that has been recognized by the District as being a lawful water use;
 - 2. Demolition or removal of Exterior Restaurant Seats specifically permitted by debiting Water Use Capacity from an Allocation, Entitlement, Water Credit or Water Use Credit;
 - 3. Permanent disconnection of a lawful water use from a Water Distribution System;
 - 4. Residential removal of District-documented and lawful water fixtures listed in Rule 24, Table 1: Residential Fixture Unit Count Values and the associated plumbing for those fixtures so there is no evidence of the removed water fixture;
 - 5. Permanent installation of water fixtures or appliances that are designed to achieve greater water efficiency than mandated in District Rule 142 and Rule 143.
 - 6. Removal of established Lawn on sports fields at a Public School District Site.

EXHIBIT 13-B

- F. To determine a Water Use Credit, the General Manager shall:
1. Verify that the reduction is one which is permanent (i.e. Permanent Abandonment of Use) and the date that Permanent Abandonment of Use occurred.
 2. Quantify the Water Use Capacity of the Site using the water use factors from Rule 24, Tables 1 and/or 2. If no factor is available on Table 2 or if the use is substantially different than any of the uses shown on Table 2, the General Manager may make an estimate based upon water records showing the average use over a minimum of eight (8) years.
 3. Grant a Water Use Credit for the permanent removal of water using fixtures if the fixture was properly and lawfully installed. Credit for fixtures listed in Rule 24-A-2 shall only receive a Water Use Credit upon evidence of a Water Permit showing a debit to a Jurisdiction's Allocation and payment of related Capacity Fees.
 - a. Water Use Credits for multiple Showerheads shall be limited to a maximum of four (4) fixture units per Separate Stall Shower or Bathtub. A Shower System shall be considered a component of a Separate Stall Shower or Bathtub for purposes of this Rule.
 - b. Credit shall not be given for any reduction which occurs as the result of the removal of landscaping installed without a Water Permit or installed pursuant to a Water Permit for New Construction. An exception to this limitation shall be made for Non-Residential landscaping that was specifically identified, quantified, and permitted by the District. Any Water Use Credit granted under this subdivision shall be determined using the Estimated Applied Water for the increment of landscaping being permanently abandoned.
 4. Quantify the water use reduction (the abandoned Capacity) using the following methods:
 - a. Residential Water Use Credit for demolitions, permanent disconnection of water service, and permanent removal of water fixtures shall be determined using the Fixture Unit Values from Rule 24, Table 1: Residential Fixture Unit Count Values.
 - b. Residential Water Use Credits shall only be granted for installation of the ultra-low consumption appliances listed in Table 4: High Efficiency Appliance Credits. This table may be amended by Resolution of the Board of Directors.

EXHIBIT 13-B

TABLE 4: HIGH EFFICIENCY APPLIANCE CREDITS

| Appliance | Description | Water Use Credit in Fixture Units (FU) |
|---|---|--|
| High Efficiency Toilets | A toilet designed to have an average maximum flush of 1.3 gallons. | 0.5 FU |
| Ultra High Efficiency Toilet | A toilet designed and manufactured to flush with a maximum of 0.8 gallon of water and that is labeled by the U.S. Environmental Protection Agency's WaterSense program. | 1 FU |
| Instant-Access Hot Water System | A recirculating hot water system or other device(s) that results in hot water contact at every point of access throughout the Dwelling Unit within ten (10) seconds. Instant-Access Hot Water Systems shall be installed in each auxiliary building plumbed with hot water on a Single Family Residential Site. There shall be no Water Use Credit for installation of Instant-Access Hot Water Systems for New Structures. | 0.5 FU |
| High Efficiency Dishwasher | A dishwasher designed to use a maximum of 5.8 gallons per cycle. A High Efficiency Dishwasher shall have Energy Star certification. | 0.5 FU |
| High Efficiency Clothes Washer | A Clothes Washer with a Water Factor of 5.0 or less. | 1 FU |
| Rainwater/Graywater Toilet Flushing System for Multi-Family Dwellings | A rainwater or Graywater recycling storage system used to flush toilet(s). System capacity shall meet 100% projected annual demand, plus three days. | 75% of FU |
| Rainwater/Graywater Clothes Washing System for Multi-Family Dwellings | A rainwater or Graywater recycling storage system used to wash clothes. System capacity shall meet 100% projected annual demand, plus three days. | 75% of FU |

Table 4 amended by Resolution 2008-03 (2/28/2008); Resolution 2009-10 (7/20/2009); Ordinance No. 140 (11/16/2009); Resolution 2009-14 (12/14/2009); Ordinance No. 151 (11/19/2012); Ordinance No. 156 (11/18/2013); Resolution 2019-09 (7/15/2019)

EXHIBIT 13-B

- c. Non-Residential Water Use Credit for demolition and for permanent disconnection of water service shall be determined using Table 2: Non-Residential Water Use Factors.

- d. Non-Residential Water Use Credit for retrofits with Ultra-Low Consumption Technology shall be documented under the following circumstances and shall be granted for the increment of water savings beyond the water savings anticipated from the installation of Low Water Use Plumbing Fixtures and other District mandates:
 - (1) Application for Water Use Credit Post-Retrofit. The Applicant shall submit clear and convincing evidence of water savings. This shall be accomplished by providing the District with a minimum of eight (8) years of documented pre-retrofit water history for the use from the Water Distribution System (i.e. bills or correspondence from the Water Distribution System Operator) along with two or more years of post-retrofit water history for the use (i.e. bills or correspondence from the Water Distribution System Operator). When eight (8) years of water history for a use is unavailable or when less than two years of post-retrofit water history is available, the Applicant shall obtain an independent third party's review of the projected water savings. The District shall maintain a list of Persons qualified to prepare a third party water conservation analysis. The District shall verify the installation of Ultra-Low Consumption Technology by conducting an inspection.

 - (2) Application for Water Use Credit Pre-Retrofit. The Applicant shall submit clear and convincing evidence of water savings. This shall be accomplished by providing the District with a minimum of eight (8) years of documented pre-retrofit water history for the use from the Water Distribution System (i.e. bills or correspondence from the Water Distribution System Operator) to establish a baseline consumption level. When eight (8) years of pre-retrofit water history for a use is unavailable, the factor from Rule 24, Table 2: Non-Residential Water Use Factors shall be used as the historic use baseline. To substantiate projected water savings resulting from the proposed retrofit(s), the Applicant shall submit additional documentation to support the estimated water savings. When District staff is not able to verify the estimated water savings, the Applicant may be required to reimburse the District for costs to obtain an independent third party's review of the projected water savings. The District shall verify the installation of Ultra-Low Consumption Technology by conducting an inspection.

EXHIBIT 13-B

- H. When a Water Use Credit on a Site results from demolition of a building that straddled a lot line, the property owner shall specify in writing the quantity of water credit assigned to each of the lots formerly occupied by that building. When a Site with a valid documented Water Use Credit is assigned new Assessor's Parcel Numbers and the original Assessor's Parcel Number becomes inactive, the Site owner shall specify in writing the quantity of Water Use Credit assigned to each of the Parcels. Such designation shall be recorded upon the title of each Parcel.
- I. A Water Use Credit shall enable reuse of saved water on the Site.
1. Water Use Credits may be moved between one or more structures on the same Site or may be used to construct new uses on the same Site.
 2. The District shall not require an additional increment of water for exterior water usage on a Vacant Lot or lot containing an uninhabitable structure when the owner of the Site has submitted clear and convincing evidence of landscaping and irrigation that was installed by and has been consistently maintained since March 11, 1985. Examples of acceptable evidence are dated photographs, official documents, permits or correspondence of the Jurisdiction, receipts or invoices for gardening services or purchases related to landscaping and maintaining landscaping on the Site.
 3. A Water Use Credit for disconnection from a Potable Water Distribution System shall be granted by the General Manager only upon the removal of the Connection and written confirmation of such removal by the Water Distribution System Owner or Operator.
- J. An On-Site Water Credit resulting from the non-permanent removal of a lawful use that occurred on or after March 1, 1985, may be applied to, and shall allow, the future reuse of that increment of water on that Site. A Water Permit for reinstating the former use shall be required and allowed.

Rule added by Ordinance No. 60 (6/15/92); amended by Ordinance No. 64 (10/05/92); Ordinance No. 71 (12/20/93); Ordinance No. 110 (9/30/2003); Ordinance No. 115 (05/17/2004); Ordinance No. 121 (8/15/2005); Ordinance No. 125 (9/18/2006); Ordinance No. 128 (6/18/2007); Ordinance No. 139 (5/12/2009); Ordinance No. 145 (9/20/2010); Ordinance No. 155 (3/18/2013); Ordinance No. 156 (11/18/2013); Ordinance No. 157 (12/9/2013); Ordinance No. 162 (8/18/2014); Ordinance No. 164 (4/20/2015); Ordinance No. 170 (5/16/2016); Ordinance No. 176 (1/25/2017); Ordinance No. 177 (9/18/2017); Ordinance No. 182 (5/20/2019).

EXHIBIT 13-C

**DRAFT
FINDINGS OF APPROVAL**

**CONSIDER REQUEST FOR VARIANCE FOR RAINWATER SYSTEM IN MIXED USE
BUILDING AT 537 ANTHONY STREET, MONTEREY, APN 001-712-010,
APPLICANT: MONTEREY DESIGN COLLECTIVE, LLC**

- 1. FINDING:** The Monterey Design Collective (applicant) has requested Board approval of a variance to allow credit for a rainwater reuse system to offset an projected increase in use at 537 Anthony St, Monterey.

EVIDENCE: Application for Variance attached as **Exhibit 13-A**.
- 2. FINDING:** District Rule 25, Table 4: *High Efficiency Appliance Credits* provides a Water Credit to Multi-Family projects that utilize a rainwater/Graywater reuse system to flush toilets and wash clothes. Single Dwelling Units were not included in the credit.

EVIDENCE: Rule 25.5, Table 4: *High Efficiency Appliance Credits* attached as **Exhibit 13-B**.
- 3. FINDING:** Rule 25-F-4-d allows Non-Residential Water Use Credits for Ultra-Low Consumption Technology Pre-Retrofit.

EVIDENCE: Rule 25-F-4-d attached as **Exhibit 13-B**.
- 4. FINDING:** District Rule 90 allows the Board to consider variances “...*from any provision of the standards incorporated into these Rules and Regulations whenever it finds: (a) that Special Circumstances exist in a particular case, and (b) that practical difficulties or Undue Hardship would result from the strict interpretation and enforcement of any such standard, and (c) that the granting of such a variance would not tend to defeat the purposes of these Rules and Regulations. The Board may place conditions upon such variances.*”

EVIDENCE: Rule 90 on file at the District office.
- 5. FINDING:** Special Circumstances exist in this case because the Site does not have sufficient Water Use Capacity to allow for an Intensification of Use on the Site without granting a Water Credit for rainwater recycling, and the Rules do not address rainwater recycling Water Credit as it applies to Single-Family/Mixed-Use projects.

EVIDENCE: Application for Variance attached as **Exhibit 13-A**.

7. FINDING: Special Circumstances exist in this case because there is evidence that the rainwater recycling system will supply 140 percent of the water needed for toilet flushing and clothes washing in the Mixed Use building.

EVIDENCE: Staff demand calculations discussed in the staff report.

10. FINDING: Potable water supply will be tracked by an inline water meter.

EVIDENCE: Condition of Approval.

11. FINDING: Granting a variance to allow Water Use Credit for rainwater recycling will not defeat the purpose of the Rules and Regulations as the proposed project will not result in a Water Use Capacity that exceeds the current Capacity.

EVIDENCE: The above stated facts.

12. FINDING: The building at 537 Anthony Street in Monterey has sufficient roof area to supply rainwater for the project during a “below normal” Water Year.

EVIDENCE: Calculations on file at the District office.

13. FINDING: In granting this variance, the Board adopts the following Conditions of Approval:

1. Install an 8,000-gallon rainwater tank and roof conveyance system by Feb 15, 2020 to allow for immediate rainwater collection during the rainy season.
2. Obtain permits for the rainwater system from the City of Monterey and the Monterey County Health Department as required.
3. Meter the potable back-up supply where it enters the rainwater tank.
4. Meter the rainwater supply line as it exits the tank.
5. Submit annual reporting on all meter reads.
6. A Limitation on Use of Water on Property deed restriction shall be recorded on the property title.
7. This variance is time limited to one year from the date of approval. Within the year, the applicant shall obtain water and building permits or the approval shall expire.

EVIDENCE: Minutes of the January 23, 2020, regular Board meeting.