



Title: Permit Escrow Return Process

Prepared by: Name: Tom Dietrich and Deb Johnson
Phone: 952.473.2855
tdietrich@minnehahacreek.org

Purpose:

Provide the Board of Managers with an outline of the process the Permitting and Operations staff will use to administer escrow funds held by the District in relation to permits that ceased to be active some time ago.

Summary:

The purpose of holding financial sureties is to have funds available to ensure activities subject to District permits are performed in accordance with those permits. Before 2000, the District required sureties in the form of bonds and letters of credit from homeowners, developers and other permittees for certain types of construction projects triggering specific District rules – most notably, Erosion Control, Wetland Protection, Shoreline & Streambank Stabilization, and Stormwater Management. Bonds and letters of credit are held by District counsel and do not constitute cash property of the permittee. For this reason bonds and letters of credit do not require addressing as part of this surety return process.

In 2000, the MCWD began accepting cash escrows. The District maintains cash escrows, which do not accrue interest and are held in a commingled District escrow account.

Under the District financial assurances rule, an applicant is required to submit a notice of completion to the District when work is completed. The District then has 45 days to inspect the project and determine whether the work has been completed in conformance with the permit and District rules. If a project meets all parameters of the close-out field inspection, the permit is subject to closure and outstanding escrow funds are returned to the permittee. A check request following the Board's check and invoicing cycle is approved.

Since 2000, the District has processed 458 cash sureties, and returned 261. Escrows for seven projects have been partially refunded as some portion of the project is yet on-going. To date, there are currently 190 open cash sureties. Of the 190 open cash escrow sureties, there are 66 from permits issued in 2010 or earlier. The District's recent financial audit identified these escrows as having been held for a decade or more and their administration is the focus of this process. In all cases a notice of completion was not submitted by the permittee, and the balance of the cash surety has therefore remained in the District's account.

To administer the return of these 66 cash sureties, staff will undertake the following steps:

1. Identify the permits associated with the open sureties.
2. Determine if work has been completed at the site, or if the site remains active.
 - a. If construction is on-going, no action on the surety is required. District staff will take appropriate steps to align permit status and the status of work.
 - b. If the site is inactive but in a condition of noncompliance, District staff will consider whether the noncompliance merits addressing and whether it may be feasible to do so with the escrow funds.
 - c. If the site is inactive and in a condition appropriate to permit closure (this includes sites where the permitted work was never initiated), District staff will formally close the permit and provide written notice to the permittee of the availability of the escrow balance.

3. Given the time that has passed, to notify the permittee District staff will start with the permittee's address of record, but will take reasonable steps to confirm that address or determine a current address.
4. If the permittee does not respond to the District's attempts at communication, the District will designate the escrow as abandoned property to be reported and delivered to the Minnesota Department of Commerce pursuant to state law.
5. Prior to distribution of funds, either to the permittee or to the State, staff will deduct District costs incurred as legally authorized and appropriate.

For this initial return process staff is focusing on the oldest sureties and those referenced during the financial audit. Staff has begun initial work and expects to have resolution on these 66 outstanding items by November 1.

Moving forward staff will implement the above steps as part of an annual cash surety review process which will ensure that all cash sureties are accounted for, and cash escrows are either returned to the permittee or delivered to the State as abandoned property per the statute.

Supporting documents (list attachments):

N/A