



**Title:** Permit Escrow Return Process – Update

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**Purpose:**

Provide the Board of Managers with an update on the financial surety return progress made to date by the Operations and Permitting teams.

**Background:**

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 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 and are therefore not a part of this cash surety return process.

In 2000, the MCWD began accepting cash escrows (sureties). 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 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 465 cash sureties, and returned 266. Escrows for seven projects have been partially refunded as some portion of the project is yet on-going. There are currently 199 open cash sureties. Of these 199 there are 62 from permits issued in 2011 or earlier. 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.

The District's 2020 financial audit identified these 62 escrows as having been held for a decade or more and their administration is the focus of this return process. At the April 22, 2021 board meeting, Resolution 21-030, Review and Acceptance of the 2020 Financial Audit, was approved. This resolution included directing staff to develop and implement a plan to address the aged sureties. At the June 10, 2021 board meeting, the Board of Managers were provided with a memo outlining the process and steps staff would take to address these aged sureties.

**Summary:**

Thus far, letters have been mailed to 58 surety owners representing the 62 outstanding sureties noted above. In response, staff have received 21 notice of completion forms, representing 23 sureties. Inspections on these 23 sites have been completed and approved with check requests being processed with the October check cycle.

Additionally, there were 12 letters mailed representing 13 sureties returned from the post office, 19 letters representing 20 sureties that have elicited no response and 6 sites pending inspection. These outstanding sureties are being addressed and researched as necessary.

Staff will provide the board with a quarterly update as to its progress on finalizing this first set of returns as well as those identified for inclusion in the next round of upcoming mailings. Moving forward staff will ensure cash sureties are accounted for in a timely manner and either returned to the permittee or delivered to the State annually as abandoned property per state statute. Lastly, working with legal counsel and the District accountant, an update will be prepared and provided to the auditors ahead of the 2021 audit.