



Title: Surety Returns Project – Update

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Purpose:

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

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.

During the District's 2020 fiscal year annual financial audit the audit identified 57 open sureties as being held for a decade or more. In June 2021 Operations and Permitting staff began the process of returning these sureties. These surety owners were mailed a notice and by October 2021 staff had returned 31.

Staff continued to contact surety owners in an on-going effort to return these older sureties, however based on overall results, during the District's 2021 fiscal year audit, the auditors once again identified those sureties still being held for a decade or more. Staff continued the return process for those sureties received between 2000-2010, and in June 2022 mailed letters to those outstanding surety owners from 2011 through 2018. The outstanding sureties from 2011 through 2018 totaled 123.

Throughout 2022 staff continued their work returning the outstanding sureties received from 2000 through 2018. In total, through December 2022, staff has returned 74 sureties in full and one partially. Additionally, three surety owners have signed documents forfeiting their surety rather than complete the close-out requirements. Of the 102 remaining open sureties received from 2000-2018, five have been identified as still active projects, four failed inspections (the property owner is aware and have a deadline to rectify), 39 are in process and 54 received no response to the initial letter or any follows ups.

Except for the still active projects, the 97 remaining open sureties of the original 180 received from 2000-2018 continue to be addressed by staff with on-going communications to the surety owner, or continued research into finding the

owner. Based on findings to-date regarding several sureties, staff anticipates bringing forward a recommendation to the Board mid-2023 to turn a number of these sureties over to the State of Minnesota as unclaimed property.

Lastly, staff intends to have this project completed by year end 2023 with all sureties returned (to the owner or the State as unclaimed property), in process of return or as on-going projects not yet ready for return. Staff guidelines for an annual review process of all open sureties are being established which will ensure all cash sureties are accounted for in a timely manner moving forward.