



LOWER MINNESOTA RIVER WATERSHED DISTRICT

Executive Summary for Action

Lower Minnesota River Watershed District Board of Managers Meeting
Wednesday, February 17, 2021

Agenda Item

Item 6. E. - Watershed Management Plan

Prepared By

Linda Loomis, Administrator

Summary

i. Financial Assurance requirements

There is a provision in the LMRWD rules for financial assurances for private development. The LMRWD did not investigate financial assurances before adopting rules, because the intent of the LMRWD was for the Cities to adopt official controls and be the permitting authority. Some cities have chosen to have the LMRWD be the permitting authority, so staff investigated how other watershed management organizations manage financial assurances. A technical memorandum dated February 12, 2021 with staff recommendations is attached.

If the Board accepts the recommendations of staff a motion should be made to adopt the Financial Assurance recommendations.

Attachments

Technical memorandum dated February 12, 2021 Individual Permit Financial Assurance recommendations.

Recommended Action

Motion to adopt Financial Assurance recommendations

Technical Memorandum

To: Linda Loomis, Administrator
Lower Minnesota River Watershed District

From: Katy Thompson, PE, CFM
Della Schall Young, CPESC, PMP

Date: February 12, 2021

Re: Individual Permit Financial Assurances Recommendations

The Lower Minnesota River Watershed District (LMRWD or District) Administrator and Young Environmental Consulting Group, LLC (Young Environmental) received a request for a pre-permit application meeting with ISG for their project, Watermark at Savage, in September 2020. At the subsequent meeting on October 7, 2020, the applicant presented their proposed project and how they were preliminarily meeting the District's rules. During this discussion, the applicant asked about the LMRWD's requirements for financial assurances, per Rule A, Section 1.2.11.

The LMRWD adopted permit fees when enacting District Rules last year. However, financial assurances have not yet been established for private development. Historically, financial assurances have not been necessary because LMRWD partner cities have had official controls in place to enact the District Rules on behalf of the LMRWD. At this time, the cities of Eden Prairie, Chaska, and Bloomington have elected to have the LMRWD remain the permitting authority for all or part of the District Rules in addition to the District's regulation of the unincorporated areas of Fort Snelling and the Minnesota Department of Transportation.

To develop recommendations for financial assurances, Young Environmental conducted a review of escrow and financial surety requirements of neighboring watershed districts for comparison.

LMRWD Financial Assurances Summary (Rule A.1.2.11)

As currently written, the LMRWD may require financial commitments from applicants to protect and preserve the water resources within the District. Such commitments will ensure adequate adherence to the rules when authorized activities are being performed. A financial commitment could take several forms, including performance bonds, letters of credit, or cash deposits. The rule states that that the Board of Managers (Board) will determine the amount of financial assurances by resolution to cover the potential liabilities of the District, including the following:

- Field inspections and monitoring
- Maintenance of erosion and sediment controls and protections
- Planting and establishing buffer area
- Remediation of damages resulting from noncompliance with the permit

Following project completion, the District staff would inspect the site to confirm compliance with rules and remediations and ensure that all required documentation had been provided and permit fees paid. If acceptable, the District would then release the financial assurances back to the applicant.

The calculation of financial assurances is not explicitly stated within Rule A but does require 10 percent contingency and 30 percent administrative costs in addition to the amount calculated from the District liabilities above.

Watershed Districts Review

To standardize the LMRWD calculation of financial assurances and render it consistent with neighboring watershed districts, an escrow and financial surety fee review of fourteen metropolitan and neighboring semirural watershed districts was completed (Attachment 1). In general, it was found that these districts calculate financial commitments from applicants based on the rule triggered and the amount of land disturbance created by an individual project, although some districts do specify financial commitments based on the proposed activity as well.

Because the Board has determined it is in the public interest to charge a minimal permit application fee to increase public awareness of and compliance with District permitting requirements, a similar approach should be taken to financial assurance calculations. The intent of financial assurance is to ensure compliance and protect District resources. To that end, we recommend requiring financial commitments only for projects within the special overlay districts, recognizing that most applicants will also be required to obtain a grading or building permit from the partner community, which will also require financial commitments.

Erosion and Sediment Control

Most watershed districts reviewed include a fee for erosion and sediment control based on the amount of land disturbed. This fee ranges from \$1,000 to \$5,500 per acre of land disturbed, depending on the size of the project. The most common requirement is a simple \$2,000 per acre, which is what we recommend the LMRWD consider using.

Floodplain and Drainage Alteration

The LMRWD is more stringent than the State of Minnesota and FEMA with floodplain requirements and requires no increase in flood elevations resulting from alterations of the landscape below the 100-year floodplain. Similar to other watershed districts, the LMRWD recommends compensatory storage to mitigate the effects of floodplain fill but does not require it if the applicant can demonstrate a no-rise. Districts that require compensatory storage charge \$7.50 per cubic foot of mitigation required.

Because of the Board's concerns regarding floodplain fill impact, we recommend a base fee of \$1,500 for a floodplain plus \$7.50 per cubic foot of floodplain fill mitigation.

Stormwater Management

There is a wide range of requirements for stormwater management financial assurances in the watershed districts reviewed. Many include fees per areas of individual stormwater feature, a percentage of the estimated construction costs or engineer's estimates, or on the amount of land disturbance.

The LMRWD does not currently require applicants to provide construction costs but does require applicants to provide the total water quality treatment volumes (infiltration or filtration volume) required to meet District Rule D. Other watershed districts that use water quality treatment appear to converge at \$0.50 per cubic foot of treatment. Given the special waters status of many of the resources the District is charged with protecting (calcareous fens and trout streams), we recommend requiring \$0.50 per cubic foot of required water quality treatment.

Steep Slopes

None of the watershed districts reviewed also has a steep slopes rule, so none has any financial requirements. The only similar rule is shoreline and streambank protection; however, those do not reflect the fragile nature of the District's river bluffs.

Consistent with other watershed districts' special requirements, such as chloride management, we recommend a flat fee of \$5,000 for projects that trigger Rule E.

Recommendations

Although the project that triggered this review has not applied for a project permit yet, we request the Board consider the recommendations for permit surety so that we will be able to provide future applicants with definitive guidelines on financial assurances.

Based on our review, we offer the following recommendations for calculating future financial assurances for District permits.

Applicability

The financial assurances requirement is applicable only to individual project permit applicants within the LMRWD portions of Eden Prairie, Chaska, Bloomington, and Fort Snelling. Government agencies and resident owners of single-family homes requesting an erosion and sediment control permit are exempt. Projects that are located within the District's special overlay districts (High Value Resources Area, Floodplain, or Steep Slopes) will be subject to financial assurances to protect these valuable and fragile resources.

Financial Assurances

Rule B—Erosion and Sediment Control	\$2,000 per acre of land disturbed
Rule C—Floodplain and Drainage	\$1,500 plus \$7.50 per cubic foot of floodplain fill mitigation
Rule D—Stormwater Management	\$0.50 per cubic foot of water quality treatment required
Rule E—Steep Slopes	\$5,000

Attachments:

- Watershed District Fee Comparison

Attachment 1 - Watershed District 2020 Financial Assurances Review

Watershed District	Escrow/Financial Surety		
	Erosion & Sediment Control	Floodplain & Drainage	Stormwater Management
Lower Minnesota River Watershed District	TBD	TBD	TBD
Brown's Creek Watershed District	The total area of disturbed land and the construction cost of stormwater management facilities.		
Buffalo Creek Watershed District	Any extraordinary expenses (inspection, engineering, legal, etc.) associated with processing the above permits will require the Permittee to set up an escrow account that the Watershed District will draw from to cover the Watershed District's expenses.		
Capitol Region Watershed District	\$2,000/ac	-	\$5,000.00
Carnelian-Marine-St. Croix Watershed District	\$2,000/ac	\$7.50/cubic foot of mitigation	\$20,000/AF of volume/water quality storage (Approximately \$0.46 per cubic foot)
Comfort Lake-Forest Lake Watershed District	\$2,000/ac	-	125% of estimated construction costs
Coon Creek Watershed District	Performance Escrow: 1. Base fee: \$1,500 2. Frontage fee: \$20/ft of ditch 3. Plus property size: \$500/ac		
Middle Fork Crow River Watershed District	At the discretion of the District Engineer. The Surety must be provided to the District before the permit is deemed to be issued and the applicant can begin work.		
Nine Mile Creek Watershed District	\$2,500/acre disturbed, plus \$2.50/linear foot of erosion control required	-	Infiltration basins: \$12/sq ft Rain gardens: \$12/sq ft Underground storage: \$980/acre impervious treated All other facilities: 125 percent of construction and maintenance costs Chloride management plan: \$5,000
Prior Lake-Spring Lake Watershed District	The permit security is not based the rule, it is based on the activity being done	-	Stormwater management facilities (ponds, outlets, infiltration basins, environmental manholes, rain gardens, etc.) - 125% of estimated construction costs (Not required if provided to the municipality and proof of receipt is provided to the District)
Ramsey-Washington-Metro Watershed District	\$2,000/ac	-	\$5,000/ac
Rice Creek Watershed District	< 1 acre (\$1,000) 1 - 10 acres (\$1,000 + \$500/ac over 1) > 10 acres (\$5,500 + \$250/ac over 10)	-	\$0.50/cubic foot of treatment (Shall be rounded to the nearest \$100)
Riley-Purgatory-Bluff Creek Watershed District	\$2,500/ac disturbed, plus: \$2.50/foot of erosion control, \$100/ea inlet, and \$250/ea rock construction entrance	-	125 percent of design engineer's opinion of costs of construction of stormwater management facilities/practices, and \$5,000 chloride management plan
Sauk River Watershed District	Anything over 1 acre land disturbance: \$1,000/acre	-	125% of estimated construction costs
Valley Branch Watershed District	\$2,000/ac	-	125% of estimated construction cost, to be determined by the permit applicant and approved by the District Engineer

- Designates items that are not specifically called out in the district's financial surety or escrow requirements.