

RESOLUTION NO. 08-12-02

**COMFORT LAKE – FOREST LAKE WATERSHED DISTRICT
BOARD OF MANAGERS**

**RESOLUTION REGARDING PERMIT FEES, FIELD INSPECTION FEE
DEPOSITS AND FINANCIAL ASSURANCES**

Manager Damchik offered the following resolution and moved its adoption, seconded by Manager Moe:

WHEREAS the Comfort Lake – Forest Lake Watershed District (“District”) has permitting requirements duly adopted pursuant to Minnesota Statutes section 103D.341;

WHEREAS Minnesota Statutes Section 103D.345, subdivision 2, provides for a \$10 non-refundable permit fee, and further provides that a watershed district may charge permit inspection fees to cover actual costs to review projects conducted within its jurisdiction; to cover actual costs related to a field inspection, including investigation of the area affected by the proposed activity, analysis of the proposed activity, services of a consultant, and any required subsequent monitoring of the proposed activity;

WHEREAS the District Board of Managers concurs in the intent of section 103D.345 that those wishing to undertake activities requiring permits, and not the taxpayers of the watershed district, should bear the cost of District review for the purpose of protecting water resources from the impacts of those activities;

WHEREAS District Rules 9.0 and 10.0, respectively, establish procedures and standards for permit fees and field inspection fee deposits and for financial assurances;

WHEREAS the Board of Managers finds that from time to time permit applicants and permittees fail to replenish the field inspection fee deposit in a timely manner, evidencing an intent not to pursue a permit application or permitted project, and resulting in additional administrative costs to the District that should not be borne by the taxpayers of the watershed at large;

THEREFORE BE IT RESOLVED that the Board adopts the following policies:

- A. Permit and Field Inspection Fees.
 1. All property owners conducting activities requiring a District permit under the District’s adopted rules must apply for and obtain a permit in advance of the work, as well as after work already has started in violation of District rules.

2. In addition to the nonrefundable permit fee, the field inspection fees will be the actual cost incurred by the District, as within the meaning of Minnesota Statutes Section 103D.345, subdivision 2, including the cost to review the permit application, and thereafter to monitor and ensure compliance with the terms of the permit and District standards.
3. To be complete, an application must include the permit fee and a field inspection fee deposit in the amount specified in Schedule A: Field Inspection Fee Deposit, attached and hereby adopted, which amount the Board finds is sufficient to cover the cost to review the permit application, monitor compliance and address non-compliance for most permits, without being excessive.
4. A permit that has been approved will not be issued until the permittee has supplemented the field inspection fee deposit in the amount already expended for permit review and the balance equals the amount specified in Schedule A.
5. The District may draw on the field inspection fee deposit during review of the permit application or after permit issuance for actual costs incurred, which costs will be determined in accordance with Schedule B: District Costs, attached and hereby adopted. Any cost incurred by the District for services or matters not addressed in Schedule B will be charged to the applicant at District cost.
6. The District, periodically and on written request, will provide a written accounting to the applicant or permittee as to actual costs incurred and the fee deposit balance.
7. The District will maintain field inspection fee deposits in aggregate in a fund separate from other District funds and from any financial assurance required under Section 10.0 of the District rules.
8. In light of the administrative costs of doing so and the limited time for which permit and field inspection fee deposits are expected to be held, the District is not required to maintain field inspection fee deposits in an interest-bearing account and will not disburse accrued interest.
9. When the District determines that work has been completed under the permit, or when an applicant formally notifies the District that it does not intend to proceed further with the work and the District finds that the site is in compliance with District requirements, the District will return the fee deposit balance to the depositor. The applicant or permittee will remain responsible to the District for actual costs that exceed the amount of the field inspection fee deposit and may be billed by the District at any time for such cost.

B. Financial Assurances.

1. Financial assurances required as a permit condition will be determined in accordance with Schedule C: Permit Financial Assurances, attached and hereby adopted. A financial assurance may be in the form of a bond, a letter of credit or a cash escrow accompanied by an escrow agreement, each as approved by the District. The District may draw on the financial assurance pursuant to the terms of the bond, letter of credit or escrow agreement.
2. A cash escrow will be held in a District fund in aggregate with other cash escrow funds and separate from other District funds. The District is not required to maintain those funds in an interest-bearing account and will not disburse accrued interest.
3. When the Board, on staff recommendation, determines that work has been completed under the permit, or when an applicant formally notifies the District that it does not intend to proceed further with the work and the Board finds that the site is in compliance with District requirements, the District will return the bond or letter of credit or the outstanding balance of the cash escrow, as the case may be. The permittee is responsible to identify the name and address of the issuer to whom the bond or letter of credit is to be returned.
4. The permittee is responsible to the District for any actual cost covered by the financial assurance that exceeds the available amount of the assurance, and may be billed by the District for such cost.

BE IT FURTHER RESOLVED that all invoices for field inspection fees or District costs subject to applicant or permittee coverage under financial assurances are payable within 30 days;

BE IT FURTHER RESOLVED that the Board of Managers hereby directs the Administrator to provide written notice of these policies in permit applications, permit documents, and related permit notices; and to make this resolution, with attached schedules, available to applicants and permittees.

BE IT FURTHER RESOLVED that the District Administrator shall maintain field inspection fee deposits and cash escrows in funds separate from District funds, shall manage said deposits and maintain permit-specific records pursuant to accepted fund management practices, and may make deposits into the fund and apply deposits to District-incurred costs for the proper administration of the District's permitting program. Until further delegation by the Board of Managers, the Administrator is not authorized to make final disbursement of deposit or cash escrow balances, or release bonds or letters of credit, to applicants or permittees.

BE IT FURTHER RESOLVED that the District Administrator and District legal counsel each may act as the agent of the District for the purpose of making a demand or requesting a draw on a permit financial assurance.

Upon vote, the motion carried with five (5) ayes and zero (0) nays as follows:

	<u>AYE</u>	<u>NAY</u>
Jackie A. Anderson	X	
Richard P. Damchik	X	
John T. Lynch	X	
Wayne S. Moe	X	
Jon W. Spence	X	

The Chair declared the resolution adopted.

* * * * *

I, John T. Lynch, Secretary of the Comfort Lake - Forest Lake Watershed District Board of Managers, do hereby certify that I have compared the above resolution with the original thereof as the same appears on record and on file in the District's offices and find the same to be a true and correct copy thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 18th day of December, 2008.

(SEAL)


John T. Lynch, Secretary

Comfort Lake-Forest Lake Watershed District Rules Schedule A—Field Inspection Fee Deposit

On December 18, 2008, the Comfort Lake-Forest Lake Watershed District (CLFLWD) Board of Managers adopted Resolution 08-12-02 establishing a field inspection fee deposit schedule. This fee deposit schedule will apply to all permit applications received as complete on or after February 1, 2009. The fee deposit for submittal of a CLFLWD permit application is pursuant to Minnesota Statutes 103D.345 and CLFLWD Rule 9.0 and is as follows:

Water Resource Fee Deposit

The amount of the fee deposit is reviewed and revised by the CLFLWD Board on an annual basis or otherwise as warranted. An application is not deemed complete until the required fee deposit has been submitted. The fee deposit is kept in an escrow account and applied to reimburse the CLFLWD for actual costs incurred in permitting, including site inspections, analysis of the proposed activity, services of consultants, and compliance assurance. When a project is approved by the CLFLWD Board, the fee deposit must be replenished to the deposit amount by the applicant before the permit will be issued, to cover actual costs incurred to monitor compliance after permit issuance and address non-compliance with the permit or CLFLWD Rules. **The applicant will remain responsible for any cost incurred by the CLFLWD greater than the fee deposit balance.** Any unused portion of the deposit balance will be returned to the applicant when the Board determines that the work has been completed under the permit. The permit fee deposit is as stated below.

<u>Permit Type</u>	<u>Field Inspection Fee Deposit</u>
a) Rule 2.0 Stormwater Management	
Rule 2.2a - Land Development-Subdivision of 3 lots	\$2,000
Greater than 3 lots	\$100/additional lot
Rule 2.2b-d – All other stormwater rule applications	\$3,000
b) Rule 3.0 Erosion Control	
Activities/Grading less than 1 acre	\$1,000
1.0 - 4.99 acres	\$1,250
5.0 - 19.9 acres	\$1,500
20 or more acres	\$2,000
c) Rule 4.0 Buffer Requirements	\$1,500
d) Rule 6.0 Watercourse and Basin Crossings	\$1,500
e) Rule 7.0 Floodplain and Drainage Alterations	\$ 500

**FOR WORK REQUIRING REVIEW UNDER MORE THAN ONE OF THE ABOVE
RULES, THE FEE DEPOSIT WILL BE CUMULATIVE.**

Comfort Lake-Forest Lake Watershed District Rules Schedule B—District Costs

On December 18, 2008, the Comfort Lake-Forest Lake Watershed District (CLFLWD) Board adopted Resolution 08-12-02 establishing a field inspection fee deposit schedule. The fee deposit for submittal of a CLFLWD permit application is pursuant to Minnesota Statutes 103D.345 and CLFLWD Rule 9.0, which allow the District to charge a fee to cover actual costs related to permitting, including site inspections, analysis of the proposed activity, services of consultants, and compliance assurance.

The actual costs to the District to be reimbursed out of the fee deposit and/or charged to the applicant or permittee directly will be calculated based on the rates at which permit-related services are provided to the District. The current rates for technical, legal and administrative services are listed on the District web site, at www.clflwd.org, or may be obtained from Randy Anhorn, CLFLWD Administrator/Limnologist, at 651-209-9753. Other CLFLWD costs will be billed to the applicant or permittee at actual cost.

Comfort Lake-Forest Lake Watershed District Rules Schedule C—Financial Assurance Requirements for Permits

Financial Assurance Requirement

In Resolution 08-12-02, the CLFLWD Board established the amount of financial assurances required to ensure that property owners perform and complete work under a CLFLWD permit in accordance with the terms of that permit. The financial assurance must be in the form of a bond, letter of credit or cash escrow. The assurance is required in accordance with Minnesota Statutes 103D.345 and CLFLWD Rule 10.0 as follows:

<u>Area of Activity</u>	<u>Financial Assurance Amount</u>
Grading or Alteration	\$2000/acre
<ul style="list-style-type: none">• <i>Financial assurance is not required for a project undertaken by or for a resident owner on a single-family home site requiring only an erosion control permit under Rule 3.0, unless the Board finds that the project presents a significant risk of water resource harm from erosion</i>	
Stormwater Management Facility	125% of estimated construction cost
<ul style="list-style-type: none">• <i>Stormwater Management Facility financial assurance is not required if applicant demonstrates that it has provided the municipality a financial assurance for the facility of an equal or greater amount.</i>	

MINIMUM FINANCIAL ASSURANCE of \$5,000 (WHEN REQUIRED)