RESOLUTION NO. 2014-13

RICE CREEK WATERSHED DISTRICT
BOARD OF MANAGERS

ADOPTING REVISED PERMIT FEE and SURETY SCHEDULES
and PERMIT VARIANCE GUIDANCE

Manager (name) offered the following resolution and moved its adoption, seconded by Manager (name).

WHEREAS the Rice Creek Watershed District ("District"), a governmental subdivision with powers set forth in Minnesota Statutes Chapters 103B and 103D, is authorized to act to achieve the purposes set forth in those chapters for the protection, conservation and beneficial use of the water resources of the watershed;

WHEREAS Minnesota Statutes §103D.341 states that the District Board of Managers ("Board") must adopt rules to accomplish the purposes of Chapter 103D and implement the powers of the managers;

WHEREAS Minnesota Statutes §103D.345, subdivisions 1 and 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, including actual costs related to investigation of the area affected by a proposed activity, analysis of the proposed activity, services of a consultant, and any required subsequent monitoring of the proposed activity;

WHEREAS Minnesota Statutes §103D.345, subdivision 4, provides that a watershed district may require a financial assurance to ensure completion of a permitted activity in conformance with the terms of the permit;

WHEREAS the District Board of Managers concurs in the intent of §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 Rule B, sections 8 and 9, provides that the Board will establish and from time to time revise permit fee and surety schedules;

WHEREAS District Rule L, governing the Board's consideration and issuance of permit variances, has been revised consistent with recent changes to statutes governing issuance of variances by certain local units of government, and the Board desires to update its variance guidance and variance request form to reflect these changes and otherwise facilitate more effective presentation and consideration of variance requests;
THEREFORE BE IT RESOLVED that the Board hereby revises the District’s existing permit fee and surety schedules by approving the changes shown on the attached documents titled:

- RCWD Permit Fee Schedule
- RCWD Permit Surety Requirements
- Permit Variance Guidance;

BE IT FURTHER RESOLVED that the changes are effective as follows:

(a) The change to the financial assurance schedule is effective for all permits that have not been approved or conditionally approved (CAPROC) as of March 11, 2014;

(b) The change to the fee schedule is effective for all future permit applications, and for all prior permit applicants that paid a fee determined according to the schedule as approved on June 26, 2013.

BE IT FURTHER RESOLVED that the Administrator shall determine any refunds due prior applicants as a result of the fee schedule change and shall include those refunds as payables for Board approval.

The question was on the adoption of the Resolution and there were 2 yeas and 1 nays as follows:

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Upon vote, the Chair declared the Resolution passed.

Dated: March 12, 2014

John Waller, Acting Secretary

I, John Waller, Acting Secretary of the Rice Creek Watershed District, do hereby certify that I have compared the above Resolution with the original thereof as the same appears of record and on file with the District and find the same to be a true and correct transcript thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 12th day of March, 2014.

John Waller, Acting Secretary
The permit fee schedule was most recently adopted on March 12, 2014 (effective immediately after adoption) by District Board Resolution 2014-13 in accordance with RCWD Rule B.8 (Procedural Requirements). The fee for a permit is the cumulative total of all individual aspects of a project. Government entities are exempt from permit fees.

Rule C (Stormwater Management Plans):
- Single lot, single family residential projects
  - Home, Accessory Structure, Driveway, etc. $150
- Residential, Commercial, Industrial, Institutional Development
  - < 1 acre of new or reconstructed impervious surface $1000
  - 1 – 2.5 acres of new or reconstructed impervious surface $2,000
  - 2.5 - 5 acres of new or reconstructed impervious surface $3,500
  - > 5 acres of new or reconstructed impervious surface $5,000 + $1,000/ac Capped at $10,000.

Rule D (Erosion Control Plans):
- < 2.5 acres of land disturbance $100
- 2.5 – 10 acres of land disturbance $250
- > 10 acres of land disturbance $500

Rule E (Floodplain Alteration):
- No mitigation required $0
- Mitigation required $100

Rule F (Wetland Alteration):
- Exemption $250
- < 1 acre of mitigation required $875
- 1 – 5 acres of mitigation required $1,750
- 5 – 10 acres of mitigation required $3,500
- > 10 acres of mitigation required $5,250
- Banking Plan $1,750

Rule G (Bridge, Culvert & Utility Crossings): $500

Rule I (Drainage Systems):
- Public Ditch Alteration Plan (abandonment, impoundment, realignment) $2250

Rule J (Appropriation of Public Waters): $0

Rule L (Variances): Variable. See District Permit Variance Guidance Policy
RCWD PERMIT SURETY REQUIREMENTS

The permit surety schedule was most recently adopted on March 12, 2014 (effective immediately after adoption) by District Board Resolution 2014-13 in accordance with RCWD Rule B.8 (Procedural Requirements). Sureties are generally required of all applicants, and are set by District staff and/or the District engineer after initial review of the project application. A surety is a monetary sum provided by the applicant to the District to ensure the project is completed as designed and in compliance with District Rules. The District returns the money to the applicant after all permit conditions are met and the project is complete.

For surety amounts of $5000 or less, the applicant must provide the District with a check made out to the Rice Creek Watershed District. For surety amounts over $5000, the applicant must provide the first $5000 in the form of a check and has the option of providing the remainder of the surety amount in the form of a check or a performance bond or letter of credit.

Upon completion of a permitted project, the permitee and/or their contractor should contact the District Inspector or complete and mail a Certificate of Permit Completion to the District. After the District Inspector has completed an inspection and determined that the project was constructed in compliance with the permit conditions, the surety amount is returned to the applicant.

The RCWD Board, in compliance with the laws of the State of Minnesota, has adopted an escrow policy directing our surety program. Of particular note is how the policy relates to "abandoned" sureties and a requirement that applicants submit a signed escrow agreement in a form acceptable to the District.

SURETY CALCULATION

The surety for a permit is the cumulative total of all individual aspects of a project. Government entities are exempt from surety requirements.

Land Disturbance:
- < 1 acre of disturbance ($1,000)
- 1 – 10 acres of disturbance ($1,000 + $500 per acre over 1)
- > 10 acres of disturbance ($5,500 + $250 per acre over 10)
- All acreage amounts shall be rounded to the nearest whole acre

Stormwater Management Features:
- $0.50 per cubic foot of treatment required by Rule C.6(c)
- Calculated surety amount shall be rounded to the nearest $100

Floodplain Mitigation:
- $23 per cubic yard of required mitigation
- Calculated surety amount shall be rounded to the nearest $100

Wetland Mitigation:
- $25,000 per acre of replacement required by Rule F.
- Calculated surety amount shall be rounded to the nearest $1,000
Background:
Rule L of the Rice Creek Watershed District's Rules, effective July 1, 2013, allows the Board of Managers to grant a variance from a provision of the Rules. Whether a variance is appropriate is a decision for the judgment of the Board. An applicant bears the burden of demonstrating to the Board with specificity that the criteria to grant the requested variance are met.

Purpose:
The purpose for this operating procedure is to document how variance requests will be processed and managed as part of the District's permit program.

Rule Language:
1. VARIANCES AUTHORIZED. The Board of Managers may hear a request for a variance from a literal provision of these rules where strict enforcement would cause undue hardship or practical difficulty because of circumstances unique to the property under consideration. The Board of Managers may grant a variance if an applicant demonstrates that such action will be in keeping with the spirit and intent of these rules and in doing so may impose conditions on the variance as necessary to find that it meets the standards of section 2, below. Such a request must be addressed to the Board of Managers as part of a permit application and must address each of the four criteria listed in the standard.

2. STANDARD. In order to grant a variance the Board of Managers must determine that:

   (a) Special conditions apply to the structure or land under consideration that do not apply generally to other land or structures in the District.

   (b) Because of the unique conditions of the property involved, undue hardship or practical difficulty to the applicant would result, as distinguished from mere inconvenience, if the strict letter of the rules were applied. Economic considerations alone do not constitute undue hardship or practical difficulty if any reasonable use of the property exists under the terms of the District's rules.

   (c) The proposed activity for which the variance is sought will not adversely affect the public health, safety, welfare, will not create extraordinary public expense; and will not adversely affect water quality, water control or drainage in the District.

   (d) The intent of the District's rules is met.

3. PRACTICAL DIFFICULTY DEFINED. In evaluating practical difficulty, the Board of Managers will consider the following factors:

   (a) How substantial the variation is from the rule provision;

   (b) The effect of the variance on government services;
Whether the variance will substantially change the character of watershed resources or be a substantial detriment to neighboring properties;

Whether the practical difficulty can be alleviated by a technically and economically feasible method other than a variance;

How the practical difficulty occurred, including whether the landowner created the need for the variance; and

In light of all of the above factors, whether allowing the variance will serve the interests of justice.

4. **TERM.** A variance expires on expiration of the CAPROC approval or permit associated with the variance request.

5. **VIOLATION.** A violation of any condition set forth in a variance is a violation of the District permit that it accompanies and automatically terminates the variance.

**Guidance:**
Consistent with the rule language above, in evaluating whether a practical difficulty exists, the Board of Managers will consider the following factors identified by the Minnesota courts:

(a) How substantial the requested divergence is from the District rule;

(b) Whether the variance would increase the cost or difficulty of providing governmental services;

(c) Whether the variance would substantially change the character of the water resource or would be a substantial detriment to neighboring properties;

(d) Whether the practical difficulty can be alleviated by a method other than a variance that is feasible and economically reasonable;

(e) Why the practical difficulty exists, including whether the landowner created the need for the variance; and

(f) Whether, in light of the above factors, granting the variance will serve the interests of justice.

**Form of Variance Request:**
A variance request must be submitted in writing to the Board of Managers as part of a permit application. Permit applicants requesting a variance must use the attached Variance Request form (Exhibit A).

**Variance Review Fee:**
The District will collect a review fee from an applicant requesting a variance from provisions in one or more District rules. The applicant is responsible for actual costs incurred by the District for staff, engineer and attorney review of the variance request, except that the first $500 of review cost is covered by the District. The applicant must post a $1500 fee deposit along with a completed Variance
Request form to initiate the variance review process. If the deposit balance drops below $500, the applicant will be notified that an additional $1500 must be deposited with the District to continue the variance review. Once the District Board has taken action on the variance request, any remaining deposited funds will be returned to the applicant with a summary report of all costs incurred by the District in reviewing the variance request.

Hourly rates for District staff and consultant time will be billed at the direct rate, not to exceed the following hourly rates:

RCWD Staff: $50.00 per hour
RCWD Engineer: $150.00 per hour
RCWD Legal Counsel: $200.00 per hour

General Procedures to Process Variance Requests:
The following general procedures will be used by staff and consultants to bring variance requests to the Board of Managers:

- A variance request must be submitted as part of a permit application and will be processed using the same permit review schedule.
- A variance request must be in writing and be submitted on the Variance Request form along with the required variance review fee deposit. A variance request will not be considered complete if the form is not fully completed and the fee deposit is not submitted to the District.
- An applicant's permit application will be considered incomplete until all required information pertaining to the variance request is received by the District.
- District staff and the District Engineer will review the variance request against Rule L criteria and make separate findings and recommendations, which will be documented on the Variance Request form.
- The Variance Request form along with the permit Engineers Report will be included in the Board packet preceding the meeting in which the variance request and permit application will be presented and considered.
- A request for variance and permit may be acted on at the same board meeting but the variance request will be considered as a separate Board action item before the permit application itself is considered. In appropriate circumstances, the Board of Managers will consider a variance request in advance of the meeting at which the permit application will be considered.