

ARTICLE 40

PERFORMANCE GUARANTEE

SECTION 40.010, PURPOSE: Performance guarantees may be required by the review authority for applications requiring Administrative or Public Hearing Review. The purpose of the performance guarantee is to insure compliance with this ordinance or conditions of approval.

SECTION 40.015, REVIEW PROCEDURE: If improvements required by this ordinance or conditions of approval are not fulfilled prior to the time of final decision or action on a development permit, Wallowa County may accept a performance agreement and/or bond executed by the applicant. And, his surety with the County Court, conditioned upon faithful performance, of completion of all specified improvements or conditions within the period of time specified in such agreement. The performance agreement shall follow the procedure set forth below.

01. The applicant shall have cost estimates prepared by an engineer or contractor and signed by same. All costs shall be based on standards as designated by this ordinance or other specifications ordinance.
02. All estimates shall be submitted to the Wallowa County Planning Director who shall forward the estimates to the appropriate agencies or departments for review.
03. The Wallowa County Planning Director shall notify the applicant as to any changes in bond or guarantee amount of conditions necessary for acceptance by Wallowa County.
04. The applicant shall submit to the Wallowa County Planning Director the bond or other guarantee and a copy, thereof, written in favor of Wallowa County. When the Planning Director finds the bond or other guarantee is in order, the agreement shall be forwarded to the Wallowa County Court for their review and proper execution.
05. All guarantees and bonds shall specify the time limit for completion of the performance agreement by the applicant. The time limit shall not exceed 12 months unless justification for a longer period of time is set forth in writing. Time extensions may be granted by the Wallowa County Court upon written request stating grounds for such a request.
06. The monetary amount of all bonds or other guarantees shall be 120 percent of the estimated cost.

SECTION 40.020, EXTENSION AND ADJUSTMENT OF PERFORMANCE AGREEMENT:

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01. The time limit for satisfactory completion of any bonded or guaranteed improvements or conditions of approval may be extended by the Wallowa County Court upon written request from the applicant. The Wallowa County Court may extend the time limit for periods not to exceed 12 months with each written request.
02. In the process of reviewing a bond or guarantee time limit extension, the Wallowa County Court shall reassess and may require an adjustment in the bond or other guarantee amount to address the current costs of meeting the existing obligations of the applicant.
03. In the case of an obligation to perform at a future date exceeding 12 months, the amount of the bond shall be adjusted annually to reflect changing estimates of the costs of fulfilling the obligation.

SECTION 40.025, NONCOMPLIANCE WITH OBLIGATION:

01. If the Wallowa County Planning Director finds that a permittee is not fulfilling an obligation, the Planning Director shall notify the applicant in writing of the agreement violation and shall specify the details of noncompliance. Within 30 days of the notice, the applicant shall correct the situation - unless the Planning Director allows additional time for compliance because of circumstances beyond the control of the applicant.
02. If the applicant does not take action within 30 days to correct the situation or fails to diligently work to complete the compliance or the compliance is otherwise not completed within the time specified in the performance agreement, Wallowa County may take the following action.
 - A. Enter upon the site of the development and carry out the obligation in accordance with the provisions agreed upon.
 - B. Notify the applicant of his/her failure to perform as required.
 - C. Demand payment from the applicant for the unfulfilled obligation.
03. If the guarantee is not sufficient to compensate Wallowa County for expenses necessary to fulfill the obligation, the amount due to the Wallowa County for the obligation is a lien in favor of the Wallowa County and upon the entire contiguous real property of the owner of the land subject to the obligation.
04. The lien attaches upon the filing with the Wallowa County Clerk of notice of the claim for the amount due for the fulfillment of the obligation. The notice shall demand the amount due, allege the insufficiency of the guarantee, and allege the applicant's failure to do the required obligation.

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05. The lien may be foreclosed in the manner prescribed by law for foreclosing liens on real property.

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