

**LUDC  
2013**

GARFIELD COUNTY, COLORADO

# Article 13: Financial Guarantee



# ARTICLE 13

## FINANCIAL GUARANTEE

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# ARTICLE 13: FINANCIAL GUARANTEE

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## 13-101. FINANCIAL GUARANTEE AND IMPROVEMENTS AGREEMENT REQUIRED.

Before any Land Use Change Permit is approved under this Code, the BOCC may require the Applicant to file a guarantee of financial security payable to the County, and to execute an improvements agreement consistent with section 4-203.K. The purpose of the financial guarantee and improvements agreement is to ensure the following:

**A. Completion of Project and Reclamation of the Property.**

The project is completed, including reclamation of property to return the property to pre-existing conditions and remove structures to 1 foot below ground level.

**B. Conditions of Permit Fulfilled.**

The Applicant performs all improvements, mitigation requirements, and permit conditions in connection with the construction, operation, and termination of the project.

**C. Responsibility for Impacts to Public Facilities and Services.**

The Applicant addresses responsibility for increased demand on public facilities and services as a result of the construction, operation, and termination of the project.

**D. Funds are Available to the County to Complete Project.**

In the event that the project is suspended, curtailed, or abandoned, the County can complete the project and necessary improvements, or restore the property to its original condition or an acceptable condition at no additional cost to the County.

## 13-102. AMOUNT OF FINANCIAL GUARANTEE.

In determining the amount and type of the financial guarantee, the BOCC shall consider the following factors:

**A. Project Completion and Reclamation.**

The estimated cost of completing the project or returning the property to its original condition or to a condition acceptable to the County.

**B. Conditions of Permit.**

The estimated cost of performing all mitigation requirements and permit conditions in connection with the construction, operation, and termination of the project.

**C. Estimated Cost.**

The estimated cost shall be based on the Applicant's cost estimate as prepared by a qualified professional engineer. The BOCC may require, as a condition of the Land Use Change Permit, that the amount of financial security be adjusted based upon bids received for construction of the project in compliance with permit conditions and the following considerations:

1. The estimated cost for the County to bring in personnel and equipment to complete any unperformed purpose of the financial guarantee;
2. Contingency costs;
3. Consultant fees, including engineering and legal fees; and
4. The duration of project construction or activity and a reasonable projection of increased project cost due to inflation, if appropriate.

### **13-103. GUARANTOR AND FORM OF FINANCIAL GUARANTEE.**

#### **A. Form.**

The financial guarantee shall be in a form acceptable to the BOCC and shall be set forth in an improvements agreement executed by the County and the Applicant.

#### **B. Guarantor or Surety.**

If the form is a security such as a guarantee or letter of credit, the guarantor or surety shall be licensed to do business in Colorado. Should the license to do business in Colorado be suspended or revoked, the Applicant shall have 60 calendar days, or a time reasonable to the BOCC, after the BOCC receives notice thereof, to provide a substitute guarantee in a form and type acceptable to the BOCC. Should the Applicant fail to make a substitution either prior to a lapse in licensure or within the time allowed, the BOCC shall suspend the Land Use Change Permit until proper substitution has been made.

### **13-104. RELEASE OF GUARANTEE.**

The financial guarantee may be released under any of the following conditions:

#### **A. Surrender of Permit.**

The Land Use Change Permit has been surrendered to the BOCC before commencement of any physical activity on the project site.

#### **B. Project Abandonment.**

The project has been abandoned and the site has been returned to its original condition or to a condition acceptable to the County.

#### **C. Satisfactory Completion.**

The project has been satisfactorily completed as verified by a qualified professional engineer and approved by the BOCC.

#### **D. Satisfactory Phase Completion.**

A phase or phases of the project have been satisfactorily completed allowing for partial release of the financial guarantee consistent with the project phasing, as verified by a qualified professional engineer and as agreed to in the improvements agreement.

#### **E. Other Releases.**

Other conditions permitting full or partial releases may be approved as set forth in the improvements agreement.

### **13-105. CANCELLATION OF THE FINANCIAL GUARANTEE.**

A financial guarantee may be canceled only upon written consent by the BOCC. The BOCC may grant a request to cancel all or a portion a financial guarantee if canceling the guarantee will not detract from the purposes of the security.

### **13-106. FORFEITURE OF FINANCIAL GUARANTEE.**

#### **A. Notice and Response.**

If the BOCC determines that a financial guarantee should be forfeited because of any violation of the Land Use Change Permit or improvements agreement, the BOCC shall provide written notice to the obligor or surety under any financial guarantee and to the permit holder.

1. The County shall send by certified mail, return receipt requested, a written notice of forfeiture of financial guarantee to the obligor or surety and to the permit holder. Notices shall be mailed to the last known address of the Applicant and of the obligor or surety and shall contain the following:

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- (a) The reason for forfeiture of the financial guarantee, specifying each permit violation with references to the section or sections of the Code violated;
      - (b) The permit holder's right to respond by request for a Public Hearing by the BOCC and notice of automatic forfeiture if the permit holder does not respond; and
      - (c) The deadline for response by the permit holder.
    2. The permit holder may request a hearing by the BOCC by written request to the Director within 10 calendar days of receipt of the notice of forfeiture of financial guarantee.
      - (a) If the permit holder submits a timely request for hearing by the BOCC, the Director shall schedule a Public Hearing within 45 calendar days of receipt of the permit holder's request.
      - (b) If the permit holder does not submit a timely request for hearing by the BOCC, the BOCC may order the financial guarantee forfeited.

**B. Public Hearing and Action by the BOCC.**

1. At least 30 calendar days prior to the date of the scheduled Public Hearing before the BOCC, the County shall have published a notice of Public Hearing in a newspaper of general circulation in the project area.
2. At the Public Hearing the permit holder may present statements, documents, and other information for consideration by the BOCC with respect to the alleged violation(s) and forfeiture of financial guarantee.
3. The BOCC shall either withdraw the notice or enter an order for forfeiture of the financial guarantee.

**C. Default and Use of Financial Guarantee.**

The financial guarantee may be used by the BOCC in the event of default or allowed default of the permit holder, for the purposes of recovering on the guarantee or fulfilling the obligation(s) of the Land Use Change Permit holder. The County may arrange for the lending institution providing money for the permit holder to hold required funds in escrow. Funds shall be disbursed out of escrow by the lending institution to the County upon County's demand for the purposes set forth in this Article.

**D. Inadequate Revenue and Cost Recovery.**

If the forfeiture results in inadequate revenue to cover the costs of accomplishing the purposes of the financial guarantee, the County Attorney may take such steps as deemed proper to recover such costs where recovery is deemed possible.