



PERFORMANCE AGREEMENTS FINANCIAL GUARANTEES

SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING
976 OSOS STREET • ROOM 200 • SAN LUIS OBISPO • CALIFORNIA 93408 • (805) 781-5600

Promoting the Wise Use of Land • Helping to Build Great Communities

FREQUENTLY ASKED QUESTIONS •

What Are Financial Guarantees?

Financial guarantees are a form of financial security posted by the applicant to ensure timely and proper completion of project/site improvements to ensure compliance with the San Luis Obispo County Code. Financial guarantees are also used to warranty materials, workmanship of improvements, and design. Financial guarantees include assignments of funds, cash deposits, surety bonds and/or other financial securities acceptable to the Director of the Department of Planning and Building. They are required by ordinance and statutes and certain sections of the San Luis Obispo Code on various types of projects, such as commercial or residential permits, subdivisions, grading permits, or code enforcement.

The Operations Division within the County of San Luis Obispo Department of Planning and Building provides information to applicants regarding the types of financial guarantees required for specific projects. There are two primary classifications of financial guarantees. These are as follows:

Performance Financial Guarantees

Performance financial guarantees are posted to ensure actual construction and installation of required improvements for land use permits, land divisions, wireless communication facility sites, or restoration of surface mines. There are various time limits placed on performance based on the code or as set by agreement between the Department and the applicant. The time limit for performance guarantee compliance may be extended by six months at the Director's discretion if circumstances beyond the control of the applicant warrant an extension. The request for an extension shall be in writing and accompanied by a schedule for completion of the remaining work.

Maintenance and Monitoring Financial Guarantees

The County can require all applicants to post a maintenance guarantee and/or defect guarantee. This type of bond is used to guarantee the successful operation and maintenance (including monitoring) and the workmanship, materials, and design used in construction of improvements required by the conditions of any permits or approvals issued pursuant to Titles 19, 21, 22, and 23 of the San Luis Obispo County Code.

Unless otherwise indicated in the conditions or Developer's Agreement, all maintenance and defect guarantees shall guarantee successful operation, workmanship, materials, and design of required facilities for a period of one to seven years following final inspection and approval of improvements.

Why Are Financial Guarantees Necessary?

Financial guarantees are a precautionary measure to help San Luis Obispo County avoid incurring public financial liability for an applicant's project. They ensure the following:

- All work performed complies with the provisions of conditions and requirements of San Luis Obispo County Code and applicable laws and ordinances;

- Protective controls and/or required improvements are completed for the permit within the specified time limits;
- Corrections are made to any deficiencies that affect public health and safety or welfare;
- San Luis Obispo County has a means of recovery in the case of developer/contractor default;
- Design, material, and workmanship of the facilities comply with applicable standards for a specified period of time; and
- Plantings or improved facilities are maintained by the developer/contractor for a specified period of time.

What Authorization Does San Luis Obispo County Have To Require Financial Guarantees?

Titles 19, 21, 22 and 23 of the County Code all establish the authority and procedures for accepting and enforcing financial guarantees, with the intent of ensuring that development projects are completed and maintained in accordance with the standards of those Titles and the Conditions of Approval.

What Types of Financial Guarantees May Be Required For a Permit?

The following list identifies the financial guarantees required for various permits. The following are examples of the types of items that may require the posting of a Financial Guarantee:

- Grading
- Wireless Site Restorations
- Demolition permits
- Subdivision improvements
- Residential relocations
- Site improvements
- Landscaping
- Critical areas mitigation.
- Street tree planting and maintenance

What Are My Options For Posting Financial Guarantees?

San Luis Obispo accepts the following forms of securities to satisfy the requirements of financial guarantees:

- **An Assignment of Funds (AOF)**

An AOF involves using a form prepared by Planning and Building or State of California Conservation that is signed by a principal of the project and an officer of a banking institution licensed to do business in the State of California. The form must be notarized. It stipulates that the bank is holding a set amount of money in a savings account, Certificate of Deposit, or loan account and that those funds will not be released without written authorization by the Operations Department. If the applicant defaults, the bank is required to pay the funds to San Luis Obispo County upon receipt of a Notice of Default from the Director of Planning and Building or his/her designee.

- **Cash**

Securing financial guarantees using cash requires that either cash or other instruments such as personal checks, cashier's checks, or money orders that can be converted into cash, be deposited into Department Bond Trust Fund. If the applicant defaults, the department will notify the applicant and use the funds to pay for any necessary corrective work. Amounts in excess of what is required to complete the work are returned to the applicant.

- **Surety Bond**

A surety bond is a third-party financial guarantee that is issued by an organization chartered by the State of California (i.e., a licensed insurance company). This organization, or surety, agrees to tender the penal sum of the bond (the bond amount) if the applicant defaults. In the event of a default claim, the surety has the option to either tender the amount of the bond or complete the work in lieu of tendering the bond amount. Before making payment on a default claim, the surety will investigate the validity of the claim. The bond cannot be terminated, canceled, or released without written authorization from San Luis Obispo County.

Does San Luis Obispo Issue the Financial Guarantee?

San Luis Obispo does not issue financial guarantees. You may obtain financial guarantees from the following sources:

An Assignment of Funds (AOF) may be obtained from a bank that is FDIC insured or a credit union that is insured and licensed to do business in the State of California

Surety Bonds are available from an insurance company or agent (look under Bonds, Surety and Fidelity in the yellow pages of the telephone book or contact the California State Surety Association)

Does Planning and Building Have Specific Financial Guarantee Forms or May I Obtain Them from my Bank or Surety?

You must obtain the specific financial guarantee forms and corresponding agreements from the Department of Planning and Building. All financial guarantees must be submitted by the applicant/owner of the property on original San Luis Obispo forms. Forms can be emailed or the applicant may also elect to pick up the forms. The department does not consider a faxed copy an original document. Only original forms prepared by the Operations Department with original, notarized signatures will be accepted.

When does an Applicant Post a Financial Guarantee?

The time at which a financial guarantee must be posted depends on the type of permit or review involved (e.g., commercial, residential, grading, subdivision, or critical areas). For example, a restoration bond is required before any site construction can begin. When a financial guarantee is required, no work may be performed until the financial guarantee is received and accepted by the department.

How Does San Luis Obispo Arrive At the Value For the Financial Guarantees?

The amounts of the financial guarantees are based on the schedules appropriate to the required work. The schedules are updated periodically and frequently to ensure that the guarantee amount fully captures likely costs. Financial guarantees shall also require a administrative fee in an amount to be determined by the Director of Planning and Building. (Administrative fees may be set to 100% of the project cost and not less

than 50%) San Luis Obispo uses current detailed quotes for construction, landscaping, and environmental cost data.

Who May Post a Financial Guarantee? Can I have someone else post a Financial Guarantee for me?

Only the applicant/owner of the property or persons with financial interest in completing this project may post a financial guarantee for any project. It is important to remember after you post the guarantee; it is your responsibility to complete the work. If you sell the project, you must have the financial guarantee replaced by the new owners. If you sell the project and do not have the purchaser replace your guarantee(s), then you are still responsible for completing the work.

Where Does a Cash Deposit Go?

All cash deposits are placed in the San Luis Obispo County Bond Trust Account held by the San Luis Obispo Auditor's Office.

When and How is Money Returned?

The Department will not release performance guarantees until all the following conditions are met:

- Permit fees have been paid to date;
- Any applicable maintenance, maintenance/defect, or maintenance/monitoring guarantees have been posted;
- The development site has been inspected; and
- The Director has determined that the conditions and requirements of the permit/approval, as specified in the financial guarantee, have been met and final construction approval, if applicable, has been granted. The procedure for redeeming your financial guarantee depends on the type of project.

What is the Process for Releasing Financial Guarantees?

The project manager will notify the Operations Division of the Department of Planning and Building in writing when a financial guarantee may be released. A release notification will then be prepared by the Department of Planning and Building for the principal, Surety Company, financial institution, and/or San Luis Obispo Auditor's Office. The original documents (surety bond or Assignment of Funds) will be returned to the Surety Company or financial institution.

May Someone Else Replace a Customer's Bonds, or May Customers Replace Them With a Different Type of Financial Guarantee?

Permit applicants may replace bonds with a different type of financial guarantee or a new owner (with legal proof of ownership) may replace your bonds. There is, however, a requirement that updated cost estimates for project be submitted and a new administrative fee will be added for each replacement of each financial guarantee.

Why am I required to update the Financial Guarantee?

The update requirement for replacing financial guarantees ensures that there are no changes for cost of completion and that ample administrative costs are in place.

Can the Amount of a Financial Guarantee Be Reduced Before Release?

The Director of Planning and Building may allow reductions in performance guarantee amounts in accordance with San Luis Obispo cost estimate of the work remaining to be completed. The applicant must supply the authorized staff person with a copy of the project's Bond Quantity Worksheet that indicates the percentage completed for each line item. The request for reduction shall be in writing, accompanied by a schedule for completion of the remaining work.

What is Default?

Default occurs when an inspection by Department reveals that some or all of the permit requirements have not been met and the principal has indicated/shown (either in writing or by not complying) that he or she is unwilling/unable to accomplish the work in accordance with the conditions of the permit.

What Constitutes Default and What Notice Would I Receive?

Both the applicant/principal and guarantor would be notified in writing of the default. Terms of default could include any of the following failure(s):

- 1) Failure to comply with the permit/and/or financial guarantee conditions;
- 2) Failure to complete, in the specified time, the required improvements in accordance with the San Luis Obispo Code and with approved project plans and conditions;
- 3) Failure to maintain/monitor, for the specified period of time, the required improvements in accordance with the San Luis Obispo Code and with approved project plans and conditions; and/or
- 4) Failure to pay current fee balances due.
- 5) When Applicant or Financial Institute has canceled guarantee with out department approval.

When Will the County Take Action Against My Financial Guarantee?

The Director will determine whether the permit or approval conditions have been satisfied in a timely manner, or whether the financial guarantee shall be collected to remedy the violation. If satisfactory assurance is not received by the Department within a time period determined by the Director that conditions will be appropriately corrected, the Department may order the applicant to perform all necessary corrective work, and/or demand payment of the financial guarantee.

What if Applicant Choose To Not Complete/Correct the Work and Request the County To Use Their Financial Guarantee To Complete the Work?

The guarantor is responsible, up to the limits of the financial guarantee, for payment of any and all necessary costs and expenses that have been or will be incurred or expended by San Luis Obispo County in causing any and all such required work to be done. In the event that total costs associated with the required work exceed the guarantee amount, the applicant shall remain responsible to San Luis Obispo for the payment of any remaining amount. San Luis Obispo may contract with a third party to complete the work required by the financial guarantee and associated agreement.

Who May I Call With General Questions?

San Luis Obispo Operations Division, accounting staff are available to discuss specific questions about financial guarantees by calling 805.781.5617.