Surety Agreements

Chapter 24.70

SURETY AGREEMENTS AND BONDS

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24.70.010 Purpose.
The purpose of this chapter is to establish financial surety requirements for (1) the installment of improvements required by this title to mitigate impacts to critical areas or associated buffers or to restore such area, and (2) to ensure the replacement or repair of such improvements which are damaged during development or over a time specified by the approval authority or hearing examiner as a condition of permit approval.

24.70.020 Surety agreement in lieu of completion of permit approval requirements.

A. Installation.

1. The property owner, applicant, or legal designee, shall install improvements as required by the approval authority as a condition of permit approval under this title and replace any such improvements damaged during development prior to final approval for occupancy and/or use; or

2. If the required improvements are not installed prior to final approval for occupancy and/or use, the property owner, applicant, or legal designee, shall execute and file with the county a surety agreement guaranteeing and covering the
completion of such improvements together with any needed replacements or repairs within a time specified by the approval authority. In no case shall final approval for occupancy and/or use be given by the approval authority if improvements remain uninstalled that constitute a hazard to public health and safety as determined by the approval authority.

B. The property owner, applicant, or legal designee, shall execute and file with the county a surety agreement guaranteeing and covering the construction, installation, and monitoring of such improvements together with a reasonable amount to cover possible any needed replacements or repairs over for a time and method specified by the approval authority as a condition of permit approval.

C. The director may approve such agreements made under this chapter.

24.70.030 Exception.
If the county agrees, by action of the Board of County Commissioners, to accept the obligation for and perform maintenance or monitoring of the improvements, then the property owner, applicant, or legal designee’s obligation to perform maintenance or monitoring functions shall terminate.

24.70.040 Amounts for surety agreements and bonds.

A. Surety agreements required under this chapter for installation of improvements shall be an amount equal to one hundred and twenty five percent of the fair market cost of installation, including materials and labor.

B. Surety agreements required under this chapter for monitoring such improvements required by this title shall be an amount equal to one hundred and twenty five percent of the cost of monitoring.

C. Surety agreements required under this chapter for maintenance and repair of such improvements required by this title shall be an amount equal to one hundred and twenty five percent of the cost of installation, including materials and labor.

D. Amounts required for the various surety agreements under this chapter shall be calculated separately.

E. The amount of the surety agreement or bond shall not be accepted by the county if the review authority determines that it will be inadequate to cover the costs related to fulfillment of the conditions of approval for the permit.

F. The approval authority may utilize various methods to calculate the amount necessary for the surety agreement to fulfill the requirements of the permit approval or mitigation plan. The property owner, applicant, or designee shall submit to the approval authority receipts, contractor bids/estimates, or other documentation that establishes the cost.
G. Such agreement shall not relieve the property owner or designee of liability for the substandard or defective condition of any required improvements discovered following the effective term of the surety or bond.

H. If costs incurred are related to issues or circumstances undiscovered or undisclosed at the time the surety agreement is accepted by the county, the property owner or applicant shall be responsible for all additional costs.

24.70.060 Forms of surety agreement.
The property owner, applicant, or designee shall include with the agreement set forth in this chapter one or more of the following at the discretion of the approval authority:

A. A surety bond executed by a surety company authorized to transact business in the State of Washington on a form approved by the prosecuting attorney;

B. Cash, deposited with the Thurston County treasurer;

C. A letter of credit or irrevocable assignment of savings executed by a financial institution stating that the money is held for the stated purpose of the installation, monitoring, and/or maintenance and repair.

24.70.070 Forfeiture of surety.
If the property owner, applicant or designee fails to complete all required work within the period specified, including any approved extensions of time by the approval authority, the county may take steps to demand performance of said obligations within a reasonable time not to exceed ninety days from the date of demand. If the required improvements are not substantially completed within that time, the county may take action to forfeit the financial surety. The county shall be entitled to recover all costs taking of such action, including reasonable attorney fees. The county shall use the financial surety to complete the required improvements and pay the costs incurred. Should the proceeds of the financial security be insufficient for completion of the work and payment of the costs, the county shall be entitled to recover the deficiency from the property owner, applicant, or designee.

24.70.080 Release of surety.

A. The surety agreement shall specify that the surety cannot be terminated or cancelled without written release by the approval authority. The approval authority shall release all or part of the unexpended portion of the surety, as appropriate, upon determining that activities subject to the surety agreement or bond have been completed in compliance with the terms and conditions of the permit and the requirements of this title.

B. Surety agreements for monitoring of such improvements together with any needed replacements or repairs as required under this title shall not be fully released for at least three years, five years for wetlands, following final acceptance of the improvements by the approval authority.