

Chapter 770
DISMANTLING AND FINANCIAL ASSURANCE STANDARDS

- 770.01 Purpose & Applicability**
- 770.02 Preliminary Construction, Dismantling and Reclamation Plan**
- 770.03 Final Dismantling and Reclamation Plan**
- 770.04 Financial Assurance**

770.01 Purpose & Applicability

- A. Purpose.** The purpose of this Chapter is to provide standards for plans and actions to dismantle wireless communication facilities, wind generation facilities, and solar generation facilities, as well as to direct how financial assurances for dismantling and restoration will be provided when required.
- B. Applicability.** This section applies to wireless communication facilities, wind power generation facilities, and/or solar power generation facilities constructed after the effective date of the ordinance as specified in Chapters 740, 750 or 760. Such facilities constructed prior to the effective date of this ordinance shall not be required to meet the requirements of this ordinance.

770.02 Preliminary Construction, Dismantling and Reclamation Plan. The applicant and landowner shall agree to a preliminary plan for dismantling/reclamation that provides completion of dismantling/reclamation of the facility without significant delay and protects the public health, safety and environment of Baker County, in compliance with the restoration requirements of this Section.

- A.** A detailed construction timeline shall be required and shall include the following:
1. Anticipated timeline for permitting, construction and operation
 2. Detailed timetable and sequence of construction, including but not limited to:
 - a. Access and transportation system details, including component delivery
 - b. Construction schedule and work force numbers, vehicles and equipment, including breakdown of days and hours
 - c. Site clearing, grading and excavation
 - d. Gravel, aggregate and concrete needs and sources
 - e. Assembly and construction of structure(s) and any accessory use(s)
 - f. Electrical construction activities
 - g. Site stabilization, protection and reclamation practices
- B.** The applicant must submit a description of actions the applicant and landowner propose to take to restore the site if operation of the facility ceases. The proposal shall describe steps taken to restore the site to a useful, non-hazardous condition, including options for:
1. Post-dismantle/reclamation land use;
 2. Information on how impacts on wildlife and the environment will be minimized during the dismantling/ reclamation process;
 3. Measures that will be taken to protect the public against risk or danger resulting from post-dismantling site conditions; and
 4. A plan for disposing of the project components.

770.03 Final Dismantling and Reclamation Plan. Before beginning construction of the facility, the applicant must submit a final plan for dismantling/reclamation of the facility that is in substantial conformance with the preliminary plan approval and includes the following:

- A. A detailed dismantling/reclamation cost analysis shall be required. This analysis shall be performed by a professional of the County's choosing, at the applicant's expense, and shall be approved by a professional engineer. This analysis shall be re-evaluated and submitted to Baker County every five (5) years, as described in Section 750.07(B)(1)(a). If a re-evaluation of the cost of dismantling/reclamation estimates the cost to be higher than the value of the financial assurance established in Section 770.04 below, the County shall notify the project owner/applicant and the financial institution who issued the bond. The financial assurance shall be updated and reissued for an amount not less than that estimated for dismantling/reclamation, within 90 days of the re-evaluation. The dismantling/reclamation analysis shall include the following:
 - 1. Salvage plan, including name and location of facility where electrical components will be disposed
 - 2. Five (5)-year-low salvage values. Only the preceding five-year low salvage value can be used in the analysis. No used equipment values can be used in the analysis.
 - 3. Labor costs
- B. As a condition of approval, the landowner(s) shall sign and record an acknowledgement in the deed records for the county stating the landowner(s), and the landowner's successors in interest, are responsible for enacting the dismantling and reclamation plan described in Section 770.03.

770.04 Financial Assurance. Before beginning construction of the facility, the applicant must submit a surety bond or Certificate of Deposit (CD), the amount of which shall be based on a detailed reclamation cost analysis, in a form satisfactory to Baker County, assuring the availability of adequate funds to restore the site to a useful, non-hazardous condition if the operator fails or is otherwise unable to restore the site as required by the permit. A bond or CD shall be established to cover the cost of dismantling/reclamation of the facility, as well as site rehabilitation. The intent of this requirement is to guarantee performance (not just provide financial insurance) and to protect the public interest and County budget from unanticipated, unwarranted burden in the dismantling/reclamation of facilities. The bond or CD shall be issued in favor of Baker County and the landowner. For projects being sited by the State of Oregon's Energy Facility Siting Council (EFSC), the bond or letter of credit required by EFSC will be deemed to meet this requirement.

A. Surety Bonds.

- 1. Bond must be properly executed by principal, including display of corporate seal (if available). The relationship of the signatory to the principal is to be shown on the bond form itself or in an accompanying document.
- 2. Bond must be properly executed by acceptable surety, with the seal of corporate surety affixed, and accompanied by the power of attorney (POA) showing proof of signing authority as surety's representative. Surety bonds must be issued by a qualified surety (insurance company) approved by the US Department of Treasury.
- 3. Bond must be at least for the required amount.

4. Principal and surety must be indicated in proper locations on the bond form.
 5. The dollar amount must be spelled out [for example, Ten Thousand Five Hundred Fifty and no/100 Dollars (\$10,550.00)].
 6. Execution date on bond must be completed and date must precede the date of filing of bond.
 7. Power of Attorney must show that person signing for surety had authority to do so on the date bond was executed. The date must be the same as or earlier than the date the bond was executed. At the end of the POA, there should be a completed certificate indicating that the POA is still valid on a certain date. This certificate must be dated the same date the bond is executed or within a few days thereafter.
- B. Personal Bonds. The principal (obligor) may furnish a personal bond in lieu of a surety bond to ensure compliance with all the terms and conditions of a plan and operations on private land. The dollar amount must be spelled out on the bond form [for example, Ten Thousand Five Hundred Fifty and no/100 Dollars (\$10,550.00)]. The personal bond form must be notarized. Baker County will accept two financial forms of personal bonds:
1. Cash Bond. A cash bond must be submitted in the form of a guaranteed remittance, such as a cashier's check, bank draft, certified check, USPS money order, or cash that shall be deposited by Baker County when received. The check must be payable in U.S. dollars and issued by a U.S. bank. The check must be issued to Baker County. Baker County shall not pay interest on a cash bond.
 2. Certificates of Deposit (CD). Federally-insured certificate of deposit payable to Baker County, requiring the following information:
 - a. Financial institution must be federally insured or a Federal Reserve Branch bank.
 - b. CD must indicate that "*Baker County*" is granted full authority to demand immediate payment in case of default. Approval by the Board of Commissioners is required prior to redemption of the CD by any party.
 - c. CD shall be issued to or for the benefit of the Baker County, and Baker County shall not pay interest on the deposit.
 - d. The amount of the bond shall be adjusted for inflation using the U.S. Gross Domestic Product Implicit Price Deflator, Chain-Weight, as published in the Oregon Department of Administrative Services' "*Oregon Economic and Revenue Forecast*," or by any successor agency (the "*Index*"). The applicant shall increase the amount of the bond annually by the percentage increase in the Index and shall pro-rate the amount within the year to the date of retirement. If at any time the Index is no longer published, Baker County shall select a comparable index for adjusting the amount.
 - e. The bond shall not be subject to revocation or reduction before retirement of the energy project site. If there is an increase in cost in future re-estimates, the bond shall also be increased.
 - f. For facilities subject to Energy Facility Siting Council jurisdiction, a finding by the Council that a proposed energy facility meets the Council's Retirement and Financial Assurance standard, OAR 345-022-0050, satisfies the requirements of paragraph (2).

- C. If at any point prior to completion of the dismantling and reclamation plan the financial assurance described in this section lapses, the lapse will be a violation of the land use permit. The Planning Director shall refer the matter to the Planning Commission for appropriate action upon notification of the lapse.