



Engineering Bulletin 11-03

Subject: Financial Assurance Requirements
Application: Wind Energy Projects

Date: December 21, 2011

Background: Kern County Public Works Department (KCPW) is responsible for the issuance of grading permits for Wind Energy Projects within the unincorporated areas of Kern County. Regulatory requirements contained within the Kern County Zoning Ordinance (19.64.140K) specify that all Wind Energy Projects are to be provided with a plan to mitigate soil erosion and sedimentation. This plan is subject to review and approval by KCPW and is to include provisions for revegetating disturbed areas of the site. In order to assure the successful implementation of the plan, the Zoning Ordinance requires the developer to post a financial security with the County. Since grading operations are regulated by the Kern County Code of Building Regulations, provisions established therein are used to determine acceptable forms of financial securities. Section 17.04.140E indicates that acceptable securities include cash deposits made with the County, negotiable U.S. Treasury Certificates, Performance Bonds, Letters of Credit and Certificates of Deposit. This bulletin establishes minimum requirements for acceptable Bonds, Letters of Credit and Certificates of Deposit.

Bonds

1. Bond shall identify that it is a performance bond for the completion of the revegetation requirements of the project. The grading permit number(s) shall be identified as well as the permit number assigned to the bond by Building Inspection. The bond permit number and bond number assigned by the bonding company shall be placed on each page of the document.
2. The bond must be completely executed; blank spaces are not acceptable.
3. Bond shall state that the surety, jointly and severally, bind themselves, their successors and assigns the payment of the sum of the bond to the Obligee, the County of Kern.
4. The business address to be shown on the bond for the County of Kern shall be 2700 M Street, Ste. 570, Bakersfield, CA 93301.
5. Bond amount shall be identified as including the costs of reasonable expenses and fees, including attorney fees incurred by the County of Kern for successfully enforcing the obligation against the surety.

6. The penal sum must be correctly stated in words and numeric figure in U.S. Dollars.
7. The permit number(s) must be correctly stated and identical throughout the bond.
8. Provisions for releasing bond shall be stated (ie- principal faithfully completes all revegetation requirements or bond is replaced). If provisions have not been met then it shall be stated that the bond shall remain in full force and effect.
9. Surety will specify that it will give prompt notice to the Principal and County of Kern of any notice received or action filed alleging the insolvency or bankruptcy of the Surety or any events which would lead up to the preventing of the surety from fulfilling its obligations under the terms of the bond (ie – loss of license).
10. A formal legal description of the disturbed area subject to the revegetation plan must be provided. At a minimum, the legal description should include the township, range and section number(s) and the appropriate base and meridian (i.e., SBB&M or MDB&M). A meets and bounds description is also acceptable. If the legal description is lengthy it may be referred to in an attachment and labeled Attachment A. The attachment shall include the permit number and bond number on each page of the attachment.
11. The company names of the principal and surety must be identical as identified on all pages of the bond.
12. Signatures for the principal and surety must be affixed to the bond with their names and titles printed or typed below each signature. Corporate seals of each shall be affixed next to the signatures.
13. The city, state and date(s) of execution of the principal's and surety's signatures must be provided on the bond (the dates of the principal's and surety's signatures need not be identical).
14. The Principal's and Surety's signatures must be notarized. The date of the Principal's and Surety's notarized signature acknowledgments must not predate the date of their signatures on the bond. The notary's commission date must not have expired.
15. If the Corporate Attorney signs for the surety, the Power of Attorney must identify the name of the attorney-in-fact (the name must be spelled identically to that on the bond form). The conditions stated on the Power of Attorney must not prevent the attorney-in-fact from acting (e.g., a dollar limitation less than the penal amount of the bond). The Power of Attorney must be signed, sealed and dated at the bottom of the form with the date being identical to the date of the attorney-in-fact's signature on the bond.
16. Surety company must be authorized to conduct business in the State of California or has been approved by the U.S. Department of Treasury to issue bonds on Federal Lands.

Letters of Credit

1. The Letter of Credit shall be irrevocable and identify it is established as security for the performance and/or completion of the revegetation requirements for the project.
2. The grading permit number(s) shall be identified on the Letter of Credit, as well as the permit number assigned by Building Inspection for the Letter of Credit. The bond permit number and Letter of Credit number assigned by the financial institution shall be placed on each page of the document.
3. The sum amount available for draft must be correctly stated in words and numeric figure in U.S. Dollars.
4. Kern County shall be the designated beneficiary. The address for Kern County shall be shown as; 2700 M Street, Suite. 570, Bakersfield, CA 93301.
5. The Financial Institution issuing the Letter of Credit must be authorized to conduct business in the State of California.
6. The Letter of Credit must be collectable at a location within California.
7. The Letter of Credit shall be provided with a stipulation that it shall be automatically extended for one year periods of time from the present or any future expiration date, unless at least 120 day prior to expiration a written notice of cancellation is given to the County.
8. The financial institution issuing the Letter of Credit shall provide the County of Kern with 120 days' notice of intent to cancel.
9. A provision shall be included that notification of cancellation of the Letter of Credit shall be considered an action upon which the County may withdraw the funds.
10. The Letter of Credit shall include a statement that acknowledges the funds represented by the instrument include the costs associated with reasonable expenses and fees, including attorney fees, incurred by the County of Kern to collect the funds.
11. The Letter of Credit shall be prepared on the financial institution's letterhead and include the address to which site drafts are to be drawn.
12. The signature(s) on the Letter of Credit shall be by an authorized representative of the financial institution. The signature shall be notarized.
13. The Letter of Credit shall include the following statements:

This Letter of Credit shall be in full force and effect until receipt of a written statement by a duly authorized representative of Kern County that all of the obligations secured hereby have been performed or until disbursement of all funds pledged and guaranteed or until the expiration date stipulated herein. This agreement shall be governed by and construed in accordance with the laws of the State of California. This credit shall be subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication Number 600 notwithstanding Article 36 of said publication

Certificates of Deposit

1. The Financial Institution issuing the Certificate of Deposit must be authorized to conduct business in the State of California and be a member of the Federal Deposit Insurance Corporation (FDIC).
2. The amount of the Certificate(s) must not exceed the FDIC insurance limits. If Certificates are issued by several branches of the same financial institution, the sum of the individual Certificates may not exceed the FDIC limit.
3. The Certificate of Deposit shall be made payable to Kern County, 2700 M Street, Suite 570, Bakersfield, CA., 93301.
4. The Certificate of Deposit shall be accompanied by a copy of the financial institution's deposit signature card (or equivalent) for the instrument.
5. The financial institution shall prepare a cover letter for transmitting the Certificate of Deposit to the County, signed by an officer of the financial institution which identifies the following:
 - a) Account number
 - b) Amount of the Certificate of Deposit
 - c) The payee as Kern County
 - d) Where it may be encashed and any stipulations for encashment.
 - e) The Certificate of Deposit may not be released to the depositor without written permission from Kern County.
 - f) The Certificate of Deposit must automatically renew.