



# Clear Creek County Road Use Regulations for Guanella Pass Road

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## **I. Authority:**

Includes:

CRS §30-11-107(h)

CRS §42-4-106(1), (3)

CRS §42-4-111(1)(g), (y)

CRS §43-2-111

## **II. Purpose:**

The purposes of these regulations are to protect Guanella Pass Road; to reasonably accommodate uses of the road for which it was not designed; to allow its use at a minimum cost to county taxpayers for upkeep, by requiring that all Users as defined herein pay a fair share for maintenance and pay for damages related to their Use; to protect traffic flow for recreational users of the road; and to protect public health, safety and welfare.



### III. Regulated Activity:

- A. Persons engaged in a Use as defined herein may not use Guanella Pass Road without a Use Permit issued pursuant to these regulations.
- B. Persons engaged in a Project Use which includes one or more Haul Uses, may not use Guanella Pass Road for those Haul Uses without a separate Haul Use Permit for each.

### IV. Definitions:

- A. "Guanella Pass Road" or "road" means the traveled way, shoulders, ditches and side-slopes, right-of-way (including cutslopes and fillslopes), and all facilities (for example, walls, curbs, gutters, guardrails, culverts) within the right-of-way of Guanella Pass Road in Clear Creek County.
- B. "Haul" means a one-way trip on Guanella Pass Road to or from the site of the activity to which the Use relates. Hauls include trips associated with mobilization and demobilization.
- C. "Haul Use" means an activity which entails:
  - (1) use of a vehicle that cannot safely travel at or maintain travel at the speed limits or typical travel speeds, whichever is greater, on Guanella Pass Road, including on its switchbacks;
  - (2) use of a vehicle that will obstruct traffic flow in the opposing lane, including on switchbacks; or
  - (3) use of a vehicle that cannot be cleared from the road within twenty (20) minutes to allow bidirectional travel on the road in the event of breakdown.

Activity which constitutes a "Haul Use" may also be part of the traffic of a Project Use.

- D. "Person" means a human being or legal entity of any nature.
- E. "Project" means a planned set of interrelated tasks to be executed over a period of time to complete, construct, develop or perform a specific object, to which Uses relate.
- F. "Project Use" means a Project which entails:



(1) repetitive traffic on a route or routes on Guanella Pass Road which exceeds normal traffic on the route(s) and is estimated to thereby measurably reduce the life of or otherwise damage the road on the route(s) in the judgment of Public Works;

(2) traffic by vehicles causing unusual loading on Guanella Pass Road due to the characteristics of the vehicle(s) and what it is (they are) carrying (e.g., length, width, height, weight, number of axles) which is estimated to thereby measurably reduce the life of or otherwise damage the road in the judgment of Public Works; or

(3) an increase in traffic or change in the type of traffic on Guanella Pass Road;

Activity which constitutes a "Project Use" may include one or more Haul Uses.

G. "Public Works" means the County Public Works Director, who is the Road Supervisor identified in state law, or their designee.

H. "Use" means an activity on Guanella Pass Road which constitutes a Project Use or a Haul Use pursuant to these regulations.

I. "Use Permit" is any permit issued pursuant to these regulations. A "Haul Use Permit" means a Use Permit for a Haul Use. A "Project Use Permit" means a Use Permit for a Project Use.

J. "User" is the Person for whose ultimate benefit the Use is conducted. If the Use is to benefit (e.g., is for an activity conducted on) a parcel of land, the User typically is the owner or occupant of that land, as appropriate in the circumstances.

## V. Use Permit Application:

A. Persons engaging in a Use on Guanella Pass Road must apply for a Use Permit to the Public Works Department.

(1) Permit applications ordinarily will be accepted from Users only. Public Works may, in its sole discretion, accept applications from contractors performing for the benefit of a User a single Haul Use which is not part of a Project Use.

(2) When the User is a government, Public Works may, in its sole discretion, accept the application only from the contractor(s) performing the Haul(s).

B. Pre-Application Procedure



(1) A pre-application conference is required of all applicants. The pre-application conference shall be held between the applicant and Public Works (and other County staff when deemed appropriate by Public Works). The purpose of the conference is to provide information to Public Works about the proposed Use pertinent to the application of these regulations to the Use, and to provide information about the applicable procedures, requirements and standards of these regulations to the applicant.

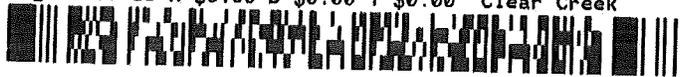
(2) At or before the pre-application conference, the applicant shall provide Public Works with a written description of the Use, at a minimum including:

- (a) Location of the activity to which the Use relates;
- (b) Name, business address and contact information of and for the User;
- (c) Name, business address and contact information of and for the User's manager responsible for the Use;
- (d) If the Use relates to a Project Use, a description of the Project;
- (e) Description of the route(s) to be used on Guanella Pass Road for the Use;
- (f) Description of all vehicles to be used in the Use, including weight, length, width, numbers of axles and spacing of axles, special steering capabilities, and weights of each Haul (to the extent known);
- (g) The estimated numbers of Hauls of each description;
- (h) The estimated timetable for the Use; and
- (i) If a contractor(s) is used to perform the Use (including for impact mitigation for the Use), the name, business address and contact information of and for the contractor(s);
- (j) Other information about the Use requested by Public Works.

(3) Any comments made by Public Works during the pre-application conference are only preliminary in nature and should not be relied upon by applicant. Formal comments cannot be made by Public Works until after a complete application is submitted.

#### C. Application Fee

(1) Within fifteen (15) business days after the pre-application conference, Public Works will establish an estimate of the amount necessary to cover the costs of reviewing



and processing the application, including the costs of retention of consultants and experts that Public Works deems necessary to advise it on the application.

(2) Once the estimate is established, Public Works will notify the applicant in writing of the fee and its amount. Until the fee is paid, the application will be deemed incomplete and will not be further processed.

(3) The amount of the fee determined hereunder may be increased at any time if it is determined by Public Works that the fee is not sufficient to cover all costs associated with reviewing the application. If Public Works so determines, it shall notify the applicant in writing of the amount of the increase. Not later than fifteen (15) days after the billing, the applicant shall pay the amount of the increase. If the increase is not timely paid, the application will be deemed withdrawn by the applicant.

D. Application. The application will include the following:

(1) The information required for the pre-application conference, completed and updated as of the date the application is submitted, specifically including the numbers, dates and route(s) of each Haul (to the extent known or estimable);

(2) Other information about the Use requested by Public Works; and

(3) When a Use consists of or includes one or more Haul Uses, the application will include the estimated speed of travel, estimated stops, total amount of time required for the Use, and a traffic control plan(s) for each Haul Use which describes how impacts will be mitigated.

E. A complete application for a Project Use Permit must be submitted at least 60 days before the desired commencement of using Guanella Pass Road for the Project. A complete application for a Haul Use Permit must be submitted at least 30 days before the Haul.

## VI. Use Permit Standards:

A. A Use must be designed to mitigate the impacts, including of the cumulative impacts of Project Uses, on Guanella Pass Road with respect to traffic flow and such that the road will remain in as good condition as the pre-existing condition.

B. At all times, Guanella Pass Road must be able to accommodate the anticipated traffic with regard to all of the following:



- (1) Road structure (including, but not limited to, pavement, subgrade, walls, guardrail, drainage and all facilities within the right-of-way);
- (2) Road width;
- (3) Geometry of road;
- (4) Sight distance;
- (5) Condition of surface;
- (6) Intersections;
- (7) Road capacity and/or level of service;
- (8) Acceleration/deceleration lanes;
- (9) Non-vehicular uses; and
- (10) Traffic flow (considering posted speed limits or typical traffic speeds, whichever is greater).

C. Specific requirements for repairs, upgrades, development, and maintenance of Guanella Pass Road may be included as a condition of any Use Permit. Such work will be at the Use Permit Holder's expense. The Use Permit Holder's obligations to repair damages and pay the Life Impact Cost pursuant to these regulations are absolute whether or not such conditions are included in a Use Permit.

D. Any new points of access to Guanella Pass Road, whether permanent or temporary, for a Use, will require an access permit in accordance with any applicable County ordinances and/or regulations.

E. A Project may be required to route vehicles to mitigate significant impacts to commercial, residential, or recreation areas, to accommodate special events using or relying on Guanella Pass Road, or to prevent impacts to sensitive wildlife areas.

F. A Project may be required to limit its Use traffic generation, including to provide employee shuttles to limit impacts to Guanella Pass Road. A Use Permit may be denied or may be conditioned to the extent the applicant or User can move loads by air.

G. A copy of the Haul Use Permit must be in each vehicle making a Haul Use.

H. All Use Permits include the following conditions whether or not expressly stated in the Use Permit:



- (1) A Use Permit Holder will provide a record for each Haul identifying the date, vehicle, vehicle license plate, weight (with load, if any), length, width, numbers of axles and spacing of axles (“Haul Record”). For Hauls consisting of passenger vehicles or pickup trucks, the Haul Record need only identify the date and vehicle license plate. For Hauls for which a Haul Use Permit is issued, a Haul Record is not required unless the Haul details differ from the Haul Use Permit. Haul Records must be submitted to Public Works in writing weekly for the preceding week until the Use is complete;
- (2) The Use Permit Holder shall place traffic control signs along Guanella Pass Road, on Haul routes and at intersections, as specified by Public Works;
- (3) The Use Permit Holder must pay emergency service providers their fees for stationing emergency services vehicles and personnel to assure the availability of their services unimpeded by a specific Haul when deemed appropriate by emergency service providers, and those fees must be paid in advance, before the Haul is conducted;
- (4) Vehicles engaged in a Use shall not exceed size, weight, or load limits as set forth in state and county laws, except as specifically permitted pursuant to those laws; a vehicle requiring such a permit shall have the permit in the vehicle while engaged in the Project;
- (5) The road shall not be blocked at any time except as expressly provided in a Use Permit;
- (6) The Use Permit Holder may be required to have tow trucks or other equipment available or in caravan during a Haul to minimize the risk of blocking the road or to facilitate the Haul; and
- (7) Limits regarding the times (days and times-of-day) of Hauls to minimize conflicts with peak traffic hours and special events, or to address other public health, safety and welfare concerns;
- (8) Limits to minimize the risks and effects of poor visibility, fog, or other environmental or road conditions;
- (9) Downhill Hauls with loads may be required to be led by pilot cars at speeds below marked speed limits;
- (10) When traffic management is required, traffic shall be directed by use of adequate signage and flaggers according to standards of the Manual on Uniform Traffic Control Devices;



(11) The Use Permit Holder promptly will notify Public Works of damage caused to the road by its activities;

(12) The Use Permit Holder must update Public Works, in writing, when it has new, more complete, or changed information regarding the timetable for Uses, details about the nature of Uses, including the vehicles to be used; and the details about specific Haul Uses. All Use Permits are subject to amendment with new or revised conditions with respect to the updated information;

(13) Permit conditions may be changed, upon Public Works giving the Use Permit Holder written notice, because of lessons learned as a Project proceeds or learned from specific Hauls, or because details about Uses and specific Hauls change, or as deemed appropriate by Public Works;

(14) Public Works may require that a scale(s) be established and operating at all relevant times to determine the weights of Hauls. The scale will be obtained and operated at the Use Permit Holder's expense;

(15) The County has the authority to close Guanella Pass Road to traffic or impose restrictions as to the weight of vehicles to be operated on it for a total period not to exceed ninety days in any one calendar year whenever the road, by reason of deterioration, rain, snow, or other climatic conditions will be seriously damaged or destroyed unless the use of haul vehicles thereon is prohibited, or the permissible weights thereof reduced. All Use Permits will be subject to such closures without advance notice; and

(16) Such other conditions as Public Works deems appropriate to protect Guanella Pass Road and the public health, safety and welfare;

I. A Project Use Permit may be issued before sufficient details about specific Hauls are known to provide a complete set of conditions with respect to them. A Project Use Permit will not be issued before the Pre-Project Evaluation of the road condition is complete.

## VII. Use Permit Holder's Cost-Sharing:

A. The Project Use Permit Holder will pay the estimated cost of the accelerated loss of life of the road in excess of normal traffic on Guanella Pass Road ("Life Impact Cost"). The Use Permit Holder will also pay the cost to repair all damage to the road directly or indirectly arising from or relating to its Use.

B. Road Condition Evaluations for Project Uses.



(1) Pre-Project Evaluation. Upon receipt of a complete application for a Use Permit (excluding evaluations costs), Public Works will engage consultants to prepare an evaluation of the road's condition on the route to be used. The evaluation will utilize methodologies deemed appropriate for the proposed Project in the judgment of Public Works. The evaluation may include physical testing and measurement, including, but not limited to, falling weight deflectometer tests, core sampling, profile (laser road surface) testing, and ground penetrating radar. The evaluation may also include videography and digital imaging.

(2) Post-Project Evaluation. Upon notice being given by the Use Permit Holder of the completion of the Project, the pre-Project evaluation will be repeated, using the same methodology to the extent reasonably possible.

(3) Evaluations will include traffic counts when there is not sufficient recent traffic count data to differentiate Project-related wear from that due to normal, non-Project traffic.

(4) All evaluations will be at the applicant's expense. The applicant must deposit the estimated cost of the pre-Project evaluations to complete its application. If the pre-Project evaluation costs more than estimated, the balance is due within fifteen (15) days after billing by Public Works, and a Use Permit will not be issued until it has been paid. The estimated cost of the post-Project evaluation must be paid before a Use Permit is issued. If the post-Project evaluation costs more than estimated, the balance is due within fifteen (15) days after billing by Public Works.

(5) Pre- and Post-Project evaluations paid for by the Use Permit Holder will be provided in writing (or format appropriate to the evaluation) to the Use Permit Holder.

C. Life Impact Cost. Life Impact Cost will be calculated from the evaluations and from actual Project traffic data, using current costs for road restoration, adjusted for estimated inflation between the time the Project ends and the restoration is projected to occur.

(1) The Life Impact Cost is payable within fifteen (15) days after billing by Public Works.

(2) The Life Impact Cost payment will be deposited in a Guanella Pass Road Maintenance Fund in the Road & Bridge Fund established solely for the use of maintaining Guanella Pass Road.

D. Damage Costs. The Use Permit Holders will pay the costs, including all in-house and third-party costs, incurred by Public Works to restore the road to its pre-existing condition, including the cost to appraise damage, plan repairs, and repair damages identified from the



evaluations (if performed), from visual inspections, and from such other technical evaluations as are deemed appropriate by Public Works.

- (1) All repairs must be performed in accordance with the design and materials standards established by FHWA in the construction of the Guanella Pass Road improvements, and with the Roadway Design and Construction Manual (except to the extent they conflict with the FHWA design and materials standards).
- (2) After giving or receiving notice of damage, and following completion of the Post-Project Evaluation, Public Works will notify or confirm to the Use Permit Holder the apparent extent and nature of the damage caused by a Use.
  - (a) If a Project is incomplete, Public Works will use reasonable engineering judgment to determine whether to postpone evaluation and/or repairs of the damage.
  - (b) When appropriate in its judgment, Public Works will evaluate the damage and plan the repair. Its evaluation and repair planning will be provided in writing to the Use Permit Holder. The Use Permit Holder will be given a specified, reasonable time under the circumstances within which to comment, in writing, to Public Works. Public Works will take comments into account in evaluating and planning repair, exercising reasonable engineering judgment in completing the evaluation and repair plan.
  - (c) To the extent work is performed by Public Works own forces (including Public Works' management of third-party contractors) costs will be billed on a time-and-material basis.
  - (d) To the extent work is performed by a third party, costs will be the amount charged by the third party.
  - (e) If circumstances do not permit Public Works to give the Use Permit Holder notice of damages, repair plans, or a comment period as otherwise provided herein, before undertaking or completing repairs, in Public Works' sole judgment, such notice and comment period are not required.
- (3) Public Works will bill the amount of third-party contracts upon contracting. If contract prices increase or decrease, Public Works will issue adjustment bills or refund any excess. Public Works will bill its in-house costs as incurred.
- (4) The Use Permit Holder must pay damages costs within fifteen (15) days after billing by Public Works.



(5) Public Works may agree that the Use Permit Holder can perform repairs, subject to Public Works' approval of the plans and of the Person performing the repair, and such other conditions as it deems appropriate.

### VIII. Performance Guarantees:

A. One or more Performance Guarantees are required for all Use Permits. Performance Guarantees ensure that, upon completion of a Use, or suspension or termination of a Use Permit, the cost of evaluations, payment of the Life Impact Cost, and the cost of restoring the road to its pre-existing condition, are fully secured.

B. All Performance Guarantees will be (1) in cash, together with an executed Security Agreement, or (2) by Letter of Credit issued by a bank authorized to do and doing business in the State of Colorado, in a form approved by the County Attorney, which may be drawn on in the metropolitan Denver area or at a bank located in Clear Creek County. The Performance Guarantee for a Project may include multiple Letters of Credit and may include both cash deposits and Letters of Credit.

C. A letter of credit Performance Guarantee will be drawn on if the conditions for its release are not satisfied within ten (10) business days (holidays excluded) before its expiration, unless prior to that time a replacement letter of credit or extension is delivered to Public Works.

D. For Project Uses, there will be a separate Performance Guarantee in an amount equal to 125% of the estimated Life Impact Cost in the sole judgment of Public Works, based on a pre-Project traffic Life Impact Cost analysis using the best available data about specific Hauls provided in the application, and reasoned assumptions based on the information, and the Pre-Project evaluations.

E. For Haul Uses which are not part of a Project Use, and for Project Uses, there will be a separate Performance Guarantee for damages, in an amount equal to 125% of the estimated cost of repairing damages to restore Guanella Pass Road to its pre-existing condition on the routes or the portions of the routes that are at risk for suffering damage, in the sole judgment of Public Works.

F. Public Works may (1) require the amounts of the Performance Guarantees be increased or replenished in the event of mid-Project draws, repairs, or increases in the estimate of the Life Impact Cost and/or the risk of damages; and (2) make partial releases of a Performance Guarantee in the event of mid-Project decreases in the estimate of the Life Impact Cost and/or the risk of damages. A Performance Guarantee must be replenished or increased within fifteen (15) days of written notice by Public Works.



G. The Performance Guarantees may be drawn on to pay for the cost of Post-Project evaluations, Life Impact Cost, and costs to repair damages to Guanella Pass Road. If there are multiple Performance Guarantees for a Project Use, any of them may be drawn on for any purpose.

H. The Life Impact Cost Performance Guarantee will be released upon payment of the Life Impact Cost, if it is not required to secure the performance of damage repairs with respect to the Project Use.

I. The damages Performance Guarantee will be released upon completion of a "warranty period" of twelve (12) months after completion of the repair work or of the Project, whichever occurs last. If the repair fails during the warranty period, it will be repaired at the Use Permit Holder's expense. Repair work will be deemed complete for purposes of starting the warranty period upon final inspection approval by Public Works.

J. All draws from and all partial and full releases of a Performance Guarantee will be done in accordance with the Policy for the Approval, Maintenance and Release of Financial Guarantees (currently stated in Resolution R-15-103) or its successor.

#### **IX. Pre-Project Improvements:**

If in the judgment of Public Works portions of the road need to be repaired or upgraded before the Use in order to make the road suitable for the Use, or to mitigate the impact from the Use, the repair or upgrade work will be performed at the Use Permit Holder's expense. The cost of the work is due within fifteen (15) days after the billing by Public Works. The Use Permit will not be issued before the work has been performed and paid for when the work is required before the Project begins.

#### **X. Use Permit Expiration, Suspension or Termination; Enforcement:**

A. If the Use Permit Holder fails to pay a bill for fees, evaluations costs, Life Impact Cost, or damages, when due; if the Use Permit Holder fails to increase a Performance Guarantee when due; or if the County elects to draw on a Performance Guarantee; the Use Permit will be suspended until the bill is paid, the Performance Guarantee is increased or replenished, or a new Performance Guarantee fully securing the balance of the performance of the conditions for the Use Permit is submitted to the County.

B. Public Works may suspend or terminate a Use Permit if its terms are violated. Public Works will give prompt written notice of the suspension or termination, which may include



notice by e-mail. The Use Permit Holder may appeal a suspension or termination to the Board of County Commissioners by filing with it a written appeal, explaining and documenting the grounds therefore, within fifteen (15) days of having been given notice of the suspension or termination. An appeal hearing will be set for the next convenient date and the Use Permit Holder will be given notice of it in writing, which notice may be by e-mail.

C. No Haul or Project traffic is allowed on Guanella Pass Road while a Use Permit is suspended. If a Use Permit remains suspended for more than thirty days, it automatically will terminate.

D. The Use Permit will expire upon the first to occur of:

- (1) the last Haul identified in the description of a Use has occurred;
- (2) the Use Permit Holder notifies Public Works in writing the Use is complete; or
- (3) the Use Permit expiration date.

E. The Use Permit Holder's obligations under a Use Permit and these regulations survive the suspension, termination or expiration of a Use Permit.

F. The Use Permit Holder's obligations under a Use Permit, and these regulations, may be enforced by any appropriate action including an action for an injunction.

## **Guanella Pass Haul fee Schedule**

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|---|----------|
| 1. Permit application review fee  | \$340.00 |
| 2. Hauls that are not excessive in weight and are less than or equal to 25 feet in length   | \$0.00   |
| 3. Hauls 25 – 38 feet in length and being a single unit (no trailer) which do not require a pilot car   | \$50.00  |
| 4. Hauls greater than 38 feet in length that are not excessive in weight or length REQUIRING a pilot car and hauls that are excessive in weight or length which require a pilot car and/or a Clear Creek County escort. | \$150.00 |