



Oregon

Tina Kotek, Governor

Department of Transportation

ODOT District 1

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November 14, 2023

File Code: PMT 4-20

Jennifer Bailey
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Subject: Approval of Application for Upgrade of an Existing State Highway Approach & Transmittal of Preliminary Construction Specifications
Highway Number 102, (Nehalem),
at Mile Point 83.31
Application Number 81136

Approval of Application Upgrade of an Existing State Highway Approach

I am pleased to inform you that the Oregon Department of Transportation (ODOT) has approved your *Application for Upgrade of an Existing State Highway Approach*. Before proceeding with any construction work in the highway right of way you must satisfy the requirements below. After the requirements have been satisfied you will be issued a *Permit to Construct* and may begin construction conforming to the provisions of the permit.

Remaining Actions to be Completed Prior to Issuance of Construction Permit

Attached are the *Preliminary Construction Specifications* that include the construction drawings and all terms and conditions that will be included in your *Permit to Construct a State Highway Approach*.

If you have any objection to the *Preliminary Construction Specifications*, please inform the Department of your objection in writing within 21 days of the date of this letter. The Department will not issue your *Permit to Construct* a state highway approach until agreement is reached on all *Preliminary Construction Specifications*.

If the *Preliminary Construction Specifications* are agreeable to you please submit the following required items;

- A copy of the *Preliminary Construction Specifications* with your signature confirming your agreement, and
- Proof of liability insurance (see attached Oregon Administrative Rule OAR 734-051-5060(3), and
- A performance bond in the amount of \$5,000.00 or a cash deposit in lieu of bond in the amount of \$5,000.00, payable to ODOT. **You may not initiate any construction in ODOT right-of-way until all of these steps have been fulfilled.** [OAR 734-051-5020(3)]

Submittal Requirements

Your submittal deadline will be **no later than 5:00 PM on January 13, 2024** sent to the following address:

Richard Kearns, Permit Specialist
ODOT District 1
350 W Marine Drive
Astoria, OR 97103

Under Oregon Administrative Rule (OAR) 734-051-5020(3), you are required to submit the requirements or request a time extension by the submittal deadline or the **approval of your application will expire**. If necessary, the Department may extend the time for your submittal if both you and the Department agree in writing before the submittal deadline listed above. Please contact me if you would like to request an extension of time.

After you submit the required items, the Department will contact you if any information is missing or corrections/revisions are needed. We will notify you when your *Preliminary Construction Specifications* are approved. Upon approval ODOT will issue your *Permit to Construct a State Highway Approach*.

If you have any questions about the content of this letter or specifically about what we are asking for, please feel free to contact me at (503) 325-7222.

Sincerely,



Richard Kearns, Permit Specialist
ODOT District 1, Maintenance Office

Attachments: *Preliminary Construction Specifications*
734-051-5020 Issuance of Construction Permits
734-051-5060 Liability, Insurance and Bonding Requirements

734-051-5020

Issuance of Construction Permits

(1) **General Requirements.** The region manager shall issue a construction permit when construction plans, if required, and all other required documents are received and approved.

(2) **Procedure.** Prior to issuing a construction permit the department will issue to the applicant construction specifications including all provisions, mitigation measures, conditions, and agreements that will become part of the construction permit. To receive a construction permit, the applicant must complete the following, pursuant to subsections (a) through (d) below, within sixty (60) days of the date of the department's transmittal of the construction specifications:

- a) Review and sign the construction specifications to confirm that the applicant understands and agrees to the specifications including all provisions, mitigation measures, conditions, and agreements that will become part of the construction permit; and
- b) When the department determines that standard plans are not appropriate, an applicant must submit construction plans sealed by an engineer licensed in the state of Oregon within 60 days of notice of approval of an application to obtain a construction permit. The region manager determines the acceptability of submitted construction plans. If plans are not submitted within 60 days and no request for extension is received within that time, the approval of the application will be void; and
- c) Return the signed construction specifications to the department; and
- d) Submit proof of liability insurance and bond or deposit in lieu of bond as required by OAR 734-051-5060.

(3) **Non-Compliance.** If the applicant does not complete the actions required in section (2) of this rule within the 60-day timeframe, then the department will not issue a construction permit and all approvals associated with approach application will be revoked. The 60-day time frame may be extended if the permittee and the department agree in writing before the deadline pursuant to OAR 734-051-5040.

(4) **True and Complete Information.** An applicant or permittee shall provide true and complete information, and if any required fact that is material to the assessment of the approach's impact upon traffic safety, convenience or the legal or property rights of any person (including the State of Oregon) is false, incorrect or omitted, the region manager may:

- a) Deny or revoke the construction permit; and
- b) At the applicant's or permittee's expense require the applicant or permittee to:
 - (A) Remove the approach and restore the area to a condition acceptable to the region manager;
 - (B) Provide additional safeguards to protect the safety, convenience, and rights of the traveling public and persons (including the State), if such safeguards are adequate to achieve these purposes, as a condition of the continued validity of the permit to operate; and
 - (C) Reconstruct or repair the approach.

(5) **Signed Permit Required.** No work on highway right of way may begin until an applicant obtains a valid construction permit, approved and signed by the region manager.

734-051-5060

Liability, Insurance and Bonding Requirements

(1) **Liability.** A permittee assumes responsibility for damage or injury to any person or property resulting from the construction, maintenance, repair, operation, or use of an approach for which a construction permit or a permit to operate is issued and where the permittee may be legally liable.

(2) **Indemnification.** An applicant or permittee indemnifies and holds harmless the State of Oregon, the commission, the department, and all officers, employees or agents of the department against damages, claims, demands, actions, causes of action, costs, and expenses of whatsoever nature which may be sustained by reasons of the acts, conduct, or operation of the applicant, his agents, or employees in connection with the construction, maintenance, repair, operation, or use of an approach. Any such indemnification shall also provide that neither the contractor or subcontractor, nor any attorney engaged by the contractor or subcontractor, shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election, assume its own defense and settlement in the event that it determines that the contractor is prohibited from defending the State of Oregon, or that the contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against the contractor if the State of Oregon elects to assume its own defense.

(3) **Amount of Insurance.** Construction of an approach may not begin until the applicant provides the department with evidence of insurance in the following minimum amounts:

a) \$500,000 for property damage resulting from any single occurrence, or \$500,000 combined single limit and annual aggregate; and

b) \$500,000 for the death or injury of any person, subject to a limit of \$500,000 for any single occurrence and annual aggregate.

(4) **Additional Insured.** Insurance policies must include as Additional Insured the State of Oregon, the commission, and the department, its officers, agents and employees, except as to claims against the permittee, for personal injury to any members of the commission or the department and its officers, agents, and employees or damage to any of its or their property.

(5) **Insurance Required Prior to Construction.** Construction of an approach may not begin until a copy of the insurance policy or a certificate showing evidence of insurance is filed with the department.

(6) **Notice of Intent to Cancel or Not Renew Insurance.** A permittee shall provide thirty (30) days written notice to the department of intent to cancel or intent not to renew insurance coverage. Failure to comply with notice provisions does not affect coverage provided to the State of Oregon, the commission, or the department, its officers, agents and employees.

(7) **Damages.** If the permittee or permittee's contractor damages the highway surface or highway facilities, the applicant must replace or restore the highway or highway facilities to a condition satisfactory to the department.

(8) **Assurances.** The permittee must furnish, in an amount specified by the region manager and for the time period necessary to install the approach, a cash deposit or a bond issued by a surety company licensed to do business in the State of Oregon to ensure the approach is installed in conformance with the requirements of this division and that any damage to the highway has been corrected to the department's satisfaction; and no

construction is performed until a deposit or bond is filed with the department.