



SUBJECT Timelines for Approach Road Permitting Process	FINAL NUMBER AM13-01(B)	EFFECTIVE DATE 05/01/2013	VALIDATION DATE 11/12/2014	SUPERSEDES or RESCINDS
WEB LINK(S) http://www.oregon.gov/ODOT/HWY/TECHSERV/Pages/technicalguidance.aspx				
TOPIC/PROGRAM Approach Permits/Access Management	APPROVED SIGNATURE Original signed by: Larry McKinley, Access Management Program Manager			

PURPOSE

The purpose of this Technical Services Bulletin is to summarize the required timelines for approach road permitting, pursuant to OAR 734-051.

GUIDANCE

This bulletin is for use by the department’s Access Management staff and may be shared with members of the general public to provide instruction or additional information.

DEFINITIONS

“**OAR 734-051**” means Oregon Administrative Rule Chapter 734 Division 51.

BACKGROUND/REFERENCE

Senate Bill (SB) 264, which became law in January 2012, amended ORS 374 and established specific timelines for the approach road permitting process. Section 13 of SB 264 changed some of the “old” timelines in the previous administrative rules (OAR 734-051-0070, *Application Procedure and Timelines*). “New” timelines to comply with SB 264 are included in OAR 734-051-3040, *Private Approach Permit Application Review, Approvals and Timelines*.

SB 264 also introduced a new requirement for the department to provide the opportunity for “pre-decision collaborative discussion” before the department issues a decision to deny or approve with mitigation an approach road application. SB 264 also modified the department’s administrative rules for the three types of post-decision review processes, comprised of “post-decision collaborative discussion,” “Access Management Dispute Review Board,” and “contested case hearing process.”

This bulletin highlights the differences and commonalities between the timelines in the previous and current administrative rules.

EXPLANATION

The timeline for notice of completion determination is contained in OAR 734-051-3040(2).

The 120-day timeline for final decisions is described in OAR 734-051-3040(4).

The procedures for extending timelines are described in OAR 734-051-3040(7).

The timeline for expiring applications is described in OAR 734-051-3040(12).

The timeline for pre-decision collaborative discussion is described in OAR 734-051-3060(4).

The timeline for post-decision collaborative discussion is described in OAR 734-051-3090(1) and (2).

The timeline for the Access Management Dispute Review Board is described in OAR 734-051-3100(1) and (3).

The timeline for the contested case hearing process is described in OAR 734-051-3110(2).

See Attachment A for more information on these timelines and how they compare to previous administrative rules.

RESPONSIBILITIES

Department staff members in the following positions are responsible for carrying out the guidance in this bulletin as it relates to their assigned duties and authority:

- Region Managers;
- District Managers;
- Region Access Management Engineers;
- Development Review Coordinators;
- Access Management Coordinators;
- Permit Specialists; and
- Other staff as assigned by management authority.

ACTION REQUIRED

Implement this bulletin upon the effective date.

SPECIAL INSTRUCTIONS

If problems or concerns develop in implementing this bulletin or if further clarification is needed, contact the Access Management Program Manager.

CONTACT INFORMATION

Title: Larry McKinley, Access Management Program Manager
Branch/Section: Technical Services/Access Management
Phone: 503-986-4216
E-mail: Larry.MCKINLEY@odot.state.or.us

ATTACHMENT A

Senate Bill (SB) 264, which became law in January 2012, amended ORS 374 and changed some of the department's required timelines for approach road permitting. The new laws took effect on January 1, 2012. Section 13 of SB 264 changed some of the previous timelines in OAR 734-051-0070 *Application Procedure and Timelines*. The new timelines were codified as OAR 734-051-3040 *Private Approach Permit Application Review, Approvals and Timelines*. The timeline for notice of completion determination is contained in OAR 734-051-3040(2). The 120-day timeline for final decisions is described in OAR 734-051-3040(4).

It is important to note that any of the timelines in the rules may be extended upon agreement between the applicant and the department. The procedures for extending timelines are described in OAR 734-051-3040(7). The timeline for expiring applications is described in OAR 734-051-3040(12).

SB 264 also introduced a new requirement for the department to provide the opportunity for "pre-decision collaborative discussion" before the department issues a decision to deny or approve with mitigation an approach road application. The timeline for pre-decision collaborative discussion is described in OAR 734-051-3060(4).

SB 264 also modified the department's administrative rules for the three types of post-decision review processes, comprised of "post-decision collaborative discussion," "Access Management Dispute Review Board," and "contested case hearing process." The timeline for post-decision collaborative discussion is described in OAR 734-051-3090(1) and (2). The timeline for the Access Management Dispute Review Board is described in OAR 734-051-3100(1) and (3). The timeline for the contested case hearing process is described in OAR 734-051-3110(2).

Timeline for Notice of Completion Determination

OAR 734-051-3040(2):

(2) Notice of Completeness Determination. *Upon receiving an application for state highway approach, the department shall determine and provide written notification about whether the application is complete within thirty (30) days of its receipt of the application. Where the department determines that an application for state highway approach is not complete, (a) through (e) apply, as follows:*

(a) The 120-day timeline under OAR 734-051-3040(4) does not begin until the application is deemed complete as defined in OAR 734-051-1070(18);

(b) The department shall notify the applicant in writing when an application is incomplete within the timeframes required by this rule;

(c) The department notice shall provide specific information on what is needed to make the application complete;

(d) The department notice shall indicate that the application must be made

complete within sixty (60) days of the date of the department notice, at which time the application expires unless the department and applicant agree to an extension; and

(e) Where an application is deemed incomplete because no right of access exists at the proposed approach location, the department notice shall provide information on how to apply for a grant of access or an indenture of access, as applicable.

What has changed from prior administrative rules?

- The department must determine whether an approach permit application is complete within 30 days after the application is received.
- The processing time to determine whether an application is complete is reduced by 10 days.
 - Prior to January 1, 2012, the date SB 264 took effect, the department had 10 days from the date an application was received to determine if the application was filled out appropriately and could be accepted. Once the application was accepted, the department had 30 days to determine whether to deem an application complete or request supplemental documentation. Under the new rules, the 30-day timeline to make a completeness determination or request supplemental documentation begins the day an application is received.
- “Accepted” status eliminated from CHAMPS.
- New “Received” status added to CHAMPS.
- Applications will go from CHAMPS “Pending” or “Pre-application” status to “Received” status, or go straight to CHAMPS “Received” status.

Timeline for Final Decisions

OAR 734-051-3040(4):

(4) Decision Timeline and Final Decision Within 120-Days of Complete Application. *Except as provided in section (7), the department shall make its final decision, including resolution of all internal appeals, to grant or deny an approach permit within one hundred twenty (120) days of the date the department deems an application for state highway approach complete. The 120-day timeline breaks down as follows:*

(a) The department shall make its decision to approve, approve with mitigation, or deny an application within thirty (30) days of the date that the department determines the application to be complete, where the proposal meets the applicable spacing, channelization and sight distance standards of OAR 734-051-4020; or

(b) The department shall make its decision to approve, approve with mitigation, or deny an application within sixty (60) days of the date that the department determines the application to be complete for all other

applications.

(c) The final sixty (60) days of the one hundred twenty (120) days are reserved for the contested case hearing procedures of OAR 734-051-3110, except where the timeline is extended pursuant to section (7) of this rule.

What has changed from prior administrative rules?

- The department must make a final decision within 30 days of the date the application is deemed complete for applications that meet spacing, channelization and sight distance standards.
 - This includes approach permit applications with OAR 734-051-4020(3) safety and operations concerns.

What is the same as prior administrative rules?

- The department must make a decision to approve or deny the application within 60 days of the date the application is deemed complete for applications that do not meet spacing, channelization and sight distance standards.
 - This includes approach permit applications for properties that do not have alternate access, where the department does not have to approve deviations to spacing, channelization and sight distance standards, and the department and the applicant agree on a location for the approach that optimizes safety, highway operations and site design.
- The department must conclude the decision-making process within 120 days.
- The first 60 days of the 120 days comprise the period that begins at deemed complete and ends with the decision to approve or deny an application. This decision may be appealed.
- The final 60 days of the 120 days are reserved for the contested case hearing if the applicant requests a contested case hearing.

Procedures for Extending Timelines

OAR 734-051-3040(7):

(7) Extension of Timelines. *The timelines of division 51 may be extended pursuant to (a) through (c) below:*

(a) Submittal of an application for a grant of access or application for an indenture of access suspends the 30 or 60-day timeline identified in subsection (4)(a) or (4)(b) of this rule.

(b) Submittal of a written request for the post-decision collaborative discussion under OAR 734-051-3090 or dispute review board review under OAR 734-051-3100 suspends the 120-day timeline in section (4) of this rule.

(c) The timelines in division 51 may be extended where the applicant and the department agree to an extension in writing before the applicable deadline, as specified in these rules. Any agreement to extend a timeline

shall include a new deadline date and shall state the reason for the extension. Applications for which an extension of time has been issued will expire on the deadline date specified in the extension letter if no new extension has been agreed to and the activities for which the deadline was extended have not been completed.

What has changed from prior administrative rules?

- In prior rules, a “region review” was the administrative process available for an applicant to appeal a department decision. The region review has been replaced by two options for administrative review: 1) post-decision collaborative discussion and 2) dispute review board.

What is the same as prior administrative rules?

- Submittal of a written request for administrative review of ODOT’s decision suspends (stops) the 120-day clock.
- Submittal of an application for a grant of access or an indenture of access suspends (stops) the 120-day clock.
- Timelines may be extended where the applicant and the department agree to an extension in writing before the applicable deadline.

Timeline for Expiring Applications

OAR 734-051-3040(12):

(12) Expired Applications. *Except as provided by OAR 734-051-3040(7), an application for an approach shall expire after one hundred twenty (120) days of inactivity on the part of the applicant if the department sends a reminder letter to notify the applicant that ninety (90) days have passed with no activity, and advising that the application will expire in thirty (30) days if the application continues to be inactive. After an application for state highway approach has expired, a new application is required.*

What is the same as prior administrative rules?

- The 120-day timeline for expiring applications is the same as it was in the prior rules.

Timeline for Pre-decision Collaborative Discussion

OAR 734-051-3060(4):

(4) Timeline. *The department’s notice of preliminary decision and offer of a collaborative process must occur within either the 30-day or 60-day application decision timeline under OAR 734-051-3040(4), whichever is applicable. The department and applicant may agree to extend the timelines for the department’s final decision as part of the collaborative process.*

What has changed from prior administrative rules?

- The requirement for the department to provide the opportunity for “pre-decision collaborative discussion” before issuing a decision to deny or approve with mitigation an approach road application is new.
- The department must complete the collaborative process within 30 days of the date the application is deemed complete for applications that meet spacing, channelization and sight distance standards.
- The department must complete the collaborative process within 60 days of the date the application is deemed complete for applications that do not meet spacing, channelization and sight distance standards.
- The timeline may be extended where the applicant and the department agree to an extension in writing before the applicable deadline.

Timeline for Post-decision Collaborative Discussion

OAR 734-051-3090(1) and (2):

*(1) **Purpose.** An applicant or permit holder may request a collaborative discussion pursuant to this rule. The post-decision collaborative discussion process is an optional dispute resolution process that falls outside the 120-day timeline in OAR 734-051-3040(4).*

*(2) **Conduct of the Post-Decision Collaborative Discussion.** The post-decision collaborative discussion with the department shall be conducted as follows:*

(a) The collaborative discussion shall be conducted under the alternative dispute resolution model in ORS 183.502;

(b) The applicant must request the collaborative discussion in writing before the discussion may proceed;

(c) During the post-decision collaborative process, the applicant or permittee and the department may present new or additional information in writing or in person for the collaborative discussion; and

(d) The collaborative discussion shall be conducted not more than forty-five (45) days from the date of the agreement to collaborate, unless the department and applicant or permittee agree to an extension.

What has changed from prior administrative rules?

- Submittal of a written request for the post-decision collaborative discussion process suspends (stops) the 120-day clock.
- The department must complete the collaborative process within 45 days of the date of the agreement to collaborate.
- The timeline may be extended where the applicant and the department agree to an extension in writing before the applicable deadline.

Timeline for the Access Management Dispute Review Board

OAR 734-051-3100(1) and (3):

(1) Dispute Review Board. *In addition to requesting a contested case hearing under OAR 734-051-3110 or a post-decision collaborative discussion with the department under OAR 734-051-3090, an applicant or permittee may request review of a department decision or department determination pursuant to 734-015-3020(10)(a) through an Access Management Dispute Review Board process. The dispute review board process is an optional dispute resolution process that falls outside the 120-day timeline in OAR 734-051-3040(4).*

(3) Procedure. *The dispute review board review shall be conducted as follows:*

(a) The Access Management Dispute Review Board shall consider information presented by the parties;

(b) The applicant or permittee and the department may present new information to the dispute review board, if the new information has been shared with the other party in advance of the scheduled meeting and the party receiving the new information has a reasonable amount of time to prepare a response; and

(c) The dispute review board shall notify the applicant or permittee and the director of its findings regarding the department's original decision or its recommendations pursuant to OAR 734-051-3020(10)(a).

(d) The dispute review board review shall be conducted not more than forty-five (45) days from the date of applicant's request, unless the department and applicant or permittee agree to an extension.

What has changed from prior administrative rules?

- Submittal of a written request for the Access Management Dispute Review Board process suspends (stops) the 120-day clock.
- The department must complete the Access Management Dispute Review Board process within 45 days of the date of the applicant's written request.
- The timeline may be extended where the applicant and the department agree to an extension in writing before the applicable deadline.

Timeline for the Contested Case Hearing Process

OAR 734-051-3110(2):

(2) Procedure. *The contested case hearing procedure is subject to the following requirements in subsections (a) through (f) below:*

(a) The request for a hearing and the hearing are governed by OAR 137-003-0501 through 137-003-0700;

(b) After receiving a request for a contested case hearing, the department shall notify the office of administrative hearings of the request for the hearing;

(c) The hearings process falls within the 120-day timeline in OAR 734-051-3040(4) unless the department and the applicant mutually agree to a time extension;

(d) The department and the applicant may present additional information in writing or in person at the contested case hearing; and

(e) An administrative law judge will review the department's decision, conduct a hearing, and may approve, reverse, or modify the decision. The administrative law judge:

(A) Shall issue a proposed order as set forth in OAR 137-003-0645;

(B) May require conditions or limitations to be incorporated into the construction permit or the permit to operate; and

(C) The filing of exceptions stays the 120-day timeline for ODOT's final decision.

(f) The director shall issue a final order or may adopt as final the proposed order issued by the administrative law judge.

What is the same as prior administrative rules?

- The department must complete the contested case hearing process within 120 days of the date the application is deemed complete.
- The timeline may be extended where the applicant and the department agree to an extension in writing before the applicable deadline.
- The filing of exceptions suspends (stops) the 120-day clock.