

Group Decisions and/or Discussion

Introductions:

Development/Business Interests

Bob Russell, Oregon Trucking Association russell@ortrucking.org

Mark Whitlow, RTF & ICSC MWhitlow@perkinscoie.com

Practitioners

Brent Ahrend, Group Mackenzie bahrend@grpmack.com

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Jamie Jeffrey, City of Portland Jamie.Jeffrey@pdxtrans.org

Other Participants

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Ann Hanus, Association of Oregon Counties ahanus@aocweb.org

Craig Honeyman, League of Oregon Cities choneyman@orcities.org

Del Huntington, Huntington Traffic Solutions del@huntingtontrafficsolutions.com

Oregon Department of Transportation

Bob Bryant, Region 4 Manager robert.w.bryant@odot.state.or.us

Erik Havig, Planning Manager Erik.m.havig@odot.state.or.us

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Candice Stich, Region 2 Project Manager Candice.a.stich@odot.state.or.us

Consultants

Scot Siegel, OAR writer

Scott Keiller, Meeting note taker

Meeting Agenda:

- ❖ Introductions and meeting overview
 - Bob Bryant
- ❖ Overview of the ODOT implementation process and schedule for rule making
 - Harold Lasley
- ❖ Review SB264 implementation in the draft temporary rules
 - Scot Siegel
- ❖ Review "parking lot" list
 - Bob Bryant
- ❖ Discussion on AMSC role
 - Bob Bryant
- ❖ Agenda build for next meeting
 - Scot Siegel
- ❖ Adjourn

Meeting Overview:

Bob Bryant, ODOT Region 4 Manager opened the meeting, noting that SB 264, adopted in June 2011, directs rulemaking by January 2011. Due to the short timeframe, ODOT is drafting temporary rules, which require less process. The Access Management Stakeholder Committee (AMSC) is reviewing the draft temporary rules today. Permanent rules must be adopted by 6/30/2012.

Overview of Implementation:

Harold Lasley, ODOT Access Management Manager gave an overview of the rule making schedule.

- o *Documents reviewed were two timeline charts for the temporary and permanent rule making processes*

Bob Bryant indicated that while ODOT is updating the rules, staff is working to follow the intent of SB 264 to the extent allowed within the current rules.

Bryant said the rulemaking will both implement SB 264 and improve organization of the rules in general. For example, the rules are renumbered to group topics, consolidate sections, and make the rules user-friendly.

A general discussion on whether SB264 was effective immediately upon becoming law in June or whether the effective date is January 1, 2012. Harold Lasley indicated that the Department's reading of the bill is that January 1, 2012 is the effective date for provisions that apply to ODOT. Brent Ahrend and Jim Hanks said their recent experience with ODOT indicates ODOT is already changing its processes in ways that are consistent with implementation of SB 264. Bob Bryant indicated that ODOT must follow Division 51 at present but is working to implement SB 264 principles to the extent possible.

In terms of formatting temporary rules, it was suggested that ODOT consider direct web links to statute. Siegel mentioned that this can be written in. Whitlow mentioned we should consider not placing dates on OHP or other docs. Rather, consider stating "current approved version of".....the reference document (i.e. OHP). This will help to avoid routine search and update of the rule when reference documents are updated. It was noted that boldface text in section headers will not appear as bold online when published by the Secretary of State.

Review of Draft Temporary Rule:

The consultant team was introduced. Scot Siegel and Scott Keillor have worked on private as well as public side of access management. The Div 51 update task is clear via SB 264, and applies to private access management rules and permitting. The draft also adds clarity and organization.

- o *Documents reviewed were the Temporary Rule v2 and Rule Cross Reference Sheet that was sent to AMSC members in their electronic agenda packet.*

Siegel reviewed a reference sheet that compares SB 264 Sections with New Division 51 Rules. Note that "parking lot issues" are not under the same timeline required of the changes now being discussed.

- o Section 1000
 - o Siegel mentioned that division 51 rules within the 1000s include general provisions and the delegation of permit authority. SB 264 adds or updates certain definitions. Some new terms have also been defined.
 - o SB 264 uses the terms "approach" and "access" interchangeably in SB 264 to describe both permitted and unpermitted access. There is still a question as to what can be considered grandfathered. Whitlow suggested the group consider legal approaches include permitted approaches, plus cases where an ODOT project built approaches, and where past permits have been misplaced.
 - o Lasley noted that the draft rules are for private approaches only. Bob Russell asked that we consider a section on public approaches as a parking lot issue. Del Huntington said that presently a City can use local TSP to direct special access standards. Bryant noted that this option is unchanged, and no collaborative process exists in statute for public approaches.
 - o 1020 (2) Jim Hanks said regarding the "Intent" provisions: change opening sentence from "will balance" to "...balances economic development objectives....." Use present tense.
 - o 1030 The Committee agreed that ODOT needs to decide what to do with the category of approaches/accesses that are not grandfathered under pre-1949 rules and are not permitted. Consider using definitions of "access," "approach" and "driveway". Revisit all with the goal of taking into account of existing access – both permitted and unpermitted in order to apply

“moving in the direction” provisions.

- Grandfathered Approach – not clearly defined on page 6. See page 10 for existing definition. Craig Campbell said ODOT has indicated that a majority of approaches in the state do not have the permit required by law. Should we consider a revised definition for grandfathered? The existing definition includes pre-1949 approaches – that was the date that a written permit began to be required. Whitlow mentioned that one issue is how much diligence is required of an applicant vs. ODOT in determining if an approach is grandfathered or legal. What do we address in rulemaking vs. legislation? Rules require authorization in statute. For ODOT and the AMSC, it is now a matter of time limitations. Parking lot issues will roll into 2012 and likely be done in 2013.
- Lasley mentioned that ODOT is working on a statewide inventory of existing driveways/approaches. Long-term, the goal is to get all approaches under permitted, but with regards for adequate safety and operations. Whitlow suggested that all driveways in place be presumed legal, and that ODOT should accept the burden to research, review and decide if they are illegal. Bryant indicated that there are many examples of both unintentional and intentional illegal accesses. These likely occurred in the 1950s through the 1970s. It is difficult to discern how these approaches came to exist or how many are out there. The AMSC needs to find agreement on how to handle the unpermitted approaches issue sooner than later. The new rule is drafted to take into account unpermitted accesses in some cases, such as under “moving in the direction” provisions. Lasley stated that ODOT looked at a limited number of projects as a “sample” and found that 70% were not permitted. Jim Hanks asked if anyone knows – beyond the presumably large number of unpermitted access -- how much of a problem they present. This is an unknown. Whitlow noted that if an applicant has an unpermitted approach and they want to move a project forward, the time and money required to deal with access issues can kill the project. He requested that ODOT spend some more time on this as a priority parking lot issue.

o Section 3000

- o The decision process (<120 days): application, collaboration, decision in 30-60 days, and dispute resolution were all summarized by Siegel. Whitlow stated that post-decision discussion option should be considered in lieu of appeal. He also noted that 3010(5) Approval Criteria: you don’t need the references to comprehensive plan and TSP, just zoning code because codes and ordinances implement the plans. ODOT’s reasoning for including these references is that SB 264 allows for provisions within an IAMP that may differ from SB 264 standards and the IAMP may not be adopted into code. ODOT does not interpret local policy or code; ODOT relies on the LUCS as confirmation that land use is approved by local government. The key is that a signed land use compatibility statement (LUCS) is provided by the applicant. However, if an IAMP is adopted by ODOT, then the IAMP takes precedence under SB 264.
- o 3020 (2)
 - Russell finds this language too complicated – revise if possible.
 - Whitlow asked that we consider adding “one or more” to read “.....required for one or more private approaches meeting one or more of the following.....” Also make it clear as to when an access becomes an approach. We need a separate section to address the approaches that are not grandfathered or permitted. ODOT should be the one to determine if an access or approach is permitted.
- o 3020 (3) Siegel summarized when a deviation is or is not required. Deviations are not required if through a change of use, an approach(es) is/are moving in the direction of compliance – per page 24 (2) Change of Use, a new application is required. Whitlow asked ODOT and the group to consider language that separates these “modified” applications from new applications. After all, they are really updated applications. Lasley pointed out that SB 264 requires a “new” approach permit in this case. Bryant indicated that ODOT does not issue modified permits, but

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- perhaps these could be called a “replacement application.”
- o Section 3020 (4) lists approval criteria and states the applicant and ODOT need to agree that the permit is “moving in the direction of” compliance. Line 944 and 949: consider replacing “and” with “or”. We need a threshold criterion to define how much change in a driveway requires a permit – i.e. Whitlow said surely no permit is required to move a driveway 1 foot? Do we want to create separate “guidelines” or put all the guidance into the new rule? Jamie Jeffrey said we may want to consider a guide or manual.
- o 3020 (6) Whitlow asked that Siegel delete the reference to OAR 734-051-4020. He noted that (5b) is informal and (6) is the formal process if ODOT and the applicant do not fully agree. The group discussed adding an introduction to (6): “Unless the department and the applicant have reached agreement under (5b).....” Lasley pointed out the use of the term “accesses” under (6a and 6b) to address unpermitted approaches. Consider this same change from “approach” to “access” for (6c-6f)? Bryant noted that ODOT engineers wanted a higher standard for widening vs. narrowing, hence the difference in terms. Jeffrey asked the group to consider using more explicit terms, like “permitted” and “non-permitted” access. Lasley noted “approach” is used throughout the existing rule and is defined as a permitted access, but SB 264 uses the terms “approach” and “access” interchangeably and doesn’t define either term.
- o 3020 (7) Siegel led a discussion with the group regarding the “moving in the direction of” clause within the rule update. There is still a concern about the number of legal, non-permitted approaches. The AMSC would like all remaining non-permitted accesses to become permitted (approaches) upon approval of the change of use application.
- o 3020 (9) Whitlow asked for a discussion on the provision: “where agreement is not reached” between the applicant and ODOT. Check reference to OAR 734-051-3070, which appears to be an error. Also ODOT needs to decide whether to process such applications under a normal application process, or whether to issue a decision at this point with dispute resolution and/or appeal rights; also recommends providing timeframes for reaching agreement.
- o Section 4000
 - o 4020 (2) Lasley said the statute directs that channelization provisions are standards, but they are actually thresholds for determining when channelization must be addressed. The new rule tries to make clear where a permit can meet a quick test, so the applicant can move on or request a deviation. If you cross the threshold, channelization must be addressed, but ODOT can waive this requirement through deviation process. It’s important to clarify that the channelization standards reside not in the rules but in the highway design manual because the design standards vary based on site conditions and speeds. Ahrend explained that the idea of SB 264 is to set a quick threshold to determine if you need to address channelization criteria – most approaches do not trigger channelization. Channelization is defined in SB 264 and in rules. Members asked that we make this standard clearer to a broader, non-technical audience.
 - o 4020 (3) Safety and Operations – Bryant said that ODOT has the burden to determine where and why safety or operations concerns arise. ODOT can deny or require mitigation, but this does not preclude dispute resolution. Jim Hanks asked that we consider some clarifying language to reiterate an applicant’s options here. Under subsection a): qualify what timeframe is used for the “95th percentile” – tie this back to the procedures manual, which gives an industry standard. Also, regarding “weave movements” in (f), tie this to details in the design manual to clarify technical standards. Havig said that ODOT has a technical committee working on these items – likely for inclusion in the permanent rule.
 - o 4020 (6 & 7) Siegel summarized these subsections: 6. Alternate Access provisions state that when no alternate access is present, highway access can be made available. Otherwise, circumstances where ODOT may consider alternate access are limited to rural areas and expressways. 7. Reasonable Alternate Access: consider changing headings from “sufficiency” and “adequacy” to a) alternate access for use of property, and b) alternate access to serve volume and type of access. However note these words are taken from statute. Another issue is whether an alternate access is sufficient. The concern is that private owners used to have to

improve an alternate access to a higher standard than may have been appropriate. We need to clarify to what extent an applicant may be required to make roadway improvements where alternate access is required. Whitlow said this allows us to answer the basic questions: "Is that alternate side street usable or not? Does it provide for 'reasonable access'." We need to prepare a better definition of "economic development" in permanent rule making; Siegel commented that, until the term is defined by rule, local comprehensive plans would serve as a proxy for determining economic development need. Michael Rock said we can review other examples, but this is a difficult task. The idea is to balance the perspectives of a land or business owner vs. ODOT regarding the number of access points needed.

"Parking Lot" Discussion:

See April 13, 2011 memo from Del Huntington as starting point for Parking Lot Issues.

- o What are the priorities?
 - o Whitlow answered based on the group's prior work: Project Delivery; Medians; and IAMPS are the focus areas identified by the AMSC. There was a request to include grants of access and unpermitted driveways.
 - o Discussion: IAMPS are now being adopted. There would be interest in revising local IAMPS based on reduced spacing standards for ramps that could result via the new rule. Note: ¼ mile spacing is expensive and forces development of parallel routes.
 - Can the rule add flexibility? Ahrend gave an example from Hillsboro – an expensive ramp rebuild required and impacts to valuable industrial land.
 - Can ODOT review this as a case study? We also need to look at IAMP ramp spacing impacts on urban environments. It was stated that the original IAMP provisions were not envisioned to apply to urban areas, but only for rural areas.
 - Havig indicated that IAMP development guidelines have been recently updated, are more flexible, and suggest situations where deviations may be appropriate.
 - o Russell suggested we go over the parking lot list with Legislative Oversight Task Force.
 - o What happens to parking lot issues when addressed – do they go through rule making or legislation?
 - Craig Honeyman said the Task Force should be able to provide direction on this.

Discussion on AMSC Role:

Bryant requests the AMSC continue to assist through temporary rulemaking and permanent rulemaking. This includes parking lot issues. The AMSC agreed that the Oversight Task Force would benefit from AMSC involvement, as the committee has a good understanding of the details of access management, the nuts and bolts. Note the AMSC sunsets in 2016, but the group could finish earlier. ODOT is unsure about when the Oversight Task Force will convene, and will check on this.

Agenda for December AMSC Meeting:

ODOT will be working hard and fast toward meeting the January deadline on adoption of temporary rules. ODOT will consider AMSC comments, but may need to address some of them in the permanent rule process after the new year. AMSC members asked for ODOT to send the next draft earlier prior to the next meeting. ODOT will send the final OTC draft to the AMSC; this will have already been approved by DOJ. So, the group is really working toward developing permanent rules, beginning at its next meeting. The OTC is not likely to change the temporary rule, but DOJ could have changes. Please forward all comments by the end of this week (Friday Oct 21). Committee members agreed that they may want to "copy all" for information purposes only, not for discussion. The completed draft rule will be sent to the OTC 11/21/11. The next AMSC meeting is targeted for early December. Candice will setup a Doodle Poll to determine the date.