

## Group Decisions and/or Discussion

### Introductions:

#### Development/Business Interests

Bob Russell, Oregon Trucking Association [russell@ortrucking.org](mailto:russell@ortrucking.org)

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#### Practitioners

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#### Other Participants

Ann Hanus, Association of Oregon Counties [ahanus@aocweb.org](mailto:ahanus@aocweb.org) (by phone)

Jon Oshel, Association of Oregon Counties (by phone)

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#### Oregon Department of Transportation

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Candice Stich, Region 2 Project Manager [candice.a.stich@odot.state.or.us](mailto:candice.a.stich@odot.state.or.us)

Michelle Van Schaick, Meeting facilitator [michelle.vanschaick@odot.state.or.us](mailto:michelle.vanschaick@odot.state.or.us)

### Meeting Agenda:

- ❖ Introductions and meeting overview
- ❖ Temporary Rule Status Update
- ❖ Temporary Rule Proposed Amendments
- ❖ Permanent Rule Making Update & Timeline
- ❖ Legislative Oversight Task Force Update
- ❖ February 2012 Agenda Build
- ❖ Adjourn

### Introductions and Meeting Overview:

Bob Bryant led the introductions and discussed the agenda. The hope was to go over status of the temporary rule, where the Committee was in the permanent rule process. He'd also like to go over the status of the Access Management Oversight Task Force. Ann Hanus and Jon Oshel connected by phone and wanted to discuss an item before the rest of the agenda. Bob asked the Committee if they were ok with addressing Ann's question before starting the meeting. There were no objections. Ann Hanus is concerned about language that with required assurance of a bond. She is looking for something in writing by ODOT through email or temporary rule, which would clarify this issue. Ann explained the reason it's a problem is because in the past the usual thing was to use an IGA to give access to local governments. She is concerned that the permanent rule won't be done until after construction season, so they wanted assurance so they don't have to deal with this. Bob Bryant explained that this wasn't new language. He said the bond is only applied with third parties on ODOT state right of ways. Bob also said he could certainly provide language in the temporary rule or in a letter to AOC. Jon Oshel said there was an example where this didn't happen three years ago (bonding). Harold

Lasley asked a question about the project in question, but Jon did not know the details. Harold explained why there could have been an instance when there would be a bond requirement. Jon said it was probably a project being managed by the county.

Bob said he and Harold would craft some language that they could send to AOC. There will be nothing in the temporary rule, but maybe in the permanent rule. Jaime Jeffrey asked if the letter could also be sent to the LOC as well as the AOC. Bob thought it was a good idea. Ann asked that the letter be sent by email to Ann, Jon Oshel and Craig Honeyman. It was agreed.

#### **Temporary Rule Status Update:**

Harold Lasley declared that the temporary rule was approved by the Commission on December 21<sup>st</sup>. Mark Whitlow and Don Forrest were at the meeting. Harold said so far, there are no real problems. There will be discussion about a revision to the temporary rules and then they will go back to the Commission this month and the rules will take effect February 1<sup>st</sup>. Michael Rock asked if the temporary rules get filed with secretary of state website. Harold was not sure, but assured him that they are on our website. Don Forrest asked Jamie Jeffrey about a project in Portland and whether it was a city project or not, she assured him that it was. They decided the temporary rules would not affect the project.

#### **Temporary Rule Proposed Amendments:**

##### **Section 3020**

Bob Bryant asked if everyone recalled the parking lot issues. He stressed that ODOT was committed to the parking lot issues. He said that the "Unpermitted driveways" issue was important enough to get it incorporated into the permanent rule. The Commission requested that the committee continue work with stakeholders about unpermitted driveways with regard to change of use. Bob explained that a sub-group was established to work on this issue. Bob said Director Garrett asked if possible, have the issue resolved and back before the Commission this month – at the February 25<sup>th</sup> meeting. Bob stressed the need to revise the language to make the deadline for Commission. Bob believed language was sent to everyone. Candice pulled it up on screen. Bob asked if the Committee could get concurrence today, then it would be put in front of the Commission to amend the temporary rules. Bob also stressed that the Committee has the permanent rule to write and changes can still occur during that process. Bob explained that the idea was to walk through the temporary rule, get any overall thoughts or comments, and get concurrence.

Section 734-051-3020 Change of Use of a Private Connection. Bob led the discussion. It excluded some bodies from the "moving in the direction of" language. There isn't good information about unpermitted driveways. The idea was to try to broaden the language for all driveways, not just connections. The group ended up with the word connection, not driveway. Bob read the definition of "connections". Most of the changes reflect the word connection which was changed from the word "approach". Bob went over the changes made starting with section 1. Jim asked if this changed any value of the standards between connection and approach. Bob answered no, for the purpose of this section, they are the same. Don agreed and gave Jim further clarification as to why the word was changed. Bob gave even further clarification as to why the word was changed. Bob said that this was just referring to change of use. The group still has to figure out how to process requests that aren't change of use. If it doesn't meet the threshold and is unpermitted, it would fall under the full standards. Bob explained that there is a bit more work to do to achieve the goal of getting existing driveways to use the "moving in the direction of" language. Mark Whitlow thought that the "moving in the direction of" language applied to all driveways. Mark thinks that we've been moving so fast, that on that point, we should step back and look again and gave an example of a situation where "moving in the direction of" would work. Don said that ODOT's big concern wasn't so much unpermitted driveways, but the "Saturday night special" illegal driveways. Mark explained that the statute says must have written permission, not necessarily a permit.

Back to topic. Bob went over section 2. He explained that as of right now, the threshold for Change of Use applies to all connections. He explained that if an application exceeds the threshold, then they can be evaluated using the "move in the direction of" criteria. But if the driveway is unpermitted and does not exceed the threshold, then the rule currently requires the application to be evaluated under the full Section 4020

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standards. Bob said this is a hole we still need to address with regard to threshold. Don asked if we decided to use existing trips as a baseline if nothing else was available. Bob said that was one of the options discussed but still need to revisit the item.

Back to topic – Bob went over where the words changed from approach to connection. Section 9 – discussion about the language about the agreement and appeals. There were examples given about when an agreement could be appealed. Bonnie Heitsch discussed the rules and gave clarification of what the language covered. Jamie provided even more clarification about what the language meant. Mark Whitlow discussed the item further. Discussion about grandfathered approaches that aren't permitted ensued. Permitted approaches and unpermitted approaches still need further clarification. Jaime asked if we could table this, she felt like there wouldn't be an agreement. Discussion continued anyway about the permitted and unpermitted driveways. Bonnie said that there is potential liability if all of a sudden all driveways were all permitted. Bob finally said that they need to stop talking about the "grandfathered" issue. Don and Bob continued to talk about unpermitted and permitted driveways. Jim asked what grandfathered was. Mark read what it was to Jim.

It was decided to strike the language that was added to section 9 since agreement could not be reached.

Mark asked Bob to clarify section 10. Mark didn't think it made sense. Discussion continued between Bob and Mark about permitted and unpermitted driveways and different examples. Jamie tried to clarify what section 10 was trying to say. Mark and Don went over why they had issues with the language. Bonnie tried to bring everyone back (moving in the direction of). Bob finally said he got Mark's point and will flag both 9 and 10.

Bob went over the last section added. Jim asked a follow up question. Bonnie gave an example of to clarify. Something about right-of-way and right of access. Bob went over the 'vacant lot' example. For section b Jamie thought an amendment should be added after comprehensive plan. Jamie went over an example of land use approval and how ODOT can give some sort of preliminary approval. Everyone agreed to take out the language "comprehensive plan or zone change" and add "of the property" at the end. Bob went over section c and the date chosen. Mark thinks that it should say that it shouldn't be just after the date mentioned. He feels the driveways should all be illegal if ODOT can't prove they're legal. Discussion about grandfathered and permitted/not permitted driveways continued again.

Don and Bob went thought the language in section g. Don thought the language needed clarification and words added. It was discussed that TPR language be inserted into section g. Michael Rock will send language to Bob. Bonnie agreed with the decision. Jamie asked if all plans come with some sort of funding. Bob said that all plans do come with some sort of funding. Jamie thinks the wording is confusing.

Break

Bob thought we should take what the committee has today and recommend to the Commission that they adopt this as an amendment to the temporary rule, with the plan that the part about "funded" be changed. Jim said as long as the way the funding is determined, then he's ok. Mark thought there should a timeline added to the funding piece. Bob asked if we shouldn't put this forth in front of the Commission. Jamie asked if the committee should hold this or not, since there are obviously issues. She also said this makes change of use for unpermitted driveways clearer than it was before. There was a discussion about the timeline and whether 4 years was agreed upon. Michael will send the TPR language to the Committee. Bobl Russell asked if the Committee could agree to use that language or 4 years, whichever is shorter. (adding language to (g) – check with Candice).

The Committee started arguing again about section 9, Unpermitted driveways. Bonnie thought that the unpermitted language should be in there somewhere, it can even be up at the definition. She does not want ODOT to be in a legal problem. Harold said that Mark wants all driveways that are unpermitted to be permitted unless ODOT can prove otherwise and Mark agreed that that was what he wanted. Harold said that wasn't possible. It was decided to strike the last sentence in section 9 and take language to the OTC that says the

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committee is still working on it. Bonnie said that if that sentence is omitted, it won't pass legal sufficiency test. She said that it needs to be defined. She continued by saying until there is a decision to move in the direction that Mark is suggesting, it's problematic. Jim sees both sides and didn't decide either way when Bob asked him whether the language should be in or not. Paul Mather asked Bonnie why it needed to be there. Bonnie said that ODOT needs to be able to protect those driveways that are legal, if it isn't made clear, then ODOT is giving the property owner rights to appeals or compensation that they shouldn't have if there driveway is illegal. Don agrees with that for the "Saturday night specials", but not for others. Bob agrees with that and said it's why ODOT is trying to get the "grandfathered" language in. Jim asked Bonnie again to explain the legal issues. Bonnie agreed that the language in "grandfathered" need to be clarified. Bonnie cannot sign off on this without the language because of potential appeals and financial liability. Del Huntington gave an example to Bonnie. She said the same thing again. Mark's issue is that the term "unpermitted" includes grandfathered. Mark wants 5120 to say "may" instead of "shall" for grandfathered (way off topic).

Agreed to add "unless otherwise grandfathered". Mark and Bonnie agreed.

Bob asked if with that change, the Committee could get this to the Commission. There was general agreement, no one disagreed.

Mark and Bob will work on section 10.

Mark wants a marked and clean copy of the document. Bob said he'd have it before he got home tonight.

**Permanent Rule Making Update & Timeline:**

February 21<sup>st</sup>. Permanent rule goes out.

Temporary rules were filed on December 22<sup>nd</sup>.

**Legislative Oversight Task Force Update:**

Bob let everyone know that task force is going to meet. Michelle is working on the date. This Committee is going to work through issues and find out from the task force what their role will be. Bob asked if we should set a date for the next committee meeting, or wait till after the task force. Bob thinks the committee should stay together for technical assistance to the task force.

**February 2012 Agenda Build**

Harold Lasley thinks the committee should meet after February 21<sup>st</sup>.

Please complete the "March 2012 AMSC Meeting" at Doodle. The link to your poll is:

<http://www.doodle.com/v79nc77qsik8qwcu>