

AGENDA

Access Management Oversight Task Force
Local Government Center
1201 Court St NE Salem OR 97301 (Rm 117)
10:00 – Noon, February 10, 2012

Task Force Members: ~~Sen. Jason Atkinson, Sen. Betsy Johnson, Rep. Cliff Bentz, Rep. Margaret Doherty, Rep. Mike McLane~~, Matt Garrett (ODOT Director), Mark Whitlow, (RTF, ICSC), ~~Chris Doty (City of Redmond Planning Director)~~, Craig Pope (Chair, Polk County Commission), Bob Russell (Oregon Trucking Association), Rob Sadowsky (Bicycle Transportation Alliance)

Guests: Patrick Cooney, Peter Ignatovich, Paul Mather, Victor Dodier, Bob Bryant, ODOT

Bonnie Heistch, DOJ, Ann Hanus, AOC, Mary Olsen, OTC

Introductions/Agenda Review (10 minutes) – Matt Garrett

Matt Garrett lead the meeting with thanks to the members for their time. He gave a brief description of the issue of Access Management. Introductions followed.

Access Management Oversight Task Force (30 minutes)

Task Force Rules – *Victor Dodier*

Victor Dodier, ODOT (title) went over a handout with proposed rules for the task force and (laws?). He explained that this task force was a continuation of the work done through senate bill 1024 (2010). Findings and recommendations need to be filed by December 1st to interim committees related by transportation. Do not need to create legislation, but can recommend legislation. Members were asked to look over the rules. Matt Garrett went over the 5 legislative members, missing a representative from the cities. Victor went over each item on the list. Bob said we would not take a motion on the rules today, but would bring this back to next meeting.

Craig Pope asked about alternates. Matt answered no and asked if Victor concurred, he did. Victor explained that if there is a vacancy, it is up to the governor to provide someone to fill in. Matt said the stakeholder committee would be providing insight and support. Craig said that there would be an issue if people who should be here didn't show up and provide a quorum. Matt said it was a legitimate issue and we would address it if it becomes a problem.

Selection of Task Force Chair – *Matt Garrett*

Matt asked if everyone would ask for names for a chair. He also said these meetings could be conducted virtually if needed and voting can be done that way as well.

Access Management Stakeholder Committee Role – *Bob Bryant*

Bob went over history of what lead to this task force. He talked about the stakeholder committee and the decisions made around access and rules that were changed to legislative language. Question about the role of the task force and the committee. Bob asked if we wanted to maintain the working group, or assume that this group would replace the committee. This is something we need to answer, and doesn't necessarily mean it needed to be answered today. Bob Russell said he would like discussion about this issue. He recommended that the stakeholder group remain in tact and provide insight and support to the task force. Matt said he concurred. He understood that this task force would be charged with oversight to the group. The technical issues still need to be handled through the group. Bob Bryant let the members know that they had a copy of all Committee members in their packet. Bob Russell thought it might help if the legislatures have clarity of what they are being invited to – something in the meeting invite that shows clearly what this is for. Matt said that as we work through some of the issues, we have kept the commission apprised of what work is being done.

SB 264 Task Force Legislation – *Harold Lasley*

Matt apologized if this was repeat information for some, but for others, it was meant as history. Mark Whitlow thought that we should consider that since legislatures are not here, do we need to hear this again? Matt – we could wait, or proceed for Commissioner Pope and Rob – they were both fine with moving forward and waiting for legislatures.

Access Management Statutes & Rules – ORS 374 & OAR 734-051 (40 minutes)

Background – *Harold Lasley*

Stakeholder Process / SB 1024 & 264 Briefing – *Bob Bryant*

Permanent Rulemaking Timeline (10 minutes)

Current Status – *Harold Lasley*

Harold went over the timeline (handout and slide). He went over the statute requirements for temporary rules. February 21 draft of permanent rules need to be distributed to small business and dlcd. Between each set date, we are reviewing and incorporating comments. He made sure that future rule making will occur – and let everyone know that this process would be used for any amendments, unless they are urgent emergency issues. Rob asked about the life of the task force through the process. Bob Russell said the task force is scheduled to go through 2015, unless the work is done. Matt said the temporary rule has been adopted. If we finish the permanent rule before the timeline, there is time to amend the temporary rule – the commission has signed off on that decision. We have a little bit of flexibility between the temp and perm rule. Mark Whitlow said that he and Bob Russell go into the history of the group (wrote 1151 rule?) and he said this time they spent all of the committee work on the statute. Committee finished statute, then ODOT went and hired a consultant to write the rule. Not till October that stakeholders were asked to look and comment on the 65 page rule. Now we're going to the permanent rule making with the same sort of disconnection. He feels we're doing the same thing again. He has articulated this issue. We need to stop and get back on track. He is not sure we're close on the temporary rule, feels we have three big pieces to work through. He went over the issues with the "shortcut" they thought they were getting through change of use. Talked about the issue with going back to using full standards. Bob asked for clarity, if Mark was talking about the issue when agreement wasn't reached. Mark is frustrated with the lack of progress made with the temporary rule. He and Matt Garrett talked about this further. Mark said they have asked for user guide. Matt said we have been following the guides of rulemaking. Matt has asked for straight and simple schematic. Responsibility is oversight and monitoring. Need to demand of ODOT and stakeholders how this will play through at the counter. How do we get to yes? Sometimes the answer will be no. Need to not compromise safety. We might not answer all the questions, but we need to be clear. There is a clock that is ticking on the temporary rule. Mark Whitlow thinks that one of the disconnects with the readability is the way batched. Write it in a way that shows what to do per application.

Bob Bryant said this a good segway into additional topics. How do we engage in the rule making process? Timeline is key. Drove a limited process. Product hasn't been well vetted. Our #1 priority is to get a product in front of the commission by the summer. First item of additional work will be to make sure rule is clear (temp rule and perm rule). Trying to make the rules more user friendly. We have a goal of June, but know that we have ongoing work that may come back as legislation after June. Matt – work needs to be in plain English. Maybe needs to take communication folks to translate legal talk. Bob Russell thinks we're headed in the correct direction. Use this group to vet the English version, and let the stakeholder group vet the technical portion. Rob thinks we should adapt new treatments that we're adapted years ago. Separated bicycle facilities,

etc. Matt appreciates the new lens of perspective from Rob's world. Victor – we need to be mindful of timeframes. When SB264 was enacted, it became active this year. We need to understand that this may take longer than anticipated. Maybe have a May first due date? Lesson is that in the future, the implementation of the bill has to be in line with expectations. Matt – clock is ticking. He will be the resources to the table and not do it in a black box (addressed to Whitlow). Mark – piece by piece.

Bob – we're really close to having a draft of the final rule. Will build some structure of how we will walk through the process. Will look at things that can still be tweaked and changed, and flag what will take longer than the summer. Rob – next step is draft rules will go to stakeholder committee? Harold – when we send to small business, basically going to public. Bob – will be the best product that we have. Mark – can we be specific? Saw temp rule in October....blah...why don't you just share perm rule now? Let's see what you're doing? Harold – thinks that what we're doing, but can certainly share what we have. Matt – consider it done. It's coming to you. Rob – what is not coming out of the stakeholders consensus? Matt – just get it out. Craig – takes this role very seriously. Have been told by some of subordinates that he is a legislative formality. Takes oversight very seriously. Follows stakeholder work. He would concur that one of the problems is finding ways to help get things done. Is there leadership in the stakeholder group? Bob Russell said it was Bob Bryant. Craig thinks this a great thing for an oversight committee – would like feedback from stakeholder group – what is missing. Needs that info from the stakeholder group – now. Russell – Bob Bryant explained the parking lot list. Had that list in mind when he mentioned a work plan. Discussion continues...Bonnie gave description – temp rules were adopted. Perm rules can be opened up and amended. It is administrative, no legislation required. Bob Russell – appropriate in rule or legislation?

Bob went through parking lot issues. Likely will not be reflected this summer because of timing issues of deadlines. [Slide 25] Some were issues at the beginning, some have surfaced as a result of temp rule. Bob Russell – unpermitted change of use if the 800 pound gorilla in the rule. 80% driveways are unpermitted (Whitlow). Matt – wants to be flexible on the issue. Bob went through the rest of the list and gave background information on each topic. Mark Whitlow – medians, try to work there by iteration. Addressed that issue in permitting. Same rules of closure in projects as well as outside of projects. Harold – explained projects....unique situations.... Rob – appeal process.... Bob Russell – safety always trumps economic development. Matt – medians, used for safety, didn't explore all options. Now having conversations to have pathways that work for all. Mark – three big holes in change of use - what is process, what is included, how do you measure it? Should be top of list. Bob Bryant – list isn't in ranking order. Take away word is "balance". Bob explained that ODOT historically was focused on mobility and safety, and now we are shifting balance toward economic development.

Mark – talked about the subgroup. Suggest keep small group approach to finish change of use issue to get it right in the permanent rule. Talked about the progress and change that ODOT has done up to date. Commended changes. Odot took on burden of proof – something is unsafe...applicant doesn't have to prove it is safe (example of something ODOT has changed). Matt – thinks there are things that are clear to him as what we need to do as next steps. First – we will get the language that exists to everyone – rule. Second – stakeholder committee needs to continue, as well as the subgroups. Third – workplan. Disciplined approach, put it into place. Fourth – speak in plain language. Cradle to Grave (whitlow said, matt quoted). Fifth – need to vote on chair. Throw names into hat. Next time we meet is determined by chair.

Russell – sen Johnson was obvious choice for chair. Should ask her.

Matt – need to give legislatures context. Engage by phone or meeting. We will be happy to try to capture time.

Mark – small group meetings, waited for task force to meet. We are going to take back to small group, parking lot issues. Change of use issues. Matt agrees. Try to get it done as quickly as possible (matt). Wants to show progress (matt).

Bob – as we continue to engage small group, will keep task force apprised of meetings and progress. Matt said Rob could send a rep to small group.

Craig – takes pressure from constituents. Expecting to see you do something. Am grateful we are at that point. Would support sen Johnson appointment of chair. Appreciate that it's extremely complex. Matt – appreciated comments, everyone feels stress and pressures.

Paul – important to communicate what we've accomplished. Work plan that goes backwards, and talks about what we have yet to do. Craig thinks that was a good idea. Russell agrees.

Matt asked Commissioner Olson for comments. She thinks we're going in the right direction. Thinks transportation industry is changing the most. Multi-modal funding challenges. Good forum for us to communicate. She is encouraged on that level. Government needs to be more participatory. Those providing service, and those using the service. We come out with the best product when we have to most input.

Additional Work on Unresolved Issues (20 minutes) – *Bob Bryant*

Change of Use / "Moving in the Direction Of" Appeal Rights

Rules for bringing Unpermitted Connections under Permit

Task Force input

Next Steps (10 minutes) – *Task Force Chair*