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April 5, 2011

Senate Committee on Business,  
Transportation and Economic Development  
Oregon State Capitol  
900 Court Street NE, Room 453  
Salem, OR 97301

**Re: SB 264-1**

Dear Chair Beyer and Committee Members:

This letter is written on behalf of the International Council of Shopping Centers (ICSC) and the Retail Task Force (RTF). We support SB 264-1 for the following reasons:

- The bill further implements the legislative directive of SB 1024 to develop a highway access management system based on objective standards. It does so in a way that will balance the economic development objectives of properties abutting state highways with the transportation safety and access management objectives of state highways;
- In doing so, the bill adopts a number of legislative directives, objective standards and streamlining procedures to resolve issues that have been identified as problematic under existing access management administrative rules:
  - While continuing to recognize the ever-present importance of safety considerations, the bill shifts the burden of proving safety or related highway operational problems to ODOT based upon a pre-identified list of safety and highway operations circumstances;
  - The bill requires ODOT to prove that other mitigation measures are ineffective or unavailable prior to requiring non-traversable medians as mitigation measures;
  - The bill eliminates the presence of alternative access as a basis for denying an application for a highway approach, except in limited circumstances;

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- The bill eliminates the applicability of ODOT's mobility standards to turning movements *from* private approaches during the Department's review of approach permit applications, except in limited circumstances, which is a needed streamlining measure;
- The bill clarifies when a traffic study may be required by ODOT;
- The bill accelerates the permitting process for applications which meet objective spacing, site distance and channelization standards;
- The bill adopts shorter spacing standards deemed to be more consistent with local street spacing standards inside urban growth boundaries, with the new standards to be applied to urban areas with posted speeds of 45 miles per hour or less, thus greatly reducing the need for deviations and lessening the administrative burden of the approach permit application process;
- The bill adopts new collaborative procedures during the application review process for change of use applications that do not meet standards and to discuss ODOT's tentative decisions, as an attempt to work more cooperatively and to avoid the need for appeals;
- The bill also introduces new alternative dispute resolution procedures to provide more meaningful appeals in response to criticisms regarding the existing region review process; and
- The bill appoints an access management oversight task force to keep the additional work to implement SB 1024 on track.

Please note that SB 264-1 does not fully implement SB 1024, so additional work remains to be done. The access management stakeholders committee (AM Committee) identified the further need to revise existing administrative rules regarding project delivery and interchange area management plans (IAMPs) in the next round of work to be performed in the 2012 legislative session. The AM Committee identified the unworkable nature of existing rules for IAMPs in urban areas. Likewise, we identified the need to align the Department's project delivery rules to be consistent with the Department's closure rules outside of project delivery.

The bill also recognizes the need to have the Department engage in further rulemaking to implement the new statutory provisions. It is very important that the new administrative rules be adopted in a manner that is consistent with the new statute. One rulemaking issue identified by the private sector members of the AM Committee is the need to establish uniform grandfathering provisions to ensure that driveways established by ODOT during previous projects are deemed to

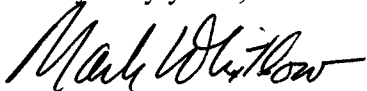
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be legally established and, accordingly, subject to the new change of use of approach rules contained in SB 264-1.

We appreciate the cooperation of ODOT to engage in a paradigm shift in converting the governance of highway access management from administrative rule to statute. I would also specifically thank Victor Dodier for working with me on the numerous drafts of SB 264-1. We are hopeful that the better balance of access management and economic development contained in SB 264-1 will achieve the State's goals in both of those important categories.

Thank you for the opportunity to provide comment on this important measure.

Very truly yours,



Mark D. Whitlow

MDW:sv

cc: ICSC GR Committee Members  
RTF Participants