

Montana Transportation Commission

**April 24, 2019 Meeting
Commission Room
2701 Prospect Avenue
Helena, Montana**

IN ATTENDANCE

Barb Skelton, Transportation Commission Chair
Greg Jergeson, Transportation Commissioner
Noel Sansaver, Transportation Commissioner
Mike Hope, Transportation Commissioner
Tammi Fisher, Transportation Commissioner
Mike Hope, Transportation Commissioner
Mike Tooley, Director MDT
Pat Wise, Deputy Director MDT
Dwane Kailey, MDT Engineering
Lori Ryan, Commission Secretary
Dustin Rouse, MDT
Val Wilson, MDT
Lynn Zanto, MDT
Kevin Christensen, MDT
Jake Goettle, MDT
Kevin McLaury, FHWA
Carl Seilstad, Fergus County Commissioner
Chris Hoffman, Ravalli County Commissioner

Please note: the complete recorded minutes are available for review on the commission's website at https://www.mdt.mt.gov/pubinvolve/trans_comm/meetings.shtml. You may request a compact disc (containing the audio files, agenda, and minutes) from the transportation secretary Lori Ryan at (406) 444-7200 or lryan@mt.gov. Alternative accessible formats of this document will be provided upon request. For additional information, please call (406) 444-7200. The TTY number is (406) 444-7696 or 1-800-335-7592.

OPENING – Commissioner Barb Skelton

Commissioner Skelton called the meeting to order with the Pledge of Allegiance.

Bid Letting – Call Numbers

Kevin Christensen said there are three projects for your consideration today. Like the last bid letting, we have really been struggling with the last few lettings. I don't know if any discussions have occurred with the Commission about the market forces and what we're seeing with our projects particularly with bridge projects. This letting is no exception.

Call No. 101: Kerry Fell Area Bridges. Engineer's Estimate \$9,181,807.96. We had one bidder, Sletten Construction Company. They bid \$15,881,567.23. They were 72.9% over the Engineer's Estimate. There was an 8.77% DBE participation. We did a write up on this project and for the cross-over traffic control and mobilization on this project, the bid amounted to \$9 million alone. I've never seen bids like this particularly for the cross-overs. They bid \$1 million each on cross-overs. I've never seen anything approach that. They did have a write-up that made absolutely no sense to me at all, talking about a 23-mile haul. So, I'm baffled by this bid and there is no way the staff can recommend awarding this project. There wasn't adequate competition. We intend to repackage this and re-let it. One thing we're talking about is perhaps letting the cross-overs as a separate contract to attract a lot more "dirt" contractors. We are recommending rejecting this bid.

Call No. 102: Southwest of Lodge Grass SW. Engineer's Estimate \$2,261,453.35. We had three bidders. The low was Riverside Contracting. They bid \$2,773,932.59. They were 22.66% over the Engineer's Estimate. There was no DBE participation.

We did look at their bid and there were a few things we believe we were low on – plant mixer seam, the asphalt cement, and the mobilization. Based on the Commission policy, we do think it's in the best interest of the public to award this. There was adequate competition and we don't think re-letting the project is going to result in any lower bids. We are recommending award on this project.

Call No. 103. Over Height Rejection System. Engineer's Estimate \$348,052.00. We had one bidder, Pavlic Electric. They bid \$476,229.00. They were 36.83% over the Engineer's Estimate. There was no DBE participation. We did take a look at this one as well. We were low on conduit – we neglected to take into account that it was going to need to be bored. We didn't have a lot of bid history on the overhead rejection systems. We did think we'd get economy of scale because there are four of them but we didn't see that. We missed it on traffic control a little bit. Also with the cantilever pulls, we're having supply issues with them. We just recently lost another supplier and now we only have two nation-wide. Based on that and on the Commission policy, we think it's in the best public interest to award this contract.

Staff recommends awarding Call No's 102 and 103 and rejecting Call No. 101.

Commissioner Jergeson asked the time line for putting Call No. 101 back up. Kevin Christensen said we don't have a time line, we're exploring options. We've found in the past if we break these bridge jobs into smaller projects, it attracts companies that have lower bonding capacity; we saw that in Great Falls. Right now we're just exploring options for repackaging the bid. Also, the bridge work doesn't present a safety hazard for the traveling public so there is no concern there. Commissioner Jergeson said he always has questions when the staff recommend we not approve. The difference between the Engineer's Estimate and the bid is the largest I've seen on any project. That is something clearly to be taken under consideration but I'm interested if their bid may have been extreme to the one direction, is there an issue about the Engineer's Estimate being wrong in the other direction. I'll go to what I refer to as Gordon Stockman's Warning that had the Engineer's Estimate last June – the bid we approved was \$10,757,000 and the Engineer's Estimate done just pre-opening of the bids was \$9,181,000. That's a decline in the Engineer's Estimate, professionals employed by the department of \$1.6 million in a period when we're well aware that if any pressure, it's inflationary. Then I went to the Red Book to try and make sense of that because it doesn't include state. The total funds that do not apparently include state \$11,593,000. Now maybe some of that is pre-engineering and other costs that are not part of what company is bidding on; it's just costs that the department bears as they put these projects together. Even when I looked at the two fiscal years that construction was funded for, that came to \$9.5 million and then if you were to add 10% because it's on the Interstate for the state share, we're looking at an Engineer's Estimate somewhere last October of around \$10,700,000 and how then does our Engineer's Estimate go down in this inflationary period because all the other projects have seen some real heavy inflationary moves. Why isn't that reflected in the Engineer's Estimate on this project?

Kevin Christensen said we refine the Engineer's Estimate as the project is refined through the actual project development phase and the detail of the project emerges. On this project, what's interesting is that we've seen bridge prices just go through the roof in our bridge contracts. We've been chasing that because of the lack of competition. On this project, interestingly the bridge prices we got were right in line with our Engineer's Estimate which baffled me. We saw again that the mobilization was high and we've seen that upward trend but nearly \$6 million of this contract was just in cross-overs. I've never seen, in my career, a \$1 million bid each for cross-overs. Their explanation made no sense. The highest price we've seen in our bid history for a cross-over was on the magnitude of \$400,000. There are bid items for cross-overs, construct and maintain, and remove which were \$1 million apiece for three which is \$3 million. There's a couple of more that are ramp cross-overs that they bid \$600,000. The highest bid history we have on that is \$175,000. Then for

traffic control, there are a number of traffic control items that we have really good bid history on the Interstate, and the bids on those items were extremely high as well. I'm not sure how to answer your question other than the reason our Engineer's Estimate on this bid was lower than the number you mentioned, is that we do refine that and actually take one last look at it about one month prior to bid. I've never seen those kind of prices on those kind of items and they are not related at all to the actual bridge work. So what's going on there, I don't know; I really don't. Nobody in the department has ever seen anything like that. Our Engineer's Estimate may be a little bit low but not \$6 million low.

Commissioner Jergeson said even \$10,700,000 and \$15,800,000 is a lot. I assume every decision you make could be subject to some kind of feel. How do we defend our own numbers changing the way they did and then find fault with somebody else's numbers that come in when they are the only bidder. That still presumes that nobody else was told they couldn't bid on the project, they chose not to.

Dwane Kailey said that is why I love what we've done – by going back to the Commission policy and not sticking hard line to that guideline for award just based on dollar values. You're asking staff to re-evaluate the contract. Are there other things we can do? By sticking to the policy, I love what we're doing because it gives us that defensibility should somebody want to challenge it. About two year's year ago we started looking into this guideline for award and the values, we couldn't find any science where these dollar values came from – the percentages up or down. We couldn't find any good hard-core science for that. As best as we can tell, they're somewhat arbitrary numbers. By going back to the Commission policy and talking about what other factors we can consider, I think we're providing the defensibility that you need should somebody want to challenge you. Kevin's analysis and the staff analysis is right on. We have a means to recommend them that we can apply to this job to reduce those prices by separating the two items out and increase competition. To me that's defensible and it's in line with your policy. Sticking with just the estimate and the percent job of that estimate, I don't think is what we want to go back to.

Commissioner Jergeson said he was asking these questions because I want to have an understanding. We have all these estimates which are all the way through until you get a bid and the contract is awarded, then that becomes a real number. The rest of the time it's an estimate but estimates are what you use to budget. There's a limit on the amount of money available in each district for each kind of project and so you have these estimates. I keep trying to track the changes in the estimate, what makes sense and when I see the Engineer's Estimate decline, I don't see the rationale for it. If held to the other estimates, there still may be such a difference there particularly in the cross-overs and we need to examine that but we don't want to be vulnerable because there's a disparity in these numbers.

Jake Goettle said the earlier the estimate occurs in our process, the more risk we're going to have in our estimate. So it's very likely you're going to see, over time, that estimate refined. What happens is, we have ... (inaudible) ... so we account for that with contingency and we account for that with risk that we're applying to our earlier estimates. As that progresses, we detail more and more information out on those projects and that risk reduces for us and those contingencies reduce, so likely you're going to see, to some extent, those estimates come down because we're removing some of that risk as we work our way through the project. To see that, is not a surprise. Yes you are correct, as we move through the year, we're adjusting and increasing our Engineer's Estimate trying to keep up with the prices we're seeing but there isn't really a correlation with the risk that we were carrying earlier in the project's life to the estimates you're seeing today.

Commissioner Jergeson said yes, except for my piece I did last year and sent out to everybody, about the disparities between the STIPP and the Red Book. Sometimes

the estimates from one year to the next in both documents go down and in other projects the estimates go up – within and between. I’m just trying to understand all of these phenomena when it comes to a price that we’re evaluating against somebody’s bid to make a determination whether or not to award a bid when there is only one bidder.

Kevin Christensen said I would guide us back to Commission Policy 15, which says we need to consider that, but then there are eight other factors that we really need to consider. I’ve got to tell you I like that policy and it gets away from just solely looking at the estimate and it makes us do some of our hard engineering thinking about what we can do different. Are we going to get a different price if we just re-let it or can we do something different with this contract and lower these prices? I appreciate where you’re going with the estimates, but I want to stick to Commission Policy 15. I think it’s the way to go. Also with defensibility, if there should be a protest we have defensibility; we have a robust data base tracking bid items way back. With these particular items, we have a lot of bid history and we use them a lot, i.e., on cross-overs. The highest we’ve ever seen is in the \$400,000 range and how a contractor can justify a standard cross-over costing \$1 million, their explanation didn’t come anywhere close to where that price came from. Commissioner Jergeson said maybe they were going out to eastern Montana maybe.

Commissioner Fisher asked if there was a lot of dirt on cross-overs. Would they have to haul dirt or is there dirt on site? Kevin Christens said it depends on the distance between the two lanes, sometimes there is a grade separation, but there wasn’t on this one; there wasn’t anything unusual with these cross-overs. We use our “as built” drawings to come up with estimated quantities. There just wasn’t anything unusual here that could justify that kind of a price.

Dwane Kailey said a 25-mile haul in eastern Montana is nothing; we see that regularly. Kevin Christensen said we routinely see 150-mile hauls for materials in that part of the country. Commissioner Fisher said the idea is to re-package it so you could have smaller projects for another bridge group to do and increase competition and maybe on the dirt side, you could get dirt contractors that could be able to account for all the hauls they have to bring in material. So you’re hoping for a better bid letting. I look at the subs here and it doesn’t look like there’s anybody who would be doing the dirt work, so the idea would be to bring down the costs if you could separate the job out and get a dirt sub for a smaller bridge contractor. Kevin Christensen said that is correct. The thought was that if we let a contract for just the cross-overs, it’s our belief it will attract quite a few contractors that all they do is move dirt and gravel. The cost should be significantly lower for that bid package. Smaller contractors that don’t have a \$10 million bonding capacity can bid on it. We’ve seen that in Great Falls where we’ve split large projects up into smaller bites and it does attract contractors that don’t have that large bonding capacity.

Commissioner Fisher said mobilization is by percentage, so I can see where this went way out of whack on the mobilization percentage. Our Engineer’s Estimate is 20% of the bid, obviously the variables there when we’re talking about a \$6 million spread is enormous. Mobilization, from the limited knowledge I have, when you know you’re in a highly competitive market is where you start slicing. I can see where the spread occurs because it is a percentage of the ultimate amount. Obviously I’m understanding where they are going but I also understand that, as we do our Engineer’s Estimate, it’s based on a percentage of the total project value. That’s where a huge skew happens. Dwane Kailey said, just so you understand, these three subs are not all their subs – these are only the DBE subs. Kevin Christensen said Century was their dirt contractor.

Commissioner Hope moved to approve Call No’s 102 and 103 and reject Call No. 101. Commissioner Fisher seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Approval of Minutes

The minutes for the Commission Meetings of February 5, 2019, February 19, 2019 and March 5, 2019 were presented for approval.

Commissioner Jergeson moved to approve the minutes for the Commission Meetings of February 5, 2019, February 19, 2019 and March 5, 2019. Commissioner Fisher seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item 1: Local Construction Projects on State Highway System – Local Forces
City of Missoula, City of Sidney**

Lynn Zanto presented the Local Construction Projects on State Highway System – Local Forces, City of Missoula and City of Sidney to the Commission. Under MCA 60-2-110 “Setting priorities and selecting projects,” the commission shall establish priorities and select and designate segments for construction and reconstruction on the national highway system, the primary highway system, the secondary highway system, the urban highway system, and state highways. This statute exists to ensure the safety of our system, protect transportation investments, and encourage better coordination between state and local infrastructure improvements. MDT staff reaches out to local governments to solicit local projects on state systems to ensure compliance with this statute.

Summary: The City of Missoula and the City of Sidney are planning to design and build transportation improvement projects on the state highway system. The projects will be funded locally and will utilize local forces for construction. These projects will be designed with input and concurrence from MDT staff to the extent practicable.

The City of Missoula and the City of Sidney will assume all maintenance responsibilities associated with new project elements. Thus, MDT will not incur additional liability or maintenance costs as a result of the proposed projects.

On behalf of the local governments, as required by MCA 60-2-110, staff requests that the Transportation Commission approve the local projects listed below. The projects are also illustrated on the attached maps: City of Missoula (Attachment A) and City of Sidney (Attachment B). Lynn Zanto explained the color code on the maps.

Location	Type of Work	Cost (estimate)	Fiscal Year	Type of Labor
S 3rd Street (U-8102), from Cottonwood Street to Oak Street, in Missoula	Mill & Fill with ADA Upgrades	\$300,000	2019	Local
S 5th Street (U-8114), from Orange Street to Russell Street, in Missoula *	Mill & Fill with ADA Upgrades	\$400,000	2019	Local
S 6th Street (U-8118), from Orange Street to Russell Street, in Missoula *	Mill & Fill with ADA Upgrades	\$425,000	2019	Local
Lincoln Avenue (U-10405), at the 4th Street SW intersection, in Sidney	Traffic Safety Improvements	\$40,000	2019	Local

* Note: Lane reconfiguration work on 5th and 6th Street (in Missoula) is not included in this project approval request.

Staff recommends that the Commission approve these improvements to the state highway system, pending concurrence of MDT's Chief Engineer.

Commissioner Jergeson said if some people oppose the project and send petitions and arguments against what the city is proposing, are we faced with a packaged deal here or would we have the authority to separate and give specific solitary consideration to the project people might find fault with. Lynn Zanto said as you are considering the recommendations we bring before you, if you're okay with three projects and not okay with one project, you could move to approve three and not take action on the other one. We do ask the local governments to tell us about their public involvement when we solicit them; we want to make sure they've done some sort of public involvement at their local level. They tell us what they've done. Dwane Kailey said we've had that instance in the Missoula Pedestrian Over-crossing and the Commission did hold on that until we had some answers from the local government. Lynn Zanto said you only approve if you are comfortable with that approval.

Commissioner Fisher moved to approve the Local Construction Projects on State Highway System – Local Forces, City of Missoula and City of Sidney. Commissioner Sansaver seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 2: Local Construction Projects on State Highway System – Contract Labor
City of Billings
City of Bozeman
City of Miles City

Lynn Zanto presented the Local Construction Projects on State Highway System – Contract Labor – City of Billings, City of Bozeman, and City of Miles City to the Commission. Under MCA 60-2-111 “letting of contracts on state and federal aid highways,” all projects for construction or reconstruction of highways and streets located on highway systems and state highways, including those portions in cities and towns, must be let by the Transportation Commission. This statute exists to ensure the safety of our system, protect transportation investments, and encourage better coordination between state and local infrastructure improvements. MDT staff reaches out to local governments to solicit local projects on state systems to ensure compliance with this statute.

Summary: The Cities of Billings, Bozeman and Miles City are planning to design and build transportation improvement projects on the state highway system. The projects will be funded locally and will utilize contract labor. The projects will be designed with input and concurrence from MDT staff to the extent practicable.

When complete, the Cities will assume all maintenance responsibilities associated with new project elements. Thus, MDT will not incur additional liability or maintenance costs as a result of the proposed projects.

On behalf of the local governments, as required by MCA 60-2-111, staff requests that the Transportation Commission delegate authority to the Cities of Billings, Bozeman and Miles City to let and award contracts for the projects listed below. The projects are also illustrated on the attached maps: Billings (Attachment A), Bozeman (Attachment B) and Miles City (Attachment C).

Location	Type of Work	Cost (estimate)	Fiscal Year	Type of Labor
Virginia Lane (U-1015), from Park Lane to Woodland Drive, in Billings	Sidewalk	\$5,000	2019	Contract
Central Avenue (U-1008), at the 24 th Street West Intersection, in Billings	Intersection Improvements	\$400,000	2019	Contract
S 3 rd Avenue (U-1209), at the Graf Street Intersection, in Bozeman	Roundabout	\$1,000,000	2019	Contract
Strevell Avenue (U-8006), from Stower Street to Main Street, in Miles City	Reconstruction	\$1,500,000	2019	Contract

Staff recommends that the Commission approve these modifications to the state highway system and delegate its authority to let, award, and administer the contracts for these projects to the Cities of Billings, Bozeman, and Miles City - pending concurrence of MDT’s Chief Engineer. We do basic reviews to make sure that ADA portion is being met and we’re compliant with federal disability laws on our system.

Commissioner Jergeson said the project in Billings is \$5,000 – does that have to be put out for competitive bid or does it have to be combined with the other one? Lynn Zanto said it is based local and how they want to advance things. This is how the City of Billings is proposing it. Commissioner Jergeson said with contracting, if it is over a certain amount, they have to put it up for bid under state law. Dwane Kailey said under our state law, under \$5,000 does not have to be competitively bid, between \$5,000-\$25,000 we can do a limited solicitation, and over \$25,000 we have to do competitive bidding unless you have some other justification such as exigency.

Commissioner Jergeson moved to approve the Local Construction Projects on State Highway System – Contract Labor – City of Billings, City of Bozeman and City of Miles City. Commissioner Hope seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 3: Construction Project on State Highway System Contract Labor – Railroad Quiet Zone, Shelby

Lynn Zanto presented the Construction Project on State Highway System, Contract Labor – Railroad Quiet Zone, Shelby to the Commission. Under MCA 60-2-111 “letting of contracts on state and federal aid highways,” all projects for construction or reconstruction of highways and streets located on highway systems and state highways, including those portions in cities and towns, must be let by the Transportation Commission. This statute exists to ensure the safety of our system, protect transportation investments, and encourage better coordination between state and local infrastructure improvements.

Railroad Quiet Zone – Shelby

The City of Shelby is proposing a railroad quiet zone along Main Street (US-2) in Shelby. In order to properly implement the quiet zone, a railroad crossing on US-2 (N-1) must be modified. Proposed improvements would include raised medians, roadway widening, gated signals, updated circuitry and storm water drainage improvements.

MDT headquarters and Great Falls District staff have reviewed and concur with the recommended improvements. The City of Shelby will provide 100 percent of project funding and will be required to complete MDT’s design review and approval process (to ensure that all work complies with MDT design standards).

Additionally, the City of Shelby will assume all maintenance responsibilities associated with these improvements. Thus, MDT will not incur additional liability or maintenance costs as a result of the proposed project.

Summary: The City of Shelby is proposing a project to modify a National Highway System route to accommodate a railroad quiet zone. The project will be fully funded by the City of Shelby and will utilize contract labor to modify a railroad crossing on US-2 (N-1).

Staff recommends that the Commission approve this modification to the state highway system and delegate its authority to let, award, and administer the contract for this project to the City of Shelby - pending concurrence of MDT's Chief Engineer.

Commissioner Jergeson moved to approve the Construction Project on State Highway System, Contract Labor – Railroad Quiet Zone, Shelby. Commissioner Sansaver seconded the motion. All Commissionees voted aye.

The motion passed unanimously.

Agenda Item 4: Construction Project on State Highway System, North 27th Street Signal – Billings

Lynn Zanto presented the Construction Project on State Highway System, North 27th Street Signal - Billings to the Commission. Under MCA 60-2-110 "Setting priorities and selecting projects," the commission shall establish priorities and select and designate segments for construction and reconstruction on the national highway system, the primary highway system, the secondary highway system, the urban highway system, and state highways. This statute exists to ensure the safety of our system, protect transportation investments, and encourage coordination on public and private infrastructure improvement projects that impact MDT routes.

North 27th Street Signal - Billings

The contractor for the Billings Clinic is proposing modifications to North 27th Street (N-53) to address traffic generated by expansion of their facility in Billings. Proposed improvements would include the installation of a new traffic signal at the intersection of North 27th Street and 10th Avenue North.

MDT headquarters and Billings District staff have reviewed and concur with the recommended improvements. The Billings Clinic will provide 100 percent of project funding and will be required to complete MDT's design review and approval process (to ensure that all work complies with MDT design standards). After construction, MDT will assume all maintenance and operational responsibilities associated with the new signal.

Summary: The contractor for the Billings Clinic is proposing modifications to the National Highway System to address traffic generated by expansion of their facility. Specifically, the contractor is requesting to install a new traffic signal at the intersection of North 27th Street and 10th Avenue North in Billings.

Staff recommends that the Commission approve this modification to North 27th Street - pending concurrence of MDT's Chief Engineer.

Commissioner Skelton asked if this was in conjunction with all the other work they are doing on 27th. Lynn Zanto said our project team is coordinating to make sure we aren't tearing up the other work that's been done. It is coordinated.

Commissioner Sansaver said there may be some questions on signals which are sometimes a contentious topic, can you talk about warrants and how they are done. We don't just put in a signal anywhere, there may be some specific things that need to be done. Dwane Kailey said, based on the MUTCD and national guidance, with signal warrants, there are 11 things we have to look at, anything from congestion, accidents, pedestrian movement, etc. The thing you have to remember with intersections, no matter what intersection improvement you put in, you're trading one accident for another. With signals, we're typically trading right-angle crashes which are some of the most severe for rear-end fender-bender type accidents. Same thing with roundabouts – typically a roundabout still has accidents but they are typically property damage only rear-end type accidents. That's why we go through the 11 warrants to evaluate whether or not a signal can go in or not because, again, we're creating crashes and we know that especially in inclement weather. People are going to be cued up for the signal and somebody is going to fail to stop and there will be a rear-end accident. We know that and that is why we go through the signal warrants.

Commissioner Hope asked if in the regulations there was a way to choose a roundabout versus a signal. Dwane Kailey said there are no warrants for roundabouts. We have an analysis we go through which is based more on the level-of-service. Can a roundabout accommodate it or not? Then it comes down to funding because a lot of our roundabouts are concrete which reduce our maintenance costs long term but it also raises the cost of them substantially over the cost of a signal. It depends on what we're trying to address. When it comes to safety, a lot of times safety will recommend a roundabout and that is the sole intersection improvement we're going to look at because that is what it's going to take to mitigate those crashes.

Commissioner Fisher moved to approve the Construction Project on State Highway System, North 27th Street Signal – Billings. Commissioner Hope seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 5: Construction Project on State Highway System Secondary 340 Structure Replacement – Fallon

Lynn Zanto presented the Construction Project on State Highway System, Secondary 340 Structure Replacement – Fallon to the Commission. Under MCA 60-2-110 “Setting priorities and selecting projects,” the commission shall establish priorities and select and designate segments for construction and reconstruction on the national highway system, the primary highway system, the secondary highway system, the urban highway system, and state highways. This statute exists to ensure the safety of our system, protect transportation investments, and encourage coordination on public and private infrastructure improvement projects that impact MDT routes.

Secondary 340 Structure Replacement - Fallon

TransCanada is proposing modifications to Secondary 340 (S-340) to allow their trucks to transport large (heavy) loads over the route. Presently, a bridge on Secondary 340 (near Fallon) cannot support these large loads – due to the deteriorated condition of the structure. Thus, TransCanada is proposing to replace the structure with a new bridge or culvert.

MDT headquarters and Glendive District staff have reviewed and concur with the recommended improvements. TransCanada will provide 100 percent of project funding and will be required to complete MDT's design review and approval process (to ensure that all work complies with MDT design standards). After construction, MDT will assume all maintenance and operational responsibilities associated with the new structure.

Summary: TransCanada is proposing modifications to the Secondary Highway System to address a substandard bridge on Secondary 340. Specifically, TransCanada is requesting to replace the existing structure with a new bridge (or culvert) – so that their large trucks may be able to utilize the route.

Staff recommends that the Commission approve this modification to Secondary 340 - pending concurrence of MDT's Chief Engineer.

Commissioner Jergeson said a federal Judge stayed the Trans-Canada project, is this project going to occur no matter what happens with that Stay on ultimate approval or disapproval of the project or is this project tied to the ultimate outcome of that. Lynn Zanto said this would be considered part of their non-related haul for the Trans-Canada effort. This is something they see as infrastructure needed. I believe they will probably coordinate it. I don't think they will want to build a new bridge for us if they can't move forward with their project. For our end, we're not violating the Stay by continuing to review and look at this project for them. It will be up to them and will be a business decision in terms of funding and building for them.

Commissioner Sansaver moved to approve the Construction Project on State Highway System, Secondary 340 Structure Replacement – Fallon. Commissioner Fisher seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 6: Construction Project on State Highway System Lockwood High School - Billings

Lynn Zanto presented the Construction Project on State Highway System, Lockwood High School - Billings to the Commission. Under MCA 60-2-110 "Setting priorities and selecting projects," the commission shall establish priorities and select and designate segments for construction and reconstruction on the national highway system, the primary highway system, the secondary highway system, the urban highway system, and state highways. This statute exists to ensure the safety of our system, protect transportation investments, and encourage coordination on public and private infrastructure improvement projects that impact MDT routes.

Lockwood High School – Billings

The Lockwood School District is proposing modifications to Hardin Road (U-1028) near Billings to address traffic generated by their new high school. Proposed improvements would include new turn lanes (left and right) at the approach into the main parking area.

MDT headquarters and Billings District staff have reviewed and concur with the recommended improvements. The Lockwood School District will provide 100 percent of project funding and will be required to complete MDT's design review and approval process (to ensure that all work complies with MDT design standards). After construction, MDT will assume all maintenance and operational responsibilities associated with these improvements.

Summary: The Lockwood School District is proposing modifications to the Urban Highway System to address traffic generated by their new high school. Specifically, the Lockwood School District is requesting to install new turn lanes (left and right) on Hardin Road (U- 1028) near Billings.

Staff recommends that the Commission approve these modifications to Hardin Road - pending concurrence of MDT's Chief Engineer.

Commissioner Fisher moved to approve the Construction Project on State Highway System, Lockwood High School - Billings. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item 7: Construction Project on State Highway System
Flathead Valley Community College – Kalispell**

Lynn Zanto presented the Construction Project on State Highway System, Flathead Valley Community College – Kalispell to the Commission. Under MCA 60-2-110 “Setting priorities and selecting projects,” the commission shall establish priorities and select and designate segments for construction and reconstruction on the national highway system, the primary highway system, the secondary highway system, the urban highway system, and state highways. This statute exists to ensure the safety of our system, protect transportation investments, and encourage coordination on public and private infrastructure improvement projects that impact MDT routes.

Flathead Valley Community College – Kalispell

Flathead Valley Community College is proposing modifications to Grandview Drive (U- 6704) in Kalispell to address traffic generated by expansion of their facility. Proposed improvements would include a new right-turn lane (on Grandview), signal upgrades and new curb and gutter at the intersection of Grandview Drive and US-93.

MDT headquarters and Missoula District staff have reviewed and concur with the recommended improvements. Flathead Valley Community College will provide 100 percent of project funding and will be required to complete MDT’s design review and approval process (to ensure that all work complies with MDT design standards).

After construction, the City of Kalispell will assume all maintenance and operational responsibilities associated with these improvements. Thus, MDT will not incur additional liability or maintenance costs as a result of the proposed improvements.

Summary: Flathead Valley Community College is proposing modifications to the Urban Highway System to address traffic generated by expansion of their facility. Specifically, Flathead Valley Community College is requesting to install a new right-turn lane (on Grandview), upgrades signals, and add new curb and gutter at the intersection of Grandview Drive (U-6704) and US-93.

Staff recommends that the Commission approve these modifications to Grandview Drive - pending concurrence of MDT’s Chief Engineer.

Commissioner Fisher moved to approve the Construction Project on State Highway System, Flathead Valley Community College – Billings. Commissioner Hope seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item 8: Highway Safety Improvement Program Project
Railroad Crossing – Pratten St. – Columbus**

Lynn Zanto presented the Highway Safety Improvement Program Project, Railroad Crossing – Pratten Street – Columbus to the Commission. The Highway Safety Improvement (HSIP) Program makes federal funding available to states to assist with the implementation of a data-driven and strategic approach to improving highway safety on all public roads. States are required to set-aside a portion of these funds for safety improvements at railway-highway grade crossings under 23 United State Code (USC) Section 130.

Under Section 130, Montana is required to conduct and maintain a survey of all railway-highway grade crossings to identify crossings that may require installation of protective devices and/or elimination of hazards.

At this time, MDT is proposing a railway-highway crossing safety improvement project on Pratten Street (P-78) in Columbus. Proposed improvements would include signal upgrades, roadway surfacing work, intersection improvements, pedestrian safety features, and some track removal.

The estimated total cost for all project phases is \$1,600,000 (\$1,430,000 federal + \$170,000 state match) – with the majority of the federal funding originating from the Highway Safety Improvement (HSIP) Program and a portion (\$370,000) from the Surface Transportation Program Primary (STPP).

Summary: MDT is requesting Commission approval for a project to improve a railway-highway grade crossing on Pratten Street (P-78) in Columbus. The proposed project is consistent with the goals and objectives identified in the Performance Programming (P3) Process – as well as the policy direction established in TranPlanMT. Specifically, traveler safety will be enhanced with the addition of this project to the HSIP program. The estimated total cost for all project phases is \$1,600,000.

Staff recommends that the Commission approve the addition of this HSIP project to the highway program.

Commissioner Skelton asked if they a putting arms on this. Lynn Zanto said yes. Commissioner Fisher asked if there were arms now and this is just an upgrade because it looks like it is in the middle of town. Commissioner Skelton said it is on the edge of town. Commissioner Fisher said then you would expect with pedestrian and other traffic, that arms would be important. \$1.65 million seems like a whole lot of money to help a railroad crossing but I recognize that if it doesn't have the typical safety features of an in-town railroad crossing, it would be important. Commissioner Skelton said one of the big issues is the factory is across it and a lot of tourists cross it in the summer.

Commissioner Fisher moved to approve the Highway Safety Improvement Program Project – Railroad Crossing – Pratten St - Columbus. Commissioner Sansaver seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 9: Bridge Program Projects
Old Hwy 10 Bridges – E of Hysham
Twelve Mile Crk – 2M W Huntley
Shiloh Rd/I-90 /Bridge – Billings

Lynn Zanto presented the Bridge Program Projects – Old Hwy 10 Bridges – E of Hysham, Twelve Mile Crk – 2M W Huntley, Shiloh Rd/I-90 Bridge - Billings to the Commission. MDT's Bridge Bureau reviews bridge conditions statewide and provides recommendations for construction projects to be added to the Bridge Program. At this time, the Bridge Bureau recommends adding three (3) bridge projects to the Surface Transportation Bridge (STPB) Program.

Project information is shown on Attachment A. If approved, it would be MDT's intention to let these projects individually. The estimated total cost for all project phases is \$8,932,000 (\$7,733,000 federal + \$1,199,000 state) – with the entirety of the federal funding originating from the Surface Transportation Bridge (STPB) Program.

Summary: MDT is requesting Commission approval to add three (3) bridge projects to the Surface Transportation Bridge (STPB) Program. The estimated total cost for all project phases is \$8,932,000 (\$7,733,000 federal + \$1,199,000 state) – with the entirety of the federal funding originating from the Surface Transportation Bridge (STPB) Program.

The proposed projects are consistent with the goals and objectives identified in the Performance Programming Process (P3) as well as the policy direction established in TranPlanMT. Specifically, roadway system performance and traveler safety will be enhanced with the addition of these projects to the Bridge Program.

Staff recommends that the Commission approve the addition of these projects to the Bridge Program.

Commissioner Jergeson said, this goes back to breaking out bids for smaller contractor's bonding capability, do we feel it is more appropriate to bundle these three bridges for the bonding issue. Why exactly did we bundle the three. Dwane Kailey said, as we go through project development, if we think it is better to have them bundled we do that. If we want to separate them, we can split them out and set them up individually for contract. Keep in mind that it is going to be two or three years before these are close to construction, so we can assess the market then and make an appropriate decision when we get there. Commissioner Jergeson said instead of having 15 different agenda times, you just bundle them for that reason. Dwane Kailey said it is a way to bring them to you and develop them at the same time. Lynn Zanto said this is how we're bringing them forward, if there's a specific way you'd like to see the agenda item, if you want them by District, we can always do that.

Commissioner Fisher said she noticed that there is only one of the new structures that is going to add capacity. The one in Hysham is a new structure with no added capacity. Is that an entire bridge where there was no bridge before? Is it going to be a bridge that is added next to an old bridge? Dwane Kailey said it is a bridge replacement which means we're taking out an existing bridge and putting in a new one. Commissioner Fisher asked if it was the same as Shiloh Road in Billings or it is just a rehab. Dwane Kailey said it's rehabbing. Commissioner Fisher said then the one in Huntley is similar to the one in Hysham but you're actually adding capacity to that one? Dwane Kailey said right now there is not much shoulder width, so we're adding some shoulder width. It is also a functionally obsolete bridge which means it doesn't conform as well. Commissioner asked if we had some funding issues with Huntley last year. Dwane Kailey said we did lose a bridge back in 2011 because we had some culvert issues.

Commissioner Sansaver moved to approve the Bridge Program Projects – Old Hwy 10 Bridges – E of Hysham, Twelve Mile Crk – 2M W Huntley, Shiloh RD/I-90 Bridge - Billings. Commissioner Hope seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 10: Highway Safety Improvement Program – Additions to HSIP Program (4 New Projects)

Lynn Zanto presented the Highway Safety Improvement Program – Additions to HSIP Program (4 New Projects) to the Commission. The Highway Safety Improvement (HSIP) Program makes federal funding available to states to assist with the implementation of a data-driven and strategic approach to improving highway safety on all public roads. In Montana, the primary focus of the HSIP program involves identifying locations with crash trends (where feasible countermeasures exist) and prioritizing work according to benefit/cost ratios.

At this time, MDT is proposing to add 4 new projects to the HSIP program – two in District 1, one in District 2, and one in District 5. The projects on the attached list (Attachment A) meet the criteria set forth for HSIP-funded projects. If approved, it would be MDT's intention to let these projects individually.

The estimated total cost for all projects is approximately \$16,282,000.

Summary: MDT is requesting Commission approval to add 4 projects (listed on Attachment A) to the Highway Safety Improvement Program. The proposed projects are consistent with the goals and objectives identified in the Performance Programming (P3) Process – as well as the policy direction established in TranPlanMT. Specifically, traveler safety will be enhanced with the addition of these projects to the HSIP program.

The total estimated cost for all projects is approximately \$16,282,000.

Staff recommends that the Commission approve the addition of these HSIP projects to the highway program.

Commissioner Fisher asked about Clear Water Junction – the amount is close to \$5 million, is that going to be an overpass? Dwane Kailey said it isn't going to be an overpass. Jake Goettle said we're not saying it is going to be a roundabout but that is where we're leaning. Commissioner Fisher said you need to slow traffic right there because I know the rest area is on one side. Jake Goettle said if you're familiar with the area, you know speeds on Hwy 2 are very high through that area. We anticipate quite a lot of geometrics we're going to have to include with the roundabout to slow traffic down as they approach either section. Couple that with a concrete roundabout, it is very likely to be a high cost. That is all phases of the project.

Commissioner Sansaver said when we started moving into the roundabouts, I haven't paid much attention but we're now being affected by roundabouts. Was there some type of statewide papers that advertised the state was going to start moving to roundabouts or is that something we just decided to do? Dwane Kailey said you ask a very excellent question. We did not do the best job of educating the public when we initially started going into roundabouts. Over and above that, our first designs weren't perfect and we've had some issues with them. With the newer design, they are functioning extremely well and we have stepped up our public involvement. In fact the last Legislative Session, based on a roundabout, SB 182 was floated through. It hit the Director's radar and mine as well, and he and I had some very frank conversations and we both agreed that we needed to step our game with public involvement. Based on that, we worked with the Senator who sponsored the bill, and we didn't fight him on it. We amended it so it was something that would work for the Agency. I think right now we're getting better; we're doing a ton of public involvement. We've hired five firms that are helping us and if you know of anything we're missing, please let us know. We are really trying to get the word out there both on the preconstruction side and on the construction side. We've developed numerous videos for them, in fact we videoed the Lane Deer one. We have three

videos that are awesome. They are very realistic example of how to drive them; not only in a passenger vehicle but there are numerous trucks going through it. We've used those numerous times to show the public how to drive it, here's how it works, and here is how it does accommodate large trucks. You've hit on a very valid point and I'll take full responsibility; we didn't do the best originally. Being engineers we saw the benefits of it and thought we could just sell it easily to the public. It didn't go to well. Director Tooley said it turns out that Engineers aren't very good sales people so we hired some.

Commissioner Sansaver said perhaps we could find a method of dissemination even now because there is going to be many more to come. We're just having the newspapers across the State of Montana give just an introduction of the intent of what the Commission and MDT are trying to accomplish with these roundabouts so the State of Montana population isn't so ignorant about (I'm using that term to its definition) what roundabouts are for, how they are cutting back the accident ratios, cutting back the deaths on Montana highways. I don't think it's too late to do that; I think we should be more proactive with it and move forward and have it in the newspapers once every quarter or semi-annually. It's reintroducing the roundabouts and what the intent of the state is. Dwane Kailey agreed whole-heartedly. Right now we've got at least three of our firms working on that very issue because we've got three proposed up in Kalispell that are fairly contentious. We just two in Poplar and one in Broadus. We've definitely learned that we need to do better so we're stepping that up.

Director Tooley said if you are interested, there are several videos of how to operate a roundabout, we can show you. They are constantly providing us better ways to get that message out and let the public know how to drive through them. Commissioner Sansaver said he'd seen some of the videos because I attended the Poplar meeting. I'm more interested from the state perspective and the Commission perspective of getting that information earlier and not be reactive but proactive to the public. Dwane Kailey said your point is very valid. One of the efforts of the Public Involvement firms was to set up a survey and they found that in more of our urbanized area, there is a lot more buy-in to them. They are getting used to them and becoming more comfortable with them. But when we go to Poplar, a lot of those people don't make it to Billings or Shiloh Road very often, so they weren't as familiar with them. That is where we're going to start targeting more – the more rural areas because they don't see them as much and when they do see them, it's that panic of how to deal with it. We want them to be comfortable with them; they are the best intersection control you can do anywhere – even Interchanges. You still have conflicts with Interchanges but there is no better intersection treatment than a roundabout, bar none, where appropriate.

Commissioner Skelton said doesn't the website show the proposed roundabouts? Dwayne Kailey said yes there is a link that sends you to it. Commissioner Hope asked about the driver's education programs throughout the state, can't we start with the youth when they first start driving? Dwane Kailey said my understanding is that OPI has adopted some roundabout training; I believe every major city has adopted that training through their Driver's Ed Program. I have two kids and one just got done with Driver's Ed and the other one starts on Monday, and their teacher is making them run through one of the roundabouts here in town. I'm glad they are doing that.

Lynn Zanto said the 59th Legislature passed a Resolution that encouraged roundabouts rather than a traditional improvement and encouraged the department to look at roundabouts for intersection improvements to help address right-angle crashes. Kevin McLaury said at Federal Highway has put a lot of effort behind a specific emphasis area and roundabouts is one of them. We highlighted a whole week of activities across the national about the safety and design of roundabouts. I commend the department. When we started out, we were all getting our hands

around this and what designs we we're doing and building some pretty good sized roundabouts. FHWA actually has a PhD whose degree is in roundabouts. We brought her in a couple of times when the department was working with some of our technical experts nationally to see about ensuring the safety of roundabouts, particularly in rural areas and try to reduce the cost of these. The department has taken a lot of that information. You're going to see some real improvements and the cost starting to come down on some of these. I'm personally excited about this because when you have a T-intersection, that is the worst crash rate – if you get T-boned, the probability isn't good. On a roundabout, you're going to have a side-swipe more than likely, or not at all. I believe we've only had one fatality at a roundabout in the State. Dwane said three – all three were on Shiloh. One was medical – the guy had a heart attack going into the roundabout; not because of the roundabout. The other two were motorcycles and one guy dumped his bike going into it and slid into the roundabout, hit a signpost and he was not wearing a helmet. The other guy decided to take his motorcycle up and over the roundabout and did not make it. From our aspect there are three deaths associated with roundabouts, but they were not driving appropriate for the roundabout.

The other things we did in Kalispell, one of our PI firms actually set up a roundabout rodeo. They went into the fairgrounds and actually marked out a roundabout and invited a bunch of members from the trucking community to come in. They had a hick-up because it got rainy and they were on grass and dirt and some of the trucks had challenges with the mud but the comments we got out of it were very positive. The trucking industry was very happy. We are trying to be creative and educate and I'd like to see more roundabout rodeo's out there because I think they're very effective. You're point is very well made and I couldn't agree with you more.

Commissioner Sansaver said we have a dilemma in getting plenty of notice out to the public so they can learn about things, anticipate things. I went through our Grass Range roundabout, and a week after the decision was made to abandon that roundabout project, I had a trucking firm in Havre call and ask if it was too late to put in a word in favor the roundabout. They don't like to come to a complete stop with their heavy loads going to Billings, and they send at least one load a day. They prefer to just be able to slow down but maintain momentum with their heavy loads especially going up that hill. I said it was too late, the decision was made just a week ago.

In reference to the website, the information on the roundabouts and the visual that shows all locations – if you click on that icon on that page, it will take you to all that information. Lynn Zanto said she would send it out to the Commission.

Commissioner Jergeson moved to approve the Highway Safety Improvement Program – Additions to HSIP Program (4 New Projects). Commissioner Hope seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Public Comment

Carl Seilstad, Fergus County Commissioner

Madam Chair, members of the Commission and Staff, thank you once again for allowing me to be here. I was here a month ago. Due to the new Commissioners not being here, they tabled the speed zone study that the department proposed and what Fergus County proposed until this meeting.

Basically Fergus County conducted at least two public meetings after we got the report back from the state on the state's recommended speed zone study. We did

not have anybody opposed to what I'm going to present. They figured the state's proposal may be a little fast yet. The MDT proposal, in the Truck Bypass, as you're coming out of Lewistown at 35 mph and then right here (referring to map) then hit 45 mph and then 55 mph. Basically what we're doing in both of these situations when you're coming out of town either on the truck bypass or down in Lewistown West, where it turns into the 45 mph speed zone and carried that all the way to the new intersection. This intersection was rebuilt a couple of years ago, and has a few problems. Coming into town we've recommended a 55 mph zone here but we withdrew that because it was not part of the scope of the first speed zone study. I was told I didn't have to request one because I was on record as wanting one.

Basically from this point from the intersection, which is right here (referring to map) about 1,000 feet and then 45 mph coming in until you hit 35 mph all the way. Commissioner Skelton asked if the map was the same one as Agenda Item 11. Dwane said yes. Carl Seilstad said when we proposed the 45 mph to go through the intersection both on the Truck Bypass and Lewistown West we pretty much had unanimous support. In the packet there are a lot of letters of support from community members, a letter of support from Sargent Jason Grover, Montana Highway Patrol, and a letter of support from our former Fergus County Sheriff. Someone said support is one thing and enforcement is another so my Sheriff wrote a little note to say it was on his radar and he will be enforcing it. When I talked to Sargent Grover I think I insulted him by asking for a letter because he said, "I enforce all the speed limits."

The problem we're having is not only fender benders and accidents, but this is a picture – here's the intersection right here. There is a business that sits right along the highway right-of-way. Here's a picture of last winter and you can see the tracks through the intersection. In my packet before I had a picture of the guy's pickup sitting in the guy's business yard from going through the intersection. This has happened over and over; this isn't the first time and he went out and took a picture.

That's all I have to say. We've always gone with the department's recommendations in all cases except this one. I think the 45 mph speed limit will work coming out of town because you're going from 35 mph to 45 mph and stay at 45 mph until such time as the speed zone changes to 55 mph or 60 mph after the intersection. The only part I'm worried about is ... I think we can put up the 45 mph and it will work coming into town on Lewistown West ... referring to map ... coming into town when you come off the intersection, you've got an off ramp that has a recommended speed is 45 mph. So when you come around that corner, if you look at the sign and slow down for the curve you're going 45 mph, then we leave it at 45 mph the rest of the way into town. The only thing that bothers me is the traffic – a lot of grain haulers and stuff that are blowing through that intersection who will be going 70 mph and have to hit the skids to come down to 45 mph. So that is why I think it is very important that we get the 55 mph out in front of the 45 mph. That's all I have right now. I'll be glad to answer any questions.

Commissioner Fisher asked how many entrances to businesses you have off 191 and 87. Carl Seilstad said there's about three residents and right by that intersection you've got at least four businesses to the north and along the other side of the Truck Bypass, you've got at least two intersections that they use coming onto 191 instead of hitting the highway going into Lewistown. So there's several. Commissioner Fisher asked about the triangle – between the Truck Bypass and 87, in that triangle part, are there businesses in there or is it an empty field? Carl Seilstad said there is a cabinet shop, the rental place is right across, and then there's a trailer sales just beyond that intersection, and I believe there is another business where you turn off and go by the sign shop, there's more stuff back in there.

Commissioner Hope said originally when you put the Bypass, what was the justification to put the Bypass in, to move traffic faster? Carl Seilstad said the Bypass

was long before me; it's been there a long time. Commissioner Fisher asked if it bypassed anything now. Carl Seilstad said actually 191, you come in from Roy and Hilger that way and instead of going through Lewistown you take the Truck Bypass. That's for anyone who wants to keep on going on 191. Commissioner Skelton said the Bypass goes to the stockyards. Carol Seilstad said if you're leaving town and you want to come in the Truck Bypass, you make a left on the intersection and head north to the stockyards and fairgrounds.

**Agenda Item 11: Speed Limit Recommendation
US 87/MT 200 – Lewistown West, US 191 (P-75)
Lewistown Truck Bypass**

Dwane Kailey presented the Speed Limit Recommendation for US 87/MT 200 – Lewistown West, US 191 (P-75) Lewistown Truck Bypass to the Commission. I want to clarify something – I did go back and talk to staff and if you go to page three of the presentation you will see a graph. Our graph is on top and speed tally stations are below – the first one at milepost 70.5 near Yellowstone Lane does incorporate the area that Commissioner Seilstad is talking about prior to our recommendation. We have enough data and MDT would recommend that the speed limit stay at 70 mph. You as a Commission have enough information that if you wanted to adjust the speed in accordance with what Fergus County is asking for 1,000 feet prior to our recommendation. Carl Seilstad said our recommendation is starting at 55 mph right here (referring to map). Dwane Kailey said what they've asked for 1,000 feet before this be reduced to 45 mph coming into town. You have enough information in your packet to address that issue. MDT's recommendation is as follows:

US 87/MT 200

A 55 mph speed limit beginning at station 320+00, project NH 57-3(36) and continuing east along P-57 alignment to station 542+00 (300' west of the intersection with "H" Street), an approximate distance of 1.08-miles.

A 45 mph speed limit beginning at station 542+00 project NH 57-3(36) and continuing east to station 570+00 (100' west of the intersection with "F" Street), an approximate distance of 0.53-mile.

Lewistown Truck Bypass

A 55 mph speed limit beginning at station 320+00, project NH 57-3(36) and continuing along P-57 and onto P-75 at station 335+93 to station 77+00, project F 389(1), an approximate distance of 0.83-mile.

Commissioner Sansaver asked if MDT was proposing to keep the speed at 70 mph. They are proposing to drop it to 55 mph. Commissioner Skelton asked if it was close to the three residences. Carl Seilstad said he was talking further west of town. Coming into town we're recommending 55 mph which is currently 70 mph. We're recommending dropping it to 55 mph there and then 45 mph where the state had recommended 55 mph. I'm open to the 55 mph – it doesn't have to go that far out of town if the department doesn't feel that's necessary. They could shorten the 55 mph up to give the motorist time from going from 55 mph down to 45 mph – that's our recommendation.

Dwane Kailey said I would be remiss if I didn't mention that the research project we did does caution us from getting more than five or ten mile per hour away from the engineering recommendation. It can be mitigated if there is law enforcement. Commissioner Sansaver said I don't see a whole lot of law enforcement. No disrespect to law enforcement out there, but I don't see it. Dwane said they're spread too thin and can't target all these speed zones like this. As I mentioned earlier, it is

your authority to set it as you see fit. Commissioner Sansaver asked if it was because of the inability of law enforcement to control the 70 mph to 55 mph to 45 mph, is that the reason you don't think this is prudent to do. Dwane Kailey said in the research we found that if there is increased law enforcement, there is better adherence or compliance with the speed limit and we don't have the accidents increase. When you don't have the law enforcement, people are going to want to drive what they are comfortable driving. That is what we measure. If they perceive the conflicts, they are going to slow down irrespective of what the sign says – that is what we're measuring, what they are comfortable driving. If you don't have law enforcement, some people will slow down and others don't and you start creating those speed differentials and that is when you have crashes.

Kevin McLaury said to put a fine point on Dwane discussion about the research they did, there's over 50 years of documented history of this process. It's not an exact science and I'm not going to tell you it is. Five miles per hour one way or another, there's pretty good adherence, but we have 50 years of history based on this process. It's not just something that was done two years ago; there's a lot of knowledge and history that has been put into how this process that MDT uses that meets the MUTCD. Again, it's your authority. You can set the speeds. Nobody is questioning that, it's just that there is a lot of data and knowledge behind the process and how you get to what the department is proposing.

Commissioner Sansaver asked Carl Seilstad if they had taken all that data into consideration. I'm sure you have. From the letters I've seen, you're basing your decisions on these speed zones on safety. Carol Seilstad said yes. Also if you were to look, Sargent Grover put it best that reducing the speeds will lessen the incidence happening around that intersection. Our Sheriff said the same thing. I'm not an expert in speed limits, but I will tell you one thing, we've gone with the department's speed study 99.9% of the time. I can give you an instance in our County where it's not working – that's in Hilger, Montana. When the state came back with the speed zone study through Hilger they recommended lowering the speed limit through that little town to 45 mph. It's 55 mph at Roy and its 45 mph coming into Lewistown coming in through the Fairgrounds. Through that little town – and if there were a 55 mph in front of the 45 mph at Hilger, it might slow you down more, but the only people slowing down 45 mph going through Hilger, are those people turning to go to Winnifred.

Commissioner Hope asked when you look at Fergus' proposal and I go up there quite a bit and spend a lot of time in that country, it looks like with their proposal, you are slowing speeds down from where it is currently. Is that correct? My concern as a person who drives that road, I can see the locals following the law but I don't see people traveling through the community following it. There are so many different speed zones coming in from Eddy's Corner. Have you guys thought about that at all? Commissioner Seilstad said we requested a speed zone study through Eddy's Corner and it came back at 55mph. I think for the traffic flowing through there the 55 mph is actually working at Eddy's Corner. Before we go back up to 55 mph that the state is recommending, if you're going to nix that and go with 55 mph, I would compromise and go 45-50 mph if there is a five mile an hour difference. So if you come out of Lewistown and you are requesting 55 mph at H Street, then make that 50 mph. I would like to see it lowered. Our constituents feel that 55 mph is too fast through that intersection.

Commissioner Fisher made a motion to reduce the speed zone along both US 87 / MT 200 on the Truck Bypass to 45 mph and introduce a new 55 mph speed zone beginning 1,000 feet west of Cottonwood Road and continuing east to milepost 79.25 an approximate distance of 1.35 miles. Commissioner Sansaver asked if she was basically agreeing with the state speed study and all the data. Commissioner Fisher said I'm agreeing with what the Fergus County alternative proposal is, taking into account the studies that have been done. For me in particular, if law enforcement

says this is what we want and are willing to enforce, I give that quite a bit of deference. Add to that, the number of turn-offs in that area indicates that a reduced speed limit would be appropriate. If there were no exits from those roads, I could see an increase in the speed limit but the number of accidents there give me cause for concern for a reduced speed limit.

Commissioner Fisher moved to approve the Speed Limit Recommendation for US 87/MT 200 – Lewistown West, US 191 (P-75) as follows: reduce the speed zone along both US 87/MT 200 on the Truck Bypass to 45 mph and introduce a new 55 mph speed zone beginning 1,000 feet west of Cottonwood Road and continuing east to milepost 79.25 an approximate distance of 1.35 miles. Commissioner Sansaver seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 12: Speed Limit Recommendation Secondary 373 – Woodside Cutoff

Chris Hoffman, Ravalli County Commissioner

I am the County Commissioner from District 2 in Ravalli County. I think there would be argument over which is the fastest growing district and I think it's safe to say that Ravalli County is growing fast. I've heard this discussion and like Commissioner Seilstad, I had the opportunity to be here last month and hear the engineers talking about what type of arguments you'll hear for speed zone reductions. In this case we also requested and received a study from Mr. Kailey's part of the house. We disagreed with it respectfully, like Commissioner Seilstad, and I think most Commissioners in most county governments have a lot of respect for the Department of Transportation and what you folks do. 99.99% we would agree with you and just move on.

In this particular case, we have a short stretch of SR 373 which is the only stretch that has a speed limit higher than 45 mph. Most are considerably lower. This is one of four river crossings in the Bitterroot. I think Director Tooley would agree with me on a number of levels when I say that Ravalli County, the Bitterroot Valley is a very unique place on lots of levels. In terms of transportation though, we have Hwy 93 that runs from the Canadian border clear down to Mexico, but our part starts at the edge of Missoula County and ends at the Lemhi County border, Idaho. That's our one way in and one way out. In the middle we have East Side Highway with runs from Florence into Hamilton and terminates there. These river crossings are very important to us, again, we have four of them. This one is probably the busiest river crossing in the Bitterroot.

I come to you today, not just as a two-year member of the Board of County Commissioners, I started that journey two years ago after a 33-year law enforcement career, 27 of which was spent in the Bitterroot and the last 14 as Sheriff. So I'm intimately familiar with the enforcement problems that we have there, some of the safety issues and factor that we've dealt with for a long time. You folks, at least the Department of Transportation, considered a bridge project – the bridge that crosses the Bitterroot River on SR 373 is extremely narrow, unfortunately it's an attractive nuisance. We worked day and night trying to keep kids off that bridge in the dog days of summer from jumping off it, and just simply could not. You would have to get a deputy or a Highway Patrol Trooper there to keep the kids off that bridge and they would need to be there all day every day. This creates a lot of concern and we've had pedestrian/motor vehicle or bicycle/motor vehicle accidents as a result of that attraction. I think you guys considered a pedestrian bridge or a bicycle bridge to add to the bicycle path that already goes along SR 373. I think an awful lot of money was spent on it only to find the funding had been cut and you just simply were unable to

go ahead and complete that. It would have made it a little safer but we would still be here today if that project had gone on ahead.

I think, as Commissioner Seilstad said, a picture is worth a thousand words. I'd like to take you on a three-minute drive on the stretch of highway that we're talking about that I shot yesterday. I shot one that was snowy last month but it wouldn't have shown near the detail.

Showing the video – we're pointed north on 93 turning onto SR373 at Woodside just north of Hamilton. 60 mph speed limit starts immediately. This is an extremely narrow chunk of road, barrow pits are steep on both sides as you can see. Here the bicycle path is on the north side very close to the highway. You'll see several crosswalks, lots of driveway accesses coming up including close to the bridge. Here we have a crosswalk in the 60 mph zone. Lots of driveway entrances, church, now the narrow bridge that I was discussing. There's a fishing access to your left and an access on the right as well as you cross the bridge. The area on the left is actually the southern border for Keller Wildlife Refuge – we see a lot of wildlife hit including Moose. More driveways. Limited site distance. People often have to pass their driveway and turn around and come back if the driveway is on the left. There are times of day when traffic is so heavy, you've got business entrances here. Here's a main feeder road, Old Corvallis Road, which leads into Hamilton. More private driveways. As you can see, we've passed another crosswalk within the 60 mph and here's the bicycle path on the south side of the roadway. We have a drain ditch on the left coming up with a steep barrow pit. We drop down to 45 mph here. Now we've got the Corvallis Volunteer Fire Department coming up on the right. A brand new subdivision just past that. If I remember correctly, it is 15 or 16 new homes going in.

I wanted to show you how close that bicycle path is. The number of cross walks and some of the things we're concerned about. This is something that the County Commissioners are bringing before you, I come to you today representing the ... we got not one letter on raising the speed limit in SR 373. You should have in your packets a significant number of letters in favor of this. This community is begging for this speed limit to be dropped to 45 mph. We've measured it – we're talking a 12 second difference. In most cases, as Mr. Kailey said last month when I was here, a lot of these arguments are emotional and I chose to believe the arguments that I've heard from the community and that I make to you today as a retired law enforcement officer who enforced the speed limit on this stretch of road, are common sense.

I wanted you to see this because we're not asking for a significant portion of a state highway to have this radical of an adjustment, we're asking for a mile and a half to be reduced to match the rest of SR 373. As you cross it is actually 25 mph and never goes above 45 mph headed east into the mountains or up into the residential areas on the west side of Hwy 93. Again, this is a community push and you have a lot of pretty important letters that you've received as well as a map that our GIS Department created that shows you or delineates all the driveway accesses, the crosswalks, the speed limit signs. I'd be willing to take any number of questions.

There is an informational letter written by a fellow by the name of Allen B. Ergo that I think covers it as well as anything bullet point by bullet point if you would look for that. He passed that out and you have several copies from other people. One of the homes you pass there was one of the longest serving police chiefs – Hamilton Police Chief Allen Alp retired and lives on this road and you have a letter from him. You have my letter as a retired law enforcement officer and I can speak to how much we patrol that area and how often we see Highway Patrol on there. In fact I've been stopped in a patrol car by a Highway Patrolman on this very stretch of highway for missing a headlight. I also have a current letter from our current Sheriff, Sheriff

Steve Volton ensuring that he can and will enforce this reduced speed limit on SR 373. Thank you very much.

Commissioner Sansaver said I appreciate your video; it's much easier to understand than the map. One thing I didn't notice on that stretch was a double yellow line that would stop people from passing. If you're going 60 mph and you go to pass somebody, you have the right to go 70 mph to get around that vehicle. So potentially you have people traveling at 70-75 mph in that mile and a half stretch where you have all those intersections coming in from people leaving their homes or businesses or kids crossing on a bike. I can definitely see why you would want to slow that down. I myself had a terrible accident with a young boy on a bicycle. I was going 7 mph in a 25 mph speed zone and the accident was unavoidable. In this particular situation, doing 70 mph which is still allowed by state law, if a kid decides to cross on a bike, that's something in my opinion, is avoidable. Chris Hoffman said he agreed. Commissioner Sansaver said when he first read this a month ago because it is near and dear to my heart because of my accident. I totally feel the pulse of your community. I would support what you're requesting.

Commissioner Hope said it is great to say they are going to do it but how do we know that. Do we have any follow-up with? Chris Hoffman said I can't speak for the Highway Patrol and for the very reasons that Commissioner Seilstad said, I did not approach our Detachment Sergeant in the Bitterroot on this. I know what they think already anecdotally. I can speak for the Sheriff's office and I can tell you, and I would allude back to what I've said, this is probably the busiest river crossing in the Bitterroot. It joins the west side of the Bitterroot with the east side of the Bitterroot. Corvallis is one of the fastest growing communities, people often make that switch over to East Side Highway there rather than joining it off First Street in Hamilton. I can tell you how much the Sheriff's Office spends on it. I can tell you how closely they watch these river crossings because there is a tendency for people who are crossing from East Side Highway from Hwy 93 from either their homes or for agricultural reason or whatever the case may be, tend to get off that main highway and just really want to jet to get where they're going. That's me included. I can tell you that yesterday when I shot that video you say, was the first time in a long time that I've been on it and did not see a patrol car, of course. I wouldn't have staged it for you but I would have bet you money that I would have seen a patrol car on it. We spend a lot of time there and this is why, when I went to our former Under Sheriff and Current Sheriff and said here's what we're trying to do and he said "it's about time, what do you need." I didn't have to ask him to write me a letter and claim that you'll enforce the speed limit there. To him, this was no brainer. He's not here but he's easily reachable and he would tell you his guys are on this constantly, Highway Patrol is on it constantly.

You change the speed limit or reduce the speed limit, as was the case on Victor crossing, which is a narrow curvy terrible piece of road, when that speed limit reduced, I can tell you that I had to tell my guys to stay off of it; I pay you for investigating cases. Between the Highway Patrol and the Sheriff's Office, when that chunk of road changed, revenues went up and literally my guys, I didn't want them sitting stationary radar. We've got a great contingent of Highway Patrol there, but they do it anyway, and it's a new time and a new Sheriff and every one of his cars has a radar beam in it which is a far cry when I was a Deputy and Jay Prince locked them all up in the closest because he didn't want guys writing tickets because it was bad for elections. This is a new time and those guys are enforcing traffic laws. I can say that with a lot of confidence.

Commissioner Fisher said this is in my District; I'm pretty familiar with this area because my parents lived in Hamilton. What seems to me is compelling, along with what Commissioner Sansaver said, is that if you're coming off US 93, that's an intersection and you've got to slow down. It is 1.4 miles and so taking it up to 55 mph there only to have to slow down 1.4 miles later ... because you're in between

town and the intersection with Hwy 93, it seems like, while it's a departure from what the department would recommend, at 45 mph there is more continuity to that. Also the fact that the bike paths, which is from one side of the road to the other side of the road, means if you're on the bike you have to cross; you don't have the opportunity to not cross. So you are forced into crossing the road. Note that the crosswalks don't seem to be signaled crosswalks so that in advance you have a light that tells you "slow down because a crosswalk is coming up." They are just crosswalks. As Noel indicated, a kid standing at a crosswalk just sees it as a crosswalk, they're not looking for what the signage is on either side of the crosswalk to notify traffic. They think it is safe to cross because it's a crosswalk. Whether the motoring public knows that is debatable especially if you're unfamiliar with that road. So, I would agree with Commissioner Sansaver as well.

Chris Hoffman said thank you and I'm glad you are familiar with that area. That is something I will take back to the Board and let them know. I would only add that the Corvallis School District stretches across to the west side of Hwy 93 and it takes in the community of Pinesdale and all the people that live over on that side. This road, especially when it's not covered in snow, the bike path is used heavily in the spring and in the fall prior to snow flying by kids riding their bikes and making their way to school along Woodside cutoff. So there's just a ton of pedestrian and bicycle traffic there.

Commissioner Sansaver said we've had a lot of discussion about law enforcement. You were in law enforcement and I'm touched by that. Could there be an assistance to the law enforcement efforts and to get people to observe this or any other speed limit we might set there? In a short stretch of road like that, put in lane wide rumble strips on either side of the bridge? Even though I rattle across those things at 80 mph, maybe they would help. What they are thinking is usual and comfortable, they would decide that usual and comfortable is more in line with 45 mph. Chris Hoffman said without putting too fine a point on it, and Director Tooley will tell you this, I'm game for any amount of money the Department of Transportation wants to put into this. I think the Civic Club and Corvallis School District of which my wife happens to be a School Board member so I keep track of that District, they tried to get a project and they got partial funding for it. When you come through Corvallis, you are in a school zone from the minute you hit SR 373 until you go out of the town of Corvallis and beyond where the Co-op office was until recently. We got some flashing crosswalk signs that were long-past due and I think they also tried to push MDT a little further and get some of that going down SR 373 but similar to the situation we have with the bridge which desperately needs a pedestrian or bike path across it because it's a horrible situation there, we'd be open to discussions about anything. I know the Civic Club and the School District would look for grants to aid in that. That's the long answer to your question. Commissioner Sansaver said he asked that question to see if those kind of zones putting in that assistance to law enforcement.

Dwane Kailey said I'm not going to rehash everything I said earlier; it's the same situation. I just want to make sure the Commission is aware that I've been doing this for 10 years and I don't take any of this personal. It's our recommendation and it's your authority. I get what you're doing and I'm good with that. The only thing I'd offer up is I think what you're referring to is transverse rumble strips and I would not recommend those. I actually grew up in the Bitterroot not too far away from this area, and there are a lot of residences plus the public down there who are used to their tranquility. Transverse rumble strips are very loud and I would not recommend them. If you want us to look at them, we will look at them.

Chris Hoffman said he wanted to make clear that we're not asking for 45 mph the whole length, just changing the 60 mph zone to 45 mph and leaving the rest the way it is.

Commissioner Sansaver moved to approve the Speed Limit Recommendation for Secondary 373 – Woodside Cutoff recommendation from Ravalli County to 45 mph. Commissioner Fisher seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 13: Commission Duties and Authority

Val Wilson said I wanted to talk to you again about duties and authorities. As we talked during orientation that, in response to a Legislative Audit inquiry, back in October MDT's Chief Auditor made a recommendation that the Commission and staff consider precisely the duties and authorities of the Commission. So, we started working on this in October and it was pretty easy to identify the Commission's duties and authorities because they are either statutory or administrative rules or policy and in some cases they are in our standard specifications. However, trying to align those duties and authorities with what the process is was a little trickier but I think we've gotten the bottom of that.

Basically our concern was that we weren't bringing information to the commission that was informational and asking the Commission to take action on it. So we've taken the Audit Recommendation and your directive for that precisely defining roles and try to apply that to our process. We talked about that this morning so I don't want to take your time. We'll certainly talk about the memo on duties and authorities, remember the way we set this out was not necessarily chronologically or where it falls in Title 16 or 61, but just taking a look at it in groupings of what your authorities are for governing your meetings and for governing your commission actions. The second part was your jurisdictional duties, which you exercised when you decided the speed limits on this particular section of road. All the information we talked about this morning on your authorities to designate highway systems and to determine if you wanted to abandon the systems, also the sufficiency level for how we're going to maintain our roads and to what standard is looked at from the federal standpoint to determine how we're doing on our maintenance of the National Highway System.

So, there's the governance part which is the jurisdictional authority, the funding duties and authorities that Lynn discussed during the orientation, and again the contractual part. Your contractual duties are to select, that is what we did this morning when we looked at the projects that were added to the program, and then to priorities and to award, which is what you did this morning. I think we can talk about this some more; I don't think there is any commission action that's needed at this time. We did talk about some things to do with policies and leave that as a standing agenda item that we can discuss and bring forward those most important policies that we want to look at and revise. If you have any questions, I'll be happy to answer them.

Commissioner Sansaver asked if that was an Audit finding that you are talking about. Val Wilson said there was an inquiry to the Legislative Audit and they sent a letter to the Director. The Director then asked our Chief Auditor to investigate. That finding was that our process, in regard to the email vote on bringing those three projects forward under the redistribution, did violate the public participation because there wasn't accurate notice. The Auditor did find that she wasn't certain that the Commission had to take that vote to move those forward so that's why we're taking a look at the TCP (Tentative Construction Program) and try to build a little bit of flexibility into how the Commission votes on prioritizing. As you can see, there's all kinds of different things that can happen that may make some things slide forward or backwards on the list of priorities. Commissioner Hope asked if that's a correction to an Audit finding. Val Wilson said yes, there was an audit finding.

Commissioner Sansaver asked if we have the liberty to review the audits. Val Wilson said yes, I have that. It was a memorandum from the Chief Auditor to Director Tooley dated October 22, 2019. I can certainly get that information to Lori and have her send that to you. Commissioner Sansaver asked if we usually get information from counsel or do we sit with the Auditor and review the findings. Commissioner Skelton said before it has come from counsel. Commissioner Sansaver asked if the Auditor comes before the Commission and we get to hear the final results. Commissioner Skelton said it came from counsel, we never met with the Auditor. Val Wilson said the Audit Unit is administratively attached to me. Our Chief Auditor is retired and I'm the Acting Chief right now. Commissioner Hope asked if we had an outside source doing an audit. Val Wilson said the findings are communicated from the Director back to Legislative Audit and if they have further questions or follow-up, then we will have more paperwork but they were satisfied with our commitment to precisely define and make sure the notice was properly given.

Commissioner Jergeson said I don't think it's a particularly high standard to notice a meeting, even an electronic meeting three days out. I think what was going on that day was some sort of short-cut practice which had been done before. If it would have been noticed, there wouldn't be anybody asking how they participate in it. What is troublesome was the propensity to short-cut things not that anybody had anything nefarious in mind in the process. We should just simply be in the habit of noticing meetings that are going on, in any form they are, that are going to involve the quorum of the Commission including decisions. Val Wilson said I agree.

Director Tooley said, for the new Commissioners, this was a situation where a decision didn't even need to be made, but because the department asked the Commission to make a decision, we were put in that position and that's what the Chief Auditor reported back to me. The department violated the law by taking that action and he gave us his recommendation to prevent that in the future. So we've implemented that. Commissioner Fisher asked if it was the same as a quorum of us where can't go to lunch together because that's considered a meeting. When I was a Mayor that was the deal. If a quorum went somewhere together, that was considered a meeting. So to avoid the appearance of impropriety and avoid the open meeting requirements under Montana law, does that mean three of us can't go to lunch together? Val Wilson said that's a great question. A meeting is defined under Montana statute and here is what I believe to be true. It's a meeting of a quorum, so it would be three of you and it has to do with whether it is corporal or electronic, to hear, discuss, or act upon a matter over which you have supervision, control, jurisdiction, or advisory power. So if you are at a restaurant and you are talking about lightning striking your house, you are safe in doing that. You just need to monitor yourselves that you're not talking about official business and then you don't have to worry about it.

Val Wilson, Chief Legal Counsel reviewed the Commission Key Duties and Responsibilities. Commissioner Sansaver requested a copy of the audit letter and legal noted they would send the document.

Agenda Item 14: Design Build Project Roberts Rest Area

Kevin Christensen presented the Design Build Project – Roberts Rest Area to the Commission. This is a design build project and these get presented to the Commission separately from our traditional design bid build, low bid, that we did earlier in this meeting. This is an alternative contracting method not based on low bid, it is based on best value. When we develop a project, we issue a Request for Qualifications to all interested firms and they can submit their Statement of Qualifications. We review those and score them and short list the firms based on their scores. Those short listed firms are invited to submit a Technical Proposal.

The Technical Proposal is based on the Request for Proposal so that is essentially the guiding contractual document that's developed by MDT. Once they submit their Technical Proposal, we have a Technical Review Committee and they independently review and score all those Technical Proposals. Once those scores are completed, they present them to a selection committee of MDT people for approval. Once those scores are approved, then the firms are invited to submit a Bid Proposal.

The best value is on the second page of your handout. We've got the Bid Price Proposal amount and the Technical Proposal scores. There is a formula we use to determine the total score, based on best value. On this particular project, the Roberts Rest Area, we short listed three firms. All three firms submitted a responsive Technical Proposal. They are pretty extensive, maybe 120 pages, it takes a lot of work to develop them. We received three proposals and their scores are on the second page. All three firms submitted a Bid Price Proposal. As you can see one of the firms, EEC/TD&H, was nonresponsive. In this case they submitted the wrong bid bond with their bid price proposal. We see that from time to time – we have proposal meetings and actually include our bid bond form with the Request for Proposal. We actually give them the correct form they are supposed to turn in and still we see them use a different bid bond form. We got with legal a long time ago and we've been real consistent that if they don't use the correct bid bond form, they are deemed nonresponsive.

From the bids and Technical Proposal scores, the best value is Swank Stahly. The staff recommendation is to award this project to Swank/Stahly and give the Stipend to all three firms. The Stipend is to offset some of the costs they incurred in developing their Technical Proposal which is quite costly for them to do. The Stipend doesn't approach the actual costs, and in this case the Stipend was \$35,000, even though EEC/TD&H were nonresponsive on their Bid Price Proposal, they did take the time and submitted a responsive Technical Proposal, we own it, and the firm we are recommending award to can actually use that proposal.

Commissioner Sansaver asked if typically you have the bid bond in a separate envelope than the bid itself. Kevin Christensen said no, the Bid Price Proposal is just submitted. There are several things other than the bid bond they have to have in there. We actually have a check list that we go through. It is similar with design, bid, build – they also have to submit all the correct paperwork with their bid and it is submitted altogether. Commissioner Sansaver said typically with all the federal work I've done, we were required by the feds to open up the bid bond document first. If they didn't have the proper paperwork in there, their bid wasn't opened or even considered. The reason was, you get on various different boards or selection committees, and somebody might want to give them a chance to get the bid bond paperwork correct. So the way the feds took care of that was to open up the pre-document first that required the bonds in that, and if they did not hit all the checks on the check list in that first envelope, you didn't open the second one. That took all the precarious situations that could arise away. I don't know if it's a matter of the law or policy but I would certainly think that should be or could be something you might want to look at a little more seriously. A lot of contractors don't like other contractors looking at their bid when they didn't get the award. This person may be saying I don't want this guy going through my subcontractor because my sub said he would do it for less than Swank.

Kevin Christensen said I don't know if this addresses your issue but all of the bidding we do, if they don't have all the documents, we don't even read the bid. So design build will go into a room and we'll have on the screens the firms and their technical proposal scores, the bids are openly publicly in front of everybody, Jake's staff goes through the checkmarks to make sure they've got the correct bid bond etc. If that's not all there, the team that is opening the bids, they confirm with each other and the firm is simply read non-responsive. Their bid is not put up on the screen, so nobody knows what that is. The second part that might assuage some of your concerns is

most all of our projects are design, bid, build. About 80% of the bids we receive are electronic and that's all an encrypted system, it's a third-party system and if they don't have all the correct information, we don't have access to their bid or their bid price or any of that stuff; it just doesn't come through. It simply doesn't come through to us if they don't have all the correct information when they're submitting their bid electronically.

Commissioner Sansaver said it does and it doesn't because I see if they were non-responsive, they were still awarded 75,000 technical points. Kevin Christensen said that was their score of their Technical Proposal which is completely separate from the Bid Price Proposal; completely separate. They are independent processes. When we score the Technical Proposal that is prior to any bids coming in. Those scores are kept secret under lock and key because we don't want any of the firms or public to know what these scores because if it gets back to the firms, they'll know what their standing is and they can adjust their bid accordingly and would be an advantage. So, these scores aren't divulged until we are literally opening the bids.

Commissioner Fisher said I look at the best that TD&H can get is \$35,000 for a partial reimbursement of their time on the Technical Proposal. If I file a brief late in court, I don't get any consideration for that; it kind of flies in the face of what I normally see. However, I also note that Swank did not score even in the ballpark on the Technical Proposal, 5,000 points off the other two, so I would guess that in the actual build they may take some of the Technical Proposal portions of the other two that were high and incorporate that into the actual build. I think that's by design; that's the whole process so you can get the full gambit of information and basically pick out of the proposal what is useful from the various bidders. In this one, I'm okay with that, but it does give me heartburn if they can't get the form right, why would we reimburse them? One strike you're out because non-responsive is non-responsive so I wouldn't have the state reimburse them any funds if they couldn't get the form right.

Kevin Christensen said Swank did score on their proposal but I'd like to stress to the Commission that they were all excellent proposals; they were all very good proposals. Secondly, with regard to the Stipend, it probably costs these firms \$75,000 - \$100,000 to develop the proposal. Our Stipend is \$35,000 and comes nowhere near covering their cost. The reason we distinguish between the Bid Price Proposal and the Technical Proposal is because they put the work in and submitted a good proposal and it was responsive, and what we're doing is consistent with industry standards. We're just trying to offset some of their costs and it was too bad – I personally don't know what their bid was because we can't consider it. Lastly, the reason the Stipend is so much lower than their actual costs is because we don't want to have people in the business of just submitting proposals and making money off it without intending to follow through and do the project. If you don't reimburse them, you have a hard time getting people to go through this process. We often have discussion with industry about our Stipend and we try to stay consistent with the industry standard. Typically it's a percentage of the value of the project and we try to stay consistent nationwide with it. If we didn't provide a Stipend, it would probably chase out people from considering doing these.

Commissioner Jergeson asked if there was a possibility of some of their designs are unique enough to be considered trade secrets. Kevin Christensen said we've gotten FOYA requests for these proposals and when that happens, we contact the firms and ask them to redact any trade secrets or propriety information before we make those available to the public. Commissioner Jergeson said but if they have one and we pay them for their plan, then we can use that plan in our designs. Kevin Christensen said that is correct. Commissioner Jergeson said the other thing is the Technical Proposal is kept secret until bid day. This morning there was a discussion on the regular bid process that these companies can see who has asked for the department design. Is there a reason that needs to be disclosed? You said if they see eight bidding, they

know they've got to sharpen their pencil, but if they see that they are the only ones bidding then ... Kevin Christensen said that is the Plan Holders List and that information is available to people who are preparing a bid. We often see jobs where four or five or six companies have pulled plans and then we'll only get two bidders. Just because they are pulling plans doesn't mean they intend on submitting the bid. Commissioner Jergeson asked if there was a requirement to ask for the Plan Holders List. Kevin Christensen said I don't believe there is – it used to not be but we made that public and that was at the request of the contractors. Commissioner Jergeson said I think more things ought to be public than not but it seems to me that this is the kind of situation where it's part of the bidding process and things are kept un-public until the bidding process is complete. That knowing who has pulled the project design is something that should be kept secret legitimately so until the bidding process is complete.

Jake Goettle said to speak to the Plan Holders List, it's no longer active because we've gone to electronic plans. So they're posted and it is advertised that electronic plans are posted for anybody to look at them. The Plan Holders List is no longer active. We addressed your point. Commissioner Jergeson said when Fallon County bridges problem is posted, then again any contractor will not be able to see who else has pulled them. Jake Goettle said correct. Commissioner Sansaver asked if The Plan Holders List was public information. If you put it through Billings, Bismarck or anywhere they disseminate plans, that's public information at that point. Justin Rouse said yes, anybody can access it. Commissioner Sansaver said we have no control on public law on who can look at your plans. Kevin Christensen said we recently went to electronic plans but we no longer print plans for contractors; it's all on our website. Commissioner Fisher said that takes care of the public, so there's nothing for us to publish. Commissioner Sansaver said it is public information for anybody.

Commissioner Sansaver moved to approve the Design Build – Roberts Rest Area Project and award all three firms the Stipend. Commissioner Fisher seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 15: Certificates of Completion January & February, 2019

Dwane Kailey presented the Certificates of Completion for January & February, 2019 to the Commission. Any time we see a pretty significant change between the “as bid” amount and the “final” amount, we include additional documentation for that project. The first two pages are just projects and their certificate of completion, and the third page is the detail information for the Downtown Stat Signals – Billings project and that is because there a Change Order for \$1.4 million. Any time we see a substantial change, we include that information. We are presenting them for your review and approval. If you have any questions or comments, please feel free to ask.

Commissioner Fisher moved to approve the Certificates of Completion for January & February 2019. Commissioner Hope seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item No. 16: Project Change Orders January & February, 2019

Dwane Kailey presented the Project Change Orders for January & February, 2019 to the Commission. They are presented for your review and approval. If you have any questions, please feel free to ask. Staff recommends approval.

Commissioner Fisher said it looks like a number of the larger ones have the quantities, is that something we summarily see in Change Orders is a quantity issue. Dwane said yes, but not always. For example, you can see Cabinet Gorge which was a significant overrun because we ran into a terrible situation out there with design and construction and had to do a redesign. That was a pretty big deal but most of the time it is overruns on quantities.

STAND.

Agenda Item No. 17: Liquidated Damages

Dwane Kailey presented the Liquidated Damages to the Commission. They are presented for your review and approval. We have eight projects and contractors for liquidated damages:

Milk River – 4M W of Zurich. The contractor is COP Construction. They had 1 day of liquidated damages for a total value of \$2,068. They are not disputing these costs.

Neihart-Monarch Hill. The contractor is Schellinger Construction. They have 3 days of liquidated damages for a total value of \$6,204. They are not disputing these costs.

Columbia Falls Urban. The contractor is Knife River Corp- Missoula. They had 3 days of liquidated damages for a total value of \$6,204. They are not disputing these costs.

Bearmouth-East & West. The contractor is Riverside. They had 2 days of liquidated damages for a total value of \$4,136. They are not disputing these costs.

Drexel-E & W. The contractor is Riverside. They have 5 days of liquidated damages for a total value of \$18,020. They are not disputing these costs.

Five Mile Cr – 1 M NE Edgar. The contractor is Highland Const. They had 1 day of liquidated damages for a total value of \$1,284. They are not disputing these costs.

Stocket-South. The contractor is United Materials. They had 1 day of liquidated damages for a total value of \$1,178. They are not disputing these costs.

So Central Arterials-GTF. The contractor is United Materials. They had 1 day of liquidated damages for a total value of \$2,969. They are not disputing these costs.

Please note none of these are disputed and none of them are very significant. Therefore my recommendation would be that the Commission take no action on this item.

STAND.

Agenda Item No. 18: Letting Lists

Dwane Kailey presented the Letting Lists to the Commission. They are submitted for your information, review and approval. These are very dynamic and as of today's date, we have not added anything. We will bring it to your attention if we have to make any adjustment. Staff recommends approval as presented.

Commissioner Jergeson said explain to me and the rest of the Commissioners, we're looking at a Letting List proposed for April 11th. I'm not sure we're time travelers, so how do we approve something that's already occurred. Dwane Kailey said we're not asking for your approval, this is just for your information. If you have questions, please feel free to ask. Commissioner Jergeson said I have a question about 127 which we did not accept. Are there three different projects; we rejected something with UPN-8127 this morning and we have two more with the same number. Dwane Kailey said two were tied for letting, they were bid and these are the two you rejected earlier today. These first two were tied for letting.

Commissioner Jergeson said that raises another question from the TCP, there were these minor rehabilitations in the TCP with a relatively small number but on several different pages in the TCP, we have 8127 projects – are all the 8127 projects together? Were they all done this morning? Is there something hanging out there? There is something not showing itself to us properly. I'm trying to track from the TCP to this bid letting list to the action we took today.

Dwane said if you remember back to Lynn presenting some of the bridge projects, the question was asked if we could bundle some of the projects for bidding. The discussion was that it is easiest to bundle them all into one project, bring them for your approval, then we can go through the design process and split them out as we see best. So at times, they are not going to fit exactly what's in the TCP. Lynn said part of why you're seeing that same unified project number, 8127, is the TCP is put together based on the funding source. So if you look at the letting list for Terry Fallon. There will be a page for NHPB which means that is a bridge project on the National Highway System but some of these bridges are also on the primary. When you look at the TCP, we have a list of our National Highway System, the Primary Bridges, and Off System but we may bundle those altogether.

Commissioner Jergeson asked why we have the different lists. Lynn said we have them so that we can track our obligations and make sure we obligate all our funds. Dwane Kailey said we have to allocate the funds for that program; we have to show the project in them. Lynn said we have to make sure we're using all our federal funds and we're not over-obligating our federal funds. Basically, the TCP helps us make sure we're obligating all our federal money, we're not over spending, scheduling our projects to keep them moving – it's a scheduling tool.

Jake Goettle said when you see the UPN 8127 001 and 002, also at times we'll split projects usually we'll split if it's a Corridor Study when we started with a 20-mile segment and we know that we can only do five miles at a time. Historically, we would keep that parent number and then split off with a 001, 002, 003 etc. As we awarded those projects on that corridor, we added on the 001, 002 to let us track and know we were working our way through the corridor. That may all be the same funding type, but we had multiple splits using that same UPN. So you may see that. Dwane said depending on when we split that, you may or may not see it be in the TCP. A shining example of that in your District, was Kiowa – we have Kiowa North, Kiowa North & South, etc. All those were two different corridors that started out with one parent project and then split. In the TCP, we split them early on so you saw them as split projects, but at times we may split them very late in the game.

Commissioner Jergeson asked if we were talking a matter of semantics. Lynn said the TCP we do once a year because the program is very fluid, we have 400-450 projects at any one time, we have uncertainties about the appropriators, is Congress going to appropriate the funds, we're projecting the level of funding we think Congress is going to give us. What's important is we do have an annual cycle, we're looking and rebalancing and looking and rebalancing, but we're keeping those projects moving. So the TCP literally is our scheduling tool to make sure these projects are moving based on funding availability and readiness of the project. We approved it in October but a lot has happened and we've learned on projects through the development process and funding, so it's a continual balancing act.

Dwane said really what it comes down to is Commissioner Jergeson has a very valid point – we don't have a really good tool in this agency today that clearly shows all of our projects and their actual full cost. What we have is the STIP, which is a federal document which does not answer has question. We have the TCP that is somewhat of a project prioritization tool and an accounting tool which again is tracking the federal aid funds. What Lynn mentioned this morning and what we're trying to do is we are dealing with some very old archaic software systems. We're trying to build that tool and I'm hoping that we're going to have a map later this year. It's something we've recognized for a long time, it's just that some of these old archaic systems, it is very difficult to get it all compiled because there really are over 400+ projects going on in this agency at any given time, they are very complex, a lot of different issues with all of them, and it is very challenging. Commissioner Jergeson is raising a very valid point, all I can say is please bear with us; we agree with you and we agree with the issue. We're trying to get there but we're just dealing with some very challenging old archaic software systems.

Commissioner Hope asked how you balance the books. Lynn said part of the TCP helps us, before putting this together my staff projects the funding we think we're going to get, and we follow when Congress takes action. If we think we'll get \$400 million to obligate which means get the commitment from the feds each year. We use this tool to do that. In about February, Engineering the project delivery side, Planning the funding side, then the Administration our cash people meet monthly. We are looking at this every month – looking at what this plan said it was going to do, where our cost estimates are coming in, what are our project development costs, by the way Congress just appropriated so now we know our spending authority – so we are continually adjusting at the staff level to make sure we obligate our funds and don't over-obligate and that we use every dollar of spending authority that comes to Montana, otherwise New York's going to get it. It's a continual process and complex.

Kevin McLaury said the Federal Highway System is called the Financial Managing Information System (FIMAS) – that's what balances the book because that is the book. From our dollars, now the state has state dollars as well and that is the process they are talking about. They are running a \$450 Million program off excel. The need for this software is there. In addition, even on their finance side, my finance people are having some problems because the old archaic system that the department is using can't split funds and you try to split funds from projects or have multiple funding sources and it turns into a mess. The department is looking at things but there are lots of needs with little money to fix it. Commissioner Hope asks if there was a budgetary constraint that the state puts on you. Director Tooley said we've been successful in getting appropriations through the Legislature to address our IT concerns, but EPMS is a two-year project. The holdup is more on the vendor's side. The money is there now. If you tell the Budget Subcommittee we are not going to be able to bill the federal government for the federal aid program, they listen. They say "what do you need and what is it going to cost."

Commissioner Jergeson said you were probably going to tell us that in your report and the questions I raised and you explained the existing software was fragile. Lynn

said you touch one thing, and 25 other things blow up. Director Tooley said HB 10 appropriations were all approved

Informational

Agenda Item No. 19: Discussion and Follow-up

Director Mike Tooley

Legislative Session Report

Director Tooley said I'm going to defer all my time to Jake Goettle and Val Wilson because they have some information for you. Briefly, the Legislature is ending. There are two things that will affect your work here, one was the department budget. I spoke to that – not only did we do well with HB10 with IT but also the long-range building and HB2 in general. The department did not have a lot of challenges in that regard. On the income side, there was a challenge – there was an attempt to divert some of the state fuel tax funds to off road use. Dwane Kailey and a retired state employee along with a number of stake holders stopped that effort. Then SB51 was a clean-up bill – an audit suggestion from our last audit to clean-up some of the terminology and the information in state code. It was a 37-page bill and when that happens, it confused the Legislature. It faced some issues but it passed and is on the Governor's desk. Those things are complete. We had a great session so far, all they have to do is finish up HB2 and we'll be in great shape.

CMGC Project Deliver Program - Jake Goettle, MDT

I'm very excited to be here. A couple of you might remember that a couple of years ago I presented our Design Build Program. This is our exciting new project delivery tool that is bigger and better than Design Build. I'm very excited to be up here.

Construction Manager General Contractor (CMGC) and my goal is to showcase the benefits of CMGC for you and explain why we are so excited to be using this new delivery tool. Feel free to interrupt me at any time and ask questions.

Overview

I'll give you a brief outline of what I'm going to talk about. What is CMGC and how does it operate. I'll compare it to some of our more standard delivery methods that you're used to that we award projects based on. How do we select projects for CMGC and Design Build as well now? We have a new selection tool that we use. We did develop a guidance document once the legislation was passed. I'll finish up with some of our pilot projects that we're working on right now.

Summary

What is CMGC? It stands for Construction Manager General Contractor. It's a highly collaborative process that's geared toward more complex projects. It is often referred to as a three-legged stool where MDT (the owner) has one leg of the stool, the second leg would be the Design Engineer and it could be with CMGC is the Design Engineer or we can have a consultant be the Design Engineer. We've committed with the pilot program to hire a consultant to do all of our designs for us. So it is truly a three-legged stool. The third leg would be the Contractor, the Construction Manager that we hire as the CMGC. The basic idea of CMGC is to bring a Contractor on board as we're working through the design of the project to help constructability, cost, schedule, construction needs and methods, what materials to use on the project.

To talk a little more on the construction piece, the Contractor's portion of it – it is set up as a two-phase contract. The first phase is the pre-construction contract where the Contractor helps us do the design. It's a relative small dollar contract compared to the overall construction contract that happens later. Once we get through the design, if the owner and the construction manager agree to a price, then we enter into the second phase which is the construction portion of the contract. In order to ensure that the taxpayers are getting a fair price, since we only have one contractor on board, we also have a third contract with this independent construction cost estimator. They are an independent third party that also bids the project as we go through it as well as the CM. They ensure that the taxpayers get a fair price for the project. We always have an out – if we can't agree to a price, we can opt out of the contract and we would let the project through normal delivery process if that price isn't agreeable. If we do agree to a price, then the project would be presented to the Commission for approval and award of that construction contract prior to going to the phase two contract.

Commissioner Sansaver asked is we were talking about a turn-key project then? It sounds really familiar to a turn-key lawyer. I design it, manage it, and I build it. Is that what we're talking about here? Jake Goettle said yes, I think so. The concept is that the entire team will work through that design and will be the owner working through the design along with the design engineer and the contractor on board as well. If we get to an agreeable price, then yes, they move right into the second phase of the contract and build it. Commissioner Sansaver asked if it was the same premise. Jake Goettle said yes.

Commissioner Jergeson asked how you chose the contactors. Is there a lottery? Do you just decide to go out and approach somebody you haven't had a contract with yet? What are the criteria? That is where the incident could occur for those of us who are the proud defenders of the competitive bidding process which is the best assurance of the taxpayer value. Jake Goettle said state law requires that we go through a two-step process very similar to our Design Build Program where we issue and RFQ. We issue and RFQ, we short list based on the contractors that submit based on their qualifications, and just like Design Build they get a Request for Proposal. They submit the Technical Proposal, and a team of technical experts reviews their proposals and presents them to a high level selection committee and we approve or select based on best value similar to Design Build. Dwane Kailey said one of the differences is the Technical Proposals in this process aren't nearly as robust as Design Build. The proposals in Design Build are essentially telling us here is what we're going to build for you. This is for construction services, so this is for their services to participate in the design process only. The construction part comes later.

So why are we using CMGC? There are a number of goals and benefits with CMGC delivery. We're really trying to capitalize on a couple of the main goals and benefits of CMGC. First off, it's a very collaborative process, so having that large team designing as we go through, having the contractor on board as we design the project, creates a high level of collaboration and communication and allows for innovation. Having a larger design team, you get more ideas for innovation on that design. There is so much collaboration and communication through the process, we really think this is going to help all of our projects because as we work with the contracting community on these project, we'll be able to drill our relationship and it will help all of our normal delivery projects as well, we believe. Other agencies across the nation have seen an increase in the relationship with their contracting community.

Secondly, the risk – CMGC allows a very good opportunity to improve risk management. We are really good at designing projects, but we don't know how to build them. So having that contractor tell us that this is a risky way to design this portion or build this portion of the project, we can share, we can assess the risk, we can mitigate the risk and assign it to the party that is best able to manage the risk. Other states have been using CMGC for years, and they see a reduction in errors and

omissions and a reduction in change orders. Having that contractor on board as you go through the design has a positive effect on the project.

As I previously mentioned, it is very advantageous for complex projects. Again, think of some of those big complex projects we've had and how beneficial it would be to have a contractor involved in the design helping us through the design process on the project. Ultimately, this is just another tool in our contracting tool box. We're going to continue to use Design Bid Build as our majority project delivery method.

We tried for three Sessions to get CMGC passed through the Legislature: we failed in 2013 and 2015, and finally in 2017 the Legislature approved a pilot program of four projects by the end of 2024. As soon as we got legislative approval, we jumped in and started training our staff, training the industry, we brought in a national FHWA expert for a two-day training workshop for the department. As we developed our CMGC guidance document, the document we would follow to administer our program, we worked through that with MCA, our engineering companies, we met periodically with them to develop those guidelines and how we were going to administer the program. We've had several training sessions since the legislation was passed, both internal and external. We have one tomorrow, an open workshop with anybody who would like to attend, mostly with our contracting community to share what we've learned to-date since we started the program, talk about the future and give and update on our program, and then ask for feedback on how we're doing and how things are going, what we can change and do better.

That's a brief summary of what CMGC is. I want to now compare it to our normal project delivery methods and show the difference in the different methods.

CMGC Compared to Design Bid Build and Design Bid

As you are aware, we used three different delivery methods: Design Bid Build, our traditional delivery; Design Build Projects which we've now been doing for 15 years which is amazing; and then CMGC is the new tool. For comparison, in 2017-18, less than 10% of our overall program is delivered with these alternative contracting methods. We anticipate a lot of projects that we maybe would have delivered with Design Build will transition into a CMGC project, so we don't see this going up very much. Design Bid Build will continue to be our standard delivery tool.

Commissioner Sansaver asked if this will over-ride the high bids we see coming in because you have the contractor involved in the ground floor, as we move through this, you're not going to see a \$4 million over or a number of additional costs? Jake Goettle said as we work through the design, there are phases that both the CM, the contractor, and the independent cost estimator are going to actually bid the project at different stages. It is a blind bidding system where we don't know whose bid is whose and we work through it. It's a very open book. Right now where we just see a bid price on an item, we would see the materials, the labor, and any elements of the bid. We would see that and be able to see the costs, is there a risk that we're not seeing that we can alleviate in some way. Secondly, that independent construction cost estimator – they are an independent third party that is giving us a second bid. So we do anticipate with the few projects we'll be doing CMGC with, we'll know the cost as we go through the project design.

Commissioner Sansaver said it is actually three bids – you have your engineer's costs, the independent contractor's costs, and the individual you're working with as a contractor that has been awarded that opportunity. You'll be able to look at three different costs, at multiple different stages of preparation for this project. Jake Goettle said you're exactly right. Commissioner Fisher said it seems like it would also make the Design Bid Build traditional delivery more competitive as well because MDT essentially gets to see inside the books of a contractor to see how they are currently bidding projects as well as you're ice man who is going to come in and say I

don't know if this is okay. He is also part of the industry, so you're going to see MDT be able to take on some of the private industry knowledge with the bidding process and those components that you would never see in a traditional Design Bid Build because you're not getting that detail. So, I think it's actually going to help the Design Bid Build process from the MDT standpoint because they are going to see the inside of the private contractor. Really it is kind of opening the books. Jake Goettle said we are excited about that. We don't know how to do production estimating and that's what contractors do and that's what we'll be able to see. It's a benefit that FHWA and other states have seen across the nation – they see an improvement in engineer's estimating.

Commissioner Jergeson said through that process, there is going to be some conflict between the building and the engineer, right? In that process, is it a collaborative process that both the engineer and the builder have to give up or does the building have to convince the engineer to give up? Jake Goettle said good observation and we anticipate that is going to happen but they have to sign the plan, so the final decision is that engineer is going to sign those plans. They are not going to do something that goes against the code or goes against their engineering judgement but it's up to the CM to convince them that is a good idea and something that we need to pursue in the design. Kevin Christensen said in this process, one of the main things that distinguishes this process from Design Build is that the department owns the design so ultimately at the end of the day it's our call. Whereas with Design Build, we set out the RFP, the guidance document, and as long as they are adhering to that RFP, we get what we get. In this case, ultimately we own the design so if there's a big conflict in the end we make the call.

Contract Structure. You're probably aware of this as well, but in Design Bid Build, the owner MDT either completes the design in-house or we hire a consultant to complete the design. We go all the way to the end of design, we advertise the project, contractor bids the project, award it, and then build the project. In Design Build we put together a contract where we hire a consultant and a contractor to team up and they finish the design and the construction for us as one team. In CMGC the owner either completes the design in-house, we have the option to do that, or hire a consultant to design it for us as we're doing with the pilot projects. Then we enter into that two-phase contract with the construction manager/general contractor with phase one being the design piece and then if we agree to a price, the second phase is the construction, and then the third contract is with that independent construction cost estimator for that additional price and compliment.

Risk. To show a comparison of risk with the three different methods. On the left is Design Bid Build, we own most of the risk as the owner. Conversely on the far right in Design Build, we pass most of the risk off to the Design Build firm. In the middle is CMGC where we manage risk, we share it, we mitigate it, we retire risk if we can. This shows the risk management capability of CMGC.

Project time. This is a busy graph but it shows the project time comparison. On the top is Design Bid Build, which would be the longest full delivery of the project through design and construction. CMGC in the middle, you can see on the far right there is a slight time savings in CMGC and that is a little quicker to get through the design with the contractor's input and it's quicker to get to the construction contract if you agree to a price. Then the bottom is Design Build which is the fastest because we're doing design and construction in one package. They actually overlap somewhat with construction occurring before design is fully complete.

Cost Certainty. This is a similar graph showing the timing of cost certainty. The top is Design Bid Build, until we get the contractor's bid we're not fully certain of the costs. In the middle is CMGC, the cost is known earlier in the design phase and construction phase of that contract. Then the bottom is Design Build, as soon as we

get the lump sum bid which is before the design is complete, we know the cost of the project.

Colorado Study. This is some information out of a study put on by the University of Colorado in 2016. Colorado has a very robust CMGC program. This took into account information from several states. It shows a comparison of construction cost growth between the three different methods – Design Bid Build, CMGC, and Design Build. You can see CMGC, based on the contractor's input during the design, there is much less cost growth through the project. You can see on large-scale projects, it actually reduces after you go to construction. That contractor is so invested in the design and so much a part of that team, they actually come up with savings after they are building the project.

This is the same study showing some comparison of project delays. Again, having the contractor's input during design reduces the change of project delays once you get into construction.

The Project Delivery Selection Process. This is to make sure that we're picking the right method for the right projects and not just going out and cherry picking a project and using a method for it. It's a somewhat formalized system and it evaluates our three delivery methods. We basically put together a diverse project delivery team. We sit down in a group for roughly two hours to talk about the projects, we run through the five different criteria and evaluate each of the three methods. We get a documented recommendation of what we think is the best delivery system for that project. That document is sent to our pre-construction engineer, he evaluates and approves that before we move forward with the project. These are the five criteria that we look at for the project. How does the delivery address costs? How does it address schedule impacts? Is there opportunity to manage risk? Which deliver method is the best at managing that risk? Again, if there's complexity in design or complexity in construction it may be beneficial to have that contractor on board. Not all projects are highly complex where we would need that.

Opportunity to Innovation. Again, the more team members we have in that design, the better opportunity we have for innovation.

This is a summary of an actual selection process we went through and shows the red light, yellow light, green light system – if it's a red light, it's basically a fatal flaw for that delivery system. Out of this we get a recommendation. In this case, the CMGC would be the recommended tool.

Guidance Document. As soon as we got approval for the legislation, we jumped into developing a guidance document so we knew what we were doing and how to do it. We didn't just go off using this system without some guidance. This became our handbook for CMGC delivery. We were very strategic about how we put this together. We didn't want to reinvent the wheel, so we borrowed from a few other states. We modified it to fit MDT's processes and to fit our Montana contractors. We reviewed this, we developed it in draft form with FHWA, Montana Contractor's Association, and Engineer Companies. We all worked on this together to develop our guidance document. It's not a contractual document, it's just our background information on how we're going to deliver and how we're going to use CMGC. Again, based on federal regulations, it's required that FHWA actually sign off and approve our guidance document which they did. We posted this on our web page for everybody to get to. There is a lot of information out there, there's a lot of information so if you're bored and would like to read through some of this stuff, there's a lot out there. Just to be transparent, we post as much as we can out there that's publicly available and is open for anybody to access.

Our Pilot Projects.

The Clark Fork 1 MNW of Trout Creek. This project was our first project to go through our Project Delivery Selection Tool and was selected as our first CMGC project. It's a major bridge rehab. If you've ever driven Hwy 200 west of Trout Creek, you've gone across this bridge and it's been in poor shape for quite a while. There's a lot of complex site constraints, no detour – a lot of complexities and we really needed a contractor's input to design the right project and build the right project out there. We selected a construction manager in December of last year and we're working through the design now. We'll be ready to hit construction right away in 2020.

Salmon Lake on US 83 S of Seeley Lake, Montana

This is major roadway reconstruction with significant geo-tech issues and maintenance and traffic issues. We are in the middle of our selection process for the CM on this project. We will be selecting them in May of this year and then work through the design hopefully over the next two years and go to construction in 2021.

Johnson Lane Interchange, Billings Bypass

This is on I-90 and is replacing an existing interchange. At this point it is planned to be our first diverging diamond interchange. I think this is the highest ADT section of road in Montana, so a lot of maintenance and traffic issues. Again, having a contractor on board helping us through that will be very advantageous. We just advertised this project yesterday, so it just hit the streets. We will be hiring the CM later this summer and designing over the next two-to-three years and then going to construction after that.

That's three of our four projects that were allowed in our Pilot Program. We're being very specific and very strategic on how we select the forth project. We have several options that have been thrown out for projects but we want to hold out and pick the right project and make sure we're optimizing the project for our local community of contractors and pick the right project for this last Pilot Project.

Thank you very much for the opportunity to visit and present this to you and I'll open it up for any questions you have.

Commissioner Hope asked what defines success. Jake Goettle said in the end getting legislative approval to use this at your discretion would be a successful outcome. Commissioner Hope asked how you go back to the Legislature and say we need to expand this and this is why. Why is that method working? Jake Goettle said benefiting our relationship with our Montana Contracting Association, getting their input on design. There are so many times when we're designing in-house or with a consultant and we don't exactly know the best way to design that project and having their expertise in the room will help us design that project correctly, get the project on the ground for the taxpayer. I think that is the biggest benefit and biggest win for this. Kevin Christensen said cost certainty. Before we go to construction we've got a cost nailed down pretty tight. We've seen that with other states and NCHRP has done reports on it, when we actually get to construction and see little if any change orders. Colorado has experienced negative cost growth on projects.

Commissioner Sansaver said one perfect way of showing success is to go back in history over the last five years and look at how many over-runs you've had on projects; how many millions of dollars that were lost on those projects. I think you can take those and scale them to what you can do with this new system and say we're not going to have these multi-million dollar over-runs. We know what's going to go into this. The contractor is taking as big of risk as we are, so we shouldn't see the change orders or the bids that come in at \$4 or \$5 million over the project cost. I think that would be self-explanatory. Commissioner Hope said there's got to be a

way to put a number on cost savings. I think you will find out you can build these projects more efficiently with this process. I don't know how you benchmark because I'm not an expert on what is going on behind the scenes, but I can tell you working with the contractor I'm working with now, we hired them and then hired the design team to manage the project. They actually, over their history of the projects with the company, made less money doing it this way than they do on the Design Build process. If we can figure a way to put a cost savings to this, it would be a reason to move this forward. My hats off to you for collaborating and looking at this, I think there will be cost savings for you not just because of over-runs but making the project more efficient and looking at it from a different angle – how you move dirt or whatever you do up front. Dwane Kailey said we're the only state agency prohibited from using this method; other state agencies have been using it for years. Jake Goettle said part of what we're doing with our CM is having them track costs and track innovations and give us a tool to take back to the Legislature and present the benefits and innovations and costs we avoided by designing one way versus another way. So we hope we'll be able to go back the Legislature and show a good benefit. Kevin Christensen said to get a contractor to open up their books and show you their margin on something like this versus another project, is amazing.

Commissioner Fisher said they make a better margin if there is one CMGC but it's a tertiary game because with the next Design Bid Build project, they have to be more competitive because now MDT knows exactly how their bidding, so they are not going to be able to add in the profit margin that they otherwise would. So it a benefit for both the contracting side and MDT because it keeps you side-by-side instead of somebody scooting ahead. I see the biggest threat is not to the credibility of this process because I think it's tried and true around the United States, we have to have the Montana Contractors actually see that it works. The biggest threat is those outside billion dollar construction companies that are now coming in and seeing CMGC and say we've been doing that for 30 years, here's our proposal. It can get push back. If they are the best proposal then they should get the job, but I think we're going to see push back from the local guys saying, "oh great, now we've opened the door to out-of-state competition and it's hard enough to make a dollar in Montana." So I think the credibility of it is going to rely upon having good Montana companies who can put forth as good a proposal as the out-of-staters that might come in.

Kevin Christensen said one of the things we agreed to prior to the legislation passing, is that we would short list every firm. So, every firm that submits are going to get short-listed no matter what. We share that same concern with the first contractor. The second one, we haven't made a selection yet, but we had five submittals and four were in-state contractors. We did see with the first one that one of our in-state contractors did very well, they competed very well. So we know that our local guys can do this. Tomorrow we put together a presentation specifically to talk to our contractors about what makes a good proposal; we're just going to have open books. They can look at Hewitt's or whatever. We have seen with the submittals we received with Salmon Lake, several of the local guys competed and are right there with the big guys. We're confident but we have to follow our process.

Notice of Appeal & Administrative Record in the Debarment of Todd Cusick

Val Wilson said this is not something that you would normally see. In advance I apologize the extra binder you're going to be taking home with you tonight. I had to provide you with the entire Administrative Record. This is one of the other duties we talked about – the Commission serves as the appellate authority for contractor debarment. I'm going to take a quick minute to walk you through what I think are the important parts of this record.

We had a contractor on a project that was in the Billings District – the Red Lodge Projects. One of the things that occurred during the project was that the prime quit

paying the subcontractors. So the prime was in violation, not only of our contract specifications but also Montana law that requires prompt payment of subcontractors. At one particular point, this contractor, Gorin, LLC, and its principal were into our subcontractor's for \$1.3 million. MDT actually quit advancing the payment estimates to Gorin, LLC, and then, in cooperation with the bonding company, began releasing the payment estimates into an Escrow Fund and finally the contractor and its bonding company did work through the list of subcontractors. The information we received was that the subcontractors eventually got paid most of what they were owed.

We took a look at our Administrative Rules which are tucked into the front of your binder. They are referenced in the Director's Final Decision. Under our Administrative Rules, the department can debar a contractor for failing to comply with prompt payment provisions. Administrative Rule 18.3.104(1)(c)(2)(i) states that the prime's repeated failure to promptly pay subs is a reason for debarment. What happened is the Director took a look at this and made an initial determination of debarment. The contractor, Gorin LLC, was an out-of-state contractor out of Utah. So that particular contractor and its principal were given notice of a determination of debarment and they requested a hearing.

Under our Administrative Rules, a Hearing's Examiner was appointed from Department of Justice, an outside Hearings Examiner, who set the matter for Hearing. After the Hearing was set, the principal of the LLC, Todd Cusick, did concede for the debarment of the company. The Hearing was held June 27-28. The Hearings Examiner did enter findings and did recommend debarment for the principal. What we found was the LLC was actually owned by two other LLC's that were controlled by the same principal, so it was a determination that it was really important to get to the root of the problem who was the principal of the company. After this Hearing the Hearings Examiner issued his Findings which are under Tab A-3 "Hearings Officer's Findings of Fact". Based upon the Findings of Fact, our Director took a look and issued a Final Agency Decision and Order. I know that when Director Tooley did that, he took a look at the information under Tab C, which is going to be the Transcript of the Contested Case Hearing and the Hearings Exhibits. Tab B is provided for you because it is part of the Administrative Record, but it's really not evidence. The evidence portion is under Tab C. The Appeals information is: Todd's Cusick's Notice of Appeal is Tab 1, the Director's Findings and Final Agency Decision and Order is Tab 2 and that is what Mr. Cusick is appealing.

Under our Administrative Rules, you sit as an Appellate Commission. No further evidence is given to you except what's on the record, so you have an opportunity to look at the Transcripts of that Hearing. Kevin Christensen was one of our witnesses. We also had two subcontractors that testified at that Hearing. Deb Poteet of Poteet's Construction and then Shane White of White Resources was one of the contractors that was out quite a bit of money.

We are not going to make a decision today, but when you come back to the June meeting, there will be an Agenda Item for you to consider that Appeal. The attorneys and the principal for Gorin may or may not be there, but if they are, they will have an opportunity to comment. So, I'm sending you home with this big package of stuff that is the complete Administrative Record. Take heart because I believe you can obtain most of your information looking at the Transcript because that is the record and the evidence that the Director used in issuing that Final Agency Decision. That was the information the Hearings Examiner used to make his Final Recommendation. If you have any questions at any time, feel free to get them to me through Lori so we have a record of any sort of communication. If there are questions that are answered substantially, then Lori can shoot it out to the entire Commission. This is very serious stuff.

Commissioner Fisher said it appears to me that the Appeal is not relevant to the facts of the non-payment in itself, it's limited to whether or not Cusick can be held responsible for the actions of Gorin, LLC. As I look at the Notice of Appeal, the appellate issue is not that Gorin didn't pay his subs during the project, it's limited to whether Cusick can be held responsible for acts of Gorin, LLC, as either a member of the LLC or a member once removed because there are several holding companies of the LLC and he is somehow in the chain going back. Is that correct? That is the specific issue, as the Appeals Commission, we are asked to look at? Val Wilson said that is true – the Administrative Rules allow for the debarment of any actor if they accept money under the contract, they can be either suspended or debarred. Probably the best arguments regarding that, if the Director's Agency Decision doesn't make sense or you want to delve deeper into that, this was the matter that was taken in front of the Hearings Examiner by the department on Summary Judgment.

Commissioner Fisher said I'm asking what our role is and what the scope of the question is in front of us. If we are the Appellate Court for the underlying Agency Decision which was done by an Administrative Law Judge that the debarment was appropriate, the specific question that we're asked on the Appeal, was not about were subs paid, the underlying facts, it's about whether Cusick can be held responsible for the acts of Gorin, and if he can't, then he can't be debarred because Gorin was the Prime, it wasn't Cusick. Is that your understanding of the question on Appeal?

Val Wilson said my understanding is that is what he's arguing. It wasn't the finding of the Administrative Law Judge and it wasn't the finding of the Director. So, the discussion on whether or not an affiliate can be held responsible for the acts of the company, is a question of law. It is pretty well settled. There's not a vast amount of state law on this issue, in fact there's none but leaning on the federal authority, any affiliation with the company and there's ample evidence in the Record and what the Director found was that Todd Cusick was the one making the decision on whether or not they would get paid and the one who was telling the subcontractors that they weren't getting paid. The LLC and what the Hearings Officer found and what the Director found is that the LLC did not shield Todd Cusick from debarment because the LLC statutes in Montana were created to keep them from certain Judgments, and this is not a Judgment. We're not going after Todd Cusick for the money and no one is going after Todd Cusick to pay those subcontractors. On a contracting level, under our Administrative Rules, is this an affiliate of the company that MDT wants to do business with? It goes back that we have to issue contracts to the lowest responsive responsible bidder, so if this company or any that he is affiliated with were to come into Montana and bid some of our contracts, then he's debarred.

Commissioner Fisher asked if that was the question. Are we asked to answer that specific question – whether or not he was properly debarred but not the underlying facts of the debarment? What I'm saying is I need to know the specific question on Appeal. If I'm reading this correct, they are not saying they didn't have factual evidence to support the debarment, they are saying you've got the wrong guy. You had all the evidence but you just got the wrong guy. Is that the only issue that we're to address on Appeal?

Val Wilson said you have to look at everything the Director determined in the Agency Decision. I don't want to be difficult. At the Hearing they did argue that none the people were properly paid and they just ripped us off, so we didn't pay them. There was lots of that stuff going on at the Hearing level. So, the Director came in and found that you didn't properly pay and you were affiliated with this company and in fact you were a principal in this company that didn't properly pay. So you have to make both of those determinations – that he indeed was affiliated and that MDT properly determined that as a principal in Gorin, LLC, he made some decisions that violated, not only our contract but also our state law.

Commissioner Fisher asked if we have the Gorin, LLC, incorporating documents and either the employment agreement or something establishing a relationship between Gorin, LLC, and Cusick? Val Wilson said yes. Dwane Kailey said the Transcripts will really help you out because that was the crux of their argument – that Todd Cusick was not the principal. That was a very well established in the Hearing that he, in fact, was and the cross examination in the Transcripts will be very helpful for you. Val Wilson said in the Operating Agreement he was the Manager and it laid out all of his duties and responsibilities. Tab 3, Exhibit 2, p.13 “the management controls the business affairs of the company, the manager shall direct, manage, and control the business, shall have full and complete authority and power and discretion . . .” As it turns out that was Todd Cusick, and it is in the record, that he is the manager but also the companies that made him the manager. There are two members LLC, the TJC Family, LLC, and he is the manager of that. The Miner’s Creek, LLC, and he is the manager of that. By his signature twice on this Agreement, he was made the manager of Gorin. Commissioner Hope asked who made him that manager. Val Wilson said he made himself the manager. I hear what you’re saying but you have to make both of those determinations – if there was a violation under the Administrative Rule of the prompt payment that gives rise to the Director’s Decision to debar and then whether the record shows that Mr. Cusick was a principal affiliate in the company and should be debarred.

Commissioner Jergeson asked about the rules as Commissioners for ex-parte communications? When I was on the Public Service Commission you had to avoid conversations with anybody who were principals in the case. We had to not indicate public prejudice about an outcome of the case. It made the Governor very angry when I wouldn’t tell him what the Commission was going to do about Babcock and Brown Infrastructure. For us as Commissioners, so our ultimate decision is not subject to appeal, because we messed up some rule about ex-parte communication. Not the merits of the case but because we messed us by violating some rule like that. What are the ex-parte communications restrictions or other restrictions about who we can or can’t or shouldn’t talk to and under what circumstances and what parties might have to appeal whether or not it is even proper for us to talk about any details outside of you or members of staff. Val Wilson said I wouldn’t have any contact with the witnesses, Kevin Christensen and Mike Taylor, or any of the subcontractors that were involved. As we talked, if you have any questions, it should go through Lori so there’s a record and if there is any sort of substantive response or communication, we would copy Mr. Cusick’s attorney on any of that. I don’t expect you’ll have questions, but you may.

Commissioner Fisher said if we’re sitting in an appellate role, my understanding it is similar to any other type of appellate court – we’re limited to whatever is in the record. We can ask procedural questions and that would be cc’d to... if we asked counsel for MDT, she would cc that to counsel for Cusick to know what the discussions were or the content of that. My understanding is that we have to rely completely on the record before us which is here without taking additional information into account. Then we could have our discussion and if you were present for the discussion, the only questions we could ask would be procedural in nature – not “what happened with this and what happened with that”. That’s my understanding, is that accurate or can you have more involvement? Val Wilson said yes, your job is to review the record to see if the Director’s Finding are supported in the record. Even if you would make a different conclusion than the Director, if his decision is supported by the underlying record, as the Appellate Court, you would need to affirm the Director’s Decision. That’s the same as it would be with the District Court taking a look at your actions. It’s by the preponderance – can you find in the Record those facts that the Director used to make that determination. It’s not a chance for you to say “Mike, you got this all wrong, give this guy another chance.” You need to make sure that what he did was straight up and supported by the record.

Kevin McLaury, said the department talked to the FHWA on whether we would be interested in debarment and I don't believe we've gotten an answer from our headquarters who wanted to see what came out of the state through your debarment process. When we debar, it's national; once they are debarred, they can't work any federal projects if we debar nationally. We have alerted to other agencies within the federal government some of the interesting activities that had occurred through this process. As we'd said before, you have to make the decision that's best for Montana and for the department, where I look at it from a different chair so sometimes we don't see the same thing and what you do may be different than what I do.

District Meeting

Lori Ryan said June 27th is our District Meeting. Commissioner Sansaver, you are in the original rotation, so the Glendive District would host the meeting coming up in June. We would come into the District on or around the 25th, spend the day of the 26th touring the District and then meet on the 27th and depart from there. Being new on the Commission, you do have the opportunity to hold on this and move into the rotation next year. If that is the case, I'd be asking the Chairman to host the meeting this year. You can think about it and get back to me. For our District Meeting, we have one meeting out of Helena on an annual basis that rotates through the Districts. Commissioner Sansaver said I'll talk to our District Administrator and say "we have a number of projects going on in our District, if you would like to show off or invite the Commission to see." I'll get with him and get back to you as soon as I've talked to him. I'd love to have you all up and take you out on my pontoon boat.

Next Commission Meeting

The next Commission Conference Calls were scheduled for May 5, 2019, May 21, 2019, and June 25, 2019. The next Commission Meeting was scheduled for June 27, 2019.

Adjourned

Meeting Adjourned

Commissioner Skelton, Chairman
Montana Transportation Commission

Mike Tooley, Director
Montana Department of Transportation

Lori K. Ryan, Secretary
Montana Transportation Commission