

Montana Transportation Commission

**July 26, 2012 Meeting
Hilton Garden Inn Billings
Billings, MT 59102**

IN ATTENDANCE

Kevin Howlett, Transportation Commissioner, Chairman
Barb Skelton, Transportation Commissioner (by proxy)
D. Winterburn, Transportation Commissioner
Rick Griffith, Transportation Commissioner
Carol Lambert, Transportation Commissioner
Tim Reardon, Director MDT
Lynn Zanto, Planning Administrator
Dwane Kailey, MDT Engineering
Jim Skinner – MDT
Ed Beaudette – MDT
Jeff Ebert – MDT
Lori Ryan, MDT
Kevin McLaury, FHWA
Paul Harker, FHWA
Chris Kelly – Marketing Manager, HDR
Scott Bell – Morrison-Maierle, Bozeman
Joe Menicucci – City of Belgrade
Russ Nelson – City of Belgrade
Steve White – Gallatin County Commissioner
Joe Skinner – Gallatin County Commissioner
Brian Sprenger – Gallatin Airport Authority
Larry Watson – Gallatin County
Waylan Plain Feather – Plain Feather Construction
Duffy Duffield – Plain Feather Construction
Frank Tabrish – LHC Inc.
Stan Newton
John Vanarken
Chris Conner – Mountain West Holding
Cary Hegreberg, Montana Contractor's Association
Northern Cheyenne Tribe:
Leroy Spang, President
Joe Fox, Jr., Vice President
Mellissa Lonebear, Secretary
Donna Fisher, Council Member
Jennie LaFranier, Council Member
Marlene Redneck, Council Member
Tracy Robinson, Council Member
Janis Spear – Transportation Planner

Please note: the complete recorded minutes are available for review on the commission's website at http://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 lrayn@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 Kevin Howlett

Commissioner Howlett called the meeting to order. After the pledge of allegiance, Commissioner Howlett offered the invocation.

Commissioner Howlett thanked Commissioner Skelton for a wonderful reception in Billings. The Commissioner was able to tour many of the projects in the Billings District. It was a great opportunity to see the lay of the land, and meet with local people in Billings.

**Liquidated Damages: Plain Feather Construction
Waylan Plain Feather; Duffy Duffield**

We are here to address some charges that were incurred on the Jct 457–Kiowa Project. We appreciate you all coming but we'd like to ask for a continuance because we've talked with the Crow Tribal Legislature and they are reviewing the MOU. Commissioner Howlett asked if this was for a project on the Reservation. Dwane Kailey said the issue is the liquidated damages. MDT has charged 13 days in liquidated damages for a total value of \$40,446.00. As far as particulars in the project, Kevin Christensen, Construction Engineer, would be more than happy to talk to you about those. Plain Feather Construction is protesting those charges. Waylan Plain Feather stated that he would like a continuance until the Crow Tribe advises us whether they want to have a say in the matter or not.

Kevin Christianson said the liquidated damages revolve around the gravel source that Plain Feather secured. There were some issues with the quality and the quantity of the material and Plain Feather ended up exhausting one source and went to another pit. That was the reason for the delay in the project. Waylan Plain Feather said when they changed pits they asked for the time to stop. It was discussed and decided that we would still have to adhere to the schedule. When we got into the pit someone passed away and one of the grandchildren filed a grievance against his family members because they didn't want to sell his part of the minerals. That limited us on the source and we had to move to a different pit that the Tribe actually owns.

Commissioner Howlett said I have some familiarity with fractionated heirships and some of the problems with the various agencies including the Bureau of Indian Affairs. The question I have is did this cost the state more money? Kevin Christensen said that was a difficult question to answer. We administered the liquidated damages in accordance with the contract. I would defer to our legal counsel to weigh the liquidated damages and how it was arrived at. Commissioner Howlett said he understood that but there is a little more complexity when working on the Reservation. If someone protests an allotment, that's a very significant issue and involves lots of different people and agencies. They may not have had any control over someone's protest – that should have been resolved prior to a contract being executed in my opinion. I still want to know if it cost the state more money because they technically had to shut down if someone protested. They can't extract any more material from somebody who has ownership but refuses to go along with it. Kevin Christensen said we worked with Plain Feather to the extent we could. What's important is that we administered the contract uniformly the same way we do with all other contractors. There were some really unique circumstances with this contract and we did work with the contractor. The Commission has the timeline. We also Change Ordered the type of plant mix from Grade F to Grade D which was kind of controversial but the Grade D mix is a little bit more forgiving and is a little bit easier to produce. In regards to that we worked with the Contractor as much as we could within the terms of the contract.

Waylan Plain Feather said he was absolutely right – they did work with us but everything they are disagreeing with was out of our hands. We did a quality job and gave them a quality product but it wasn't within the timeline of the contract. Commissioner Howlett asked if the pit was a contractor furnished pit or an owner furnished pit. Waylan Plain Feather said it was a contractor but approved by DOT. Dwane Kailey said the approval portion of the pit causes some confusion. We sample the aggregate and test it for durability and hardness because some aggregates won't hold up when made into plant mix. So we test it to make sure the aggregate is durable enough. As to actually producing the aggregate to meet the gradation requirements, that's the contractor's responsibility. So when we say we approve a pit, we're not saying that this is a good pit and you can go ahead and it will make great aggregate and plant mix. We're saying the aggregate that's in there is hard enough.

In this case this was what we call a “dirty pit”. There was a lot of fine material in it and it was a challenge for Plain Feather Construction to produce in-spec aggregate. Waylan Plain Feather asked if they met specs for the Grade D. Kevin Christensen said yes. Waylan Plain Feather said being a first-time contractor nobody ever told us that the rocks were dirty down there. We found out through DOT. We assumed that when DOT approved the pit we were ok.

The MOU states that we have to work with the Nation which we wanted to because we’re Indian owned. Commissioner Griffith asked about the relationship between the MOU and the Department. Kevin Christensen said the MOU is part of the contract. It doesn’t mandate a Tribal source be used, it just states that if a Tribal source can be attained and there is quality and quantity of material and the cost is no more than if they secured it from another source – it encourages the Contractor but it doesn’t mandate it. The language states “the contractor will secure materials from Tribally-owned sources pursuant to the MOU so long as all Tribal materials meet state and federal specifications, there is a sufficient quantity, and it’s competitively priced.” Commissioner Griffith said if it meets all those criteria it’s ok. Kevin Christensen said the way we see it is that it’s an option for the contractor. The MOU encourages the contractor to obtain Tribally-owned sources if possible if it meets those requirements.

Ed Beaudette said the situation is that the MOU is a part of the contract. It’s something we placed within the contract as an understanding to try to work with the Nations and give them the opportunity to use their materials on projects on the Reservation. Once the MOU is done, they have to meet all requirements for the materials meeting specifications and deliver on time so we can be consistent with everyone else we contract with and make sure the low bidder is the true low bidder and is in the position to be competitive and not put anybody else at a competitive disadvantage by changing it once we get into the process. That’s basically what we try to do and apply liquidated damages consistently across the board. We are trying to make sure that everyone is treated fairly in the process and no one is at a competitive disadvantage.

Commissioner Griffith asked if the contract would have been completed on time had they not had to move pits. The thing that concerns me about the schedule is about the pit location and I see also that the mix design failed and there was a bunch of time used up in the mix design. Is that relative to the pit location? Waylan Plain Feather said no, we had issues with the testing. We had an independent do the same test and they didn’t come anywhere near the state’s results. Dwane Kailey said the issue is Plain Feather Construction was trying to get Grade F mix design out of that pit and they couldn’t. Every time they submitted a mix design that we tested, it didn’t pass. That’s one of the reasons we switched to a Grade D commercial mix which eventually passed. Commissioner Griffith asked if that was a salvo for the state to try and make the project go. Dwane Kailey said the Grade D mix is a little bit more forgiving and an easier mix design for contractor to meet and this was a low volume secondary road so the Grade D commercial mix was an appropriate mix. It was our attempt to work with the contractor to help them get a mix design that would pass so they could continue the project. Waylan Plain Feather said the change from Grade F to Grade D cost the state an additional \$70,000 because it’s more expensive.

Commissioner Howlett said there are a number of different complications here that are really confusing. The Commission would like to see these small businesses succeed but on the other hand we have requirements that have to be met and it’s only fair that we impose the same standards on everyone. Given that, I think we might be in a position to look at a compromise where you don’t entirely fail and we don’t entirely fail.

Commissioner Griffith said his thought was that the MOU gives the Commission some grace because of the language. The Notice to Proceed was dated on 1/10/11

and they didn't stop time until 10/28/11, so it seems like the State was pretty good with you trying to get this handled without delaying it. I will offer a suggestion of giving seven days of versus 13 days if you're willing to accept that. Waylan Plain Feather said you said we'd split the difference. Commissioner Howlett said I said we'd try and come up with a compromise.

Kevin McGovern with C&D Construction said he was the subcontractor with Plain Feather on this project. To give you quick background of how the project got to this point. We are a contractor and we do some crushing, these guys had access to some gravel reserves in that area where and we thought we could have a competitive advantage on bidding the project. We bid the project and were the successful low bidder. Crews were mobilized in the spring. As we were crushing, we didn't submit a Grade F mix design which Kevin said we did. It was proven in the lab that we couldn't get to the point that it was worth submitting. So at that time we pursued the Grade D substitute. They continued to run the tests and there were some challenges with the mix and I don't contest that. We had independent tests done and it revealed that one side of the test passed and one side was not passing. So we felt that we had some sort of calibration issue that was not determined but the independent lab wrote a letter stating that fact. Part of the challenge of the project was did the pit itself ... we had adequate supplies. In accordance with the MOU we thought this was the right way to approach this project and the state told us what pit we should be using. Being new contractors on the stage it appeared we were working in compliance with the MOU. We had eliminated some material in the first pit and then the additional area we used to provide the remaining gravel was where we ran into this situation – we didn't have enough gravel to finish. That's when they said we needed to go to the Tribal pit which we did. So we were operating at what we thought was the correct way with respect to the MOU to try and provide the other material with quality substance that would provide the proper product for the state. CMG and Johnson Lane went through great expense by bringing in an air separator to clean this aggregate up so we could provide the product that would meet the specs. We finally did provide a product that met specs at great expense. As we continued we were in meetings continuously. We asked once we get this mix design approved, is there a way to shut the clock down because we knew we were challenged with time and we understood the liquidated damages we were faced with. It was suggested that maybe we could do that. So we felt that we're working together to resolve the issue but then the state came back and said they couldn't do that. We went at this project and put our resources together, we spent a lot of money on the project and we finally got through it. The MOU is part of the contract and it seems like we did our very best to comply with the Nation and their expectations. We talked with the Legislator, Jay Harris, who was very interested in receiving information and weighting in this thing to see if the MOU was being followed. He is in a review right now on this issue.

Commissioner Howlett said the issue it is not a contest between the Crow Tribe and the State of Montana. I think there is an issue there and that is the construction and the MOU itself and making sure we don't enter into MOU's on the Tribes properties that are fractionated or there is a potential for this kind of delays. Kevin McGovern said we thought we were following the spirit of the law by doing exactly what the Tribal office said. Commissioner Griffith asked if any other Commissioners had any thoughts. Commissioner Skelton said she supported a compromise of some sort because there were definite circumstances that arose.

Director Reardon said the Commission may waive liquidated damages. If you chose not to waive them then you don't have to do anything. There has to be a motion and a second to waive whatever portion of the 13-day assessment you chose to waive. That's the official response you have to have. At the outset these gentlemen made comment that they were meeting with the Tribe. I don't know what the meeting is about – are you attempting to work out some contribution from the Tribe for any issues related to this pit? If that were the case, that might weigh a little bit otherwise this is strictly a contract issue and it is within the Commission's authority to waive

liquidated damages if you believe the department overstated the liquidated damages. Waylan Plan Feather said it is your opinion that it's strictly a contract issue but not in ours. I disagree with what you said. It is not a strict contract issue.

Commissioner Griffith said that given the schedule and the number of days that could have been assessed, the department seemed to be fair at 13 days and probably could have assessed more. The Notice to Proceed was way back in January and your 60 days were up on the 28th of October. Kevin Christensen said Plain Feather Construction was very good to work with. They did quality work and we have no issues with their company whatsoever; they are a good company. Secondly we work with the contractors to the greatest extent possible allowed under the contract. Again we have to be very careful when we do that. When we changed from Grade F to Grade D, I got a call from another contractor and a letter complaining that we were showing favoritism. That's why we have to be careful. We were working within the parameters of the contract to the greatest extent possible while trying to give the contractor the benefit of the doubt. Contractor Griffith said therein lays the problem for the Commission – not so much your contract but whoever the second bidder was may have used a pit that was “clean” and could have produced the material and therefore they had a higher number in the bid. So we're trying to protect both ends of this operation not just the construction and build but the bidding side as well so people have a competitive process. I would make the offer that we reduce the liquidated damages by six days.

Commissioner Griffith moved to approve the reduction of liquidated damages by six days, leaving the total number of seven days. Commissioner Winterburn seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Gallatin County: Brian Sprenger, Gallatin Airport Authority
Bozeman International Airport**

Thank you very much for giving us the opportunity to appear before you. I'm here representing Gallatin County East Belgrade Interchange. With me today are Commissioner Steve White and Commissioner Joe Skinner from Gallatin County. As you are aware, the East Belgrade Interchange is the first Interchange under the new Commission policy. We want to thank you and your staff in working with us throughout the nuances of the policy and the changes that have come about because of it.

We are here today with our funding plan and are pleased to come to you with a project that is significantly more funded than when we met with you two months ago thanks to the Tiger Grant. At your request we also contacted both the City of Bozeman and Montana State University and they both stated that, while they are in strong support to the project, they were unable to contribute financially to the project because of their own financial needs. The handout you have received is our proposed funding plan for the project. The total estimated cost of the project is \$37,349,821. The MOU states that MDT can approve a project up to 10% over the Engineer's estimate. We have some concerns. We just got some information that maybe our information is a little incorrect that could be awarded up to that 10% over without the County's concurrence. Some of the discussion today is really geared toward that portion and our concern that it is between 0-10% over that could be awarded and that we would have a substantial short-fall in the funding that we would have to make up. Therefore we asked for a big contingency of \$2,064,849 just in case the difference between the Engineer's estimate and the 10% over that could be awarded.

On the funding side, we certainly thank the Commission for the previous commitment of \$10,960,000 for the Interstate Maintenance Funds. On the local side the County has secured \$7.9 million in SAFETEA-LU grants, \$1.4 million 2010 appropriations earmark, almost \$9 million through the Tiger IV Grant, and then the County is also prepared to borrow \$2 million for the project. In addition the City of Belgrade has committed \$2 million in Urban Funds and the Gallatin Airport Authority has committed \$3 million toward the project as well. The railroad crossing closures contribute another \$200,000 for a total local contribution of \$25,631,801. Combine the MDT and local funding and it equals \$36,509,906. This leaves us with a deficit of \$757,915 dollars. We are asking for your assistance in making up that budget deficit. The good news is that the funding plan budget is extremely conservative and we have almost \$5 million in construction and inflation contingencies in the budget. Overall that \$5 million is approximately 25% of the construction budget, so we feel we have a very good contingency in that area.

Because we've been conservative if funding exceeds the cost, we would propose that transferring eligible excess funds to the construction of either the connecting roads that are a part of this project under the Tiger Grant or Secondary 205 which is part of the MOU which says that the county would prioritize Secondary 205 as a priority. That being said, in order to build the funding plan we are \$787,000 short. Because of the Tiger Grant, we are under a timeline which is good news and bad news. The good news is we have to be prepared to move forward very quickly. Our concern is that approximately May of next year when we get to the bid process and the bids come in, that we're not going to have enough time for bake sales if we come up a little bit short. So we're asking for your assistance that if we are a little bit short that we look at a bid contingency. We appreciate all of your assistance and are certainly here to answer any questions you might have.

Commissioner Griffith asked if the department had a recommendation regarding this. Director Reardon said first of all I think it's important to commend the local sponsors. They were challenged to go out and fund this project and by any measure they've done a pretty good job. We certainly appreciate the time constraints they are operating under. Under the Tiger Grant they need and we need to have a project ready to go to advertisement next June. At this time we don't have any right-of-way acquired so there's a lot of work that needs to be done. Considering where we were six months ago to where we are today is a credit to a lot of work by a lot of people, most of it the local folks. Regarding the funding shortfall, the department is prepared to contribute some additional funds up to what we believe is a very solid estimate of \$788,000. MDT will commit to support that to the Commission up to the estimate. I'm not comfortable conceding at this point that we will guarantee that 10% contingency. We could be talking in excess of \$2.5 million on the Interstate Program. That could be a project somewhere that somebody else isn't going to get. What I am willing to do if the bids should come in over our current estimate of \$37,350,000, before recommending any award to the Commission, we'd go back and sit down with these folks. Depending on what the over-reach might be, if its \$100,000 we probably have lots of room to get that done but if its \$5 million then we'll have to have a longer discussion to try and figure out where to go. It's fair to say that neither side wants to see this project fail. Thanks to the work of Lynn and her staff and Jim Skinner and the efforts of the local folks in Gallatin County, we're pretty close to getting this off the ground and moving forward pretty quick.

MDT in addition to agreeing to make up the difference of the current estimate of \$37,350,000, we also have agreed to acquire the railroad property. That will be part of the right-of-way needed and we're willing to assume that and we've got an agreement that's already been signed to that effect. I hesitate to concede the 10% as any sort a guarantee – I don't feel I can mortgage that much of the future at this point. We'll certainly consider it. I appreciate the comment that this is an inflated estimate but everybody knows that real estate values in the Gallatin area have fluctuated downward than when this estimate was put together. I don't think there's

a lot of fluff in that estimate, but from MDT's standpoint we're comfortable that's a pretty solid estimate and may even be a little high. I appreciate the willingness of the local sponsors also. If the bids come in lower, that the money go over to 205 and would be set aside to do some improvement on that Secondary. That's a critical component of this as well.

Commissioner Griffith asked if it was MDT's recommendation to allow the department to go forward with this project and review it after the bids come in to decide the next step. Director Reardon said it's already a project. We already have the design going, we're charging to this project already and we're moving toward a final design. What is needed for the local sponsors is some assurance that up to \$37,350,000 is funded and that's the assurance I'm willing to provide today. We will fund that shortfall up to that amount. The other thing needed at this point is the local sponsors need to make the decision whether they are going forward with right-of-way. With those assurances from MDT, we are ready to go forward with the right-of-way issue on the railroad but we can't certify anything to advertise until we have the right-of-way closed. There's a lot of work to be done there and that will be their choice. I don't think they want to lose this project at this point either. Brian Sprenger said the MOU states we would be responsible for the right-of-way acquisition. This is a unique project in a lot of ways because there are a lot of new things happening. The locals are responsible for utility relocations and right-of-way acquisitions so there's a lot of work on our side to do. The approval from the Commission is paramount at this time because we've got less than a year to make all that happen.

Commissioner Howlett asked for a clarification. Commissioner Griffith's motion would commit the \$750,000 addition – is that the kind of resource you need to move forward with the right-of-way acquisition? Brian Sprenger said yes. The locals have done a great job in getting funding for this project. One piece I want to make you aware of, because they have acquired Tiger funding, as a part of their application the Secretary views the project as a whole even though they got \$9 million in Tiger funding; the Secretary's expectation is that the application submitted will be built. If by chance, there is a lack of funding and the project is not built per the application, there are some ramifications as you go down the road. As a point of information for the Commission that by acquiring the Tiger funding that brings that into the picture – that what was submitted will be built. Lynn Zanto said the additional funding falls within the Commission's policy. When we first evaluated how much we could contribute from the Interstate Maintenance Fund that was with the anticipation that this would happen by a 2011 Let date and now it is more in the 2013 range. We had factored in inflationary costs so this falls right in line within the Let date.

Commissioner Howlett commended them on all their diligent work. This is going to be a good project. Brian Springer said it will create a challenge and thanked the Commission for all their help. Commissioner Howlett said he would like the record to reflect the diligence that Commissioner Griffith played in this – he's been a very strong advocate for this project.

Commissioner Griffith moved to approve the total project cost of the East Belgrade Interchange of \$37,349,821.00. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Public Comment

John Vanarken

I'm John Vanarken from Laurel. I do quite a bit in the Billings area. One of the biggest issues I have is on speed limit signs and curve signs - city, county, state and federal. So many times traveling around Montana especially in the Billings area, I see places where the signs are confusing. One of them is south of Laurel as you're coming north from the Red Lodge area, there is a curve sign which says 25 mph and then there is a speed limit sign that says 50 mph. Who is deciding these things and the location of these? Another place is on intersections like Shiloh Road where the speed limit sign is so close to the intersection that by the time you get through the intersection then you've got a speed limit sign that you don't see because you're already passed it. I think there should be some kind of a guideline of where to place speed limit signs and curve signs. Commissioner Howlett said speed limits are approved by this Commission and they are approved based on recommendations that identify specific areas and lengths of speed limits. Those are done as a result of speed studies. The issue you raised with the sequencing of the signs can be a little bit confusing for a lot of people. There is a process by which these things are set and are a result of a very comprehensive study.

John Vanarken said another one is on Shiloh Road between the intersections and the roundabouts from Zoo Drive to Hesper Road. It is a short distance and you're going from one roundabout to another. The roundabouts are 15 mph but then in between there is a speed limit sign that says 60 mph. You've really got to gun it to get up to 60 mph before you get to the next roundabout.

The construction projects the Laurel East Hwy 10 project is a really a big improvement. We've got an east-bound left-turn lane but no west bound from the interchange at 437. Sikes Roman Road, Milwaukee Road, East Maryland, Yard Office Road, and Eleanor Roosevelt all need a right-turn lane so people have a chance to slow down and make a right turn when they are going west bound into Laurel. That wasn't provided. Some areas were widened out but they didn't put in turn lanes. Thank you.

Commissioner Howlett asked if Shiloh Road was 60 mph. Stefan said that it was 60 mph right now. After it's constructed a speed study needs to be conducted and brought back to the Commission. Shiloh is actually a city road and once it's completed it will be turned over to the City of Billings. They are in the process right now of reviewing that section to adjust the speed to 45 mph. Commissioner Lambert said this isn't a minimum speed - you don't have to drive 60 mph. Commissioner Howlett said no you don't. Commissioner Lambert said they are trying to adjust that but just because you have a 60 mph sign doesn't mean you have to drive 60 mph. John Vanarken said that wasn't what he was saying. I'm saying that if you don't do 60 mph people will pass you because they get in a hurry even on a solid yellow line. It creates a hazard. Commissioner Howlett said you're point is well taken and there are processes in place to evaluate that now that the road has been completed. I'm confident that the recommendation will come back for something other than what it is now.

John Vanarken said another place that is a problem. I live east of Laurel where I exit Hwy 10 at Sikes Roman Road. East bound is another place. We had a bad accident there within the last year where a guy who had been drinking and girl was making a left turn to Sikes Roman and he attempted to pass her on a curve. It is 60 mph from Yard Office Road and just before you get to where the road turns to Sikes Roman, it changes to 50 mph. That 50 mph should be moved back farther or slower so people slow down a little bit. Actually it should be slower than that.

Commissioner Howlett said because you are a member of the Planning Board, it would be good to use that position to request a speed study for the areas you've identified. Then it can come back and we'll consider it. I would use your position to advance that. Local Governments and organizations are the ones who initiate that request. There is a long list of studies so it will take a little time but they do work their way through all of the requests. Commissioner Howlett asked if MDT would take a look at the individual signs. MDT said there is flexibility on moving the signs; we can move them but we have to come back with a different recommendation. Commissioner Howlett asked if he would make sure the signs are accurate and report back to the Commission.

Stan Newton

I'm a resident of the Heights in Billings. My concern is the truck traffic we have through Billings in the Heights. It's not local traffic but its trucks coming across the state and using Hwy 3 coming down Airport Road to the Heights and to the busiest street in Montana, Main Street, and exiting around the Metro and back onto the Interstate. It's quite a dangerous situation. I believe one of the possibilities to alleviate that would be to connect Hwy 3 up with Fallen Road to Right of Way to 72nd Street and onto the Interstate. Therefore the trucks will have to go through the weigh station too instead of bypassing the station and letting Wyoming take care of it. I believe if we built that, it would probably eliminate trucks coming from there anyway. They would take the route they should be taking from Canada to Butte and down through Billings on the Interstates. Commissioner Griffith asked where the traffic was coming from. Stan Newton said the traffic comes from Canada to Great Falls and then Hwy 3, which is a two-lane roadway and is unsafe, then comes down through Main Street and back onto the Interstate. They should be going to Butte on the Interstate. That's the route they should be taking.

MDT said this really is the truck route through Billings as you come off the Interstate. They come off the Interstate at 452 and come up around the Metro and go up by the Airport on MT 3. There is also a lot of traffic on Hwy 87 which is out by the old K-Mart Store, however, that route is part of Camino Real, a National Trade Route between Canada and Mexico. So that section of MT 3 between Billings and Great Falls is the only section that isn't Interstate but it's designated as the National Trade Route which brings a lot of trucks. We have a lot of future planning that will help address some of the issues as long as it remains a trade route. We are looking at a bypass which will divert at least the MT 87 trucks off the area and they would have another approach if it ever gets built. So there are mechanisms in place to help alleviate some of the truck traffic. It is a National Trade Route that runs through MT 3.

Commissioner Griffith asked if there was a 20 Year Transportation Plan for Billings that addresses any of those concerns. MDT said the 20 Year Plan addresses a lot of the concerns with the traffic. I believe when the numbers come out it may no longer be the busiest street in Montana. I think 10th Avenue South will probably surpass it because of the work we've done with Airport Road turning it from two to four lanes and putting the Bench connection in. We've diverted 11,000-12,000 cars onto the Bench that otherwise would be on Main Street. There is a 20 Year Plan – we're going to finish out Bench, improve the intersection at MT 312, MT 87 and Main Street. In the 20 Year Plan we're hoping to have a new access from Johnson Lane to the Heights so there will be another interchange. Commissioner Griffith asked if Bench would be the truck route. MDT said Bench will not be the truck route – MT 3 will always be the Camino Real Truck Route. Commissioner Griffith said there ought to be a better access to the Interstate than going around the Metra and back out. MDT said that's the only access that exists. When the new access is built it will provide for the trucks that use Main Street to go to MT 87 to Lewistown, Malta, and Canada. Those trucks will have their own access off the Interstate that will take them directly to MT 87. So some of the trucks will be eliminated but you'll always have the

Montana trucks because of the trade route designation. Commissioner Griffith asked if there was a way to make that more direct. MDT said no, not without a lot of work. Stan Newton said you could designate the Interstate as the truck route.

Commissioner Griffith said we do that in some places. This is such a circuitous route. Someone has to do some long-range planning to fix this. We don't make exclusions to any routes; we try to encourage people to use our premier system which is the Interstate. Stan Newton said this isn't very safe right now; right now between Great Falls and Billings it is not safe. It's a little longer coming on the Interstate but it is much safer. Commissioner Howlett said we had opportunity to look at some long-range plans yesterday. When you get into these urban areas it is difficult to meet all the needs but the department is working and planning to address what they can. If we knew 50 years ago what we know today, we'd probably have planned the City a little differently. Thank you for your comments.

Commissioner Lambert said they were doing significant work on Hwy 3 between Billings and Stanford. The roadway is being widened. I drive that a lot and it is much better. Stan Newton said he was just talking about inter-continental trucks.

Stan Newton said I wanted to bring up an issue with signing. Truckers do not really have the signage to tell them where truck routes are; they are not really visible. One of the big problems is when you come north on 27th Street, you come up to 1st Avenue there is a truck route sign but it isn't really noticeable that you turn right and go down under the underpass. So many of them go right on across the railroad tracks and up 27th and go up the hill to the Airport Road. Billings is getting to the point of driving like big-city driving. There are so many places where signs say "yield". I think they should say "merge" rather than "yield". Especially out-of-town people will come to a stop and then you have to wait for the traffic. Commissioner Howlett thanked him for his comments.

Approval of Minutes

The minutes for the Commission Meetings of January 26, 2012, March 22, 2012, and May 24, 2012, and Commission Conference Calls of May 22, 2012, June 5, 2012, June 19, 2012, and July 3, 2012 were presented for approval.

Commissioner Griffith moved to approve the minutes for the Commission Meetings of January 26, 2012, March 22, 2012, and May 24, 2012 and Commission Conference Calls of May 22, 2012, June 5, 2012, June 19, 2012, and July 3, 2012. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 1: Interstate Funding Projects **D-3 Fencing – GTF N & S** **D-3 Fencing – Brady North**

Lynn Zanto presented the Interstate Funding Projects to the Commission. MDT is seeking approval for two projects on Interstate 15 (I-15) that will replace a 50 to 60-year-old fence in poor condition. Interchanges will be reviewed to determine the need for cattle guards. The following table shows project locations and projected costs.

Route	Location	Counties	Beginning RP	Length	Total Estimated Cost
I-15	I-15, north and south of Great Falls	Cascade & Teton	247.8	73.478 mi.	\$2,882,000
I-15	I-15 north of Brady	Pondera & Toole	327.9	70.132 mi.	\$3,035,000

Summary: MDT is requesting Commission approval of two projects to replace worn-out fencing along Interstate 15. The first project extends north and south of Great Falls for about 73.5 miles. The estimated cost is approximately \$2,882,000. The second project is about 70 miles long beginning north of Brady. The estimated cost is approximately \$3,035,000. The funding source for both projects is the Interstate Maintenance Program.

Staff recommends that the Commission approve the addition of these projects to the program. Commissioner Howlett asked if it was approximately \$5,800,000 for those two projects. Lynn Zanto said that was correct.

Commissioner Lambert moved to approve the Interstate Fencing Projects, D-3 Fencing – GTF N&S, D-3 Fencing – Brady North. Commissioner Winterburn seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item No. 2: 2012 Scour Mitigation

Lynn Zanto presented the 2012 Scour Mitigation. Following the 2011 flood season, MDT identified four structures in need of scour remediation. Nominations are based on evaluation of diver’s notes and historical data. The total estimated cost is approximately \$2,391,000, and the funding source is the Bridge Rehabilitation Program. Location information is shown below:

Structure ID	Dept. Route	Signed Route	Beginning RP	Length	Feature Intersection	Approximate Location
L56788012+07001	X-56788	Old Hwy. 312	12.5	0.5	Yellowstone River	Huntley
P00016000+06721	N-16	US-87	0.5	0.2	Yellowstone River	Billings – Dick Johns
P00026001+02341	P-26	MT-23	1.0	0.4	Yellowstone River	2 mi. south of Sidney
S00313008+03271	S-313	S-313	8.0	0.5	Bighorn River	7 mi. southwest of Hardin

Summary: MDT is asking the Commission to approve a project to remediate scour damage at three bridges on the Yellowstone River (near Huntley, Billings, and south of Sidney) and one on the Bighorn River (southwest of Hardin). The total estimated cost is approximately \$2,391,000, and the funding source is the Bridge Rehabilitation Program.

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

Commissioner Griffith moved to approve the 2012 Scour Mitigation. Commissioner Lambert seconded the Motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item No. 3: Turn Lane Projects
Kershaw Turn Lanes
Carter N Turn Lanes

Lynn Zanto presented the Turn Lane Projects for Kershaw and Carter North. Due to expected traffic increases at the Kershaw and Carter grain facilities, MDT is asking the Commission to approve two projects to preserve the safe and efficient operation of US-87 (N-10). The improvements will consist of installation of a left- turn lane, a right-turn lane, and an acceleration lane at each location.

The proposed funding source for these projects is the National Highway System Program. The estimated cost per project is approximately \$3,008,000 with each entity contributing \$850,000 to the project at their facility.

Listed below is a summary of the location and estimated cost for each project:

Project	Location	Beginning RP	Approximate Length	Estimated Cost
Kershaw Turn Lanes	US-87 (N-10) west of Fort Benton	36.9	1 mile	\$3,008,000
Carter N Turn Lanes	US 87 (N-10), EGT grain elevator (RP 30.875)	30.5	1 mile	\$3,008,000

Summary: MDT is asking the Commission to approve two projects to preserve the safe and efficient operation of US-87 (N-10) at the Kershaw and Carter grain facilities. The improvements consist of installing a left-turn lane, a right-turn lane, and an acceleration lane at each location. The estimated combined cost is \$6,016,000, and the funding source is the National Highway System Program. A funding agreement will be executed with each entity prior to advancing programming of federal funds.

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

Commissioner Lambert moved to approve the Turn Lane Projects for Kershaw Turn Lanes and Carter North Turn Lanes. Commissioner Griffith seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 4: Intersection Improvements
Holmes & Hill/Warren Avenue – Butte

Lynn Zanto presented the Intersection Improvements for Holmes & Hill/Warren Avenue in Butte. A Traffic Signal Warrant study dated 12/1/2011 has indicated the need for a traffic signal in Butte at the intersection where Warren Avenue and Hill Avenue meet Holmes Avenue (U-1820). The need for a signal is based on current vehicle volume, waiting times for north/southbound traffic, and anticipated increased vehicle volume. It will be necessary to re-align Hill Avenue and Warren Avenue to avoid split phase operation of the signal on the side streets.

A copy of the approval letter from the Butte-Silver Bow Planning Board is attached. Butte-Silver Bow City/County has conducted a public involvement process, and in general, the public supports this project.

The total estimated project cost is approximately \$574,000. The proposed funding source is the Surface Transportation Program Urban.

Summary: MDT is requesting Commission approval for a project to install a traffic signal in Butte at the Warren Avenue and Hill Avenue/Holmes Avenue (U-1820) intersection. The project also includes realignment of Warren Avenue and Hill Avenue. The total project cost is estimated at about \$574,000, and the proposed funding source is the Surface Transportation Program Urban.

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

Commissioner Griffith moved to approve the Intersection Improvements Holmes & Hill/Warren Ave – Butte. Commissioner Skelton seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

**Agenda Item 5: Bridge Replacement – Yellowstone River
I-90 Yellowstone R – Billings**

Lynn Zanto presented the Bridge Replacement Project on the Yellowstone River in Billings on I-90 to the Commission. MDT’s Bridge Bureau has identified two bridges on I-90 (near Billings) that are functionally obsolete and fracture critical. These structures cross the Yellowstone River at RP 452.03. The status of these bridges makes them candidates for bridge replacement.

Additionally, the Billings Area I-90 Corridor Planning Study has identified capacity needs along this corridor. Consequently, as part of the bridge replacement project, MDT will evaluate additional roadway and bridge work that will help alleviate congestion issues from the South 27th Street Interchange to the Lockwood Interchange.

In general, the project is supported by the locals and is scheduled to be included in the next update of the Billings TIP. The bridges and their locations are listed below:

Structure ID	Route	Beginning RP	Feature Intersection	Approximate Location
I00090450+05271	I-90E	450.09	MT Power railroad spur	Billings
I00090452+00331	I-90E	452.03	Yellowstone River	Billings
I00090450+05272	I-90W	450.09	MT Power railroad spur	Billings
I00090452+00332	I-90 W	452.03	Yellowstone River	Billings

The total estimated project cost is approximately \$45,451,000. For the bridge replacement work, MDT is proposing to utilize BR funding for four structures. For the roadway work, MDT is proposing to use Billings District IM funds

Summary: MDT is requesting approval of a project to replace functionally obsolete, fracture critical bridges on the Yellowstone River at RP 452.03 and to make roadway improvements between the South 27th Street Interchange and Lockwood Interchange, consistent with the recommendations of the Billings Area I-90 Corridor Planning Study. The total estimated cost is approximately \$45,451,000. Funding will come from the Interstate Maintenance and Bridge Replacement Programs.

In addition to the two structures it would also add a third lane from 27th Street to Lockwood Interchange in both directions. Commissioner Howlett said that would eat up the \$5 million budget in a hurry. Staff recommends the Commission approve the addition of this project to the program.

Commissioner Skelton moved to approve the Bridge Replacement – Yellowstone River I-90 Yellowstone R – Billings. Commissioner Griffith seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 6: Enhancement Projects on MDT Right of Way
2nd St NW/NE Walks – Cut Bank
S 19th Ave Path – S of Bozeman
Norris Road Path – S of Belgrade
Sidewalk – Manhattan

Lynn Zanto presented the Enhancement Projects on MDT Right of Way to the Commission. The Transportation Commission approves Community Transportation Enhancement Program (CTEP) projects that are located on or adjacent to state-designated streets and roads. CTEP projects are funded with the enhancement set-aside of the Surface Transportation Program, which is allocated by population to Montana's local and tribal governments. Communities select projects to fund with their allocations and provide the required non-federal match. The program is based on an agreement between MDT and Montana local and tribal governments.

The Safe Routes to School (SRTS) program funds activities and infrastructure projects to encourage and enable primary and middle school students to safely walk and bicycle to school. Montana communities are encouraged to use SRTS funds to supplement CTEP infrastructure projects within two miles of schools serving K–8th grade. MDT's CTEP program administers SRTS projects. Only SRTS projects that are on or adjacent to state-designated streets and roads need Transportation Commission approval.

MDT is requesting Commission approval of the following SRTS and CTEP projects:

1. **2nd St NW/NE Walks – Cut Bank:** The city of Cut Bank is requesting SRTS funds to design and construct approximately 650 lineal feet of concrete sidewalks, including street crossings and signs. The sidewalk will run along the north side of 2nd Street NW and 2nd Street NE between 1st Avenue NW and a point 200 feet east of Centre Avenue (S-213). The total estimated project cost is approximately \$38,000.
2. **S 19th Ave Path – S of Bozeman:** Gallatin County is requesting CTEP funding to design and construct approximately 3,050 lineal feet of hard surface path including ADA features. The path is located south of Bozeman within the south right-of-way of South 19th Avenue (S-345) between Cougar Drive and Cottonwood Road. The total estimated project cost is approximately \$50,000.
3. **Norris Rd Path – S of Belgrade:** Gallatin County is requesting CTEP funding to design and construct 2,435 lineal feet of hard-surface bicycle and pedestrian pathway. The path is located south of Belgrade in the 4 Corners area. It will run along the north side of Norris Road (P-84) between Jackrabbit Lane (N-85) and Zoot Way. The total estimated cost of this project is approximately \$75,000.
4. **Sidewalk – Manhattan:** Gallatin County is requesting CTEP funding to design and construct 360 lineal feet of sidewalk to connect to the Gallatin River Trail. The project is located in Manhattan on the south side of North 5th Street (S-346) beginning at the intersection of North 5th Street and Fulton Avenue and continuing northeast for 360 feet. The total estimated cost of this project is approximately \$50,000.

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

Commissioner Griffith said it would be nice to have a pedestrian path like the one at Four Corners and asked if that was in the project. Lynn Zanto said she was not sure if the project included a pedestrian path or if the funding balance would allow that. The Billings project has quite a mix of funding sources from state, local, and federal. Commissioner Griffith said this is a prime candidate for a pedestrian path.

Commissioner Griffith moved to approve the Enhancement Projects on MDT Right of Way; 2nd St NW/NE Walks – Cut Bank, S 19th Ave Path – S of Bozeman, Norris Road Path – S of Belgrade, Sidewalk – Manhattan. Commissioner Lambert seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 7: Local Construction Projects on the State and Federal Highway System: Kagy Blvd/South 7th Ave – Bozeman

Lynn Zanto presented the Local Construction Projects on the State and Federal Highway System – Kagy Blvd/South 7th Avenue in Bozeman. The local government of Bozeman is planning to design and build a transportation improvement project on the Urban Highway System at the intersection of Kagy Boulevard (U-1212) and South 7th Avenue. The city will install a rectangular rapid flashing beacon – pedestrian signal, which will stop the flow of traffic when actuated by a pedestrian. The project will be designed with input and concurrence from MDT staff. The Bozeman City Streets Maintenance District will provide funding for the project, and the work will be completed by local forces. The public involvement process is complete, and in general, the public supports this project.

Summary: The city of Bozeman is planning a transportation improvement project on the Urban Highway System at the intersection of Kagy Boulevard (U-1212) and South 7th Avenue. The project will be funded by the city of Bozeman and will use local work forces.

Staff recommends that the Commission approve this project to modify the Urban Highway System, pending concurrence of MDT's Chief Engineer.

Commissioner Griffith moved to approve the Local Construction Projects on the State and Federal Highway System: Kagy Blvd/South 7th Avenue – Bozeman. Commissioner Lambert seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 8: Construction on State Highway System: Signal US – 93 – Polson

Duane Kailey presented the Construction Project on State Highway System, Signal US-93 – Polson. This project is in the Missoula District. Wal-Mart is building a new supercenter in the city of Polson, just east of US-93 and north of Memory Lane. This new building is located south of the existing Wal-Mart. The city of Polson has provided Wal-Mart preliminary plat approval for this development.

Due to a projected increase in trip generation and reconfiguration of their access, Wal-Mart has provided MDT a traffic analysis that recommends improvements to the State Highway System. The improvements include a new traffic control signal

installation on US-93 at the intersection of Memory Lane and Ridgewater Drive (RP 58.473), a new turn lane on Memory Lane, and geometric improvements to the existing approach to Memory Lane.

MDT district and headquarters staffs have reviewed and concur with the recommended improvements. Wal-Mart will complete the design of these improvements with input from MDT staff. All improvements will meet MDT design standards. Wal-Mart will provide 100 percent of the project funding including design and will use contract labor for construction.

Summary: Wal-Mart is proposing modifications to the state highway system to accommodate additional traffic generated by a new supercenter planned for construction in Polson. MDT staff recommends the Commission approve Wal-Mart's proposed improvements to the State Highway System pending concurrence of MDT's Chief Engineer.

Commissioner Lambert moved to approve the Construction on State Highway System, Signal US-93 – Polson. Commissioner Skelton seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 9: The Montana Scenic – Historic Byways Advisory Council

Lynn Zanto presented the Montana Scenic - Historic Byways Advisory Council to the Commission. In August 2009, the Transportation Commission appointed the following individuals to the Scenic-Historic Byways Program (SHBP) Advisory Council for a three-year term:

- Ed DesRosier – Mr. DesRosier is owner and operator of Sun Tours in Glacier National Park (20 years). He is an enrolled Blackfeet tribal member and was appointed to serve on the Governor's Tourism Advisory Council for Montana in 2005 and again in 2009.
- Mike Penfold – Mr. Penfold brings experience from the U.S. Forest Service (20 years) and the Bureau of Land Management (16 years). Currently, he is chairman of the Yellowstone River Conservation Forum; president of the Frontier Heritage Alliance; and field program director of Our Montana.
- Homer Staves – Mr. Staves has over 40 years in the tourism industry. Previously he served as a Chamber of Commerce executive in Billings, served for 25 years as an executive officer of Kampgrounds of America, and has been appointed to the National Scenic Byways Committee by the U.S. Department of Transportation.

The purpose of the SHBP Advisory Council is to:

- Assist MDT and the Transportation Commission in designing the program
- Review applications for nominating roads to the SHBP
- Recommend to the Commission roads that should be included in or deleted from the SHBP.

Since their appointment, the SHBP Advisory Council has:

- Reviewed the Scenic-Historic Byways pilot project (MCA 60-2-606) and, based on ARM 18.14.205, determined that only four of the eight routes had potential for designation.

- Reviewed guidelines and Web site material developed by MDT.
- Recommended byway designation to the Transportation Commission for two qualifying applications: Giant Springs Road – Great Falls and Lake Koocanusa (portion of MT-37).

Note: The Transportation Commission approved these two roads as scenic-historic byways in May 2011.

In preparation for the sunset of the SHBP Advisory Council's term in August 2012, MDT solicited and confirmed the Advisory Council's interest in continuing with a second term.

Summary: Current members of the SHBP Advisory Council offer the knowledge and expertise to provide the necessary technical oversight to MDT and the Transportation Commission in continued implementation of Montana's Scenic-Historic Byways Program. Staff recommends the Transportation Commission appoint the current Scenic-Historic Byways Program Advisory Council members for a second term.

Commissioner Lambert moved to approve the Montana Scenic – Historic Byways Advisory Council. Commissioner Griffith seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 10: Speed Zone

East Mullan Frontage Road – Missoula County

Dwane Kailey presented the Speed Zone – East Mullan Frontage Road in Missoula County to the Commission. This is a speed study on East Mullan Frontage Road. It was requested by the Missoula County Commissioners on Secondary 210 southeast milepost 1.7 and beyond. MDT has reviewed the crash history and based on our review we are recommending a 50 mph speed limit. That has been concurred with by the Missoula County Commissioners. A 50 mph speed limit would begin at the intersection with Secondary 210 and continue southeast to the end of the X-route 32211 designation, an approximate distance of 1.7 miles.

Commissioner Griffith moved to approve the Speed Limit Recommendation for East Mullan Frontage Road – Missoula County. Commissioner Lambert seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 11: Speed Zone

Secondary 311 – Hysham

Dwane Kailey presented the speed limit recommendation for Secondary 311 in Hysham. This is a speed study on Secondary 311 in the town of Hysham. It is a request by the Treasure County Commissioners. We have reviewed the travelling speeds and the accident history and we are making the following recommendation:

A 55 mph speed limit beginning at station 100+00, 400' north of Bench Road and continuing north to station 108+00, an approximate distance of 800 feet.

A 45 mph speed limit beginning at station 108+00, 450' south of Seventh Avenue, and continuing north to station 129+00, an approximate distance of 2,100 feet.

A 35 mph speed limit beginning at station 129+00, 100' south of Rapelje Avenue, and continuing north to the four-way stop and then west to station 3+00, an approximate distance of 3,450 feet.

A 45 mph speed limit beginning at station 3+00, 100' west of Pumphouse Road, and continuing west to station 1914+00, an approximate distance of 1,300 feet.

A 55 mph speed limit beginning at station 1914+00, and continuing west to station 1905+00, an approximate distance of 900 feet.

There is a map to help explain that. This is concurred with by the Treasure County Commissioners. Commissioner Griffith said he doesn't see where the Treasure County Commissioners approved it. I see where the Secretary approved it to the Commission. The letter says, "The Treasure County Board of Commissioners have reviewed and have no further comments on the proposed changes." That's hardly a ringing endorsement of the speed change. Dwayne Kailey said there has been some discussion with them and they are in support of the speed study. Commissioner Griffith asked if there were any objections. Dwayne Kailey said no.

Commissioner Lambert moved to approve the Speed Limit Recommendation for Secondary 311 – Hysham. Commissioner Skelton seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 12: Speed Zone U-8211 East Broadway

Dwane Kailey presented the speed limit recommendation for U-8211 East Broadway. This is a speed study on Urban Route 8211 also called East Broadway in Missoula County. It was requested by the Missoula County Commissioners. East Broadway is a 12-foot two-lane roadway with eight-foot shoulders. We have reviewed the travelling speeds as well as the accident history and based on our review we are recommending a 35 mph speed limit beginning at station 90+00 and continuing east approximately 6,500 feet to station 155+00, 1,100 feet east of the intersection with Staple Street, an approximate distance of 6,500 feet.

We have presented this to the Missoula County Commissioners and they have concurred. We have presented this as well as to the East Community Council and they have concurred.

Commissioner Howlett said lighting is an issue as well with as many people walking on that roadway. I'm thankful that we've got this study done. I don't recall if there is a pedestrian pathway there and people walk on the side of the road. That might be something the Missoula District needs to take a real good look at. Thank you for getting this done.

Commissioner Griffith moved to adopt the Speed Limit Recommendation for U-8211 East Broadway. Commissioner Lambert seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 13: Speed Zone US 12 – Roundup East

Dwane Kailey presented the speed limit recommendation for US 12 – Roundup East to the Commission. This speed study on US 12 near Roundup was requested by Roundup City officials. We have reviewed the travelling speeds as well as the accident history. Based on our investigation and input provided by local officials we

recommend re-instating the statutory 25 mph speed limit beginning at station 0+00, the intersection of US 12 and US 87, and continuing east to station 12+50, an approximate distance of 1,250 feet. The remainder of the 35 mph speed zone and the 45 mph and 55 mph speed zones will remain in effect as previously approved by this Commission. We have presented this to the City of Roundup and they concur with our recommendation.

Commissioner Skelton moved to approve the Speed Limit Recommendation for US 12 – Roundup East. Commissioner Griffith seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 14: Speed Zone MT 59 – Miles City South

Dwane Kailey presented the speed limit recommendation for MT 59 – Miles City South to the Commission. This speed limit study was requested by Custer County officials. The department has reviewed the travelling speeds and the accident history and we recommend a 45 mph speed limit beginning at station 74+00 and continuing south to station 114+00 approximately 4,000 feet, 850' south of the intersection with Horizon Parkway. We have presented this to Custer County officials and they provided some recommendations on our earlier recommendation and we revised it to what we're presenting today.

Commissioner Skelton moved to approve the Speed Limit Recommendation for MT 59 – Miles City South. Commissioner Skelton seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 15: Letting Lists

Dwane Kailey presented the Letting Lists to the Commission for the months of July through December 2012. The Letting List is based on our existing obligation authority that we have within the Agency and it will, at this point in time, obligate all the funds that we have identified at this point in time. The sheet I handed out is a list we have developed for the potential of redistribution funds that we may get. Typically every year we get in the neighborhood of \$5-\$10 million. We are asking your approval for the Letting List as well as the redistribution potential.

Commissioner Howlett asked if the redistribution was based on Red Book priorities. Dwane Kailey said it was. The majority of the projects in there are actually 2013 projects and there are some approved for 2014 and 2015 as well.

Commissioner Lambert moved to adopt the Letting Lists. Commissioner Griffith seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 16: Contract Award – Libby West

Dwane Kailey said that at this time he recommended postponing Agenda Item 16 – the contract award for Libby West. I believe it would be appropriate to hear from the individuals who are here first and have scheduled time on the Agenda before we address this item. This is the contract that has the DBE issue on it.

Commissioner Howlett said it would be addressed later in the meeting.

Agenda Item 17: Certificates of Completion April & May, 2012

Dwane Kailey presented the Certificates of Completion for April and May, 2012, for Commission approval. They are presented for your review and approval.

Commissioner Griffith moved to approve the Certificates of Completion for April & May, 2012. Commissioner Lambert seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 18: Project Change Orders April & May, 2012

Dwane Kailey presented the Project Change Orders for April & May, 2012, for Commission approval. These are presented for your review and approval. Commissioner Griffith wanted it noted how efficient the Butte District was in the Change Orders.

Commissioner Lambert moved to approve the Project Change Orders for April & May, 2012. Commissioner Griffith seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 19: Liquidated Damages

Dwane Kailey presented the Liquidated Damages for Commission approval. Commissioners moved to let the Liquidated Damages stand with exception of Plain Feathers Construction.* The Commission heard earlier from Plain Feather Construction and it is noted that the Commission reduced the liquidated damages by six days. Bell Crossing N&S, LS Jensen Construction & Ready Mix received 6 days in liquidated damages for a total of \$20,130. They did not dispute those charges. Left Turn Improvements in the Kalispell Area, Montana Lines Inc. received 2 days in liquidated damages for a total of \$1,704. They did dispute them but chose not to present anything to the Commission. The last contract is Brassey Street – Casino Creek in Lewistown, Century Companies Inc. They received 4 days in liquidated damages for a total value of \$5,892. They did not dispute this. With that we are presenting this to the Commission for your approval.

Project ID	Project Desc	Contractor	Disputed?	LD Days	LD Amount
STPS 451-1(4)26	Jct 457 - South	Plain Feather Construction LLC	Yes	13	\$ 40,446
NH 7-1(102)61 F	Bell Crossing - N & S	LS Jensen Construction & Ready Mix	No	6	\$ 20,130
SFCN-SFCS STWD(083)	Left Turn Improvements Kalispell Area	Montana Lines Inc	Yes	2	\$ 1,704
UPP 7199(21)	Brassey St - Casino Cr – Lwtn	Century Companies Inc	No	4	\$ 5,892

Commissioner Howlett asked that the record reflect the reduction of the number of days of liquidated damaged for Plain Feather Construction as presented below. The Commission will let the rest of the liquidated damages stand. No action will be taken on any of the others.

* Commissioner Griffith moved to approve the reduction of liquidated damages by six days, leaving the total number of seven days. Commissioner Winterburn seconded the Motion. All Commissioners voted aye. The motion passed unanimously

All other Liquidated Damages stand – no action taken.

**Agenda Item 20: Limited Access Control
NH 57-2(23)58; CN 4368 Hobson East**

Dwane Kailey presented the Limited Access Control for NH 57-2(23)58; CN 4368 Hobson East to Commission. Access Control Resolutions are an attempt to manage access and improve the safety and efficiency of our roadways. This project is located on N-57 (MT 200/MT 3/US 87) in Judith Basin County. The project begins at RP 57.748, just west of Hobson, and proceeds easterly for 5.0 miles to RP 62.75, west of Eddies Corner.

Staff recommends that the Transportation Commission designate this corridor as a “Limited Access Control Highway and Facility” by executing the Limited Access Control Resolution.

Commissioner Skelton moved to approve the Limited Access Control NH-57-2(23)58; CN 4368 Hobson East. Commissioner Winterburn seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

**Agenda Item 21: Limited Access Control
NH 57-2(25)63; CN 4368001 Eddies Corner E&W**

Dwane Kailey presented the Limited Access Control for NH 57-2(25)63; CN 4368001 Eddies Corner East & West. This is an effort to maintain the efficiency of the route. This project is located in Judith Basin and Fergus Counties on MT Hwy 200. This highway is a Principal Arterial with 2 lanes on the National Highway System. The project begins at reference post 62.75 and proceeds easterly to reference post 70.00 on new project NH 57 Hwy 200. The proposed project is 7.25 miles in length.

Staff recommends that the Transportation Commission designate this corridor as a “Limited Access Control Highway and Facility” by executing the Limited Access Control Resolution.

Commissioner Skelton moved to approve the Limited Access Control NH-57-2(25)63; CN 4368001 Eddies Corner East & West. Commissioner Griffith seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

**Agenda Item 22: Limited Access Control
NH 8-4(49)96; CN 5813 Jct. S437 N&S**

Dwane Kailey presented the Limited Access Control for NH 8-4(49)96; CN 5813 Jct. S 437 – N & S to Commission. This is an effort to improve the safety of the corridor as well as preserve the efficiency of the route. This roadway is on Route 8 US 287 and begins at R.P. 96.1 and terminates at R.P. 102.2 approximately 6.3 miles long. The staff recommends approval of the Access Control Resolution.

Commissioner Griffith moved to approve the Limited Access Control NH-8-4(49)96; CN 5813 Jct. S437 N&S. Commissioner Winterburn seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Director's Discussion

DBE Informational Update – Patricia McCubbins

Patti McCubbins, Civil Rights Bureau Director for MDT gave an update on the DBE Program. We are anxious to share our program with you and explain why we have the DBE program and what it does. Wendy Stewart and Shannon Hahn of the DBE Program also helped with the presentation.

The Disadvantaged Business Enterprise (DBE) Program is a regulation from Federal Highways. We receive federal dollars to implement this program. The DBE Program is for women and minorities in the State to see that small businesses have a fair chance of competing at the Subcontract level or Prime Contractor level. Generally they are subcontractors. The Commissioners received a folder with additional information about the DBE Program. I'll be honest with you, it is a controversial program. It's viewed differently by a variety of different people. The intent of the program is to help small businesses and give them a leg up not a free hand to just walk in and get a contract.

At the last funding cycle Montana received \$102,000. We turned it right back into the program as training dollars for the DBE participants and any of the supportive services and NCA dues. The regulation requires we do a scope of work every year stating how we're going to deliver the DBE Program in the State of Montana. We submit it to the Feds; they either approve it or submit changes, and give us guidance as to what they would like to see. It then goes to DC and is approved or denied. They kick it back to us after approval and we start the implementation stage. That is where Shannon Hahn takes it and uses it for training dollars and help. With that I will let Wendy Stewart walk you through what happens from the time participants are certified, what that certification looks like, how they are certified and how we provide the supportive services to those individuals.

Wendy Stewart

My name is Wendy Stewart the DBE Program Manager. I handle the certification piece and management of the program. We want to share with you how the process begins when a Company asks for an application from us. The application is very rigorous, 22 pages long. They have to submit three years of financials, three years of personal and company taxes, copies of all the loan documents the company has, all information for LLC including amendments, minutes, copies of their contribution information to start the business, professional resume, a personal net worth statement, bank authorizations for MDT to verify that their banking information is correct. I want to make sure you are aware that the process is very rigorous, very tight, and very regulated.

Commissioner Howlett said this program is for disadvantaged business but just the process is a disadvantage. Wendy Stewart said he would have to talk to FHWA about the process. This is a federal application so all DBE programs in all states have to use the same application which comes from the federal government. Commissioner Howlett asked if there was any way to suggest simplification. Wendy Stewart said they are working on that. All the DBE programs in all the states are always working on different ways to make it a little more streamline and help out the DBE folks a little bit more.

After the application is submitted and all the supporting documents are submitted within 30 days we schedule an on-site visit which is a requirement of the program. I go out and conduct the on-site visit. Again that is about eight pages long and is like an interview. We review things from the application and go through any questions they may have and gather information about their business so that we can establish control of the business which is part of the program. The individual who owns the business has to be at least a 51% owner and controller of the business. It's very important. Along with that every single DBE gets visited every year by our supportive services portion of the program – we want to make sure they are in contact with us all the time and have easy access to any information they might need.

Part of the DBE Program is setting DBE goals for our agency. We set those using DBE availability; DBEs who are ready, willing, and able to conduct work with MDT. This year's goal is a three year goal through September 2013 and is 5.83% for overall. This year we were afforded the opportunity to put a race-conscious piece to that goal into our overall goal which is 3.27%. That allows us, with approval of Federal Highways, to establish project specific goals. We started doing that in June because our overall goal is not being met currently. It has not been met for close to four years. We're getting closer but we're still far enough away, between the regulations we have to follow and the goals we establish, that we had to do the project specific goals.

Project specific goals are set by utilizing a spread sheet that includes the engineer's estimate on pieces of the projects coming up, what kind of availability we have in DBEs, and what DBEs can perform those duties. So it's another rigorous process we use to establish those project specific goals. We have a Committee that does this; it's not just one person. We are very mindful of what we have to offer as far as DBEs are concerned.

Along with that if a Prime Contractor cannot meet the goal, they have an opportunity to do a "good faith effort." Again when we set up the good faith effort process we worked for about three months with a very significant committee that included Dwane Kailey, Kevin Christensen, Lisa Durban, and several people from the agency. We wanted to have good program in place should we need it and the contractors were unable to meet those project specific goals. The good faith effort involves contacting the DBE. We have a DBE forward quest email system available – the Primes just have to email us and we sent it out to all the DBEs for them. That's part of our good faith effort process. They have to submit a contact report, a DBE utilization report, and a summary any efforts they made to contact the DBEs to meet the project specific goal. All of that needs to be submitted with their bid if there is a project specific goal on our project.

The supportive group services piece is the amount we get from the Federal Highway Administration every year. We ask for an amount and they decide if we get the full amount or a portion of it. Last year we received about \$102,000. With that money we pay our consultants, provide training to DBEs, our statement of work includes information that if you want to be a member or associate member of the Montana Contractor's Association we will help pay for that, and we have a travel grant and a training grant for DBEs. So virtually all of that money goes back into the DBE Program to help these firms create a strong foundation so they grow and succeed.

The ultimate goal of the DBE Program is to graduate from the program. That would mean they have sales of \$2.3 million over the course of three years. That's the goal of the program. We don't have a lot of graduating DBE's in Montana because of our size but that is the intent – to make them strong enough to graduate. That's what our hope is with our training and supportive services to teach our DBEs and continue to have them grow and learn more.

Commissioner Lambert said you guys approve these applications if you can find a busy woman who can fill out that much paperwork. Then you approve them and then they go Federal or they stay right there. Patti McCubbins said the criteria for becoming a DBE is outlined very specifically by FHWA. To become a certified DBE, MDT doesn't have any flexibility to certify – it's strictly done by the guidelines that are set by the feds. So we match those applications up, the requirements and the 22-page application is driven by the Federal DOT, they give us those directions and we get those applications and we go through them to make sure it meets all the standards they have set for us. Then Wendy goes out and conducts an on-site visit to make sure everything is in place and gives them counseling or suggestions for improvements they might need to make. After that process is done either they are certifiable or they are not. Once they are a certified they meet with our supportive services person, Shannon Hahn, who works with them to identify what they need. Do they need training in Excel, to run their HR, or their office, do they need help with the bidding process, what is it they need to help them to compete for the highway jobs. There is another piece to that – we do certify, according to regulations, all businesses that apply for the DBE status whether they are highway related or not. We offer training to all of them, however the majority of the folks who take advantage of those training dollars are the federal highways because they want to compete for those highway jobs but under the regulations we do certify everyone.

Commissioner Griffith asked Kevin McLaury what the consequences were for not meeting DBE guidelines. Kevin McLaury said that is a very broad question and it depends. If the department is actively pursuing to try and meet the goal that's been established, 5.83% for this fiscal year, if we are actively engaging, we are doing what we put in our plan to meet that goal, and the contractors are going through the process and they are getting some DBEs but for whatever reason they are not getting the number and they're using the good faith effort process, that shows that the department is working towards meeting that goal then there are really no ramifications. The other piece of this is if the department is not actively pursuing trying to get DBEs engaged and actively working through the Federal Aid Program, there are certain "sanctions" that can be applied. Obviously at this point my staff has been working very closely with Wendy and Patti and it's my view that we are actively working towards trying to meet that goal.

We're in somewhat of a new era; 10 years ago we had the 10% goal. Commissioner Griffith said the federal government made it less onerous for the contractors by reducing the fixed 10% goal down to this moving target goal and now we're not meeting that by getting enough DBEs. Patti McCubbins said while it is a mobile goal, this year Federal Highway approved to give us a "race conscious" goal which is where we can actually choose projects and assign goals to those projects so that we can try and hit the overall goal by actually assigning project specific goals. So that's what we're doing now. The Libby West Project has a project specific goal.

Commissioner Howlett said in looking at the DBE Fact Sheet, I'm just wondering if the outreach or training might be taking place because I don't know very many people who can do flagging and make \$1.5 million. It seems like it's an impossible kind of a situation; you want minorities, women-owned companies, but you've got to get more realistic about what's possible here. So I go to the question of outreach like colleges, some small corporate enterprises within Tribal structures, etc. How do we get the people involved in the system because they can't on their own, they're just not qualified. Patti McCubbins said that is the limit – you cannot go over \$1.32 million. You can have a negative personal net worth, and as long as you don't exceed the \$1.32 million, you can be in the program. You don't have to have anything in your account to become a DBE. Commissioner Howlett said I want to go back to the outreach. Patti McCubbins said we do a lot of outreach – we visit all seven Reservations at least once a year sometimes more. We have been active in the STED Commission; we go to women's conferences, minority conferences all the time. Shannon and I are on the road at least one day a week if not more going to these

different things. We work with the Native American Development Council out of Billings, we work with the SBA, we work with all ten SVBCs, we work with the PTAX, and we work with all the TERO officers. Commissioner Howlett asked why that doesn't produce anything; we are not meeting our goals. Patti McCubbins said I can't answer that.

Kevin McLaury said if we can go back in time a little bit when there was a set 10% goal. That was a hard number. We were allowed to put project specific goals on projects to meet that goal. Contractors were required to do that. A couple of cases came before the Supreme Court that said a set 10% is not really the approach we need to take. So the 9th Circuit said we were required to do a study to show what our true DBE availability was. So we went through this long and expensive process to show how we should be getting our goal. That's how the new goal was set, it's a moving target that depends who is available and who is not. Through that study, it came back that we have the ability to not have specific goals so it was left to the Contractor's hands and it controlled their destiny as to whether or not they were going to utilize DBEs. I'm not a Contractor and I don't claim to know the workings and ins and outs of where we're at, but history will show that when we had the 10% goal we were routinely at 8-9% DBE utilization and once we went off the required DBE utilization we were under or close to about 1%. And now we've gotten back to the point that Federal Highways is saying you're not going to meet your goal and it appears the only way we're going to get to where the goal needs to be is to apply these race-conscious goals or project specific goals. That's kind of the history of where we've come with the program. I think it's a program that does utilize and help disadvantaged business enterprises, women-owned business enterprises to educate them on the process and how it works. It's one that is required by law, you can use federal funds; we need to utilize this process. Personal views vary widely as to whether this program is good or bad. I'm not here to judge whether it is good or bad, I'm just discussing what the needs are for the department and where we're at today.

Commissioner Lambert said even though this is the Department of Transportation, the DBEs may have nothing to do with transportation but does it have to be transportation related businesses. Patti McCubbins said Transportation is given the authority to administer the program, we have to administer it. The way the regulations are written, anyone who qualifies under the criteria that Federal Highways has set can be certified. If they want to open a bakery and be a small baker – do we certify them? Yes using the criteria that's set for us now. Do they participate in the bidding processes and the things relative to Federal Highways? No they don't but they are still certified. There is a nation-wide piece to this – some states certify companies like Safeway, Wal-Mart and other big corporations that have a DBE piece to their business. So we do that certification but we're not involved in how they really work but they are still included in any training that we offer. Wendy Stewart said also other federal agencies that receive federal dollars can and do establish DBE goals. So it might not just be highway related. We have about 160 DBEs and over 100 are highway related. So the majority are highway related.

Commissioner Skelton asked how the "good faith effort" worked. Patti McCubbins said a "good faith effort" is when they try to contact people, try to find people who have DBE certification. We created a brochure and a process regarding "good faith effort". If a private contractor is unable to meet the project specific goal, they would need to meet the "good faith effort". It's very specific – we ask for a contact report, we get a copy of the request for bid for solicitation which we offer to DBEs, the summary of good faith effort documentation and copies of all the DBE and non-DBE folks that the prime contractor received, so that we're able to make that determination when we get all that information. If we don't have all that information we can't make the determination whether or not "good faith effort" has been met or not. A simple phone call or email is not a "good faith effort." Commissioner Skelton asked how long they had for a project. Patti McCubbins said it must be

before the bid is let. They have to have all that paperwork into us within 48 hours of the bid letting.

Commissioner Howlett said one of the principal players is the Contractor's Association. The Executive Director, Cary Hagreberg, is here in the audience and I'd like to know what the Contractor's Association is doing to help facilitate the federal guidelines that we have to operate under.

Cary Hagreberg, Montana Contractor's Association

I wanted to make some comments but I was hoping to wait until after some of the other presentations had been made. We represent the majority of highway contractors in the State of Montana, both general contractors and the majority of subcontractors that perform work on your contracts. As has been stated, the DBE Program has been very controversial and very frustrating for the construction industry, not only in Montana but throughout the United States. It's been challenged and it's been litigated on many different occasions throughout the country and through its history. It was mentioned that there was actually a decision out of the 9th Circuit Court of Appeals a number of years ago that rendered all the state programs within the 9th Circuit essentially neutralized while each state performed what Kevin described as a Disparity Study. If you ever want an interesting little history, ask the department to give you a little lesson on how that Disparity Study unfolded. It cost around \$1 million and what came back was basically useless. The initial draft was junk and was rejected by the Federal Highway Administration as it should have been. It was performed by a Consultant. The results were absolutely laughable. In the after-math a revision was done and was ultimately approved by Federal Highways. That led to where we are today with mandatory project-specific goals being placed on certain projects.

Now to MDT's credit and Ms. McCubbins in particular, we were given a lot of warning as to what was coming. We had monthly meetings with the department which were very productive where we talked about specifications and project specific issues and the department was very forthcoming in telling us they were moving toward implementing project-specific goals. We knew that Libby West was going to be the first project in which these project-specific goals would be applied. We warned the department that this transition could be a rough one and the "good faith effort" criteria in particular was in question.

Just for background let me explain to you where the tension is. Is the department going to award the bid to the lowest responsible bidder or is the department going to award the project to the contractor that meets the DBE goals? Those are not necessarily going to be the same. Commissioner Howlett said let me clarify something we can't award something that is outside a federal requirement. Cary Hagreberg said that is correct. The federal requirement in this case involved "good faith effort". Commissioner Howlett said let's go back to your question. You have to have the "good faith effort" in front of you; it has to be there. It isn't just the lowest bid; that is only a part of what has to be met. Cary Hagreberg said that is very true and I'm not here to get in the middle of this.

Commissioner Howlett said I specifically asked you to tell us what the Contractor's Association is doing as an organization and advocate. I understand the people who do the work, but understand that we've got a framework we have to work within and we don't have a whole lot of flexibility. I think "good faith effort" offers some flexibility but to pretend that it isn't there isn't going to work. Cary Hagreberg said I apologize; I was trying to build my other comments into my answer. As I mentioned we have monthly meetings with the department and it's our responsibility and our goal to educate our member companies on what the rules are and how the game is to be played. We may quibble over the rules but we do that in a different venue. We may dispute the rules of the game but we do have a responsibility to educate our

members on what the rules are and how to adhere to the rules and we work very closely with the department. It was mentioned that they have a program to assist companies to become members of our organization. We have a number of DBE Certified firms that are members of our Association and we have member companies that think the DBE Program is nothing short of reverse discrimination and should be abolished on its face as unconstitutional. So within our umbrella we have a wide range of opinions on this issue. We try to deal with all those things in an appropriate venue. We are making every effort to educate our members on what they are expected to adhere to.

This is what I would call a test case, a pilot project so to speak, the first project out of the chute in six or seven years that has project specific goals. And unfortunately the very first project out of the chute resulted in a controversy and a dispute. It's going to be our responsibility to try and help all these companies understand how to play in this new game that has been created as a result of the Federal Highway Administration approving the Disparity Study and allowing for these goals to be established. I don't know if that answers your question adequately. I think it's reasonable to expect that somewhere in the United States and probably somewhere in the 9th Circuit Court of Appeals jurisdiction, this issue will continue to be litigated. Commissioner Howlett said until there is a different resolution, it is the law. While we may have companies that feel it is reverse discrimination, there are people who don't believe there ought to be speed limits either. We live in a country where we live under a set of laws. People don't always agree but I think your organization does an outstanding job in terms of work and service to Montana. I also think that disadvantaged businesses in Montana need to have a fair shake. This is an opportunity. Granted this is a pilot thing with this particular project but it's not a catastrophic collision course we're on here. We're trying to understand how we get to where we want to go. Nobody thought the journey was going to be paved the whole way through but we've got to get there. So we're going to have this discussion about this particular project.

Director Reardon said back in January Cary invited me down to their winter meeting of the Montana Contractors and this issue came up. One of the questions was whether MDT was going to be setting goals. I think in fairness to the MCA, they've been pretty active as an organization in trying to get ahead of this. We're all floundering a bit as we've instituted this first case project. I think the MCA has been open to the department and has worked with us and vice-versa. As far as the educational opportunity, they've been there and it's on-going. It is unfortunate that the first time out we run into the issue. We're not going to be the only state and this isn't going to be the only project that is going to run into this issue as these goals become more direct and more important. I just wanted to add that I think the MCA management group under Cary has been trying and they are working to get the information. They've been very open to have our folks attend, work with them, participate, and Federal Highways as well. I don't know that the rules changed all that much but it started getting forced. The whistle got blown, a foul was called and there may be some bumps along the way. They've worked pretty hard to try and help us get there.

Chris Connor, Mountain West Holding Contracting asked a question – you said there were in excess of 100 Highway Certified DBEs. There have been two projects bid in the last month – can you tell us how many came forward. You said you've educated MCAs. How many of the 100+ contractors took advantage to bid these two projects - Libby West and Ashland? Patti McCubbins said Ashland had 10 and Libby had anywhere from two to five. Chris Connor asked if she had any idea of why there were so few because the Disparity Study shows these companies want to come and work for the department so why are we only getting 15%. I would think they would be anxious to come take advantage of this. Patti McCubbins said she agreed with him. Part of the problem on the Libby project was because it was so far. That could be a factor. I don't know; that is one of the things we continue to work on and

continue to be in contact with our DBEs asking them what we can do to help them bid these. Because there haven't been goals set in the past, a lot of them quite frankly are now seeking out other work. A lot of our DBEs do local work, city, county, sewer water work because they had to diversify instead of coming through MDT. So they are busy and they are simply not available right now.

Dwane Kailey said according to the Commission Agenda, Schellinger Construction was supposed to be here to present. They have sent us a letter this morning notifying you that they would not be in attendance. I wanted to let you know that Schellinger Construction will not be attending the meeting this morning.

Commissioner Howlett said he wanted to go back to the issue you asked to be postponed and that was the award of this contract that is the subject of this discussion. Are you prepared to proceed? Dwane Kailey said there was another contractor, LHC that was supposed to be in attendance. I believe they are here. Commissioner Howlett said he wanted to hear from them.

Frank Tabrish - LHC

I represent LHC, Inc. I understand your funding is tied to meeting a goal and if you don't meet the goal then you have to provide a documented verifiable good faith effort explanation of what you've been doing. That's what I understand.

Commissioner Howlett said it is more than that. It's to the point that federal government relaxed our need to do that under the Title 9 from 10% fixed the new goal that we're using right now. We put that out there as an industry and said you guys do it but do it so it's not painful to you and then we'll see how it works out. Well here we are. It's not working out because we're not getting DBEs involved in contracts. So now we're back with the Feds saying we have to make a more concerted effort to get to that goal. Frank Tabrish said whether you make it or not at the end of the day we've got to provide a documented verifiable good faith effort explanation. Commissioner Howlett said it's not just the industry in Montana, it's the industry as a whole, and somehow we've got to get to that goal. I realize that right now we're under good faith effort attempt, but I can tell you that if we continue with the assumed goal being up here and us at 1%, something is going to happen. It's Libby West right now but it could be 10% of our funding or 15% of our funding but some penalty that none of us will like. That's the point we're at. This is the start. It's sad that we have to be here now. I'm sorry to interrupt your comments but I want to get the playing right too. Frank Tabrish said he did to.

Frank Tabrish said we bid the project with the understanding that there's a 6% goal and if we fail to achieve that then we have to provide a documented verifiable record that we made the efforts that the Civil Rights requests of us. That said, the contract isn't a mandatory 6% participation at this point. In our mind we made a good faith effort, we believe we did. Did we achieve the goal? No. Very similar to your situation we have a good excuse in the format that you requested of us.

We were notified by MDT. We received a letter from Kevin Christensen stating that it was felt that we didn't make a good faith effort. Attached to that memo was the memo from Wendy Stewart outlining steps that we possibly could take to achieve a good faith effort. We submit that we played by the rules as they currently exist. Maybe the game needs to be changed and the discussion today is good. Under the current rule book is our bid submission consistent with the rules of the game?

Commissioner Howlett said we just had this discussion. This goes back to the Director's comments; this is an on-going contract. They were made aware of it. We didn't change the rules. Your suggestion is leading one to think that you weren't aware of it and I don't buy that. Frank Tabrish said absolutely not; we were very aware of the rules. There is a publication available from Civil Rights. Commissioner

Howlett asked how he could maintain the comments you just made that maybe we need to change the rules.

Frank Tabrish said bear with me for a little bit. One of the objections to our submission was that price can't be the only guideline, use a reasonable yardstick to determine whether or not you're going to use a DBE or a non-DBE contractor on bid day. Reasonable is a pretty broad ocean – the only guidance that we could come up with in the DBE utilization form was a checkbox for whether the DBE quote in question was more than 10%. We went with that notion because we have to put some sideboards on “reasonable.” There is also a discussion in Ms. Stewart's memo asking if we followed up or negotiated with some of the DBEs that submitted quotes. We made a conscious decision on bid day – we had a bid and it was conditioned that we needed to contact them if we were going to somehow break up their quote. Additionally there's a lump sum utilization item. So do I call the DBE up and negotiate with them prior to bid day? That didn't smell right or feel right. The quote wasn't conditioned that way as Wendy suggests. Commissioner Howlett asked how he would know how much to bid if you never contacted them. Frank Tabrish said we received quotes. Ms. Stewart suggests that we negotiate with them – we received their quotes. I received quotes from nine DBE contractors. The onus is all of a sudden on me to negotiate with the DBE? Everybody is well aware of the train wrecks that have happened in the past. We received a fair quote and we applied it as they conditioned it – but non-responsive, I didn't make a good faith effort because I didn't negotiate? I guess that was our issue with the process.

Commissioner Howlett asked Dwane if we had a record of the letter that was sent out from Kevin regarding this, something the Commission could look at. Patti McCubbins said it was in their packet. Frank Tabrish said basically a memo to Kevin Christensen came from Wendy Stewart on 6/29. Mr. Christensen sent us a letter on June 28th summarizing what was brought up in the memo. Commissioner Howlett asked who the low bidder was. Dwane Kailey said the low bidder was actually Schellinger Construction. They submitted the lowest priced bid. LHC was second based solely on price.

Frank Tabrish said the first thing mentioned in Kevin's letter was that we didn't meet the mandatory 6% goal. It's a goal; it's not a mandatory percentage as I understand the process. In her memo Wendy points out that the contractor has an obligation to get reasonable quotes to fulfill a good faith effort to secure a DBE solicitation. In this situation, given no other guidelines, we applied 10% cost differential. The only hint of a good faith requirement is the DBE Contract Form C2 that we describe our contact with DBEs we were trying to solicit. In the Good Faith Effort Guidelines it is strongly suggested that a first credible step is to utilize the DBE quote system and the solicitation for quotes is distributed to everyone within the DBE System by the end of the business day. In addition we had to document any additional efforts we made to secure DBE quotes. The memo suggests that we weren't specific enough and it goes on to hint towards can we solicit quotes by bid item. That's not realistic given the system. We need clear information. We asked for quotes and received three.

We touched a little bit earlier and suggested that we were in compliance because there was no follow-up or negotiation following the receipt of the two DBE quotes we received. We didn't want to touch that one with a ten-foot pole. We take quotes and we can't negotiate that. Commissioner Howlett said he wanted to get to the point. Highway Specialties, who is a DBE contractor bid however you chose not to use Highway Specialties, you used Mountain West Holding plus Summit High Mark. Frank Tabrish said Highway Specialties quote is in front of you. Their quote specifically said you can't break up their quote without prior permission. In addition part of their quote is a lump sum mobilization item that would have to be redistributed in some uncertain way to the spreadsheet you have. We chose not to

ask, negotiate, to break it up and redistribute it for fear we'd get a revised pricing on the items that we weren't looking at.

Commissioner Skelton said knowing that you might not get the project if you didn't get this ... (inaudible) ... can I ask what percentage of the DBE did you submit? Frank Tabrish said 0%. Commissioner Skelton said knowing that you weren't going to get the project if you didn't have 6% in place? Frank Tabrish said no; knowing that we made a good faith effort to get DBE quotes. Our intention was to get 6%, and if we didn't get DBE quotes that were within 10% of non-DBE quotes and we demonstrated a good faith effort, then according to the rule book as it exists, we played the game and we did everything right. Commissioner Howlett said I think you gambled on not wanting to get it broken down because it might have come in higher. I think that gamble cost you. Frank Tabrish said he disagreed. There is also language about bid rigging, collusion, etc. Commissioner Howlett asked what he was suggesting. Frank Tabrish said I'm suggesting that I didn't want to negotiate with a subcontractor after he submitted the quote until its public record after bid day. I don't want to call Highway Specialties and say half your quote is guardrail, rumbling strips, and traffic control; I like the guardrail and rumble strips, what amount of mobilization goes with that part and we'll break up your bid. Commissioner Howlett said you're missing Kevin's point here. I think your choice was do I use the DBE full bid amount or do I break it up and try and get a lower amount so it makes me more competitive which then puts you at risk because you didn't meet the DBE criteria. I think that's the gamble that's Kevin is getting at now. Frank Tabrish said sure. Highway Specialties quote itself specifically says this is all or nothing and if you chose to break it up then Commissioner Howlett says therein lays the gamble. You either get a DBE or don't get a DBE and when you chose that direction then you gambled on whether you'll get awarded the contract because you didn't do as good a good faith effort as possibly another contractor did. This contract was let with specifically this target. I think we're done with this discussion; we're going to move on.

Question to Wendy Stewart: What was the total DBE availability for this contract? What was the percentage this contract had available? It seems we're focusing in on a very specific area, but if you utilize all DBEs for this contract, what was that number? Wendy said it was a little over 9% availability. We decided that since this was our first contract and because we've had some issues with traffic control and mobilization, we backed that down a little bit. We felt like putting it back to 6% was fair because we had over 9% availability. Frank Tabrish asked if that was the total available from what you saw. Wendy said from the Engineer's estimate and the work our DBEs are capable of performing, yes. Frank Tabrish said you brought that down to 6% through some realization of it being new and so there was some thought put in to where we ended up on the number. Certainly contractors didn't get any DBEs or through the process felt they used a good faith effort. Commissioner Howlett asked if it was advertised. Wendy said that was part of the advertisement and contractor's knew the goal going in. Frank Tabrish said it was also advertised with the goal and if you failed to meet the goal that you make a good faith effort under the rules that were given. Commissioner Howlett said that was the gamble you took.

Agenda Item 16: Contract Award – Libby West

Dwane Kailey presented the agenda item postponed earlier, the contract award for Libby West. Knife River is on the agenda at 12:30, they are the vendor we are recommending for the Libby West project. In the meantime I'd offer up to go ahead and read the bid and offer the Commission to adopt our recommendation. Commissioner Howlett asked the Commission if they were willing to amend the time. All Commissioners agreed.

The Engineer's Estimate on Libby West is \$3,125,279.12. The low bidder was Schellinger Construction at \$3,049,648.35. The second low bidder was LHC at \$3,124,256.55. The third low bidder was Knife River at \$3,341,341.33. Schellinger bid 3% DBE participation, LHC bid 0% DBE participation, and Knife River met the 6% goal as included in the package.

The bid process offers an appeals process for any contractor challenging the determination. Both Schellinger Construction and LHC chose to appeal the determination by the department. They did go through the appeals process. The Chair of the Committee has written both of them a letter. One of the issues with LHC was the Committee did not feel they made a good faith effort based on the fact they did not make significant additional efforts to obtain DBE participation. One of the determining factors was that one of the two contractors, Schellinger, was lower in price with 3% participation while LHC demonstrated a 0% participation. The major issue with Schellinger was the fact they did not use our bid quote system and they did not supply good documentation of requesting quotes from DBEs or the program. With that the department recommends award to Knife River, the third lowest bidder at \$3,341,341.33. Commissioner Howlett recommended saying they were the "responsive bidder" rather than the "low bidder" because they responded to all the criteria set out in the bid. Dwane agreed to that change.

Commissioner Griffith moved to approve the Contract Award for Libby West to Knife River the lowest responsive bidder. Commissioner Lambert seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Northern Cheyenne Tribe

Commissioner Howlett said the Commission was appointed by the Governor and represents five different districts in the State. My District is the Missoula District which has 13 counties in the western part of the State. Commissioner Skelton is the represents the Billings district. Once a year we try and visit a district, this year it was Billings. We try to meet with county governments, city governments, and tribal governments just to listen to their concerns, and/or issues they would like to see addressed. This session this afternoon is basically a listening session for us to listen to your concerns, projects you might want to see, things you might not understand. We'll bring your comments and concerns back to staff and ask for some follow up in case there are actions or other things that need to happen. We welcome you. We're glad you were able to join us this afternoon. President Spang of the Northern Cheyenne Tribe led the discussion for the Northern Cheyenne. He asked each of the attending Tribal members to introduce themselves.

Introductions: Leroy Spang, President, Joe Fox, Vice President, Donna Fisher, representing the Ashland District on the Tribal Council, Marlene Redneck, Council Member for Lamedeer, Jennie LaFranier, Council Member from the Lamedeer District, Janis Spear, Transportation Planner, George Skalky, Council Member representing the Muddy District.

Joe Fox addressed the Commission. On behalf of the Northern Cheyenne Tribe we are here to address some issues on Route 7 which is also Secondary 407 in the Ashland area. A Resolution has been prepared. Janis Spear will go over a little bit of the history and how this came about.

Janis Spear addressed the Commission. A long time ago we decided to do some research from the BIA about State Secondary 407. I tried to get as much documentation on it as I could because the Tribe had started talking to them about giving Rosebud County a 30-day notice to rescind the MOU they had with the Tribe. That agreement stated that Rosebud County would do maintenance on BIA Route 11

and the Tribe would do maintenance on Lamedeer's Tom Street. It had been that way since the early 80's. I checked to see if it was still on the inventory of the Federal Highways List and it is and is still listed as BIA Route 11. So I talked to Shane about it and have been keeping him updated on it. We talked about options on how we were going to handle it and he thought we could write a letter to the state asking for the route back because during the duration of the Agreement somehow that Route became a State Secondary Road. The Tribe didn't know that. So I looked for documentation and so did Shane, we did a lot of research to see when and how it became a State Secondary Route and we couldn't find much. So the Tribe on June 4, 2012, gave notice to Rosebud County terminating the MOA dated March 1, 1983, regarding the BIA Route 11. We pretty much rescinded the whole MOA. I sent letters to Shane also. It's our concern that winter is going to be coming up so we need to know what's going to happen ... (inaudible) ...

Commissioner Howlett asked them to explain why they wanted to rescind that action. Janis Spear said regarding the Highway Bill, the Tribes have been very, very active in getting the Highway Bill passed in a certain form thinking that the Tribes would benefit. We've been really adamant about not adding county roads and the Tribe decided that that road should be turned back as part of our inventory. I was surprised this morning to find out that it's always been on the Tribe's inventory ... (inaudible) ...

Commissioner Howlett asked Kevin McLaury to explain what this was about. Kevin McLaury said as you mentioned, the new bill has or will revise the formula for our program and it will benefit the larger land based Tribes. In the past Tribes were using the program and putting roads on that other funding available to them including Interstates. Some Tribes viewed it as disproportionate funding for some versus others. I don't want to get into the weeds but there was a question 10, that maybe you've heard about. When Congress passed MAP 21 it pretty much took question 10 off the table because they have a set formula now that uses specific elements as to how Tribes will be funded and it's going to be phased in over a four-year period. The first year it is 80%-old, 20%-new. Then it takes four years for the new "formula" to come into play.

As part of the IR Program, it's no longer the Indian Reservations Roads Program; it's now the Tribal Transportation Program so the whole term has changed to the Tribal Transportation Program. Essentially it provides Tribes with funding to do transportation programs. Currently there are two ways you can approach this: 1) through the traditional BIA approach and there are Tribes in Montana that use BIA to help administer their program; and 2) the Federal Highway approach where a person in my office, Greg Genzlinger our Tribal Representative for Montana, North Dakota and South Dakota, oversees projects for Tribes who have come to Federal Highways so there is a direct relationship between Federal Highway and those Tribes. Essentially the dollars are available to the Tribes for eligible transportation projects similar to the TIPS program for local governments. A good analogy would be the Tribes would be somewhat considered but not identical to an MPO or a city as to how they get funding, their planning, and execution of contracts. There is more guidance coming out as this new program is being implemented come October 1. In the past there was some adding of lane miles that some Tribes benefited from; large land-based Tribes didn't have that opportunity.

Commissioner Howlett asked if the road was completely on the Reservation. Janis Spear said the majority of it is on the Reservation. Commissioner Howlett asked if the State does maintenance on that now. Stefan Streeter said it was in the Glendive District and I'm unaware of what we do with that. Commissioner Skelton said we do maintenance on it now.

Dwane Kailey said part of the history that has been missed here is that MDT and ultimately the Highway Commission was approached by the County and asked to

adopt this road or add it to our Secondary Roadway System. That was back in the late 70's or early 80's that we were asked to do that. The Commission at that time did adopt it and put it on the Secondary Roadway System. We've done a fair amount of research on this roadway and we have no ownership of it – in no way is MDT's name on it or even the County's name. We believe it is all in the BIA and the Tribe's name.

Dwane asked Kevin about the IRR or the new TTP. Is there any prohibition or regulations regarding dual funding sources? It's interesting that you compared it to an MPO. In an MPO situation you can have dual funding sources on a roadway. Is there any restriction? If it stays on the Secondary Roadway System that means it's eligible for the funds from the TTP program as well as Secondary Roadway funding. With this new program is that limited? Kevin McLaury said he was not sure. I would hesitate to venture a guess at this point. Janis Spear said it sounds like some Tribes have entered into agreements with states, counties, and townships. It sounds like there are some partnerships. It's not against any policies to do that as long as there is an agreement. Commissioner Howlett said one of his concerns was the BIA. I don't want to see you guys get put into a position where you don't have the dollars to do the maintenance that needs to be done as the Reservation grows. I understand what they were doing in Oklahoma with Interstates and State Highways and everything else and that is what this bill addressed. The important thing is that the road is maintained and it's made as safe as it can for everybody who uses it. Janis Spear said when I first got notified that the Tribe would be responsible, I started looking into the cost to maintain it in the summer and the costs in the winter. I have that information ... (inaudible) ...

Commissioner Howlett said you've already given your 30-day notice, so the question is what designation does this road have after the 30-day notice? Director Reardon said if it comes off the Secondary System and the Commission has the authority to put roads on and you can take them off. If you put a road on you do it in concert with county government. There is no process for removing a road. I don't know the consequences other than, under state law, we have a secondary road funding category and it wouldn't be eligible for that anymore because it wouldn't be on the system. That would be the part you have to work through and I don't know what the consequence would be. Commissioner Howlett said the question then becomes would we pay the county for maintenance. Director Reardon said I don't think we can. Dwane Kailey said when we adopted the highway we pay for maintenance through our state funds. We snow plow, provide pavement preservation activities, and all that is done under the Secondary Roadway Program and/or state funding program.

Commissioner Skelton asked if the county was given a 30-day notice. The county has never maintained the road. Dwane Kailey said he didn't know about the county's 30-day notice, but there was notice to the Transportation Commission. What the county did on their end I don't know. Commissioner Howlett said, as a Commission, we would want to gather as much information and historical data as we can on this road and get some actual costs and then we'll be in a much better position to give consideration to this. We obviously can't take any action today because this is just a discussion today. At least for that portion of the road that is within the Reservation, it was probably constructed with BIA money. Janis Spear said yes in 1989. Commissioner Howlett said this is an interesting dilemma that we're looking at here. Whether or not there is a possibility of an agreement with the State and with the Tribe, I can certainly understand and appreciate the Tribe wanting to exercise its authority on its property and I fully support that. But again I want to make sure that my concern about safety issues and the quality of the road and maintenance on that road is protected for everybody who uses it. At this point I would like to ask staff to compile that kind of data and present it to us at a future meeting and I certainly invite the Cheyenne guests to come back.

Janis Spear said the bottom line is we want the road back ... (inaudible) I understand you're saying that doesn't take much to get that done. Director Reardon said no the Commission can remove the road from the Secondary System. If I understand the Chairman's concern is the maintenance and if the Tribe or the BIA would have the funds to do that. Commissioner Howlett said what I don't want to do is not provide funding if there's a way that we should be providing funds from the state. If we take it off the Secondary System that is one funding source that would not be there in the future. We certainly want to accommodate your wishes. The department doesn't object to this at all but I want to make sure that everybody understands the consequence of that financially for future maintenance, future reconstruction so everybody is fully informed. Commissioner Howlett said let me present an example of a project that with the best intentions, the county wanted to take over maintenance of Mill Creek Road that goes from Anaconda to Wise River about 30 years ago. Not an ounce of maintenance was performed. Snow plowing is one form of maintenance but keeping the road up to a state level road is the other form of maintenance and the county literally spends 75% of its road budget on what I classify as the worst road in Montana and it's still the worst road in Montana after spending 75% of their road budget on it. So I'm hopeful that we'll somehow reverse that action and have the state take it back.

Janis Spear said I understand completely but we have met with the Bureau and it is on our IRR. That was one of the reasons we did the research of the history ... (inaudible) Commissioner Howlett said what we'll do is have the profile of the old road and the history brought back to the Commission with a recommendation and when we schedule it we'll certainly invite you to the discussion. We'll ask staff for a recommendation. Janis Spear asked about the timeframe. Dwane Kailey said we've got most of the history now. Commissioner Howlett asked if it could be considered at the next Commission meeting. Dwane Kailey said that would be reasonable. Commissioner Lambert said that would be September 27, 2012 and that meeting will be in Helena. Commissioner Howlett said they would tentatively look at September 27th to address this.

Janis Spear said you mentioned safety concerns. We have a project right now to put in a turn lane. BIA has applied to the State. The Tribe has released a ... (inaudible) ... We've met with Stefan ... (inaudible) ... In Busby we're trying to figure out some way to put in a pedestrian path ... (inaudible) ... as you come across the bridge. The turnoff down into the Busby village ... (inaudible) ... Commissioner Howlett asked if it was on a state highway. Stefan Streeter said he recently received a letter from the President listing a lot of the concerns we've discussed for quite a few years, the good part is we're in the process of addressing 100% of them. With respect to Busby, we have lighting, we have lowered and extended the speed limits, we've increased the size of the signs, and we're looking at some advanced flashing. We've talked about Muddy Creek, and we put a center curb line in a year ago. The other intersection is a turn lane project that's in design now and hopefully we can deliver it in 2014. Hopefully in 2014 there will be turn lanes for both Muddy Cluster and Muddy Creek. The other concern is the hills coming in about milepost 33-34. Unfortunately that is a major construction issue. The hills as they sit today meet all of the site distance requirements. So to go in and put them under major construction is not programed at this time. We did provide the lighting. Janis Spear said we just finished the lighting. The Traffic Engineers have gone out and looked and said speed enforcement is the answer. We have big signs and done everything that should make it safe, but we can't drive for people and they think more focused law enforcement would help. Lynch Coulee is another concern. We looked at that and our Traffic Engineer has been working with several Tribal groups to get that done. The last word we have is the BIA is going to build a better approach. We are working with them on the schematic. They are going to take the lead on realigning Lynch Coulee Road.

Janis Spear said we have a casino on Hwy 212 and it's very dangerous. There isn't a two lane and we've brought that up before. The speed limit needs to be reduced and put in flashing lights. The bottom line is we need a two lane highway, one to turn into the casino area and the other to pull through because it's a very dangerous area. There are accidents just waiting to happen and accidents that have happened. I'm talking about a turn lane. Has there been any thought about that? Commissioner Lambert said they discussed that at the last Commission meeting and we approved that. It's going to be addressed and I believe a speed limit change.

Commissioner Howlett said the purpose of this meeting is to hear your concerns and we want you to hold our feet to the fire too. Leroy Spang said there is another issue over there that is pretty serious. I guess it's the Ashland maintenance crew; they're slow in getting over to the Lamedeer side of the Ashland Divide. West of Lamedeer there is a three-lane road and when they do get over there they just plow the outside lanes and leave a big bunch of snow in the middle. They don't come over and try to plow it off until it's all packed and you can't hardly move it. I've live out in the country in Big Horn County since 1975 and a lot of people who live there who use that road will tell you right at the county line, you go back toward Busby it's plowed and sanded, you go towards Lamedeer sometimes the plow isn't even there. For whatever reason they are pretty darn slow getting over there. Commissioner Howlett said I won't speculate on the reasons but I can tell you that plows should not be stopping at the county line. So we need to figure out how to have some continuation there. Leroy Spang said one suggestion is to have the Busby crew go over the Ashland divide and turn around. Commissioner Howlett said that is a question that needs to be directed to the Director and ask him to look at maintenance and how they might have something that is continuous so we can be assured as a Commission that the road is being taken care of. We will do that. Director Reardon said he would get ahold of Shane and see what's going on.

President Spang said he had previously asked for a road safety audit. Since receiving your letter I did get ahold of Director Cloud and they are in the process of doing a road safety audit – looking at the safety features and what is needed through the Northern Cheyenne. I also asked them to look at 212 from where the Interstate comes off to the Reservation border. So they're going to have two different audits and do the entire length of 212 through the area. That should be in the works shortly.

Marlene Redneck said for years I've lived a block south of Lamedeer Elementary School. My concern has always been the maintenance of that road. I don't ever see it plowed except when BIA has the time. In the spring time and summer time we don't get anything. We have a lot of youngsters that go there. Last fall they left a big hole and people would run in there. I finally got ahold in Rosebud County to see if they could come and fix it and they did. It seems like it is the most neglected area. I don't know what it would take to do that little strip at least once a week. It is called West Boundary Street, right in front of the elementary school. The school maintains the school property but the road belongs to the county. Our roads are maintained by BIA and those roads are all plowed up but once you get down to the main road it isn't plowed and we get stuck there. I don't know what to do about it. You guys should try to do something about it and if you can't let us know. We have to do something. Only half if it is paved, the rest is still gravel. Maybe you need to give the money to the Tribe for the school and have them maintain it. Why it isn't being maintained is because it's such a small area but there is a lot of traffic there and a lot of kids down there and a lot of parents drive there. Commissioner Howlett asked if it is on the card. Marlene said no. Director Reardon said they can bring it to the attention of the county. We have some issues about county maintenance on the Reservations elsewhere also not just this particular incident. We can contact the county. Shane has a good relationship with them and maybe we can urge them to plow that quarter mile, it wouldn't take any time at all. Commissioner Howlett said the Commission and the department would explore what can be done about it.

Marlene Redneck said it would be nice to get something done before it gets cold again. There is a four-way stop there and I'm afraid that one of these days some car is going to come sliding by and drive right into that heavy traffic in the morning or afternoon when kids are walking.

Another concern I have is 212. As you're aware last year we had huge flooding in our area and lot of the roads were damaged and part of the road caved in. It is our understanding that the road was not built to withstand a flood. What part could we have if there are plans to rebuild that road? There are a lot of natural springs coming down the road where it caved in and we were told the Engineers have recommended building a solid area so it would not cave in when we get flooding. Now it will cost the state a lot more to come and do that. There are still a lot of areas around 212 where there are a lot of natural springs and the potential for flooding is there. I'm really concerned about that. We have a lot of trucks that go through there. When that was closed we were really happy because we didn't have all the truck traffic. There are a lot of trucks going through there. If there was a way where we could be notified or if you could take a look at redoing that area so that potential is eliminated.

Unidentified: My question is very urgent. We had a land authority meeting yesterday and were concerned about the horses that are on the road. There have been a couple of accidents since the fire. There are fences down. We took action to fix the fence, and I need to know if this is their property or ours and who would be responsible for paying. This is on Route 11. Dwane Kailey said MDT is planning, according to our standards and our agreements with the landowner, to address the fencing. All except for the Interstate system is typically built by MDT during a road construction project and is then turned over to the landowner for them to own and maintain. However given the catastrophic nature of what's happened out there relative to the fencing and other issues, MDT is proposing to do one segment. We just awarded Ashland East and there is fencing that will be replaced there. We've amended the contract and the fencing must be done by October 13th. There is another segment of roadway that is being designed but not proposed to be reconstructed for another couple of years. We've worked with FHWA and we've proposed to initiate a project this fall to replace the fencing using state funds. The project is called East of Ashland East. The fencing will be replaced with that project. There is also already a pavement preservation contract. A third segment (all east of Ashland) where there was no fencing in the Contract, we're working with FHWA to do a change order on that contract and get a subcontractor to replace the fencing on that Federal Aid Project. We were notified the other day that we also have fencing down west of Ashland and we're working on that. Shane reached out to Janis and we're working with the Tribe right now to initiate another state project to go in and replace that segment of fencing on 212 as well. I believe we've also submitted a FEMA request for that as well. If you secure that, we'd appreciate any reimbursement but our project is not contingent on that in any way shape or form. We are going to move forward and it is totally planned to have all these projects implemented and one this fall. If anything changes, I'm sure Shane will reach out and let you know.

Vice President Fox said all the issues on the agenda today concern the safety and well-being of our nation. The issue on 212 and the other road are two big routes and the pending and future endeavors ... (inaudible) ... with the heavy truck traffic that goes through there. I think the Tribe is working with the state, county and BIA on agreements. I appreciate you taking the time and giving us time to address these issues. On behalf of the Tribal Council, my colleagues and our planning department, we thank you. We hope to dialogue in the future and continue working with the state and county to address our concerns. Commissioner Howlett said on behalf of the Commission, this particular visit down here has been good. It is always good to continue to dialogue. The issues you raised today we're already on top of. You've raised a few more and we'll have a presentation and recommendation on September 27th on your request on Route 11. Thank you.

DIRECTOR'S COMMENTS

New Legislation. Director Reardon said he testified before the Revenue Transportation Committee last week at the Legislature. I gave them the single piece of legislation that MDT will be pushing this year and the Committee agreed to request a bill draft. It is to add Construction Manager General Contractor (CMGC) as an additional contracting process for Montana. It would be like Design-Build as far as falling under the Commissioner's award authority. I was encouraged by the Committee's response and their willingness to not necessarily make it their bill but they were willing to have the bill drafted. That saves the department from finding a sponsor. That was a good thing.

Contractor Payments. I can also tell you that in the last fiscal year the department had \$362 million worth of contractor payments for the year which would be the highest yearly total ever. That's a pretty big deal for our guys; they've worked really hard both in Helena and out in the field and have done just a tremendous amount of work. I want to make sure that gets acknowledged because it really is a tremendous effort when you see how long it takes to get projects from nomination to on-the-road and finished. There are many people involved in it whether it is consultants or in-house design, the people who are doing the financial end of things, working with Federal Highways, etc. In those five to seven years that go by to get those projects done there are an awful lot of people who have their hands on it. But at the end of the day it is really a great accomplishment for those folks.

New Highway Bill. MAP 21 is the buzz word of the day. Dwayne and I and Lynn along with Kevin McLaurry were all at the recent Western Association of Highways Transportation Officials Meeting in Colorado Springs. MAP 21 was the hot topic of the day. I think everybody is pleased primarily with the fact that we have 27 months to get more built and we actually have some stability in the program now instead of looking at a 90-day or 120-day extension. It's a stop-gap at best. We're still looking at how the Highway Trust Fund is going to continue to be funded with gas tax that is not going to back-fill the current level of funding that states have enjoyed for the last 24-25 years. That's a huge challenge for Congress and it's going to be a huge challenge for states. The good news, MAP 21 did come out and the bill is about 600+ pages. We are going through it with as much detail as we can. There are a lot of changes in the bill. I think it's fair to say there's about as much unknown about MAP 21 and how it is implemented and how it's going to work as the changes we do know about. We do know a lot of the previous programs that were set-asides, like CTEP, Recreational Trails, Safe Routes to Schools and a number of other similar type programs have essentially been lumped into a Transportation Alternatives category. There is going to be some flexibility and responsibility that falls on states as to how they choose to distribute that money to those programs. Right now MDT is doing a lot of internal work. We have several committees in house that are going to take different portions of the bill and different portions of some of those set-aside programs and look at past operations, past budgets, what the money is right now and how best to go about coming back with a distribution recommendation to the Commission. Most of these changes occur on October 1st, so there's not a whole lot of time to get this done. Also Federal Highways has some responsibility to get some new rules and guidance out to everybody else. As it turns out the Administrator, Victor Mendez, was at the ASHTO Conference and was asked very pointedly about some of the rule making that FHWA is going to have to do and he conceded that you have a 27-month bill that could take 18 months to get some rules done. So the back gap has to be filled; we can't wait 18 months to get all these things working. So our ability to work back and forth with Federal Highways on a regular basis is going to be critically important.

I think the over-arching theme of MAP 21, having read every comment that has come through from ASHTO and lots of different state's opinions, is that Congress

made a concerted effort to point the funding at user benefits. In other words those who are paying asphalt gas tax for road improvements. The unspoken but clear message was that Congress is looking forward to seeing more asphalt type work. There were a lot of arguments about enhancements and where that money goes that is not paid for by users like bike pedestrians. Regardless about one's philosophy about that, I think that was one of the reasons Congress opted to say we aren't going to get rid of those programs. They got rid of a few; they took 60-70 programs and consolidated them to five. They are going to give a great deal of responsibility and flexibility to states to administer that. So there's a lot of challenge and a lot of opportunity that states will have. The challenges will be significant. I can tell you I've already received comments, questions, and emails from different groups who are concerned that their historic funding is in jeopardy and it could be. CTEP has been a program in Montana for example that has worked extremely well and very beneficial. In other areas in the CTEP program there are some communities that have such a small allocation that in order for them to do something constructive with a little bit of money, it is awfully hard to get that done. But those communities that have used CTEP and enjoyed it and made it a relied upon program, they are very concerned. Recreational Trails is another group that is a little bit nervous about what is out there. Interesting comments about Recreational Trails is there is a provision in the bill that says you have to use your 2009 apportionment unless your Governor opts out. So they kind of passed that ball off to the Governor. Again there is a lot of stuff being filtered out of the bill right now.

The good news is Montana got \$380 million for the Highway Program. That's really outstanding. There's a slight increase in the Transit Program which is very beneficial to Montana. I don't know how Kevin feels about it but a week before this bill past, nobody would have bet you a lunch that they were going to get a bill done. How it happened and why it happened I don't know but I think there was some fairly significant arm twisting that took place in the wee hours in Congress to the leadership in both the House and the Senate to get it done. I guess at the end of the day, when you look at the votes, it was 74 in the Senate and over 300 in the House. When a week earlier in the House you couldn't have gotten 200 votes. It was a positive sign and Montana came out well. Our intent is to reach out to our stakeholders in the communities and seek comments from them as to their thoughts on it and eventually we'll be back here with a funding distribution recommendation. It will probably in a public forum where people can come in and argue their case. All-in-all having 27 months to work with is a good thing. I don't know how Kevin feels about it but the fact that we got 27 months is a positive thing. I think Congress realizes that they can't fool around with this too many more times and I think we're going to see a little more concerted and less politically motivated effort to get this done.

Kevin McLaury - FHWA

To answer your question Director Reardon, it's a happy day. With the passage of MAP 21 we're viewing the bill as a transformational piece of legislation. It's not business as usual. This new legislation truly is a new way of doing business. Although the guts of the bills were very similar, the major difference was the length of the dollars and they finally came to agreement on 27 months. Essentially the same funding levels as we had in 2009 with some minor inflationary increases. The dollars are fairly stable. We saw that as a huge win; that was a very positive outcome for this. I see this bill has four main areas as this transformational legislation allows - transparency. We continue heavily in the transparency area and the legislation actually dictates some of the performance measures. Additional guidance needs to come out and it may take 18 months to do a 27-month bill but I don't see us going backwards. This is a sea change in how we're moving forward.

The second element is the consolidation and we had many. Depending on how finely you want to slice the federal dollars, we have over a 100 different programs where you could deal out the federal aid program. Those have been consolidated into five

funding categories. Those programs that previously had money set aside, Recreational Trails, Transportation Enhancement, etc., they had off-the-top monies set aside for them but those are not there anymore. So you may have people coming to you asking for funding and it's going to happen because right now those programs still remain "eligible" for federal funding but there is nothing that says you have to fund these programs. I think it's safe to say that the past funding for some of these smaller programs is gone. The needs are so great and the resources are so few, that we need to be very judicious in how we use those funds.

That leads to the next point and that's flexibility. State DOTs asked for and received the ability to be flexible in how they utilize their funds which goes back to the consolidation of those programs. So rather than having earmarked programs or set-aside programs or dollars taken off the top, the states now and the Commission now has the ability to direct where funds are going, whereas in the past you didn't have the flexibility.

Then lastly it gives us stable funding. Even though it is a 27-month program, it's 27 months. It's a lot better than the last ten extensions we had that went anywhere from a couple of days to six months. It allows us to look out and see where the needs are and with the T3 process you've gone through, it helps us put the dollars where the needs are. I commend all of you for that process and following that process through because it ties into that whole transparency piece and the performance measures. Until final rules come out it is yet to be seen what those particular measures will be. Knowing the state and knowing where we're currently at, I'm not predicting a real big rift in that area. I think we're pretty well along the way already in providing that transparency.

Commissioner Lambert asked about the funds the Governor can opt out of. Would that be a use it or lose it type of thing? Director Reardon said the only one I'm aware of is the Recreational Trails fund which is \$1 million. The Governor can opt out of that earmark; it is a set-aside for a specific program. Today was the first time I heard of it. It is in one of the sections of the bill. If the Governor opts out, does that \$1 million go back into the full transportation alternative or does that money go away? I don't know the answer to that. I am hearing about it from the Recreational Trails people, they are very concerned. I anticipate as more groups become aware of the change that came with MAP 21, we'll hear from more. I believe overall all those set-aside funds that have historically been used and have now been grouped together, those funds are less. It is still less money for transportation alternatives. I don't know what percentage it is but it's less. So no matter what, there will be less money to spread around to whatever groups are enhancement alternatives. Commissioner Lambert said she would be interested to find out because if it is just going to go back into Montana's pot then you might make decisions based on that whereas if it is either build recreational trails or loose the money. Director Reardon said he didn't think it would be a use it or lose it thing, I think it is going to be a program specific thing.

Director Reardon said the other thing interesting about the bill and the alternatives is by putting it into a category the way they have, it is more of a competitive decision that the Commission will have to fund. What is going to be the most appropriate way to spend that money under the authority of the Commission? We will have a recommendation for you. We want to hear from the stakeholders out there, and we'll do our best to educate people as to what the bill is all about and what the process will be. Internally we've broken up the bill in its various provisions into different groups of people within MDT and they are going to try and come up with some recommendations and ideas and get comments from stakeholders, cities, counties, tribal governments, special interest groups. They'll take that information and compile it come up with a recommendation. The flexibility for the core program money is a positive thing; it does allow some money to be moved that historically has not been moved. We still have to have reasons and ways to do it. Our Red Book process, the

TCP is needs driven. Identify the needs, the worst first. That's a good thing and that helps when you start looking at performance measures and it gives us a leg up on some states that don't have that pulled together yet. I saw a headline today that in Massachusetts the Legislature is passing legislation that would earmark projects; directing money to the Transportation Department saying you will build this road. Montana has had that issue come up in the past and we steadfastly opposed that. I can remember in the early 90's when I was Chief Counsel we asked Governor Racicot to veto two bills that had essentially directed the agency to build two roads. We really don't want to see that come up again. I think it's a bad way to do business for construction.

Quorum on conference calls. I have one other item that has to do with the Commission conference calls – sometimes we have trouble with quorums. If it's possible if you're not going to be available please give your proxy to somebody. Commissioner Howlett said part of the problem is I'm retired and less available than when I was working. The other problem is I didn't get the notice that we'd changed the time from 10 am. Director Reardon said most of the time we don't have a problem but it makes it easier if we have a proxy. We've done a couple where we've had to call you up and get a one-on-one vote. The only concern I have is that in a public meeting we don't have that problem but other than that we're outside our scope. It's just a reminder.

Commissioner Howlett thanked Commissioner Skelton for hosting the Commission in Billings. It's been a good meeting, very interesting. There are some issues not quite so easy to deal with but we had a good dialogue with the Cheyenne. I'm sorry the Crow didn't show up. I'm sorry Yellowstone County didn't show up.

Next Commission Meeting

The next Conference Calls were scheduled for August 7, 2012 and August 21, 2012. The next Commission Meeting was scheduled for September 27, 2012.

Adjourned

Meeting Adjourned

Commissioner Howlett, Chairman
Montana Transportation Commission

Tim Reardon, Director
Montana Department of Transportation

Lori K. Ryan, Secretary
Montana Transportation Commission