

Montana Transportation Commission

January 30, 2014 Meeting
Helena, Montana

IN ATTENDANCE

Kevin Howlett, Transportation Commissioner, Chairman
Barb Skelton, Transportation Commissioner
Rick Griffith, Transportation Commissioner
Carol Lambert, Transportation Commissioner (by phone)
John Cobb, Transportation Commissioner (by phone)
Michael Tooley, Director MDT
Pat Wise, Deputy Director MDT
Dwane Kailey, MDT Engineering
Tim Reardon, MDT
Kevin Christenson, MDT
Lynn Zanto, MDT
Chuck Nempfakos, MDT
Dave Ohler, MDT
Miki Lloyd, MDT
Lori Ryan, MDT
Patti McCubbins
Kevin McLaury, FHWA
Paul Harker, FHWA
Mark Wessinger, MCA
Gregg Watson, MHP
Joe Murry, Legislative Audit
Keith Johnson, Mountain West Holding
Chris Kelly, HDR

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 lryan@mt.gov. Alternative accessible formats of this document will be provided upon request. For additional information, please call (406) 444-7200. The TTY number is (406) 444-7696 or 1-800-335-7592.

OPENING – Commissioner Kevin Howlett

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

Approval of Minutes

The minutes for the Commission Meetings of September 26, 2013, October 22, 2013, October 31, 2013, November 26, 2013, December 17, 2013, and December 20, 2013 were presented for approval.

Commissioner Griffith moved to approve the minutes for the Commission Meetings of September 26, 2013, October 22, 2013, October 31, 2013, November 26, 2013, December 17, 2013, and December 20, 2013. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 1: Construction Project on State Highway System – Foothills Ranch Subdivision- Great Falls (US 87/89)

Lynn Zanto presented the Construction Project on State Highway System – Foothills Ranch Subdivision, Great Falls (US 87/89) to the Commission. The Foothills Ranch Development is located east of Great Falls near the intersection of US-87/89 and

Secondary 227 (S-227). The developer plans to change the land use of 58 acres (in the northeast corner of subdivision) from residential to commercial development. Cascade County has approved the final plat for this development.

Foothills Ranch has provided MDT a traffic analysis that recommends improvements to the State Highway System as a result of projected increases in amount and type of traffic. The recommended improvement at this location is an eastbound right-turn lane onto Stone Mill Road from US-87/89.

The Great Falls District, and headquarters staff, have reviewed and concur with this recommended improvement. Foothills Ranch Development will complete the design of the improvement with input from MDT staff. The improvement will meet MDT design standards.

Foothills Ranch Development will provide 100 percent of the project funding including design and construction.

Summary: Foothills Ranch Development is proposing modifications to the State Highway System to accommodate additional traffic generated by the changed land use from residential to commercial on US-87/89 east of Great Falls.

MDT staff recommends that the Commission approve Foothills Ranch Development's proposed improvements to US-87/89 pending concurrence of MDT's Chief Engineer.

Commissioner Griffith moved to approve the Construction Project on State Highway System – Foothills Ranch Subdivision – Great Falls (US 87/89). Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item No. 2: Surface Transportation Program – Urban Park/Excelsior Street – Butte

Lynn Zanto presented the Surface Transportation Program – Urban, Park/Excelsior Street – Butte to the Commission. The Surface Transportation Program Urban (STPU) provides funding for improvements on the Urban Highway System in Montana's 19 urban areas. STPU allocation amounts are based on a per capita distribution and are recalculated after each decennial census. Priorities for the use of STPU funds are established via local planning processes with final approval by the Transportation Commission.

On behalf of the Butte Transportation Coordinating Committee (BTCC), MDT is requesting the addition of the following project to the program:

Park/Excelsior – Butte This project is located within the city of Butte on Park Street (U-1804) from Montana Street to Excelsior Avenue and on Excelsior Avenue (U-1801) from Gold Street to Ryan Road (to the Walkerville border). The Park Street work will consist of installing ADA ramps at the corners of six intersections and approximately one mile of milling/repaving. The work on Excelsior Avenue will consist of replacing sidewalks/curbs, installing ADA ramps at the corners of 25 (+/-) intersections, relocating/burying utilities, installing storm water improvements, and approximately 1.3 miles of milling/repaving.

The estimated total cost for all phases on Park Street is \$550,000, which includes indirect costs and inflation.

The estimated total cost for all phases on Excelsior Avenue is \$1,500,000, which includes indirect costs and inflation.

The total estimated project cost is approximately \$2,050,000. Butte's annual STPU Allocation is \$666,715 with a FFY 2014 balance of \$4,368,735.

Summary: MDT is requesting Commission approval for a Surface Transportation Program Urban (STPU) project in Butte with an estimated total cost of \$2,050,000. The project is on Park Street (U-1804) from Montana Street to Excelsior Avenue and on Excelsior (U-1801) from Gold Street to Ryan Road. The work consists of ADA upgrades, replacing sidewalks/curbs, milling/repaving, utilities, and storm water improvements.

The proposed project has been prioritized via local planning processes and is consistent with the policy direction established in TRANPLAN-21. Specifically, roadway system performance, traveler safety, and bike/ped features will be enhanced with the addition of this project to the STPU program.

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

Commissioner Griffith moved to approve the Surface Transportation Program – Urban, Park/Excelsior Street – Butte. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item No. 3: Construction Project on National Highway System – Missoula to Lolo Trail

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

Missoula County has received \$4.5 million in federal funding through the TIGER Grant Program for a project to construct an 8-mile, 10-foot wide, separated bicycle/pedestrian trail from Missoula to Lolo within the public right-of-way of US-93, a National Highway System route.

The total project cost is estimated at \$5.4 million. Missoula County is partnering with the city of Missoula and MDT on this project with additional county/city contributions of \$642,000, city CTEP funding of \$158,000, and MDT material contributions of \$100,000. FHWA will administer the project funds and coordinate with Missoula County, the lead agency for the project.

Improvements will begin at the intersection of Reserve Street (N-92) and Old Highway 93 (L-32-4576) within the city of Missoula and continue southwest along Old Highway 93 to the intersection with Brooks Street (US-93). The trail will continue south along the west side of US-93 to Blue Mountain Road. At Blue Mountain Road, the trail will cross US-93, at grade, to the east side of US-93. The trail will then run south between US-93 and the Montana Rail Link line toward Lolo. At the intersection of US-93 and Glacier Drive, the trail will cross US-93, at grade,

and continue south through Lolo connecting to the existing Bitterroot Trail near Highway. The construction of the proposed trail will connect the Bitterroot Branch Trail in Missoula to the Bitterroot Trail in Lolo. Once the project is completed, there will be a trail from downtown Missoula to Hamilton.

At their November 2013 meeting, the Missoula Transportation Policy Coordinating Committee amended their Long Range Transportation Plan to move this project from “illustrative” to “committed” and amended their Transportation Improvement Program to include this project. The construction of this new trail within the US-93 right-of-way will be designed according to MDT standards and subject to review and approval by MDT’s chief engineer. MDT has participated in initial scoping discussions and will continue to participate in the project design development review.

Missoula County is currently under contract for the environmental document and preliminary design, which will be followed by a second contract for final design and construction. According to the latest TIGER Grant program guidelines, the project has a very aggressive timeline as funds for construction must be obligated by June 30, 2014.

Summary: MDT is asking the Commission to delegate its authority to let and award a contract on state and federal-aid highways to Missoula County for a project to construct a separated bicycle/pedestrian trail from Missoula to Lolo. The total project cost is approximately \$5.4 million – with the majority of the funding (\$4.5 million) originating via TIGER Grant Program funds.

Staff recommends that the Commission delegate its authority to let and award a contract on this National Highway System route to Missoula County for the construction of a separated bicycle/pedestrian trail within the right-of-way of US-93 pending concurrence of MDT’s chief engineer.

Commissioner Howlett asked if the two crossings were signalized. Lynn Zanto said they were. Dwane Kailey said Blue Mountain Road and Glacier Drive are both signalized intersections. Commissioner Griffith asked if it was because Missoula developed the Tiger Grant that the Commission is delegating authority so they can do the project they submitted. Lynn Zanto said that was correct. We have a similar situation in Whitefish where they improved the National System Route through Whitefish and that is a similar process.

Commissioner Cobb asked a question (inaudible). Lynn Zanto said initially we did the final plans but as of right now no. It is an aggressive schedule at least from Federal Highway’s perspective and the risks are schedule and cost. Commissioner Cobb asked about the final design. Lynn Zanto said yes they have to secure a permit from us and they have to insure concurrence.

Commissioner Griffith moved to approve the Construction Project on National Highway System – Missoula to Lolo Trail. Commissioner Skelton seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

**Agenda Item No. 4: Enrichment Projects on MDT Right-of-Way –
Landscaping – Baker/Plevna
Sidewalks – Valley County
Sidewalks II – Belgrade**

Lynn Zanto presented the Enrichment Projects on MDT Right-of-Way: Landscaping – Baker/Plevna, Sidewalks – Valley County, Sidewalks II – Belgrade 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.

MDT is asking the Commission to approve the following CTEP projects.

1. **Landscaping – Baker & Plevna:** Fallon County is requesting CTEP funding for projects in Baker and Plevna.

The Baker portion of the project will install 22 period street lights at the intersection of Montana Avenue/US-12 (P-2) and Main Street/MT-7 (P-27). The specific locations are on Main Street/MT-7 between Harriet Avenue and Railroad Avenue and along Montana Avenue/US-12 between 1st Street W and 1st Street E.

The Plevna portion of the project will install approximately 700 feet of fencing along three sides of a local park – thus separating the park from the railroad tracks and Main Street. The project will also include a pedestrian-activated signal on Main Street (north of the intersection with Conser Street) that will promote safer pedestrian crossings between the school and the vocational/agricultural building.

The total estimated cost for this project is approximately \$119,000. Including this project, Fallon County will have obligated \$102,601 of the \$119,530 made available over the life of the CTEP program.

2. **Sidewalks – Valley County:** Valley County is requesting CTEP funding to design and build approximately 1,459 feet of ADA-compliant sidewalk in Nashua, Opheim, and Hinsdale.

Specific locations are listed below:

In Nashua, along Front Street (P-17) between Ford Street and Davis Street.

In Opheim, on Main Street (P-31) between Railroad Avenue and First Avenue N and on Roanwood Street between 1st Avenue N and 2nd Avenue N.

In Hinsdale, on Montana Street (S-537) between 1st Avenue and 3rd Avenue.

The total estimated project cost is approximately \$133,000. Including this project, Valley County will have obligated \$402,316 of the \$404,514 made available over the life of the CTEP program.

3. **Sidewalks II – Belgrade:** The city of Belgrade is requesting CTEP funding to design and build approximately 4,400 feet of ADA-compliant concrete sidewalk and 25 ADA ramps within city-owned right-of-way. The proposed locations serve to enhance connectivity between existing sidewalks in the community.

Specific locations are listed below:

West side of Spooner Road (U-608) from Mayfair Drive to 580 feet north.

West side of Broadway Street (U-603) from 205 S Broadway to Main Street.

North side of Madison Avenue (U-603) from Broadway Street to 820 feet west.

East side of Jackrabbit Lane (N-291) between the Lee & Dads approach and Missoula Avenue.

East side of Jackrabbit Lane (N-291) between 300 Jackrabbit Lane and Northern Pacific Avenue.

South side of Yellowstone Avenue between Oregon Street and Montana Street.

The total estimated project cost is approximately \$280,000. Including this project, the city of Belgrade will have obligated \$527,367 of the \$542,102 made available over the life of the CTEP program.

Summary: MDT is requesting Commission approval for three CTEP projects with an estimated total cost of \$532,000. Portions of these projects are on or adjacent to state-designated streets and roads. The state will perform a final review of all projects to ensure substantial compliance with project plans, specifications, and estimates.

The proposed projects have been prioritized through the respective local government processes and are consistent with the policy direction established in TRANPLAN-21. Specifically, traveler safety and bike/ped features will be enhanced with the addition of these projects to the CTEP program.

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

Commissioner Lambert moved to approve the Enrichment Projects on MDT Right-of-Way: Landscaping – Baker/Plevna, Sidewalks – Valley County, Sidewalks II - Belgrade. Commissioner Griffith seconded the motion. All Commissioners voted aye.

The motion passed unanimous.

DBE Presentation – Patti McCubbins, MDT

Patti McCubbins, MDT Civil Rights Department presented a Power Point Presentation to the Commission. The purpose and the intent today is two-fold: (1) the Commission wanted to hear about the DBE Program and learn more about it, and (2) It is a goal of MDT this year to do training in all of our programs.

DBE Program History – Why we have it and why it exists. It started back in 1980 when Congress responded to the Title VI Discrimination Law. They had heard from a variety of business folks in the construction industry and transportation, transit, and aeronautics that there was discrepancy in women and minorities gaining contracts and getting employment in those areas. So Congress acted. By 1983 Congress enacted the program and started implementing steps. The background sheet I handed out shows that it went all the way through until about 1995 with a lot of changes and continues to change every time Congress meets or an issue arises they go back to the drawing board.

I've been doing federal program implementation for 20 years. This program is unique in itself because it never ends. Generally in a lot of federal programs that are

administered in a small group or focused area they do the programs for two to three years and then leave it to the state to adopt the program, fund it themselves, and adapt it to their state. They stop their funding and may leave resources for a while or they may re-enact it under a different name but with the same intent. The DBE Program has never done that; it has always continued. In my opinion that is why we have some of the bumps we have because it keeps continuing and Congress has not taken a re-look at it to take care of the errors and problems to improve it. They have left the DBE Program intact and tried to do that through amendments and Congressional actions. That makes it very difficult for people to absorb it and understand the changes.

The other thing a little different with this program is that it is a nation-wide program and the rules are the same for Montana as Florida, Texas, Massachusetts, New York, Utah, Wyoming – it's all the same. So what makes our task so difficult is that we have to take those federal guidelines, rules and laws and establish them and make them work for our state. So when people say it's a little vague on the federal side they are right; it's very vague. However, I believe their intent is so that it fits everyone in all 52 states. I won't tell you that it's an easy program to administer but I think we've addressed some of the problems in the past and we continue to do that.

Probably the most contentious part of our program is the DBE goals and how we set a goal and enforce it and expect it to be addressed. It started out as a 10% goal on a national level that everyone had to meet on the federal dollars they received for transportation projects. In 2005 there was a lawsuit in the 9th Circuit Court and we lost. They said for your area you now have to establish a goal that is pertinent to your area. Meaning that we had to do a Disparity Study that looked at what groups needed help – women, minorities, etc. and what that looked like.

I believe it was in 2008-09 that the Disparity Study was done for Montana and we implemented that in 2010-11 and then a goal was approved by FHWA of 5.83% for the State of Montana. The groups we identified were minorities and women. Some states in their Disparity Study have specific groups targeted – so that's where you'll see it was a WBE Program or an MBE Program because they have specific groups that their Disparity Study pointed out that they have to focus their DBE Program on so it's not as global as ours.

Commissioner Howlett asked if this DBE Program applies universally to all federal programs not just Department of Transportation, for instance, does it apply to DPHHS? Patti McCubbins said it does not. Commissioner Howlett asked why it just applies to Transportation. Patti McCubbins said Congress enacted it for the transportation dollars in 1980 based on complaints they received that there was disparity. Commissioner Howlett said that in establishing the Disparity Study and setting a goal of 5.4% my assumption is it is a reflection of the percentage of minorities in the state. That has to be a factor and there is some sense of reasonableness in using that figure. I know the Native American percentage in this state is approximately 6% of the state population. So when we talk minorities in this state we are talking about women and Native Americans because there are very few African Americans or Asian Americans. We are talking about Native Americans and women. Patti McCubbins said our focus has been on Native Americans and women. We didn't break it out in the Disparity Study; we just did the DBE and included everyone. There is also an SBE (Small Business Enterprise) that we now focus on as well. That is how we got the 5.83% - that's why we use it on our contracts and do the oversight for the 5.83%.

Commissioner Howlett said it's a goal that Federal Highways, by statute, has to implement. So it's not something we have a lot of flexibility with; its part of Federal Highways funding to the state. Kevin McLaury said yes. The methodology is how we got to that goal. You said there are 6% Native and other minority classes within the state but that is just one piece of the whole. To get to that goal we look at

minorities who are ready, willing, and able to work in the construction industry. That's what we approved and what Patti is talking about – the methodology by which the state gets to their goal. Commissioner Howlett asked how a state agency or the feds arrive at defining that number – are there training programs? Kevin McLaury said every company that is a business has a Nix code. That code determines what that company does. From that code Patti and her staff look at all the minority groups that are ready, willing, and able to work in the construction industry in Montana and the method they use. Commissioner Howlett asked if the companies are registered with the Department of Labor. Patti McCubbins said the Nix code is the North American Industrial code; it's in a manual that describes every work-job code you could ever do, i.e., dishwashers, cement workers, etc. There is a code that goes with every job. The codes go in levels so if you're a business owner overseeing the entire operation, you would come out with a higher code. Those codes are attached to a national dollar amount and each bigger code has smaller codes underneath for the detail work similar to Worker's Comp codes.

Commissioner Howlett said he was still not clear about a minority business and how they get registered and how to they get “found” to be active participants in projects. Patti McCubbins said in the past we've done advertisement and recruitment. We focus on Reservations and areas like women's economic development groups to try to advertise the DBE Program and encourage their participation. Commissioner Howlett asked about the role of the contractors who have the obligation to try and meet this goal. Patti McCubbins said for recruitment purposes they have no obligation. Commissioner Howlett said then all the preparatory work is on MDT. Patti McCubbins said yes. Commissioner Howlett asked if we could charge for that. Patti McCubbins said on the federal level no but some states have adopted state DBE programs and then they can charge for that certification. The State of Montana does not have a state program so we cannot charge for that service.

National Definition of a DBE – The DBE has to be a for profit small business. They must be identified as socially and economically disadvantaged through a Disparity Study or an Availability Study. The identifying words are “have been identified from the federal level” – it's not our definition, it's a federal definition. They must be at least 51% owner and control all aspects of the business. Have a personal net worth that does not exceed \$1.32 million; two years ago that was changed from \$753,000. To be recognized as a small business a firm must meet SBA size criteria and have average gross receipts that do not exceed \$22.41 million. Montana's Disparity Study focus has been with the Tribal folks and women in Montana.

How the Program Works – Our goal has been established. We do a Scope of Work. We then take the federal regulations and the rules they've established and their guidance and develop a program for the State of Montana through MDT. We take all their recommendations and put together a program based upon Montana's needs. With that we use the goal and submit that to the feds and they approve it. Kevin's office looks through it, screens it, and works with us through the process so it's pretty seamless. We then submit that to Washington D.C. and they either say yes or they suggest changes. We then make the changes and submit it again.

Currently we have 107 Certified Highway DBEs. We have a 169 all DBE's. Site visits are conducted so every DBE doesn't just do the application, they actually receive a site visit at their business to see if they can do the business, who's in charge, what kind of business they have, if they have the appropriate equipment, if they have a separate office or are they running it out of their home. We do the site visit to see if they meet all the qualifying factors to assure that everything in their application is correct. We then determine if it's valid before we ever issue a certification to them. Their applications would scare you because it is about four to five inches thick by the time their done. We don't do the on-site until those are done. They have to submit three years of financial history and their bank has to sign off on it. These are all federal requirements.

The application is what starts the process (she handed an application to each Commissioner). Commissioner Howlett asked if there was any effort underway to streamline this. It seems to me we are trying to run people off rather than encouraging them to participate. There was a Paperwork Reduction Act passed several years ago. Patti McCubbins said part of that is to eliminate fraud. Some states have had a large amount of fraud. Other states have very cumbersome requirements. There are no secrets by the time they are done with this process. It's pretty hard to sneak anything by if it's done correctly. We're trying to make the DBE Program secure and safe. Final certification is issued to the applying DBE once the on-site has been completed and they meet the qualifying measures.

We received \$102,000 for the Supportive Service Budget so once they are certified we assign a Supportive Service Person to support them. We haven't gotten notice on this year's budget but we assume it will be the same. Those dollars can't be used on FTEs or computers or anything that benefits MDT in any way, shape, or form. Commissioner Howlett asked if those dollars were subject to sequester. Kevin McLaury said no they weren't. Commissioner Howlett asked what the money went to. Patti McCubbins said we are currently looking at a different approach. Historically the staff person went out into the field to give support to those DBE's for Excel training if they need it or any special training they may need. We send out an email to the DBE's to see if they have any needs this year, i.e., special training, license needs, etc. Commissioner Howlett asked if this was after having completed the four-inch application. Patti McCubbins said they can't get one dollar unless they are certified. The money only goes for highway DBE's. Commissioner Howlett asked how many staff people they have. Patti McCubbins said there are two. Commissioner Howlett asked if that was enough. Patti McCubbins said that was not enough and I've been working with the Director and Deputy Director to address that and we've got a plan to bring someone in at least part time to help. The applications are four to five inches thick but so are the renewals. Commissioner Howlett said in the early 80's they had more people in Civil Rights than two. Patti McCubbins said she had more people in Civil Rights but they have other jobs. We just have two in the DBE Program. The Supportive Services is strictly run on the needs of the DBE's not by what we think they should be doing. So now we've given them support, we've certified them, we do the on-sites, and now it's time to get a job so they can start making money so they are no longer disadvantaged and have an opportunity to compete in the world of construction.

Project Specific Goals - To make it fair, MDT has put together a Project Specific Goal Study Committee. Kevin can talk about that. We use the construction folks, DBE staff, federal highways and our contract planning. Kevin Christensen said we take a close look at the project, the geographic location and try to make a realistic determination of the work available to DBE's. We do a detailed analysis of the project and based on the type of work, volume of work, amount of available work, geographic location, we'll assign a project-specific goal. Patti McCubbins said we took that approach because some of the contracts aren't really big and you wouldn't have a lot of opportunity to get a lot of subs in a specific contract with a small amount of money. The other piece to that is if it's a job in Culbertson, we only have one DBE in that area and it would be too expensive to come from other areas of the state. So we try to take an approach that is fair. If it's a small dollar amount we don't put a percentage on that either; we try to look at each individual project to make it as fair as possible and successful for both the DBE's and the contractors.

Commissioner Lambert said you assume because of where the project is that no DBE's will bid on it. How do you know that? Patti McCubbins said my staff knows the DBE's and we're getting much better at knowing them and what it is they can and cannot do and what we believe they will bid on. We promote them to bid on all kinds of projects. We look at the DBE availability and we also look at what that job requires and if we have enough DBE's or any DBE's that can do the work the

contractor would need a sub for. So there's of qualifying factors that come into that process not just one.

Patti McCubbins said it is not just 5.83% across the board. When we set a project specific goal, we don't just say every one of them is going to be 5.83%. We look at them and assign a percentage. They might have a 1% or 9% - it depends on the size of the project, the availability of qualified people that can compete for those jobs. Commissioner Howlett said on the last conference call on Tuesday, every one of the companies that were successful exceeded the standard that was set. That was really encouraging. You are getting the word out there and these companies are finding people that want to work. What is your attainment of the 5.83%? Patti McCubbins said we obtained almost 6% this past year.

After we do the project specific goal setting, the staff goes to work to make sure they notify the DBE's that are in those areas to make sure they look at the posted projects to see if they have the capability or interest to do those jobs or if they are already busy working somewhere else or are able to take on another project. So we look at it again and go back to the DBE's to ask if they can do this.

The quote requester is on line so the contractors can also retrieve a quote request from all the DBE's. We've put a lot of work in this last six months to try and eliminate some of the errors with access to our DBE list – making sure it was clear, easy accessibility, etc. because we did have a tremendous amount of work to do on that. It was not as easy as it should have been but the process was still there. So the contractors would go in and start recruiting for DBE's if the project has a project specific goal. We've given them ways to do that through the quote request, the list of DBE's, and other ways.

Good Faith Effort – So now we come to the good faith effort. Congress has said that you can't just say you tried; the contractors have to prove that they tried to recruit DBE's. They have to show a good faith effort if they cannot meet whatever percentage we've assigned to that contract. Commissioner Howlett said we wrestle with that here. Patti McCubbins said we have also wrestled with that and hopefully we're getting better. You have the handout for good faith effort that goes through the process. Staff verifies when the contractors submit their good faith effort – they get on the phone and call the DBE and ask if they denied the work. We have DBE's that say yes they did because they didn't have the capacity to do the work right now and some have said no the good faith effort was not practiced. That puts us in another situation which is the appeal process and going to the next lowest bidder on the list. That is very cumbersome. Commissioner Howlett said that is what precipitated the Commission's request to the Department about streamlining the process. I know there were some feelings that the Department had acted a little strong with the contractors and in reality we don't have a lot of choice because this is a federal rule. We tried to make that clear to the contractors. I've had some parking lot discussions with different people. This is something we're not trying to ram down the contractor's throats; it's the law and we have to do it if we're going to accept federal money. I think the work you've done and what we've seen in the bids prove it's working and it's changing a lot of minds over time. It's not something we're going to move away from. It's something I'd like to see strengthened. We need to give these small companies an opportunity to participate in the Montana dream.

Commissioner Griffith asked if we were making strides in the disparity groups. Do you see a day when women or Hispanics are no longer included in the goal? In you're 20 years of experience, has the program made any strides to lessen the disparity? Patti McCubbins said she had only been with the Department for three years and only had the DBE Program for the last two years. I don't know if we have enough information to say we've made a big impact to make the change that they are no longer dispirit. We've looked at focusing on a better program based on the intent. It can't just be a program we're running because there is a population that we feel is

dispirit and we want to help them, there needs to be some obligation on their side as well. The feds have given us some tools and some ideas to address that and we have done that this year as a practice.

Next year the feds will implement the business development plan which they have to now submit to us. Anyone who qualifies for the DBE Program has to also qualify for the same factors as the SBA. The SBA requires every business they work with and certify to have a business development plan that has to be approved by them and has to be a working document. The feds are looking at that as well and this year they have said if we have not already incorporated that then you will do that. So next year it will be mandatory that we implement that. This year was our practice year and we're introducing that to our current DBE's and applying that to the new DBE's that are applying. So then next year everyone will have that. With that business development plan the feds will not let you graduate anymore – once you're a DBE you're a DBE forever unless something changes under the qualifiers, i.e., your personal net worth or you're no longer a minority. There has been a lot of conversation about the fact that if you can't graduate, then we need to break it out. The new DBE's should have a different expectation than those who've been in the program for 10-20 years. So we're looking at that and maybe break it out into what we call tiers. In the first 3-4 years you'd be in the first tier and have a business development plan. They may need more training regarding human resources, payrolls, taxes, excel – beginning business kind of struggles. The second tier might be one where you need more training on expanding your business a little bit more, financial training, etc. Again the feds want us to use the SBA model and MDT has been very good at allowing the staff to work with economic development groups, tribal economic development groups and to expand what that looks like. It's going to look different for each group of folks. Remember that we certify everyone – we have transportation groups and we also have SBE's. Another group that falls under this is someone who wants to open up a Mom and Pop store. If you meet the criteria we will certify you. They won't get the supportive service dollars but we still invite them to trainings free of charge and try to support them in any way we can. Their application process is absolutely the same as for the DBE Program.

Commissioner Howlett asked if a larger contractor could meet their DBE requirements by employing a certain number of minorities or do they have to be a DBE? Patti McCubbins said they have to be a DBE.

Reciprocity - The other piece is our reciprocity. If someone in Montana who we've certified wants to work in North Dakota in the Bakken and they apply to North Dakota for DBE status, they can contact our office to see if they are in good standing. The other states will either have them submit another packet all over again or have them print Montana's off and send it to the other state. The other state can then certify them in that State as well. Those applications are just as numerous as the others.

Training - Commissioner Howlett asked about Tribal College Training. Patti McCubbins said they are looking at that. We are beefing up our training into that area and utilizing other programs such as our Affirmative Action Program to try and help us with that outreach and recruitment. Commissioner Howlett said it was his understanding that there were a couple of tribal colleges, Fort Peck and Salish Kootenai that have training dollars. Patti McCubbins said that was a different program – OJT and Supportive Service Program. Commissioner Howlett asked if anyone knew the status of that. Patti McCubbins said they don't know what that is. My understanding is that we've done a very good job but there were a few states that didn't do such a good job so they are holding up everyone's OJT funds. Kevin McLaury said the OJT Supportive Services dollars has a finite amount of money. In the past all eligible entities had been applying for it so they are not moving the programs forward as much as the agency would like to have seen. Our headquarters folks have made a very strong concerted effort to go to those other entities that have

not been taking advantage of this and teaching them what they need to do. The pot is the pot. Previously if you only had a small number, they were getting a pretty large amount of money – SKT was getting \$500,000/year. The pot is the same but the number of applicants has significantly increased so the agency is trying to meet the needs of all those who have asked. So the amount SKT is receiving has been significantly reduced because other people are now trying to ramp up their programs. It's kind of the same as the DBE Program – once you're at a certain level and you've attained some level of success, we don't want you to continue to be reliant on those funds. There are other avenues through this process that we're teaching you to use so others entering the program can use the money. Commissioner Howlett asked if there had been notification to these entities of their status and what they will receive. Kevin McLaury said they are still waiting to see where they are with the funds. I'm not aware that OJT money has sent out notification on the dollar amounts.

Commissioner Howlett thanked Patti McCubbins for the hard work she put into the presentation. We now will take public comment related to this.

Public Comment

Montana Contractor's Association - Mark Wessinger

I want to thank you for the opportunity to come before you today. Cary Hegreberg sends his regards and his regrets that he couldn't be here today; he is in Billings working on the Montana Energy Conference. He asked me to present some information to you.

The Montana Contractors Association understands the DBE Program is a federal program and that MDT is doing its best to implement this complex and important program. We want to assure you that the MCA members want to play by the rules and this issue is routinely and vigorously discussed internally among MCA members. The Associated General Contractors of America is working on a federal level to reduce subjectivity and improve clarity and successfully implement this program on a national level. MCA is working closely with the AGC to achieve these same goals.

This is a DBE Contractor's tool kit that has been distributed numerous times by MCA to its members. MCA has been stressing with its members that they need to familiarize themselves with the requirements of the DBE Program and what is required to meet good faith effort. This particular tool kit has been endorsed by the AGC of America, the National Association of Minority Businesses, and Women First. Having said that, MCA members have some legitimate issues that I've been asked to present to you today:

- 1) Good Faith Effort: First of all MCA is very appreciative of MDT's attempts to provide guidance and clarification on this issue even though some of that guidance was subsequently rescinded. Your Good Faith Efforts has a draft on it is that correct? Patti McCubbins said yes because we are making some additional changes to it. Mark Wessinger said it looks like good guidance and MCA is very appreciative of that. However, contractors are not confident that the guidance for what constitutes good faith efforts is clear enough. It is generally perceived as being too subjective. There are words such as "adequate" and "reasonable" and "excessive" that are undefined. In its implementation the DBE Program is generally perceived as being a quota program. Specifically contractors believe that if they do not achieve the project specific goals, any and all good faith efforts will be determined to be inadequate. For example, in 49CFR subsection e, it says that "contractor is not required to use a DBE if the DBE price is excessive or unreasonable compared to a non-DBE quote or self-performed work. Contractors do not believe that guidance is applicable. Commissioner Howlett said maybe they

should change the law. Mark Wessinger said they are going to meet your project specific goals but the attitude out there now is they will meet the project specific goals regardless of the cost. Commissioner Howlett said these are federal rules. I take exception to the fact that you're implicitly accusing this agency of setting quotas. We're not setting quotas. These are the federal rules to utilize and expend federal dollars. Mark Wessinger said MCA is not accusing you of that. I'm trying to give you an idea of how the program is being perceived. MCA understands it is not a quota program. Commissioner Howlett said that's the world MCA is in otherwise you wouldn't be here on their behalf. Mark Wessinger said I'm representing a large group of people that have differences of opinion. This is the general perception.

- 2) MCA has also had reason to question the validity of the list of DBE firms that MDT makes available. These firms are supposed to be ready, willing, and able to perform the work listed. Unfortunately that is not always the case. I have one specific example to illustrate this issue. Director Tooley and Kevin are aware of this particular instance and can fill you in on the details.

Commissioner Howlett said there has been one instance. Mark Wessinger said this particular job had a 5% DBE goal on the project. The Prime Contractor used five DBE firms to meet that goal. One of the firms they used was someone who had expressed willingness in the past to do work for them but had no experience working with the firm. They used their quote and used the firm to meet that project-specific goal. They found out that this firm had no money, no financing, and no bonding. To cut to the chase the sub did not pay its workers and this particular firm was out of pocket a substantial amount of money to make those workers whole. Also we've heard anecdotally from CA members that some of the DBE firms on the MDT list when contacted stated they did not perform the type of work they are listed for. Also some of the firms stated that they do not perform work in the state of Montana. In short, MCA is concerned that this DBE list may not be properly vetted. Also it is MCA's concern that if the list of DBE firms is being used to determine availability to set project specific goals, those goals may not be reasonable if those firms are not available to actually do the work. Now MCA believes that there's an opportunity here to work with MDT and look at the methodology and hopefully assist MDT in refining the methodology used to set those DBE goals.

Commissioner Howlett said that his hope was that we would work together but I'm a little skeptical about "a coyote in the chicken house." Do you follow what I'm saying? Mark Wessinger said he did not. Commissioner Howlett said we have a set of rules and there is no flexibility with those rules. The flexibility is in the project specific goals. What I'm gathering from your presentation, one questions whether or not this department has done its job in asking if the list was properly vetted. You used a good example of someone who said they were ready to work but didn't work in that area. I suggest that the firm probably needs to do their own research on some of these people as well. I don't think that's solely the department's responsibility. If I'm going to hire somebody I'm going to get some references. Mark Wessinger said if you look at the guidance MCA is making available to its members, it goes over those steps and recommends that they personally vet these firms.

Commissioner Howlett said his preference is to work together on this but we've struggled with MCA over the last couple of years over this whole issue because I don't think initially they believed it was a concept they could accept until we finally arrived at a decision that we didn't have any choice but to use the court decision. Up until then it was a fight and it continues to be a fight. I think the department is working really hard to try and find the best avenue for these people to be able to work – both the contractors and the disadvantaged

businesses but it's an on-going struggle to get MCA on board with what we're trying to do and have to do. Mark Wessinger said MCA is working to try and implement this program as well; they want it to be successful and are doing a better job of distributing the information, trying to inform and educate their membership as to the importance of it. In general, speaking as an outsider and a non-contractor, I don't perceive in the membership any kind of animosity or bias towards this program. They want it to be successful; they just want the rules to be clearer so they know how to go about playing by those rules. Commissioner Howlett said that was a reasonable position to take and I hope we can get there. We've struggled with it this year and we've struggled with it for the past couple of years. It's time to understand that we don't have a choice. If the rules are not clear, we will continue to work to try to make them clearer. It troubles me when you come in here and use terms like "it's not properly vetted, you're way too vague in what you're asking us to do."

Mark Wessinger said MCA has been working with MDT. There were efforts by MDT to define what is an excessive or unreasonable bid or quote for work, but that guidance had to be rescinded. MCA is very appreciative of MDT's position on this issue and wants to support it but they are trying to bring to light some of the issues. Commissioner Howlett said he did not know if there was an exact clarity to what MCA's expectations are because we have a fluid DBE constituent out there. Part of it is the demographics and economics of being able to get to a certain place. We gotten away from the 10% flat goal and now have gone to project specific goal which I think is a laudable attempt to make it realistic. Should it be 2%, 3%, or 8%? Mark Wessinger said I will give you an example – recently there was a large, complex job with the Belgrade Interchange. It was asked internally by MCA why there was no project specific goal on the project because there was lots of opportunity there. The reason was that it was a very fluid project as far as funding and timing of funding and as a result there was no project specific goal on that project.

Commissioner Howlett asked why that was the case. Kevin Christensen said one of the things we look at is the risk of delivering a project and if that risk is perhaps not achieving the goal and having to cancel the project and having to re-let it. That project has a multitude of funding sources and some of them could lapse if they weren't obligated within a certain time frame. In looking at the project the Team felt the risk was too high and the amount of available work wasn't real high on that project. Dwane Kailey said funding-wise it was a very complex project – you had interstate funds, state match, local funds, TIGER grants, and other ear-marked funds as well. It was a very complex funding project.

Commissioner Howlett said he agreed with the department's work they were doing but I'm not a big fan of taking \$28 million off the table for being able to help us with our goal. To your example, every day the contractor signs on the dotted line, he takes that risk whether it's a DBE contractor or not. There are a lot of contractors going broke absent DBE participation. While that example may have been convenient for this setting, there are a lot of other contractors going broke that has nothing to do with it. It's just who gets the job and who gets stuck with that contractor that was probably ready to go broke before then. So it is a dynamic industry and that can happen anywhere. When he signs that contract it's a gamble because the last person to come in with a quote the night before and it's not properly vetted it's a gamble. From being in that business I understand that. I am sensitive to the point they make about taking \$28 million off the table with the Belgrade Interchange.

Kevin McLaury said not every project has project-specific goals. One of the pieces that Patti didn't get into is how we classify those types of projects. We encourage contractors to utilize DBEs for every project that has federal dollars. Now I want to be very specific, on those contracts that require DBE participation those are considered "race conscious". If the contractor goes above the required, that piece is called "race neutral" or if there is a contract that does not have specific contract goals, if the contractor does utilize a DBE sub that is counted as "race neutral" as a piece of the goal. So when you say there was no project specific goal, the encouragement to contractors is to utilize DBE's in a race neutral program.

Truthfully if we really want to look at the DBE program, in a perfect world we wouldn't have DBE's; we wouldn't need them because we could graduate them all and everybody would be treated equally and have the same opportunities. That's the goal but obviously we're not there. So we have this program to help those who are not in a position that others may have. That's the goal of the program. Commissioner Howlett said he was in agreement and we ought to be achieving that. My point is we have a \$400,000,000 program and we have a \$40 million project that didn't have a project specific goal, that makes all the rest of the projects stand up to a higher level of the 5.83% so they have to be at 6.5% or higher for us to be able to make the 5.83% goal. I understand taking the small projects off the table but I do have grief with larger projects being taken off because of what it does to the next one down the line.

Kevin McLaury agreed that we need to look at the larger projects but MDT has a process where they want to utilize in a repeatability stance, but if we would use maximum participation on all other projects we would be at 13-16 percent. We set the goal at 3-5 percent on a project so it gives the contractor some flexibility into which areas they can use DBE participation. When we change the rules for large projects versus a non-large project the process should be the same for how we determine what the goal is. I think MCA is looking for some repeatability on how we process projects. MDT has done a pretty good job of having that repeatable process. I've told my staff I want it repeatable even though there is flexibility in there, within reason. If we take a similar project two weeks from now and use that process, we should be in the same range. It shouldn't be one place one week and another place the next week. We should be able to get to a consistent process regardless of the size if it meets the criteria. Commissioner Howlett said his only grief was the size of the project in an area where we ought to be able to easily meet goals. Then we move up to a big project in Culbertson and have one contractor, it puts you in a bind for achieving that goal because we've taken \$40 million off the table.

Commissioner Howlett asked about the complexity of the Belgrade Interchange with the different funding sources, don't the various funding sources have the same objective you have. Don't they have some obligation to DBE and don't earmarks have some obligation to DBE? I don't think we can use that anymore. We have to apply the principles because they are federal funds. Kevin McLaury said that is the point exactly – its federal dollars period. It doesn't matter if it is NHS, STP, TIGER because it's federal dollars. If we were to go back today with a different eye, would there be a different goal in following that same process. My hope would be that we'd come to the same range. Commissioner Howlett said it's been a good experience and we've learned from it.

Kevin McLaury told Mr. Wessinger years ago we had a set 10% goal but we've come through a process with the Disparity Study and the department is getting better at setting goals with this methodology. Who's to say that a list is ever 100% accurate? But I would ask the contractors if they find DBE's that

shouldn't be a DBE or is questionable, work with Patti's group and let them know. We want the list to be as good as it possibly can.

Director Tooley told Kevin he appreciated his remarks. The example brought forward is a bad example. We had a bad actor. When the department found out, we moved to de-certify that DBE. Patti McCubbins said it is at the federal appeals level. We do pay attention to that. I can't say what happened prior to this but on a national level there's been a lot of attention brought to making sure the certified DBE's are truly disadvantaged businesses. That is why we do so much work on the front end. We are in the process of re-looking at our list and we do annual updates. We used to rubber stamp the annual updates but now we're doing on-sites on a yearly basis. She was asked if contractors contact them if they run into issues. Patti said no. We get that notice from the good faith effort. That's when a contractor will say he contacted someone and they said no. I will then call him and ask if he really said no. I tell them that if you want us to help you with this, you have to help yourself too. So we are focusing on that. Directly Tooley said he's asked Cary Hagreberg the same thing. I'm not going to act on anecdotal evidence, I want hard evidence. When we've gotten it, we've taken action.

Mark Wessinger said he'd take this conversation back to MCA and hopefully we can improve communication going forward.

Keith Johnson, Mountain West Holding Company

I have one small comment on the DBE Program. Patti has done a good job with what she has. The 5.83% goal that is set right now is coming from the Disparity Study done in 2008. I think there is a new Disparity Study being considered at this time and I think it needs to be considered sooner rather than later. Going back to the 107 certified DBE's who are ready and available for work, in the last study they used 145 but in 2013 there were actually only 37 disadvantaged business companies that actually registered for their EEO registrations. You cannot work on a Montana Highway project unless you have your approved EEO registration. That's only 35 certified DBE's that got their registrations approved last year and of those 37 only seven were firms that do design and build so none of those count towards any of the goals. That only leaves 30 DBE companies that have registered and could actually work on a highway project last year. Commissioner Howlett asked Patti if that was true. We just had two projects that had engineering firms listed as part of their DBE status. Patti said there is another program called Contract Compliance and that program monitors all of the contractors in the State of Montana to make sure they are paying Davis Bacon wages and are abiding by any federal laws. He's referring to the EEO clause for equal employment opportunity and we do not use that as a qualifying factor to certify a DBE firm.

The Disparity Study says that as part of the goal methodology that has been approved by FHWA that MDT is currently using, there is a portion of the goal setting process that does recognize professional services. Dwane Kailey said there were two things getting confused here. In our contracts we delegate to the contractor to do contractor staking. Gastin Engineering was used by a couple of the contracting firms and yes that counted towards the goal. What Kevin is referring to is through our consulting practices we have a number of firms denoted as DBE. If we get participation out of those DBE's we do transmit it to civil rights and we use that towards the calculation of our ultimate goal. Keith's point is that an engineering firm that typically does design work is not available to use on a construction project.

Keith Johnson said that his point is that out of those 37, we keep very good track of every job that's been let and how much work has been given to separate contractors. Out of those 37, if we had a break-down of those who participated in the total goal, seven contractors that would make up 80% of that total goal. Of those seven

contractors, four of them have been in business 20+ years. So 80% of 5.83% is done by essentially seven contractors who are DBE's. When you set a project specific goal of 4% on a seven or eight million dollar job, it's doing nothing to help the smaller start-up DBE's to get this work. The work is going to these seven not-so-small DBE Firms. The Red Lodge project was \$6.7 million, the Lincoln project was \$11 million and both had 4% goals and if you were only going to use one DBE contractor to supply those goals it would have to come from one area of work which four of these seven come from. I'm not even sure on the Lincoln project you if could have gotten there unless you used these specific traffic control guard rail firms. On the Red Lodge job you could have used four or five DBE's and it would have been a challenge to get to the \$6.7 million. So it's not doing much to help a bunch of these smaller start-up companies – it's all going to seven firms. That is what we need to look at when we set project specific goals; how can you help the fencing guy, the stripping guy.

Commissioner Howlett said he appreciated the comments and said it was interesting. We do need to pay attention to how we get the smaller companies engaged. You've provided some thoughtful information and I appreciate it. Keith Johnson said the last example Mr. Wessinger had with using five DBE's to meet this goal. We're a subcontractor on 95% of the projects we work on. We're not a prime contractor so we're competing with DBE's which I have no problem with but some of these prime contractors seem to use one big DBE to cover both contractors and not five smaller ones because of what could happen.

Kevin McLaury said I appreciate your comments. Obviously the goal of the program is to get DBE firms on a level playing field but also because previously the net worth of a company was \$750,000 and that has now been raised to \$1.38 million. To a person that's a lot of money but to a company that is really not that much. So if through their review, the net worth of the company is at \$1.32 million, they need to graduate those companies off the rolls of DBE's. They may be a DBE by race or by sex but if their company has been so successful that it has reached the net worth level of over a million dollars, it's time to move on and allow some of the smaller DBE's to work. The program is set up to graduate off the program. Keith Johnson said the \$1.38 million doesn't count your business and it doesn't count your home. So if they keep putting everything in their business or personal residence, it doesn't count toward the \$1.38 million. That's why I'm saying you have five of these seven firms that have been in business 20+ years. Since you started putting on the project-specific goals, my company is doing half the business we did before that. I have no problem with the DBE Program but I don't think it is helping these smaller DBE's who have been in business three or four years and trying to grow. It's helping people who have been in business 20 years.

Patti McCubbins said it is not entirely all of the business. You can't put all of it into the business, there are some rules there. You do bring up a good point – that is why we're putting more of an emphasis on our certifications up-front. In the last year, we denied more certifications than ever before. Two of those are being appealed to Washington. We denied them because there was too many family ties, too much money they were trying to hide somewhere. So we're doing a lot more on the up-front. In addition before the annual updates were only sent to us if there were changes. Now we've included an on-site visit for those annual renewals where before we didn't have to do that. So hopefully that will eliminate some of those questions.

Commissioner Howlett asked Mr. Johnson to put his comments in writing. He felt it was important to look at how the program is really doing. He felt the Commission should have a single page report showing how the program is doing. It won't change the 5.83% but at least it can us how to tweak the program. Keith Johnson said the 37 came from the MDT website and shows registered EEO submissions and DBE's. Patti McCubbins said MDT can't certify or de-certify anyone or take anyone off the list because they don't have their EEO submission; that isn't how the DBE Program

works. The EEO submission is for contract compliance usage, it's not to be applied to the DBE Program. Keith Johnson said but you're not picking from the 107 like we're being made to believe; the total you're picking from is 37. This hurts our company because we're the only one in this category that isn't a disadvantaged business.

Gregg Watson – Montana Highway Patrol

Deputy Chief of the Montana Highway Patrol. In recent years we've had four in the line of duty deaths in our agency and we worked directly with MDT on all four of those troopers. Then one additional trooper death that wasn't in the line of duty but was killed and he is also one we're discussing right now. In recent past we've worked with MDT and they've designated a section of highway and signed it in the location of the trooper who was killed. It's very important to our agency and families of the troopers that were killed. Between 1946 and 1978 there were four other troopers killed and it has been brought to our attention by their families there is not a similar designation on the highways for those troopers. At this time we are requesting that we work with MDT to designate those particular areas of the particular highways where those troopers were killed with the same signage we've used in recent years.

Commissioner Howlett said he had personally participated in dedicating two of those sites in his District. It's very humbling to be a participant and understand the grief and pain of the families and also the pride the families have in those members who have passed in the line of duty. Commissioner Griffith was concerned the signing should be more descriptive about the person and what happened so people have the whole story and not just the name. He felt that would mean more to the families and other officers. He wanted to see signs or plaques put in the closest rest area so people can understand why the highway was named after that person. Commissioner Howlett said they would be looking at two rest areas today and it would be a good time to address that and put up some kind of an information board at the rest area about what people might see down the road at a certain mile marker.

Commissioner Howlett asked if the specific request was for the Commission to provide direction and approval for the department to sign these roads where the troopers were killed. Gregg Watson said that was what they were requesting. Commissioner Howlett asked that the Commissioners representing those particular districts be a part of the commemoration. The Commission thanked him for his presentation and for his service.

Commissioner Skelton moved to give approval to sign the roads after the troopers who were killed. Commissioner Griffith seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

***Agenda Item 5: Glendive District Projects –
Slide Repair – 5 mi E Lame Deer
D4 Antelope Signing
East of Broadus – East
Reservation Creek – E & W (EB)
MT24 – Fort Peck Dam
Fairview – West
Froid – North & South***

Lynn Zanto presented the Glendive District Projects: Slide Repair – 5 Miles E Lame Deer, D4 Antelope Signing, East of Broadus – East, Reservation Creek – E & W (EB), MT24 – Fort Peck Dam, Fairview – West, and Froid – North & South to the Commission. The Interstate Maintenance (IM) Program finances highway projects to

rehabilitate, restore, resurface, and reconstruct routes on the Interstate System. MDT Districts are allocated IM funds, by Montana’s Transportation Commission, based on system performance. In response to emerging pavement preservation needs on the Interstate System, the Glendive District is advancing a project to rehabilitate approximately 5.4 miles of I-94 near the Reservation Creek Interchange at an estimated cost of \$6.77 million.

The National Highway System (NH) Program finances highway projects to rehabilitate, restore, resurface, and reconstruct non-Interstate routes on the National Highway System. MDT districts are allocated NH funds, by Montana’s Transportation Commission, based on system performance. In response to emerging pavement preservation, operational and safety needs, the Glendive District is advancing two rehabilitation and two safety improvement projects on the National Highway System. The total estimated cost for these NH projects is estimated at \$8.44 million.

The Surface Transportation Program - Primary (STPP) finances highway projects to rehabilitate, restore, resurface, and reconstruct routes on the state’s Primary Highway System. MDT districts are allocated STPP funds, by Montana’s Transportation Commission, based on system performance. In response to emerging pavement needs, the Glendive District is advancing a rehabilitation project on MT-24 (P-42) and a reconstruction project on Route 201 (P-201) near Fairview. The total estimated cost for these STPP projects is estimated at \$14.12 million.

Summary: The Glendive District is requesting approval to add seven projects to the highway program. The total estimated cost for all projects is approximately \$29,327,000. The amounts originating in specific programs are listed below:

Interstate Maintenance	\$ 6,768,000
National Highway System	\$ 8,437,000
Surface Transportation Program Primary	<u>\$14,122,000</u>
	\$29,327,000

The proposed projects are consistent with the goals and objectives identified in the Performance Programming (P3) Process – as well as the policy direction established in TRANPLAN-21. Specifically, roadway system performance and traveler safety will be enhanced with the addition of these projects to the program. Staff recommends that the Commission approve the addition of the seven projects to the program.

Commissioner Skelton moved to approve the Glendive District Projects: Slide Repair – 5 Miles E Lame Deer, D4 Antelope Signing, East of Broadus – East, Reservation Creek – E & W (EB), MT24 – Fort Peck Dam, Fairview – West, and Froid – North & South. Commissioner Griffith seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 6: Highway Safety Improvement Program – On System HSIP Projects

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

MDT is proposing to add 22 projects to the HSIP program – seven in District 1, six in District 2, seven in District 3, and two in District 4. The projects on the attached list (Attachment A) meet the criteria set forth for HSIP-funded projects. If approved, it would be MDT's intention to let these projects individually. The estimated total cost for all projects is approximately \$20,444,000.

Summary: MDT is asking the Commission to approve the addition of 22 projects (listed on Attachment A) to the Highway Safety Improvement Program. The proposed projects are consistent with the goals and objectives identified in the Performance Programming (P3) Process – as well as the policy direction established in TRANPLAN-21. Specifically, traveler safety, access management and bike/ped features will be enhanced with the addition of these projects to the HSIP program.

The total estimated cost for all projects is approximately \$20,444,000. Staff recommends that the Commission approve the addition of these projects to the program.

Commissioner Cobb said the Legislative Audit Report said we should be looking at the Highway Safety Improvements to see if they actually did anything. The department said they would look at that. Dwane Kailey said I plan to discuss that later today. Commissioner Cobb asked about Race Track Bridge Removal in District 2. The scope says reconstruction – are you removing a bridge or reconstructing the bridge? Dwane Kailey said we are removing two bridges, lowering the grade and then putting in a couple of culverts to accommodate local access. Commissioner Howlett asked if these were brought forward by the Districts and they determine if the projects meet the criteria. Lynn Zanto said the program manager analyzes crash trends so it is a mix of how they come forward, they may come from local governments or District Administrators. Commissioner Howlett if they periodically added to the list. Lynn Zanto said yes. Commissioner Griffith said two of the projects are in District 2. Gregson Bridge specifically has almost had a fatality annually so removing the bridge will hopefully get rid of those near fatalities. There have been a lot of fatalities on the Gregson Bridge, the Race Track Bridge and the Toston Bridge but it is four years before it hits the program. Commissioner Howlett said if there is a specific issue safety issue that comes up, the District can work with MDT to get it added to the list.

Commissioner Cobb asked about the not having the money to fix these safety issues, can it be moved into Highway Safety to address it. Dwane Kailey said we try to keep the two programs separate. The Highway Safety Program that looks at our infrastructure; solicits input from the district, local governments, and tribal governments throughout the state. We run those projects through a cost benefit. When we identify a specific safety project, we work with the District, identify them and if the District has other issues on that particular segment of highway we may combine the safety funds with Core funds and do a greater project but typically we do not mix the two. It is not typical for MDT to identify a project for Core funding and then move it into Safety. They are identified in two different mechanisms and two different ways but we will mix them if they are adjacent and/or have similar issues and the District wants to pursue that.

Commissioner Griffith moved to approve the Highway Safety Improvement Program – On System HSIP Projects. Commissioner Skelton seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 7: Informational TranPlan 21 Public Involvement & Stakeholder Survey Results

Lynn Zanto presented the Informational TranPlan 21 Public Involvement & Stakeholder Survey Results power point presentation to the Commission. TranPlan21 is Montana's federally mandated Long Range Statewide Transportation Plan. This plan establishes policies in the following 6 areas for the 20-year planning horizon.

- Roadway System Performance
- Economic Development
- Traveler Safety
- Access Management/Land Use Planning
- Bicycle and Pedestrian Transportation
- Public Transportation

These policy areas reflect input from the public and other transportation stakeholders.

The purpose of the TranPlan 21 Public Involvement and Stakeholder Biennial Surveys is to examine the Montanan's perception of the current condition of the transportation systems, views about possible actions that could improve the transportation system in Montana, and opinions about MDT quality of service to its customers. These surveys support this continuous and ongoing planning process.

Summary: Presentation of the results of the 2013 TranPlan21 Public Involvement and Stakeholder Survey for information only.

Biannually we survey the public and stakeholders. We've been doing this since the mid 90's so we can track trends and progress. The public telephone survey is conducted by the University of Montana and is a random public telephone survey and is statistically valid within each District. A summary of the survey follows:

TranPlan 21 Public Involvement Surveys Conclusions and Observations:

- Both the public and the stakeholders were generally satisfied with Montana's transportation system.
- MDT's overall customer service and performance grades rate in the B to C+ range.
- For many of the perceived problems, the greatest differences were between respondents in District 1, containing populous western Montana, and District 4 in very rural eastern Montana.
- Continued improvements in the rest area program resulted in higher levels of satisfaction.
- Bicycle pathways, pedestrian walkways, and bus depots also show higher satisfaction by stakeholders.
- Passenger rail service has been emphasized in our State Rail Plan.
- Both the public and stakeholders top priority is maintaining pavement condition.

Lynn Zanto said if you look at the survey on a 1-10 scale, we are in the 6-7 percent range on the overall system. Airports, Interstates, and Rest Areas have the highest ranking satisfaction. The public is least satisfied with inner city bus service and

passenger rail service. We have lost some inner city bus route in recent years and some essential air service has been reduced as well. The public was least satisfied with bus station conditions.

Road pavement condition is a moderate to serious problem with the public. It's been bad throughout Montana and we make a very concerted effort with pavement conditions. This is telling us that it is very important to the public to keep investing in pavement condition.

Commissioner Howlett said if you look at the Rest Areas and go back a few years, the Rest Areas wouldn't be very high on the satisfaction survey. Lynn Zanto said that was correct. In the late 90's we received very negative comments about Rest Areas but this survey was much higher. We've made a concerted effort through the years to address that and we continue to make improvements in the Rest Area Program.

Generally the public and stakeholders overall were satisfied with our system. Our overall customer service grade is in the B to C+ range. Commissioner Howlett thanked Lynn for the presentation. All things considered a C+ isn't too bad considering the deficit in resources for infrastructure in this country. We keep trying to do more with less. With reference to the diversity in District 1, it is a challenge to me to meet all the expectations District 1. You did a very good job in the way you put the report together in making it understandable to the user.

Legislative Audit Report on the Highway Safety Improvement Program Joe Murry, Legislative Auditor

My name is Joe Murry and I'm the Performance Audit Manager for the Audit Division. There was a Legislative Audit done on the Highway Safety Improvement Program and I oversaw the work done on that. We were asked by Audit Committee to take a look at the Safety Program. The program has spent about \$80 million over the last 20 years doing various safety projects so we thought it was important to see how the program was being managed. We found no concerns with how projects were chosen. We felt there was a good process for prioritizing projects. Where we felt some improvements needed to be made was with how the impacts of projects were being measured. The memo I handed out lays out our recommendations.

We released the actual Audit Report about one year ago and our office has a process that one year after audit reports are released to go back to the agency to some follow-up to see where they are in terms of implementing the recommendations. The memo the Commission has is the follow-up memo that went to the Op Committee. They get a brief overview of the results next week and we will be discussing any questions they may have. I don't anticipate many questions because we found the department has made pretty good progress implementing the recommendations.

Basically we had two recommendations in that Report and we found both recommendations were being implemented. That means the department is in the process of policy developments on the ground work to get those recommendations implemented and make changes in how they are operated. We're happy with that. When we see an agency making positive changes to a program, then we're satisfied. We don't expect the agency to be able to get everything fully implemented in a year so we had no issues with that. I don't anticipate the Audit Committee will have any issues with where the department is and where they are going. I think they should be commended in the work being done. Commissioner Howlett thanked him for his report.

Agenda Item 8: Speed Limit Recommendation MT-200 Dixon

Dwane Kailey presented the Speed Limit Recommendation MT-200 in Dixon to the Commission. We were contacted by the Sanders County officials to look at concerns with a pedestrian crossing and the associated speed. We did investigate the area, looked at speeds, and looked at the pedestrian activity. Based on what we experienced out there which was minimal pedestrian activity and in communication with the school we found it was appropriate to extend the speed zone to incorporate more of the town. At this time we are not recommending any changes in additional traffic control for the pedestrian crossing. We have school crossing signs out there both ahead of the crossing and in and at the crossing to advise the travelling public that there could be pedestrians. In our investigation we did not see much pedestrian activity. When we contacted the school they also conveyed there wasn't much pedestrian activity. There are a couple of families that cross there but it was infrequent. They occasionally do a few crossings for school activities but those are very infrequent.

So at this time we are recommending an extension of the 45 mph zone. The recommendation in total would be a 55 mph speed limit beginning at station 414+00 about 650 feet west of Wild Plum Lane extending an approximate distance of 1,800 feet, then transitioning to a 40 mph speed limit for an approximate distance of 3,400 feet, then transitioning to a 55 mph speed limit for an approximate distance of 4,000 feet. We sent this recommendation to both the Confederate Salish and Kootenai and Sanders County and we have both of their concurrences with this recommendation.

Commissioner Skelton moved to approve the Speed Limit Recommendation for MT-200 Dixon. Commissioner Griffith seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 9: Speed Limit Recommendation Urban Route 8124 – Mullan Road, Missoula

Dwane Kailey presented the Speed Limit Recommendation for Urban Route 8124 – Mullan Road in Missoula to the Commission. You may recall that we brought you an interim recommendation in July for this route based on a request by the city of Missoula. The Commission adopted the interim speed limit. We then went back to the city and asked them to produce the speed study which they did. MDT reviewed it to see if it complied with good engineering standards. We do approve their recommendation. With that the staff is recommending, in concurrence with the city of Missoula, a 35 mph speed limit beginning at the intersection of West Broadway and continuing west to the intersection with Reserve Street, an approximate distance of 0.87 miles.

Commissioner Griffith said the Resolution the city of Missoula passed states “they declare the reasonable and safe prima facia speed limit. Therefore be it resolved ...” what does that mean? Tim Reardon said “prima facia” means it speaks for itself by declaring it reasonable and safe; it is just excess language. The engineering study stands for itself as a reasonable, safe, and prudent speed limit.

Commissioner Griffith moved to approve the Speed Limit Recommendation for Urban Route 8124 – Mullan Road, Missoula. Commissioner Skelton seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 10: Speed Limit Recommendation
Urban Route 8115 – Rattlesnake Drive, Missoula

Dwane Kailey presented the Speed Limit Recommendation for Urban Route 8115 – Rattlesnake Drive in Missoula to the Commission. This was brought forward in July of 2013 as an interim based on a request by the city of Missoula. The city of Missoula prepared the speed study, MDT has reviewed it and we approve it. We are recommending a 35 mph speed limit beginning near the intersection of Cornerstone Drive and continuing north to the intersection with Aspen Lane, an approximate distance of 0.62 miles. You have a Resolution that declares that.

Commissioner Griffith moved to approve Speed Limit Recommendation for Urban Route 8115 – Rattlesnake Drive, Missoula. Commissioner Skelton seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 11: Speed Limit Recommendation
US 93 – Desmet Interchange North

Dwane Kailey presented the Speed Limit Recommendation for US 93 – Desmet Interchange North in Missoula to the Commission. This is the interchange between US 93 and I-90 West of Missoula. We installed a new signal at Cartage Road in 2012-2013. Based on the installation of that signal the county has requested that we look at the speed zone out there. We have done that and based on our review of the traveling speeds and accident history we are recommending extending the 45 mph speed limit further north. Our recommendation is a 55 mph speed limit beginning at station 165+00 approximately 600 feet south of Jellystone Road and continuing south an approximate distance of about 1,000 feet. It would then transition to a 45 mph speed limit and continue for a distance of about 3,700 feet. This will incorporate the intersection of Cartage Road. We have received concurrence from Missoula County. Commissioner Howlett asked if this was two-way traffic. Dwane Kailey said yes.

Commissioner Skelton moved to approve the Speed Limit Recommendation for US 93 – Desmet Interchange North, Missoula. Commissioner Griffith seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 12: Speed Limit Recommendation
North Merrill Avenue - Glendive

Dwane Kailey presented the Speed Limit Recommendation for North Merrill Avenue – Glendive. We were requested by city officials to look at the traveling speeds on Merrill Avenue. We did that and looked at the accident history as well. Our original recommendation was a shorter 35 mph speed zone but in providing that to the city of Glendive we received additional comments from them. Based on their comments and our additional review within MDT we are now proposing a 35 mph speed limit for the entire length of Merrill Avenue.

Therefore our recommendation is a 35 mph speed limit beginning at station 37+00, 250 feet north of Allard Street and continuing north to station 44+00, 100 feet south of Oregon Lane an approximate distance of 4,000 feet. We presented this to the city of Glendive and we received their comments requesting this. We believe we are in concurrence.

Commissioner Skelton moved to approve the Speed Limit Recommendation for North Merrill Avenue - Glendive. Commissioner Griffith seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 13: Speed Limit Recommendation US 212 - Joliet

Dwane Kailey presented the Speed Limit Recommendation for US 212 - Joliet to the Commission. We received a request from officials to review the speed zones in an around the town of Joliet. We have conducted that and looked at the accident history in the area. Based on our review we are recommending the following speed zone. A 55 mph speed limit beginning at station 678+00 approximately 200 feet south of 421 continuing north an approximate distance 1,800 feet, transitioning to a 45 mph speed limit going the distance of approximately 750 feet, then transitioning to a 35 mph speed limit for an approximate distance of 4,150 feet, transitioning back to a 45 mph speed limit an approximate distance of 1,100, and then transitioning back to a 55 mph speed limit for an approximate distance of 900 feet. We have presented that to the town of Joliet and their concurrence is attached.

Commissioner Griffith moved to approve the Speed Limit Recommendation for US 212 - Joliet. Commissioner Skelton seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 14a: Design Build Project Clark Fork Bridge Rehab

Kevin Christensen presented the Design Build Project – Clark Fork Bridge Rehab to the Commission. These are two design build projects for consideration today. This is for the Clark Fork Bridge Rehab. This is the second time around for this project and there is a sense of urgency with this project. We only had one submittal with our first RFQ so we made some phone call and increased the stipend for the Technical Proposal and re-issued our request RFQ. We received three responses and scored those and short listed three firms. We received three Technical Proposals from the three short-listed firms; two of the three were responsive. The adjusted score that represents the best value to the department was Sletten Construction HDR Engineering. So the department is recommending that the Commission award the project to Sletten Construction HDR Engineering and that the Commission award the stipend to L&J Construction and Sletten Construction but not the non-responsive firm. This is the first time we've had a non-responsive Technical Proposal since we started.

Commissioner Howlett asked him to define non-responsive. Kevin Christensen said we have a minimum score of 60%. Technical Proposals are scored individually by the different members of the Technical Review Committee. The reason we have a minimum score is that we don't want firms to make a living submitting Technical Proposals. It takes a lot of effort to put together a good proposal and in this case this firm missed the mark by quite a ways. They missed several components that were required in the RFP and the components they did address they did a very poor job. Again these proposals were scored independently and all the scores concurred that it was a non-responsive Technical Proposal. Commissioner Howlett asked the total cost of the project. Kevin Christensen said the winning firm's bid was for \$1,137,777.

Commissioner Griffith moved to approve the Design Build Project – Clark Fork Bridge Rehab. Commissioner Skelton seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 14b: Design Build Project Bearmouth Rest Area

Kevin Christensen presented the Design Build Project – Bearmouth Rest Area to the Commission. This project has been in development for quite a long time. We received six SOQ's and we scored those and short-listed four firms. All four firms submitted a responsive Technical Proposal and they all submitted Bid Price Proposals. Diamond Bjerke WGM Group scored the highest. Their Bid Price Proposal and Technical Proposal resulted in the best value to the department. This project illustrates that design build doesn't go by low bid; we factor price in as well as value. The department recommends that the Commission award the project to Diamond Bjerke WGM Group and that all four firms be awarded the stipend. The bid for this project was \$6,249,888.

Commissioner Griffith asked about a fourth proposal that was significantly less. Did they do significantly less work? Is that how the rating for their proposal went? They aren't significantly less adjusted scored. Kevin Christensen said it is important to note what's in the Technical Proposals. It's not just design components but it is the firm's understanding and approach, their schedule, their personnel, their resources, and their quality management plan. Langley scored very low. They were responsive but they missed the mark on a number of things. The answer to your question is yes, in their proposal they took a minimalist approach. That's the beauty of design-build; we set broad parameters and allow the firms to use their innovation and creativeness to submit a design and an approach. There are a lot of tricky things with this project that need to be accounted for – there is a river right next to this, the waste-water treatment is a very significant component of this project. It was one of the issues that delayed this project so much in the project development phase. Langless didn't do much at all to address those issues; the permitting, the flood plain issues, the railroad issues, and there is a significant portion of the work where they are going to have to jack-and-bore underneath the Interstate. Langless didn't really address that at all. Everything that Langless didn't address, Diamond Bjerke did. They demonstrated a very good understanding of what this project entails and they addressed in detail all of those components. It is unusual for us to see this much difference. Again this is a first in our design-build history. We've had higher bids be awarded the project but not to this extent. It demonstrates the two different approaches that these two firms took. Langless took kind of a bare-bones approach. Frankly they did miss some components in their proposal that they would have to address if it eventually went to them; but that is not what staff is recommending at this time. Commissioner Howlett asked if it would be built on the same site. Kevin Christensen said yes.

Commissioner Griffith moved to approve the Design Build Project – Bearmouth Rest Area. Commissioner Skelton seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 15: Amended Access Control Bridger – Fromberg F 4-1(3)26; CN: 0019-003

Dwane Kailey presented the Amended Access Control for Bridger – Fromberg F4-1(3)26; CN: 0019-003 to the Commission. This is an access control and you will need

to sign it. We do a fair number of access controls on projects and this one is in relation to Bridger-Fromberg. The intent of access control is two-fold: 1) to better notify the public that we at MDT do have authority over access onto our highways. Not all the public is aware of that so one of the means of getting that message out to the public is through an Access Control Resolution; 2) to actually document where those accesses will be and set up better control. The ultimate intent of access control is improving safety on the roadway and limiting entry points. We originally limited this area to 26 accesses but we have an individual wanting to build a Family Dollar Store. We have reviewed their proposal and where they are proposing to put their access. We do believe it is in a safe location and is something that we would recommend but in order to do that we need the Commission to approve an Amendment to the Access Control Resolution. You have a map that shows where this is proposed to be located. The staff recommends amendments of the Control Access Resolution.

Commissioner Skelton moved to approve the Amended Access Control Bridger – Fromberg F4-1(3)26; CN:0019-003. Commissioner Griffith seconded the Motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 16: Certificates of Completion September, October, November – 2013

Dwane Kailey presented the Certificates of Completion for September, October, and November, 2013 to the Commission. We are presenting these for your review and approval. Along with the Certificates of Completion we've also included the DBE goals, how much was proposed for participation and what the final numbers looked like on the contract for your review.

Commissioner Griffith moved to approve the Certificates of Completion for September, October, and November, 2013. Commissioner Skelton seconded the Motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 17: Project Change Orders September, October, November – 2013

Dwane Kailey presented the Project Change Orders for September, October, and November, 2013 to the Commission. The Change Orders are presented for your review and approval.

Commissioner Griffith moved to approve the Project Change Orders for September, October, and November, 2013. Commissioner Skelton seconded the Motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 18: Liquidated Damages

Dwane Kailey presented the Liquidated Damages to the Commission. We have 12 projects before you today. Out of these 12 projects none of them are being disputed by the contractor. With liquidated damages, if you do nothing they stand.

No action taken.

Agenda Item 19: Letting Lists

Dwane Kailey presented the Letting Lists through September 11th to the Commission. We may move some projects from month-to-month and you might see a little bit of an adjustment from month-to-month. These have all been approved by you in the TCP. If we move a project in or out, we are going to notify you and I will call those out for your attention so you can specifically approve those for addition in the Letting List. At this time we are proposing to bring any new ones into the Letting List that have not already been approved for 2014. Commissioner Howlett asked if we sent out for bid all the projects in the Letting List of the January 16th. Dwane Kailey said yes. All the projects shown here did go to bid on the January 16th, however, I do believe Alder South was delayed for Letting for a week because of an issue. Commissioner Howlett asked if that issue was resolved. Dwane Kailey said it is and we awarded it last week.

Commissioner Griffith moved to approve the Letting Lists. Commissioner Skelton seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 20: Highway Memorial & Commemorative Signing

Tim Reardon said as you recall back in October we talked about establishing a policy for the Memorial Sign Program. I have a draft with some attachments that you can review. I'm not asking you for a decision today since you need time to look at it. I set out basically three separate types of signs. One of them would be a memorial sign for individuals who are killed in traffic crashes as a result of DUI. There is a question as to how you would want that sign to read. Some states limit that program to an innocent victim and they require that there be a conviction of the DUI driver on the record in order to put that sign up. Most of those states have a sign that says "don't drink and drive" and then a separate plate "in memory of". Those signs say "victim of a DUI driver". Other states, in an effort to carry forward the message of "don't drink and drive" regardless of whether or not the victim is the driver or a passenger in the vehicle but the decision of law enforcement is that it's a result of driving under the influence. They use "don't drink and drive" as just a message. In research this is a wide-spread program around the country. Included in your packet is a one-page application that Colorado uses. I used that for the memorial sign.

The other signs we talked about were commemorative signs for historic events, some relevant event in history that is important to an area or it might even have national importance. These might be for historic battles and those kinds of things. We do get those requests once in a while. That would be a separate sign with a separate application process that would be vetted for its significance. If three people in a town think it's historic, it may or may not be historic so we'd want some justification. Commissioner Howlett asked if he saw those as a replacement for some of the big wooden historical signs. Tim Reardon said no. The intent is not to replace any existing signs or the white cross program out on the highway now. The idea behind this policy proposal is that we're getting requests on a regular basis coming to the Commission and the department or going to the Legislature. One of the things that usually happens is they want it on the map and we're getting a pretty busy map right now showing all these locations. It also takes time; you have to wait a year and a half to get it. The idea was to put this policy in front of the Commission; it allows the department and the Commission cooperatively to consider those requests and to decide to go forward with the signage. Commissioner Griffith at one of our earlier meetings indicated a desire to at least where possible put something in a Rest Area or a pull out to get cars off the road if they want to read about the event. I tried to leave some room for that as well.

The third type of sign is for law enforcement officers who are killed in the line of duty. It would be an automatic sign under this policy. It could be instituted by the Director or by the Commissioners or by Law Enforcement to ask for placement of that sign. It would be easy to modify the proposal to include something along the lines of putting it at a nearby Rest Area.

There has always been an issue about signs on the highway. Signs are just another obstacle and at times a distraction. The states I looked at, the signage is pretty brief. They are all out of the clear zone and they all must comply with the regulations. The Interstate is a different breed of cat so I included a parenthetical for concurrence of Federal Highways. If you go out on the Interstate you will see signs designating three or four different names – the Mansfield Memorial Highway, the First Special Forces Highway, and another name also. The idea is not to promote installing signs but the reality is you're getting the requests on a regular basis. Either you go to the Legislature or do it on an ad hoc basis. A policy would allow you to control the size and to some extent the location. The maintenance folks tell me it would cost \$200-300 per sign for the memorial signs. Commemorative signs of historic events would be subject to how big the sign would be.

I don't have any strong feelings. I've gotten some editorial suggestions from Lynn and Dwane. I'd ask you to look at the policy and offer your comments. In Missoula there was a question as to how long a sign should stay up. I put 10 years in there but it doesn't matter if there is a time limit. There is a maintenance cost and in some areas it might make it a little tougher to plow, etc. We can try to get some control and still accommodate the wishes of the families. This is just a draft and I'm open to any suggestion.

Commissioner Howlett asked the Commissioners to review it and get comments back to Tim Reardon. We will consider this at our next meeting. Commissioner Griffith asked him to send them an email so we could comment back to you. Tim Reardon said he would also include Kevin and his staff as well. An interesting thing in some of the states I researched, they are starting to struggle with signs distracting drivers, cell phones, texting. In some of the larger urban areas it's hard to find where you're going because of all the signage. States are trying to deal with it.

Director Discussion & Commission Updates

Director Tooley said I will present these items in ascending order of funds.

Federal Funding Status

As we all know MAP21 expires at the end of September. Congress has been working towards coming up with reauthorization. Chairman Shuster wants to have a bill out for debate by the summer so ideally this is completed and funded by September 30th so we can start the next fiscal year with some money in obligation. Right now, they did pass a 2014 Appropriations Bill funding us at MAP21 funding levels. We're waiting for the obligation limitation from Federal Highways. Last year it was \$364 and we plan on \$384 this year to accomplish the goals of the TCP. So work continues and we expect them to fund infrastructure probably through continued transfers from the General Fund. Deputy Undersecretary made an announcement the other day that some payments may be slowed down this summer because the Highway Trust Fund does need more cash in it. Montana's in a position that is better than most states in the fact that we do have a pretty decent balance in the State Fund so we can wait a little longer than some for reimbursement. We're going to watch that very carefully and have been working with the Governor's Budget Office to come up with contingency plans just in case our friends down the road say the bank is empty. But they seem to be taking steps themselves to slow payments down in

order for the income to match the outgo. We're going to be fine; we're just waiting for reauthorization.

Interstate Capacity – Broadus Interchange

At the end of our TCP Meeting in October we had some discussion regarding set asides, specifically Interstate Capacity. The way the TCP has it right now is that the Broadus Interchange is included in the FY 2018 for a combination Interstate Reserve Capacity and Bridge Funding. That was a change from Core Program to Interstate Capacity and it moved that project out a year. We had quite a bit of discussion on that and you asked us to come back with some ideas. Staff has come up with some options.

Option 1 would be to leave the funding as is and reflected in the current TCP at \$10 million Interstate Capacity and \$2.2 million Bridge-On-System. The issue is that extends the Capacity one additional year and adds a project not in the original plan when the Reserve was established. It does provide a project to District 4 that they haven't had before.

Option 2 would be to fund it through the D4 Core Program. If you did that then you will zero out the Pavement Preservation. We had a lot of discussion at TCP about how you would not be in favor of that and you had concerns. If you take a dollar out now it will cost you eight later. We know that from P3 and our experiences.

Option 3 would be to look for other money to put towards either the Culbertson project or the Broadus Interchange. That's really unpredictable. We received more funding this year than we ever have in the past from the Grab Bag but it's not predictable so that's pretty dangerous.

To get to the point, in reviewing the different options our recommendation is to leave it as is. It's in the TCP, it is funded, and we all understand where it's coming from and where it's going to go. It does have some issues of extending the Capacity Reserve one more year but at the same time frees up funding for projects that probably wouldn't have been done in northeast Montana in the time they need to have them done. So there are some benefits to it and one small drawback. So we recommend leaving it as is.

Commissioner Griffith said my concern isn't for this project; it's easy to leave it where it is and fix this for one year. But it's the indication of what we're going to be using the Interstate Capacity money for next year and the year after. So if this one competes for Interstate Capacity money – I'm not making a pitch for this but we've always had the Ladies of the Rockies Interchange on our agenda because the Commission promised it to them, why don't they come and say let's use Interstate Capacity. That's my problem with it; I don't want to have to deal with it in that way. So my preference is to do it under one of the other options. I think we're setting a precedent. We're pretty well stuck with the Capacity Program and Capacity projects; that was the intent of the Commission. We are setting a precedent if we do this. I'll leave it up to the Commission but that's my personal opinion.

Director Tooley said that is the second part of the recommendation that if something like this comes up again, you take time to analyze the impact and is that a direction you really want to go. But it's in the TCP now and basically let's think about it next time. The department has had the same discussion. Commissioner Howlett asked if they agree with your recommendation and in the same motion implement a moratorium on additional withdrawals that don't make the original intent. I think it does a couple of things; one, it gives them a pass. I think we need to stay with the Capacity or we're not going to have any money to fix issues on the Interstate when it comes to capacity. So we've got to be careful not to have that available.

Commissioner Griffith said this isn't the first one to do this. We sent that one back to the District and said you and the Director need to solve this problem rather than the Commission changing the rules to fit that funding source. I understand your thought process but if this would be the first then I would accept it but it isn't. Commissioner Howlett said then let's stop it and say it isn't available after this. We can't do much about what's already happened but we can say in the future that's not an option. Director Tooley said the department can craft rules; that is within our authority. If you want us to write a rule that limits this type of activity, then we can do that. Commissioner Griffith said in the end it is the Commission that can move the money around – you can write a rule which works for the department to get it to us but we can write a rule that says Ladies of the Rockies should have an Overpass. We did that but we didn't give them any money to do it. I don't want to have to deal with that under the Capacity rules again but I don't want to take it out of the Commission's hands if they need it again. A year from now we can't make the Commission follow rules that we set; it will have to be them that sets it. While it's a good idea and it gets it done expediently, it was left for the Commission to solve. They came in with a balanced budget with the bridge being out of the budget so we ended up having to make sure that project got done. We understood the priority. I understand the need.

Commissioner Howlett said undoubtedly future Commissions will see things differently but I think with the tenure we have we need to say what we're going to accept. I think we have to put a moratorium to say it's not available anymore. Commissioner Griffith said he's been telling his District that now. I feel uncomfortable with accepting this. Commissioner Howlett said we need to put it in an official action and direction to the department to develop a policy that prohibits its use for anything other than the intended purpose for which it was created. Commissioner Skelton asked if that was already the policy. Commissioner Howlett said the Commission had never formally said they weren't going to use it for anything else. Tim Reardon said it was the Commission's call.

Lynn Zanto said when the project came forward we were struggling to fund some Interchange Capacity issues. The Commission asked us at that time to take a look at this. So we went through a process and solicited all the Districts including Glendive. We brought it back to the Commission in 2004. It came up that we strayed a little bit. Probably because the one item that was in there was the I-15 Corridor which went over railroad structures. Belgrade Interchange was also in that original. Missoula was another one where we had big long projects on the Interstate. One of the tools we use to deal with big long projects is to split them out into smaller chunks. The ones I reviewed fit within the original intent. That's the history. Commissioner Griffith said the problem we got into with the first one and this one now is we didn't have a balanced budget coming into us. Lynn Zanto said that was correct. Commissioner Griffith said then the only way it could get done was to take money out of one to do the other. For me personally my goal was to get Culbertson done and you couldn't do both. There were a lot of needs in that District, Culbertson being one of them. Lynn Zanto said Culbertson has been taken care of and this project will to. So you're concern about "no more" that is what we're saying; we met the intent of the original Commission action.

Commissioner Griffith said that was not what I was thinking. I think we still need to have a reserve to deal with Interstate issues but I don't think it ought to be a plum tree. Lynn Zanto said we have the conversation about reserves every year through our P3 Process. Commissioner Griffith said one of the options was to take it out of maintenance and I don't support that. We're not really addressing the big projects. I'm not comfortable with the precedent. Commissioner Howlett asked him if he could live with it for this year. Commissioner Griffith said yes.

Commissioner Cobb asked if all the members were in favor of this. Commissioner Skelton said she supported it with the moratorium. Commissioner Howlett said he was in favor of the moratorium. Commissioner Cobb said he agreed.

Tim Reardon said as a matter of procedure I would suggest you vote for the Broadus issue and then establish a moratorium in a separate vote. I don't think it's a good idea to tie it to the project. You want to put a moratorium on all future proposals to draw from the Interstate Maintenance Fund. If you want to do it for the Broadus Interchange, my suggestion is to do the motion for the Broadus Interchange, deal with that, and then deal with the moratorium separately as a matter of procedure. Lynn Zanto said you've already concurred with the project as it's funded in the TCP. Kevin McLaury asked what the project was not meeting for funding requirements for Interstate Maintenance Reserve Fund. Commissioner Howlett said specific capacity was why the Reserve Fund was established. We didn't feel, in the discussions, that it met the specific criteria for Capacity. Commissioner Griffith said he felt there were two problems with it. We tell our people in the District here is the funding source and here is your anticipated year of completion because we don't have access to any more money. Then the District comes in two years later and presents another project that isn't funded and we give them money then I have to explain that to my District. It's an unfair advantage for them to not be able to ask for it. I hear Missoula screaming for Capacity money all the time. Why accept this one project? I think it's a bad precedent.

Commissioner Skelton moved to concur with the staff recommendation of using Option 1 for the Broadus Interchange. Commissioner Griffith seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Commissioner Howlett said this means that any future projects that do not meet the intent of that Reserve Capacity the money is off limits.

Commissioner Skelton moved to impose a moratorium on future access to the Interstate Reserve Maintenance Fund to those projects for which meet the original intent of the Reserve fund. Commissioner Griffith seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Transportation Alternative Grants

Director Tooley said the Transportation Alternative Grants group has met, gone over 72 applications for \$23 million, and has made awards. It is very well balanced between different types of projects, locations, etc. I want to give you a heads up that this is coming. Some of those will be On-System which falls under your purview. At some point Lynn will be asking for them to be added to the program. I wanted to give you the list and entertain any questions you might have.

Commissioner Howlett asked if only one Tribe applied. Dwane Kailey said there were other applications and we included how the applications were scored. More than likely there were other submissions however they may not have risen to the level of being funded. Dwane said he would get with staff and get the numbers of how many tribally-submitted projects there were. Commissioner Skelton asked how many projects there were in total. Dwane said there was a total of 72 for about \$23 million.

Commissioner Howlett asked if this was annually. Dwane said because of MAP 21 and this program being very new, we had to establish the process for it. We actually did a two-year solicitation for this program. We are going to wait and see what Congress does with reauthorization since we don't know if this program will be

supported in the new authorization or not. Depending on what Congress does, we will determine if we will do it annually. Commissioner Howlett asked if these projects would otherwise have been funded by CTEP funds. Dwane Kailey said they combined three programs – Safe Routes to School, Rec Trails, and CTEP.

Director Tooley said you do not have to adopt these right now. When the projects come to you to be added to the system, then we will need your input. We are just letting you know in advance.

Ronan Urban

Commissioner Howlett said in our conference call I asked if we could get an update on Ronan Urban. Dwane Kailey said they were ready to give an update on that project. Miki Lloyd is the Project Manager and he will give you the update on where we're at.

Miki Lloyd introduced herself as the Project Manager for this project. We had a laundry list of ideas to talk about; most of them are issues that have been resolved with the city. We have two outstanding issues. The one currently holding up the schedule is the Park & Board 4F issues. There is a Park we're going by in the town of Ronan and the jurisdiction for that Park is the City Council. We've been in correspondence with Public Works Director who is a member of our TDC Board. The City Council was brought in to try and resolve this issue. We've had issues from their City Park Board but we have not come to any resolution. In December FHWA went up to help educate the City Council on different options for the 4F issue – 4F is a protected status in our environmental process for park recreational areas. If we are impacting a recreational area, then it has to be addressed. We are getting some parking outside the Park but it's not necessarily in the recreational area of the Park that is considered 4F. We have some limits going into it to create our roadway system with a culvert. The city has requested we put up some brush and a short retaining wall. What we are requesting from the city is for them to agree to diminimus which a facet of 4F that would allow a lesser impact then we don't have to do the full 4F process to evaluate that. They have not agreed to that yet because there are individuals at the city who are requesting additional items from us. At this time we've haven't gotten resolution.

After that meeting in December, FHWA did an informal request at the request of the city to see if constructive use for 4F could be utilized. They said constructive use could not be used. So it went back to the City Council. They've met once since then and still could not make any resolution. I talked to the Public Works Director again this Monday and also this morning. They would like to set up a meeting with a few representatives and the Public Works Director to try and move the project forward. I think they still have some requests for us regarding parking.

Commissioner Howlett said he attended a meeting in November and indicated to the City Council and those that were in attendance (1) my support for this project, and (2) because we do this five-year plan, we didn't have the luxury of waiting a long time; decisions have to be made. If they cannot come to some resolution, then I'm not going to let these dollars allocable to this District not go somewhere in that corridor. We have to finish 93. I made that clear – if you can't come to a decision on this project then it might not go. I think that's a reality. That's where we are. I hope we can get it resolved but if we can't get federal concurrence, then we're not the bad guy. I brought an article from the paper and we're just getting beat up. I don't mind that but I want to be in the fight. I'm committed to getting 93 done and getting it nominated in my tenure and I've been here 12 years. I want to see it get nominated; the entire project. Post Creek Hill has been nominated. If Ronan happens to fall out then we want Post Creek Hill ready. I was asked the drop dead date for a decision and I don't know that but at some point it will be made and probably relatively soon. I don't want this dragging on and on and on. Miki Lloyd said she agreed. We will set

up this meeting and hopefully they will move on it. Dwane Kailey said normally we try and work with the District Administrator but he wasn't able to attend. I do want to converse with them a little more about this issue. You're points are very well taken and we need to fish or cut bait. I don't believe we're going to drop this project but we're not going to make it our highest priority either. We're not going to waste time and resources on a project that we don't have any hope for resolution any time soon. Commissioner Howlett said he would not favor going into a whole discussion of realignment. I'm not going to support that at this point. The frustration of the Commission is we've got all the other projects on 93 going undone waiting for a decision on this. I would like to have an answer by our next Commission meeting whether we're going to go forward or realign our priorities for Red Book. Dwane said that was reasonable.

Utility Relocations

This is not a critical item right now. There are utilities under First Avenue that the city is going to have pay 15% for their share of relocation and the city has said that is burdensome for them. They are looking for some grants and are still concerned about that. It could become a future issue. Commissioner Howlett said they would like to have those issues resolved by the March meeting. Dwane Kailey said that issue is going to be extremely difficult to resolve by the next Commission meeting. It is not necessarily a critical path item at this point in time and it is not delaying delivery of the project. We have a fair amount of time for that item to be resolved before it starts impacting the project schedule. Commissioner Griffith said if we already know we don't have funding for it, I don't want to get a year from now and have it crop up. Dwane Kailey said that could be a problem but there are avenues as time goes on for the local government to secure additional funding through the Legislature.

Commissioner Griffith asked about the utilities that need to be relocated. Dwane Kailey said the city is responsible for the water and sewer facilities in that location. Our participation is 85%. Commissioner Skelton asked if the city's only concern was the water and sewer. Dwane Kailey said yes. Commissioner Skelton asked if the city was making a good effort to look for other funding. Miki Lloyd said they knew this could be a potential issue and that is why we're looking at it so early in the schedule. We gave them a list of grants they can put in for. Those are on two-year cycles and we were trying to get them in the cycle but it sounds like they already have current grants they received for other needs they feel are a higher priority than their water and sewer on this street. So their resistance is coming from that. Commissioner Howlett said he hopes this issue can be resolved. Isn't this is state law? Dwane said it is state law combined with MDT policy.

Arlee Bouncing Balls

Ed Toavs spoke to MDT about a request from the Arlee School System about putting in some bouncing balls where there are approximately 120 kids crossing the road every day. We need to get some bounding balls in that community. We have those big florescent signs up above the road. I have come dangerously close to being rear-ended there stopping for kids to get across the highway. We have a speed limit there that nobody wants to enforce. These balls are essential before and after school hours. Could you look at that? Dwane Kailey said he would do that.

Next Commission Meeting

The next Conference Calls were scheduled for February 25th. The next Commission Meeting was scheduled for March 27th.

Adjourned

Meeting Adjourned

Commissioner Howlett, Chairman
Montana Transportation Commission

Mike Tooley, Director
Montana Department of Transportation

Lori K. Ryan, Secretary
Montana Transportation Commission