

Montana Transportation Commission

March 28, 2013 Meeting
Helena, Montana

IN ATTENDANCE

Kevin Howlett, Transportation Commissioner, Chairman
Barb Skelton, Transportation Commissioner
Rick Griffith, Transportation Commissioner
Carol Lambert, Transportation Commissioner
D. Winterburn, Transportation Commissioner
Michael Tooley, Director MDT
Pat Wise, Deputy Director MDT
Dwane Kailey, MDT Engineering
Paul Johnson, MDT
Tim Reardon, MDT
Dave Ohler, MDT
Patti McCubbins, MDT
Lori Ryan, MDT
Kevin McLaury, FHWA
Bob Seliskar, FHWA
Lloyd Rue, FHWA
Paul Harker, FHWA
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 lrayn@mt.gov. Alternative accessible formats of this document will be provided upon request. For additional information, please call (406) 444-7200. The TTY number is (406) 444-7696 or 1-800-335-7592.

OPENING – Commissioner Kevin Howlett

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

Bid Letting

Dwane Kailey presented the results of the Bid Letting to the Commission for their approval. We have five projects for your review and approval. Contract #1 is Biddle North and South. The Engineer's Estimate is \$13,113,199.60. We had seven bidders and the apparent low bidder is Ophthedahl Construction at \$12,497,175.92. They were 4.7% under the Engineer's Estimate. The second low bidder, Witkins, was almost \$700 more than the apparent low. Contract #2 is Dunmore East. The Engineer's Estimate was \$2,104,935.30. We had three bidders and the apparent low bidder is Riverside Contracting out of Missoula at \$2,163,526.25. They are 2.8% over the

Engineer's Estimate but within guidelines. Contract #3 is Park Avenue Broadway to Neill Avenue in Helena. The Engineer's Estimate was \$498,670.80. We had one bidder and the apparent low is Helena Sand and Gravel at \$522,537.00. They are 4.79% over the Engineer's Estimate but within guidelines. We also had no DBE goal but received a participation of 1.3%. Contract #4 is for Glendive Rumble Strips. The Engineer's Estimate was \$271,745.00. We had three bidders and the apparent low is High Mark Traffic Services out of Billings at \$224,217.50. They were 17.49% under the Engineer's Estimate. Contract No. 5 is Delineation I-15. The Engineer's Estimate was \$218,310.00. We had six bidders and the apparent low is Mount West Holding out of Billings at \$173,515.25. They are 20.52% under the Engineer's Estimate. The department recommends award of all five contracts. Commissioner Howlett said the reason he wanted to do the Bid Letting first was because it will be incorporated into the minutes.

Commissioner Lambert moved to approve the Bid Letting. Commissioner Griffith seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Approval of Minutes

The minutes for the Commission Meetings of September 27, 2012, and January 31, 2013 and the Commission Teleconferences of January 29, 2013, February 26, 2013, March 5, 2013, and March 12, 2013 and bid letting of March 26, 2013 were presented for approval.

Commissioner Griffith moved to approve the minutes for the Commission Meetings of September 27, 2012, January 29, 2013, January 31, 2013, February 26, 2013, March 5, 2013, and March 12, 2013 and bid letting of March 26, 2013. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 1: Safe Routes to School Project on MDT Right of Way Pedestrian Crossing – Whitefish

Paul Johnson presented Safe Routes to School Project on MDT Right of Way, Pedestrian Crossing – Whitefish. The Safe Routes to School Program is continuing and we will have about one more year worth of projects and then it will wind down and go to the Transportation Alternatives Program. We still have a few of these projects that you'll be seeing over the next year. The Safe Routes to School (SRTS) Program funds activities and infrastructure projects to encourage and enable primary

and middle school students to safely walk and bicycle to school. Projects must be within two miles of schools serving K–8th grade. Only SRTS projects that are on or adjacent to state-designated streets and roads need Transportation Commission approval.

The city of Whitefish has requested SRTS funding to design and install signage and crosswalk striping at six locations in Whitefish. Of the six locations, two are on-system: the corner of Spokane Avenue and 2nd Street (US-93, N-5) and the corner of 1st Street and Baker Avenue (U-12001). The 1st Street/Baker Avenue location will also include a pedestrian beacon.

The following list gives the locations for both on- and off-system projects. The numbering on the list correlates with the designations on the attached map.

1. Muldown Elementary School drop-off/pick-up loop (north of 7th Street).
2. Corner of Kalispell Avenue and 1st Street.
3. Corner of Kalispell Avenue and East 2nd Street.
4. Corner of Spokane Avenue and 1st Street.
5. Corner of Spokane Avenue and 2nd Street (at this point, both Spokane Avenue and 2nd Street are on US-93, department route N-5).
6. 1st Street and Baker Avenue (U-12001)

Summary: MDT is requesting Commission approval of a SRTS project sponsored by the city of Whitefish to put signage and crosswalk striping at six locations near elementary and middle schools and to install a pedestrian beacon at the Baker Avenue/1st Street intersection. The two on-system locations are the corner of Spokane Avenue and 2nd Street (US-93, N-5) and the corner of Baker Avenue (U-12001) and 1st Street. The total estimated cost of this project is approximately \$51,000. Staff recommends that the Commission approve the addition of this project to the program.

Commissioner Griffith asked about the projects coming for the next year, have the projects been identified or are people still making application. Paul said they are in the process of identifying those locations and you should see those at upcoming meetings. They have not been identified at this point in time. Basically we are winding down the funding for SAFETEA-LU as long as we have funding for that particular program. Commissioner Griffith asked if communities or schools were eligible and are there still dollars they can apply for. Paul Johnson said at this point in time there are but that process is winding down. It is still a competitive process. Commissioner Griffith asked if we'd provided any formal notice of any changes. Paul Johnson said he was not aware of any notification. Commissioner Griffith said there were obviously changes coming with the Transportation Alternatives but at what point do we say this money is obligated and we're not taking any more applications. I'm trying to avoid some confusion out there for people who might

want to apply and not know that changes are coming. Dwane Kailey said they had provided the same communication to the Safe Routes to School recipients that we provided to the CTEP recipients, meaning the federal rule is that we've got three years plus the existing year to obligate those funds. So any remaining obligations must be expended within the next three years. I believe they have provided that information to the Safe Routes to School Program recipients. So they are aware that this is changing. Commissioner Griffith asked about prospective applicants. Dwane Kailey said anybody that has the opportunity to apply, we've made public notice. We've also gone very publicly with our TA Program soliciting comments as well, so I believe they've had a fair amount of notification as to the changes for both Safe Routes to School as well as CTEP.

Commissioner Howlett asked when that change would occur. We have about three years so we may need to obligate the additional funds. I don't know what's left in Safe Routes to School but I believe CTEP is up around \$12 million that remains to be obligated. They've got three years to obligate those remaining funds.

Commissioner Griffith said we have new money coming so are we going to have both programs running at the same time. Dwane Kailey said yes, there is going to be an overlap. It is our plan to get our nominations notification for the Transportation Alternatives Program out this summer and start taking nominations to obligate those funds. I believe we are actually going to go out and ask for obligations for two years – the entire MAP21 funding program. So we will have an overlap of about two-three years. Paul Johnson said we've solicited public comment for the Transportation Alternatives Program. I believe that may still be open. It is a transparent process and they are allowed to comment on the process itself but that will be closing shortly. After that we will begin a transition into the Transportation Alternative Program.

Commissioner Griffith moved to approve the Safe Routes to School Project on MDT Right of Way: Pedestrian Crossing – Whitefish. Commissioner Winterburn seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 2: Bridge Preservation and Rehabilitation Projects

Paul Johnson presented the Bridge Preservation and Rehabilitation Projects to the Commission. MDT's Bridge Bureau reviews bridge conditions statewide and provides recommendations for construction projects to be added to the Bridge Program. At this time, the Bridge Bureau recommends adding 13 projects to preserve and rehabilitate approximately 114 bridges statewide. A lists proposed bridge rehabilitation and preservation projects, locations, a brief description of the proposed work, and estimated project costs.

Summary: MDT is requesting Commission approval of 13 projects to preserve and rehabilitate approximately 114 bridges. The total estimated cost for all projects is approximately \$66,500,000, and the proposed funding source is the Bridge Rehabilitation Program. Staff recommends that the Commission approve the addition of these projects to the program.

Commissioner Griffith asked if all the bridges have all been designated “structurally deficient or in need of repair”. Paul Johnson said not all of them are structurally deficient; there are a couple of bad ones that went into the nominations for these bridges. Obviously that was one of the considerations. The guidance we received in MAP21 placed an emphasis on our National Highway System. There are some bridges that are structurally deficient that will be addressed and there are others we want to prevent from getting to that stage. The primary focus of these projects is MAP 21 Guidance on the NHS. Commissioner Griffith asked about the impact of \$66 million on the budget to the bridge program. Paul Johnson said presently the majority of the money, about \$50 million, was reserved in the Tentative Construction Plan for Bridge Rehabilitation Projects. At this point in time it fills the program through five years with approximately \$10 million additional funding. Commissioner Griffith asked if they had any reserves in the event we have something that is structurally deficient that fails so we can address it. Paul Johnson said we always have that option. We have scheduling we can adjust accordingly. Obviously if we have a high priority bridge, we can definitely make adjustments for that especially in a given year such as this year where we have additional obligation authority so we have the ability to react to those things. Commissioner Griffith asked if he would consider these bridges a higher priority or are they just in the program. Paul Johnson said these are priority bridges. There are a number of goals and objectives that we’re trying to meet regarding structurally deficient bridge decks and these would be considered a high priority.

Commissioner Griffith asked about Toston which is a high priority bridge. Why didn’t it make the five-year list? Paul Johnson said it was in the program presently and engineering work is underway. It is a high priority bridge and as soon as the engineering work is completed, I believe it hits in the fifth year of the program. It is in the program, work is underway and as soon as it hits the program, it will be delivered. Commissioner Griffith said this is getting it from the Red Book to the actual work schedule or does this get it to the Red Book. So is Toston already in the Red Book and this just gets the rest of them into the Red Book? Paul Johnson said yes that is correct

Commissioner Lambert moved to approve the Bridge Preservation and Rehabilitation Projects. Commissioner Griffith seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item No. 3: Safety Improvement Program

Paul Johnson presented the Safety Improvement Program to the Commission. As you are aware we have additional funding authority for Highway Safety Improvement Program and we've undertaken the tremendous effort to add to that program. MDT is asking the Commission to approve four new safety projects to be funded under the Highway Safety Improvement Program (HSIP). The overall purpose of HSIP is to reduce traffic fatalities and serious injuries by implementing infrastructure-related safety improvements. Funding distribution is prioritized according to benefit/cost ratios at locations where feasible countermeasures to crash trends are identified.

The projects on the attached list meet the criteria set forth for HSIP-funded projects. They will be let for construction individually. The list gives the project names, locations, estimated cost, and a brief description of the proposed work.

The project scope for the Helena and Missoula projects is to install signal upgrades, and the scope for the Butte and Great Falls projects is to upgrade advance warning flashers.

Summary: MDT is requesting Commission approval of four new safety projects to be funded by the Highway Safety Improvement Program. The projects are located in Butte, Great Falls, Helena, and Missoula. The total estimated cost is approximately \$1,275,000. Staff recommends that the Commission approve the addition of these projects to the program.

Commissioner Griffith moved to approve the Safety Improvement Program. Commissioner Winterburn seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item No. 4: Addition to Great Falls Urban Highway System

Paul Johnson presented the Addition to Great Falls Urban Highway System to the Commission. The city of Great Falls and Cascade County, through the Great Falls Metropolitan Planning Organization (MPO), are asking the Transportation Commission to approve adding a segment of 24th Avenue South to the Urban Highway System. The segment of 24th Avenue South under consideration begins at the intersection with 13th Street South (U-5215) and extends to the intersection with 26th Street South (U-5226). The segment is approximately one mile long (see attached map).

The Urban route to the east (26th Street South/U-5226) ends at the junction with 24th Avenue South. 13th Street South, to the west, is also on the Urban System (U-5215).

The addition of 24th Avenue South to the Urban System would provide Urban System continuity in the southern portion of the Great Falls Urban Area.

A federal congressionally directed appropriation will be used to reconstruct this road segment with widening, intersection improvements, and bike/pedestrian improvements. Any additional project costs above the federal appropriation (including match) will be the responsibility of city and county governments.

Planning staff have reviewed this request and agree that this segment of 24th Avenue South would be a logical addition to the Great Falls Urban System and provide a much-needed east-west corridor for the southern portion of Great Falls. This segment is functionally classified as a minor arterial and meets the eligibility requirements for Urban System routes. In the past, the Transportation Commission has usually required that additions to the Urban System be offset by equivalent mileage reductions elsewhere in the urban area. In this case, MDT Planning staff will recommend not removing an equal amount of mileage due to the justification that this arterial provides an important east-west corridor within the city of Great Falls.

Staff recommends that the Transportation Commission approve the addition of 24th Avenue South between 13th Street South and 26th Street South to the Great Falls Urban System.

Commissioner Lambert asked what the section was before. Paul Johnson said this roadway was under local jurisdiction. This would probably be a city/county route. It is at their request that we add this to the system. I will point out that this will not change their allocation in any way; the amount of money that goes to the Great Falls area will not change, it's simply a designation within their area. If they add this route, essentially they would have to redistribute the funds elsewhere on their Urban System. So this does not bring them any additional money, it's just a jurisdictional decision to add it to the Urban System. Commissioner Lambert asked who was doing the maintenance before. Paul Johnson said the city and the county had been doing it. I don't know if there is a jurisdictional change regarding maintenance. This may still be under city/county. In some cases our Urban Routes are maintained by MDT and in other cases by city or county entities. Usually the maintenance responsibility stays with the entity even if it is added to the Urban.

Commissioner Howlett said it seems that when you add designations that should qualify you to get additional resources because obviously you have more demand. I don't think there's a city in the state that doesn't have an important corresponding artery to something that is already an Urban Route. Paul Johnson said yes that's right. With the recent census, there has been a change regarding the allocation of these Urban Funds throughout the state. It is determined by formula as to population within the urban areas. Commissioner Howlett asked if he was retracting his previous statement. Paul Johnson said no, actually the mechanism for funding

change comes from the redistribution based on the census. This particular allocation will not change their allocation from the Urban System but the new formula will. Commissioner Howlett asked if there was an effect of mileage versus funding to the System and that's why we've been resistant to adding new. Paul Johnson said there is no short, easy answer for that. There are a couple of factors in place: (1) There can be additional urban areas that are added to the over system and we will see that in this particular census, and (2) There is a formula distribution for those areas that is based on population. Commissioner Howlett said he was not worried about the transition to the new census; I'm worried about what happens now. It was my understanding that we did the offsets to avoid ... we turned one down in the Butte District when they wanted to add some additional streets to their Urban System. In my time on the Commission we haven't added urban routes without having an offset. So I'm questioning why now. Paul Johnson said that's correct but in this particular case we're talking about a one mile section and I believe, if required, Great Falls would consider removing this section. As I mentioned before, this will not change their overall distribution of funds to the Great Falls Urban area and also this particular action will not affect any other urban areas state-wide. In this particular case, we have a directed earmark that will be applied to this particular location and it was directed toward continuity in this area. This is one of the few areas where it could be applied and that is why there is a recommendation to add this particular section. Should the Commission feel that mileage should be removed; the Great Falls MPO would consider that and remove equal mileage.

Commissioner Griffith said the word "earmark" must have been an appropriation from several years ago. Paul Johnson said that was correct. Commissioner Griffith asked if adding this and not employing the offsets sets precedent. Paul Johnson said we would not view that as being a precedent because each of these can be considered individually on its merits. Commissioner Griffith asked if this is different than what we've done in the past. Paul Johnson said yes. Commissioner Griffith asked if it had an adverse impact on the appropriation. Paul Johnson said the adverse effect to the appropriation at this time would be if we do not have an eligible area to apply that to. This is a relatively limited congressional earmark. Commissioner Griffith asked if it was specifically for Great Falls. Paul Johnson said it was for the central area in Great Falls. In this case there are very limited alternatives. Commissioner Griffith said it is a good project and we ought to do it but I do think we need to get an offset for it and that is my recommendation. Commissioner Winterburn also felt the Commission should stay with precedent.

Commissioner Griffith moved to approve the Addition to Great Falls Urban Highway System with the exception of offset mileage equal to the addition. Commissioner Winterburn seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 5: Exigency Bridge Repair Shady Lane Bridge – Kalispell

Paul Johnson presented the Exigency Bridge Repair, Shady Lane Bridge, and Kalispell to the Commission. MDT's Bridge Bureau reviews bridge conditions statewide and provides recommendation, construction projects to be added to the bridge program. At this time the Bridge Bureau recommends adding the Shady Lane Bridge on Secondary 317 northeast of Kalispell to the program as an exigency bridge repair project. During recent inspections serious bridge deck deficiencies were identified that require immediate repair. MDT Maintenance has stabilized the deck with a steel plate, however, a bridge deck rehabilitation project will be necessary to restore the bridge to working order and ensure public safety. This project will replace the superstructure using existing foundation and precast elements. The goal is to complete the rehabilitation work quickly, no later than the end of this construction season. To accomplish this, many of the usual processes and procedures would need to be compressed and expedited for all phases, approximately \$799,000. The proposed funding source is the Bridge Rehabilitation Program.

Summary: The Shady Lane Bridge on Secondary 317 is in need of immediate repairs to the deck based on safety concerns. MDT has declared this an Exigency situation. This project will replace the superstructure with the goal of completing work by the end of the construction season. The estimated cost is approximately \$799,000. The proposed funding source is the Bridge Rehabilitation Program. Staff recommends the Commission approve the addition of this program.

Commissioner Griffith said this is the type of bridge repair he was referring to earlier. Paul Johnson said exactly. The good news is that we have additional funding that has come to us so funding for this particular project will not be a problem this year and it will not affect the program. We have plenty of funds available for this particular project in this particular year. Commissioner Griffith asked about the procedures that need to be compressed and expedited, can you explain what you are talking about there. Dwane Kailey said we have a bridge built by the county back in 1980. It wasn't built to MDT standards. We assumed the structure when we took over the Secondaries. The deck is failing and we put some steel plates out there to keep traffic on it at this point in time. We compress these with additional time restraints when we apply for permits from the Corp and Fish Wildlife and Parks, by classifying it as an Exigency which expedites their review. It also allows us to go through, if need be, in expediting bed review so instead of doing the full one-month advertisement, we can cut that down to one to two weeks. So those are the things we will look at. We want to get this done before fall of this year.

Commissioner Howlett asked what channel the bridge traverses. Paul Johnson said it was Spring Creek. Commissioner Howlett asked what the term "exigency" meant. Dwane Kailey said it was a term that we use when it doesn't meet the definition of an

emergency. An emergency typically requires a declaration by the Governor and carries certain connotations with the Federal Government. In the case of “exigency” it does not meet the definition of a true emergency project, but yet it is a term that is recognized as a very serious situation that we’ve got to rectify in an expeditious manner. Commissioner Howlett asked if he was seeking an expedited bid process now. Dwane Kailey said at this point in time we don’t know if we need an expedited bid process. We anticipate one. We may come to you and ask approval to allow either the Director or the Chief Engineer to go ahead and award the project. As we get closer to that, we will advise you appropriately. Commissioner Howlett said this action could include that authority if necessary. Dwane Kailey said at this point in time we are not asking for that.

Commissioner Griffith moved to approve the Exigency Bridge Repair, Shady Lane Bridge - Kalispell. Commissioner Skelton seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

**Agenda Item 6: Speed Limit Recommendation
MT 16 & MT 200 Corridor –
Glendive to Fairview**

Dwane Kailey presented the Speed Study Recommendation for MT 16 & 200 Corridor Glendive to Fairview to the Commission. As many of you are aware, with the Bakken Development we have seen significant increases in truck volumes along this corridor. We’ve done a number of studies up there including a research project and a safety review as well as a speed study. This was actually identified through the safety review. A number of the emergency personal, public, and local governments asked us to take a look at the speed because of the differential between the high volume of truck traffic and the passenger vehicles. They really wanted us to take a look at trying to eliminate that disparity or differential. In reviewing it and looking at the traveling speeds, we are in concurrence. We do believe the elimination of the differential would be appropriate.

At this time we are recommending to set a special speed zone of 65 mph beginning 1.8 miles north of Glendive continuing north to milepost 31.6 approximately 29.8 miles, then again from milepost 32.3 north of Savage continuing about 17.5 miles to milepost 49.8. The reason we break that is because there is already an established special speed zone within the area of Savage which was already approved by the Commission. Then again a 65 mph speed limit beginning at milepost 53.4 north to Sidney and continuing north to milepost 62.2 south of Fairview an approximate distance of 8.3 miles. Along the same lines in this recommendation we’re also asking for a 55 mph speed limit beginning at station 64 and continuing north to station 87

an approximate distance of 2,300 feet in Glendive. Also in and around the Sidney or north of Sidney, a 55 mph speed limit beginning at milepost 53.4 and continuing north to milepost 54.5 an approximate distance of 1.1 mile.

We have concurrence from the local governments in this case. We did do some public advisory on this and we received a fair amount of support for that recommendation.

Commissioner Lambert moved to approve the Speed Limit Recommendation for MT 16 & 200 Corridor Glendive to Fairview. Commissioner Griffith seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 7: Speed Limit Recommendation MT 200S- Glendive West

Dwane Kailey presented the Speed Limit Recommendation for MT 200S – Glendive West to the Commission. Dawson County has requested a 55 mph speed zone along MT 200 to encompass a Sand & Gravel Plant west of Glendive. We have looked at the traveling speeds and the accident history. At this time we are recommending a 45 mph speed limit beginning at the intersection with County Street and continuing west an approximate distance of 7,500 feet or 1.4 miles then transitioning to a 55 mph speed limit and continuing an approximate distance of 3,800 feet. We have presented this to Dawson County and they concur with this recommendation.

Commissioner Lambert asked if this was already a 45 mph speed limit. Dwane Kailey said a portion of the 45 mph speed limit was in place. We don't have the paperwork documenting that as a special speed zone so we want to clean that up a well. Commissioner Howlett asked what happened to the paperwork. Dwane Kailey said he did not know but this makes it official and puts the paperwork in place.

Commissioner Lambert moved to approve the Speed Limit Recommendation for MT 200S – Glendive West. Commissioner Griffith seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 8: Speed Limit Recommendation MT 200 – Milepost 56 to Milepost 69

Dwane Kailey presented the Speed Limit Recommendation for MT 200 – Milepost 56 to Milepost 69 to the Commission. The issue is we have a very narrow canyon, a

very winding road, and we've got a fair number of sheep that love this section of roadway. We've also got railroad tracks adjacent to the highway. It is a very difficult tough situation. We've been requested by Sanders County to take a look at the speeds. They are asking for a 55 mph speed limit. We went out and looked at the traveling speeds and the accident history. We've handed out two letters: one that we received from Fish Wildlife and Parks Biologist, Bruce Sterling, and a letter from Sanders County. Our Speed Study came back with a recommendation of 65 mph. We did look at the animal/vehicle collisions as well as the characteristics of the road and unfortunately the Engineering Study does not substantiate the 55 mph request. We have done a number of speed studies and in particular on Hwy 191 which progresses through a number of different transitions. What is unique about Hwy 191 is that when the federal government abolished the nationwide speed limits, Montana went to the "safe and prudent" rule. We went out and actually did a speed study on 191 and found the traveling speeds to be right around 55 mph. We then set the speed limit at 65 mph, went back and studied the speed again and found the traveling speeds to be around 55 mph. We have now set the speed limit at 55 mph and still the traveling speeds are at 55 mph. I'm not trying to sway you; I'm just trying to give you all the information so you can make the most appropriate decision. State law says that we have to provide you with a speed study. It is then within the Commission's authority to set the speeds as you see fit. In this case, Sanders County does not concur with our Engineering Study; they still want a 55 mph speed limit.

Commissioner Griffith said in Anaconda there is a similar situation and I assume the salt on the road is attracting the sheep to the road, is that the issue here. Dwane Kailey said in working with the biologist we believe that there are a number of issues contributing to it. One is the salt and we are looking at trying to minimize or eliminate the salt within our sanding material up in the area. We also believe that this is one of the few water sources; they've got to come down from the very steep rocky mountain side to get to the river to water. There is also a protective fence along the railroad that tends to pinch them in there a little bit and that's a challenge. Last but not least we also believe that one of the contributing factors is that cement grabs the sunlight and tends to heat up, the grass tends to green up in and around our roadway sooner than anywhere else and we believe they are coming in to graze on that new grass early in the spring time. Other than that, I don't know why the sheep go there. We are also recommending some additional signing up there. I believe it is in place now and I'll double check on that as well.

Commissioner Griffith asked if it was a four-season problem or just in the winter like Anaconda. Dwane Kailey said I don't have that information but my recollection is that it is predominately in the fall-winter timeframe. I've also heard comments that it may have something to do with the rut as well. But it is typically in the fall-winter timeframe. During the summer and spring they tend to migrate back up into the mountains. Commissioner Griffith said he didn't see that as one of the recommendations. We have that on the Anaconda road and we've had pretty good

success with that. We've only had one animal killed since we did the bouncing ball lights and the seasonal speed limit. I'm wondering if that would work here. I'm a proponent of it because not only do we kill species that has had a lot of hard luck because of pneumonia and other things, but we're also threatening the lives of people too. Those are two really good reasons to try and protect that.

Commissioner Howlett said he'd been involved in this particular issue for the better part of the year and I do not agree with your recommendation. The number of kills was inconsistent with what Fish, Wildlife and Parks has said and it may have been because you only retrieved certain animals. A dead animal is a dead animal. I don't question the science of the traffic study and the obligation we have to do it but I'm a scientist too. I happen to be a social scientist and a social engineer. When I'm looking at getting a car from point A to point B, I look at everything in between. I think we are the voice of the public and I want to listen to what the public has to say. They have to govern there, they live there. I'm appreciative of the work that goes into the research of trying to get a vehicle from point A to point B which comes out of an edict called the federal regulation and the speed study. That is the rule we live with. I also am very much supportive of the responsibilities that local governments have to undertake. As Commissioner Griffith pointed out this animal is a threatened animal; it's not an endangered animal but it's a threatened animal. It has had a significant time with all the diseases and other environmental factors. Then we have the lives of people who are at risk traveling 70 mph in that corridor and also the property damage. In a fog you can hit something and do \$3,000 worth of damage to a vehicle; if you hit a Ram you're going to total the vehicle. I think we ought to adopt an interim speed. I would like to take a hard look at what they've done in Anaconda; I think that's been successful. There could be some technology, there should be some sheep that are collared up there that can transmit some radio signals to alert the public that there in the vicinity. I'm not going to support not reducing the speed.

Dwane Kailey clarified some issues. There are ten warning signs already in place in this area just like in Anaconda. One thing I'll ask when you make your recommendation, the county asked for very specific areas for 55 mph. To give them engineering reasons why, may not be the best route, but they are asking for two very short one-mile segments for the 55 mph zone. From an engineering standpoint, that's very confusing to the public. So when you make your recommendation, please be clear as to what segments you want this speed incorporated. Commissioner Griffith asked the distance in between the two segments. Dwane Kailey said from the Thompson River Bridge to milepost 59, then again from milepost 64 to milepost 65. That is the greatest area of concern relative to the speed zone. Commissioner Howlett said what if we looked at the greater portion of this entire area. Dwane Kailey said from an engineering standpoint I think the public is more understanding of a longer special speed zone than two very short, very small speed zones. Commissioner Howlett said the plan should be to look at a long area rather than this accordion type speed zone. Dwane Kailey said he would recommend that the

Commission look at the crash rates and the milepost they are incorporated with. I think from the animal-vehicle collision side it does justify it a little more for a broader interim speed zone. Commissioner Howlett asked which mileposts were involved. Dwane Kailey said they are looking from milepost 55-56 and from milepost 64-65 but we have other animal-vehicle crashes all the way out to milepost 68 but we include all the way to milepost 69. That is the area we studied and that would incorporate the majority of the animal-vehicle collisions that we identified in this study.

Commissioner Howlett said this was not Hwy 93 in terms of volume. Sanders County is not heavily populated. I would support the entire section from milepost 55 to milepost 69, a distance of fourteen miles at 55 mph. We have sixteen miles on the east shore of Flathead Lake that is a 50 mph zone, so it's not uncommon to have these long zones where it's consistent and people know what it is. It seems reasonable to me.

Kevin McLaury said he appreciated the discussion and recognized the authority the Commission to set speed limits. The science behind speeds is that people will drive what they are comfortable with regardless of what the speed limits are or what the posted signs say. That is a fact. We've got study after study after study that shows that. The reason I start the discussion with that is – what's the goal here, what are we trying to do, what is the overall goal? I think it's to save vehicle-animal collisions, the mortality of the sheep in particular because there were a number of deer and elk and a few other animals hit in there also. Obviously it also does property as well. What I'm bringing up for some discussion is does this speed limit reduction going to gain what the objective is. Maybe we should be looking at something different. Is there a different solution other than putting some signs up? If science holds, which it has and will repeat itself, speeds won't be reduced unless we have significant enforcement. Commissioner Howlett said that is the problem and I can tell you in Anaconda, they enforce it. That's the commitment we would have to have from Sanders County. We want to be a partner but you have to be a partner too. I'm in total agreement with that part of it.

Kevin McLaury said his thought was bigger – is there an opportunity for an animal crossing. Not anything the size of what we have on Hwy 93. I printed out some pictures of the area. Are there opportunities to partner with Fish and Wildlife to do some fencing or a reasonable approach? If you did an underpass would the sheep use it? Is that possible? Or maybe some minor overpass to allow the animals to cross and to help guide them to the water because what you're seeing in the pictures is that water is the key. The sheep like to be in that steep rocky area. Is there another solution that's better? Commissioner Howlett said he agreed with that idea. Would it be possible for the Department to look at, not only this one, but other areas where we have this impact? Could we put a crossing someplace else too? I'm in agreement with temporarily doing something here. Then revisit this when we've had a little

more time to think about it. I'm totally in agreement with your thoughts and idea. I'd like to see this as a bigger picture; not just this one but others also.

Kevin McLaury said his concern as a resident of this state and a hunter, bodily damage and vehicle damage obviously nobody wants to see. If you read the Fish and Wildlife piece, our numbers vary significantly. If the mortality rate for these sheep is what they say it is ... the railroad is right next to it so you have to question how many sheep are getting hit by the railroad. That's a whole different question. If we had a different solution, that may eliminate the whole issue if we can better guide the animals to a more appropriate crossing and eliminate the vehicle-animal collisions. Commissioner Howlett said the first day of the meeting in Anaconda my suggestion was to do a crossing there. It is the same exact issue – an old railroad bed, and the creek coming down there. They are coming for water and salt. Kevin McLaury said they would have to look at the engineering – if they want water is there a way to run a smaller culvert and provide water on the north side of the road rather than providing a crossing? I'm just throwing out ideas here. My concern is that people are not going to slow down unless you have constant, constant surveillance by police. That's the science. So if we're trying to resolve the issue of the animal mortality, I'm not sure that gets us there.

Commissioner Howlett said he was trying to do two things: (1) I'm trying to assure the public, particularly the Sanders County Commissioners that we listen and we hear what they are saying and (2) to mitigate those circumstances and crashes, mortality, property damage, and lives. I'm open to any and all suggestions. To do nothing is not acceptable to me. I want to see some reduction in speed even on an interim basis until we do more study. I want to see some action on this.

Dwane Kailey said I want to defend MDT staff here a little bit. There have been a number of meetings both in Anaconda as well as up in Thompson Falls about these issues. We have explored certain things such as salt walks to address the salt issue. We've looked at alternate water sources and if I recall the concern with both of those options is that sheep are very prone to disease and if you bring them into a very tight unit such as a salt walk or one water source, it increases the risk for them to pick up pneumonia. I believe FWP has been very reluctant to go that route. Also in conjunction with this we do have a project within the Red Book but it has not been funded at this point in time, to reconstruct a major section of this area in the future. Again it struggles for funding as many other needs in that district do. I know they've looked at alternative crossings in trying to address this issue, but there are so many needs in the Missoula District, it's struggling for the funding. So I just want to make it very clear that MDT staff and FWP staff have struggled and worked on this issue. I'm not saying they won't be more than happy to convene another discussion but I just want it to be on the record that they have worked and struggled with this issue. It is a very tough issue.

Director Tooley said that Director Hagener and I speak often about a number of issues. This is one thing that is important to talk about long term and look at your suggestion at a much higher perspective at the agency level. We both have the same goal which is save the sheep and save the people. I'm happy to have that discussion regardless of the Commission's decision.

Commissioner Lambert said we could reduce the speed but also dictate a joint study with the department and FWP. Does that need to be in the motion? Commissioner Howlett said it needs to happen. I think we ought to be looking at an interim reduction in speed and maybe it needs to be seasonal. Commissioner Griffith said that would work. Commissioner Howlett said they could look at something in the fall and through the winter months when they are congregating on the road; from October 1st to April 1st there could be a speed limit in place. Go back to work and come back with some solutions.

Lloyd Rue, Federal Highway Administration, said I've asked the question over the last couple of days what speed would be effective to reduce mortality. Is 55 mph more effective than 65 mph? I can't answer that question. There is some evidence to say that it didn't seem to have much effect on mortality. A reduction to 55 mph I don't find any evidence that it will reduce mortality of wildlife compared to 65 mph. There is a good body of evidence that when speeds get 45 mph and below you'll reduce mortality. Commissioner Howlett said you can stop quicker at 55 mph than at 65 mph. We will revisit this in six months. In Anaconda we do 45 mph but we also do great signing. It is one thing to have a speed zone that people think is a radar trap but it's another thing to give them the reason that we're protecting the animals. We do that in Anaconda. They have great signage, bouncing balls, and somehow every time those bouncing balls are lit up, there are sheep in the area. I don't know if they are on the collar of the sheep but I can almost guarantee that if the lights are lit up then the sheep are in the area.

Tim Reardon said he knew a little bit about Anaconda. Tremendous number of approaches and accesses as you go west of town, so it's a natural extension of the lower speed limit until you get to the area where the sheep are. The Department a couple of years ago eliminated salt from the sanding material. They have a dedicated truck that has sand only. It's exclusive to that area and it has had marginal impact. The comparison is not apples to apples. For the speed limit on Hwy 200 is already significantly higher than the area leaving Anaconda. That distinction is pretty important. Secondly, regardless of what the Commission does to reduce the speed limit, there is nothing from the County Commissioners relative to a commitment for law enforcement which I suspect is pretty strapped up there anyway. But it would be reasonable for the Commission to send a letter signed jointly by the Director and the Commission that if the speed limit gets reduced, seasonal or otherwise, there is an expectation that there will be increased and data driven enforcement to make it reasonable and make it supportable. My guess is a hard line of enforcement will

result in a great many more local residents visiting the Justice of the Peace than tourists. The seasonal area you're talking about doesn't draw a whole lot of tourists on a site-seeing visit unless they are going up to see the sheep. So what the Commission does to reduce the speed won't make a difference except to that occasional tourist who believes that is what you should do and falls in that 15% percentile and then the local wants to pass him. Then you create conflicts that are unanticipated and unappreciated. My suggestion is that there be some communication back to the County Commissioners rather than just reducing the speed limit, that it is dependent upon some evidence that it has produced some results. I think working with FWP is important. The biologists on the ground certainly have strong feelings just like our engineers. Somebody needs to think outside the box a little bit. The reality is that there may always be some level of sheep mortality up there. We have signs up all over the place up there and people are still hitting them.

Commissioner Howlett said we're at the end of the proposed season now. I think we need to get something on the books. I will certainly not hesitate to be a signatory to a letter to Sanders County of expectation. In terms of an imposition of an interim speed limit but based on the recommendations of the Biologist probably wouldn't go into effect until this fall anyway. So let's get something on the books, and then do a letter explaining what we are doing. It seems to me that this will force the agencies to begin the discussion. In the absence of coming forward with something else that interim will stay in place. Commissioner Griffith said Anaconda would be a perfect location for that and I'm wondering if there are other places around the state that have similar things going on that we could look at. Until I toured Hwy 93 and saw the actual crossings that they were putting in, I wondered how it would even work. Sitting here on the Commission I wasn't in favor of it but when I went out and looked at it then I saw the animals using those crossings so it's certainly working there. We have a new project coming up in Anaconda that a crossing could be attached to. There are other sites that may be potential sites for doing something based on you guys being able to work with FWP and getting a recommendation and see if it would be helpful. Commissioner Howlett said one of the long term goals is to have collaboration at the agency level because there are a number of wildlife conflicts with vehicles – elk in Ennis, deer in the Swan, the sheep on Hwy 2. Across the state we have a number of high impact areas and as we move forward with design let's just incorporate those things to the extent we can. Several years ago we adopted a policy of incorporating contact design into our planning of our facilities. We've done this across the state. So let's move forward with this.

Commissioner Griffith moved to approve the interim Speed Limit Recommendation of 55 mph for MT 200 – Milepost 56 to Milepost 69. Commissioner Lambert seconded the Motion. All Commissioners voted aye. * Director Tooley will meet with Director Hagener to discuss possible joint resolution of the issue.

The motion passed unanimous.

Public Comment:

Commissioner Lambert said she was asked by Senator Brennan to tell you that he is not going to be able to make it to the meeting.

Agenda Item 9: Speed Limit Recommendation MT 78 – Absarokee to Columbus

Dwane Kailey presented the Speed Limit Recommendation for MT 78 – Absarokee to Columbus to the Commission. We've reconstructed a section of that roadway and we were asked to look at the speeds. We've conducted our review and at this time we're recommending a 65 mph speed limit beginning at the end of the 45 mph zone near milepost 33.4 north of Absarokee then continuing northeast to the beginning of the 45 mph speed zone approaching Columbus near milepost 45.6 an approximate distance of 12.2 miles. With that we are recommending continuing the 60 mph day time and 55 mph night time speed limit for trucks. We submitted this to the county and they concur with our recommendation.

Commissioner Skelton moved to approve the Speed Limit Recommendation for MT 78 – Absarokee to Columbus. Commissioner Winterburn seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 10: Speed Limit Recommendation Secondary 288 – Churchill

Dwane Kailey presented the Speed Limit Recommendation for Secondary 288 - Churchill to the Commission. In our review we identified a number of speed zones that we did not have documentation to support. So we reviewed the accident history as well as the travelling speeds and at this time we are recommending the following speed zone: a 45 mph speed limit beginning at 372+00 and continuing south to station 380+00 an approximate distance of 800 feet. From there we would transition to 35 mph and proceed to station 413+00 an approximate distance of 3,300 feet. At that time we would transition to a statutory 25 mph speed limit 500 feet west of Pleasant Street and continue east and south to station 441+50 an approximate distance of 2,850 feet. This will extend the 25 mph speed zone to avoid conflicts with the "turn ahead" warning sign. We would then transition to a 35 mph speed limit beginning 100 feet south at Crestline Drive and continuing south to station 451 an approximate distance of 950 feet. At that time we would transition to a 45 mph speed limit beginning at station 451 and continuing south to station 463+00, 250 feet

south of Cameron Bridge Road an approximate distance of 1,200 feet. We've presented this to Gallatin County and they concur with our recommendation.

Commissioner Griffith moved to approve the Speed Limit Recommendation for Secondary 288 - Churchill. Commissioner Lambert seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 11: Speed Limit Recommendation Smelter Avenue – Urban Route 5204

Dwane Kailey presented the Speed Limit Recommendation for Smelter Avenue – Urban Route 5204 to the Commission. We were asked by Cascade County officials on behalf of Black Eagle residents to look at a three-block residential site on Smelter Avenue and reduce the speed from 30 mph to 25 mph. We have conducted the review as well as the accident investigation. Based on our review we support the request of Black Eagle residents to move the 30 mph to 25 mph speed limit transition from the intersection with 15th Street NE. west to Wire Mill Road. This conclusion is primarily based on the densely developed residential neighborhood and those characteristics inherent to a residential area, one of which is the statutory 25 mph speed limit. We also observed a reduction in the travel speeds from that identified in the industrial area west of Wire Mill Road.

By shortening the previously approved 30 mph speed zone the following recommendation will re-instate the statutory 25 mph speed limit in the area of concern. The Montana Transportation Commission only needs to act on the 30 mph special speed zone. Therefore we are recommending a 30 mph speed limit beginning at the intersection with 10th Street NE. (US 87) and continuing east to a point 150 feet west of the intersection with Wire Mill Road, an approximate distance of 1,300 feet. We've presented this to Cascade County and they have concurred in this recommendation.

Commissioner Griffith moved to approve the Speed Limit Recommendation for Smelter Avenue – Urban Route 5204. Commissioner Skelton seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 12: Speed Limit Recommendation Worden – Old Highway 312

Dwane Kailey presented the Speed Limit Recommendation for Worden – Old Highway 213 to the Commission. The study stems from a concerned local citizen and was conducted in cooperation with Yellowstone County officials. They requested we review the speeds. We have reviewed the speeds as well as the accident history. At this time we are recommending a 50 mph speed limit beginning 100 feet west of Irrigation Canal and continuing east to a point 400 feet east of the intersection of North 16th Street an approximate distance of 5,050 feet. We've presented this to Yellowstone County and they concur with our recommendation.

Commissioner Lambert moved to approve the Speed Limit Recommendation for Worden – Old Highway 312. Commissioner Lambert seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 13: Letting Lists

Duane Kailey presented the Letting Lists to the Commission for their approval. We are asking for four things: (1) it is your authority to approve the letting list as presented. We have added about \$60 million worth of work. The reason is our bids have been coming in approximately 10% under the estimates that were carried in the TCP and the Red Book. We also received \$33 million for ER funding that came with the additional apportionment and obligation authority. So we had to incorporate that into the work. We also had a number of projects that have had under-runs based on what we obligated in the past and that money is reverting back into our fund and we are proposing to include that in our lettings. So again what we've added into these lettings is about \$60 million worth of work. Those projects have already been approved by you in the Red Book. A majority of them are all in the 2014 letting and all we're doing is moving them up and letting them earlier rather than later.

Commissioner Howlett asked for clarification on the March 1st Sequester and the 5% reduction in federal funds. What does that do to Federal Highway money coming to the State of Montana? Kevin McLaury said Sequestration, as we know, is affecting the Federal Government essentially 5% across the board but that has a lot to do with how the funding is derived. For the Federal Highway Administration Sequestration has little effect. For the State of Montana specifically NHBP is going to be affected about \$355,000. The other category is the ER funds and that was tied to the overall Sandy ER that came from the General Fund. ER funds come from the General Fund which was a part of the Sequestration so of the \$33 million, that portion will be approximately \$1.6 million Sequestration. So we will have a few less dollars. Overall the Federal Highway Administration's funding is consistent with what our normal funding would be. Commissioner Howlett asked if it was a cumulative \$1.9 million. Kevin McLaury said that is roughly the total. Commissioner Howlett said his concern was that we should not be adding if we are getting a reduction in the federal

allocations. Kevin McLaury said as you are aware, March 27th was the end of the Continuing Resolution. The Senate had passed MAP21 funding levels and sent that to the House and the House agreed with that. That bill then was pushed up to the President for his signature and he signed it. So that means the funding levels established in MAP21 for this year through the end of September are what we had planned at the beginning of the year.

Dwane Kailey said over and above the additional projects, because there are a number of other issues that have delayed the letting our projects, we are looking at some rather large lettings coming up. A couple of Commission meetings ago we talked about adjusting to two lettings per month in December, January, February, and March, and then one letting in May, June and July. Given the magnitude of lettings we have coming up this summer, we are asking to go back to two lettings for the months of June, July, August, and September. Also at this time we don't have any projects scheduled for an October letting but knowing that we have a fair amount of activities to complete, we would ask for your approval for an October 10th letting so that should a project become delayed for right-of-way or permitting or some other issue we can still obligate the monies for federal fiscal year 2013 but we would be able to let it in the October letting. We are going to do everything we can to avoid that but just in case we may need that letting to obligate the funds and not lapse them.

Last but not least we had a conflict brought to our attention for our August 8th letting that you had previously approved. So in this we are asking you to approve moving the August 8th letting to August 15th.

So to recap, you're approving the letting list as presented, you're approving additional projects, and you're also approving the additional lettings that we're adding in and the moving of the August 8th letting to August 15th.

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

The motion passed unanimous.

Agenda Item 14: Certificates of Completion December 2012 & January 2013

Dwane Kailey presented the Certificates of Completion for December 2012 and January 2013 to the Commission. We are recommending approval.

Commissioner Griffith moved to approve the Certificates of Completion for December 2012 & January 2013. Commissioner Lambert seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 15: Project Change Orders December 2012 & January 2013

Dwane Kailey presented the Project Change Orders for the months of December 2012 & January 2013. We are recommending approval.

Commissioner Lambert moved to approve the Project Change Orders for December 2012 & January 2013. Commissioner Griffith seconded the Motion. All Commissioners voted aye.

The motion passed unanimous.

Agenda Item 16: Liquidated Damages

Dwane Kailey presented the Liquidated Damages to the Commission. We have several of them today. We have three projects for your review and your information. The first is the I-15 Augusta Interchange at Craig. The contractor is Riverside. The liquidated damages are 14 days in the amount of \$63,322. They are not disputing those charges. Second is West Idaho Street. The contractor is Riverside. The liquidated damages are 2 days in the amount of \$4,440. They are not disputing those charges. The third is West of Junction MT 16 West. The contractor was Prince. The liquidated damages were 2 days for a total charge of \$5,778. They are not disputing those charges. The Commission needs to do nothing unless you want to adjust these values or days in any way. The Commission will do nothing for those that are not disputed.

Commission Discussion

WBE

Director Tooley said last time we discussed this most of the chairs were filled with some very unhappy people. So as a result you asked Mr. McLaury and me to put staff together to come up with solutions. We've come up with some pretty good ideas. I'll let the Deputy Director address that.

Deputy Director Pat Wise said we had a pretty lively discussion at the last Commission Meeting that included a number of our private partners. You tasked us to create a multi-agency work group to review legal and other related issues to the DBE Program. We took you very seriously and the next day we had a conversation with the private and public partners, internal as well as our federal partners to put a committee together and take a look at that. We had two meetings, we've put together

a legal review and our legal staff is here if you'd like to talk to them. I've asked Patty McCubbins from the Civil Rights Bureau to go through what the process looked like and our resolution. I think we've done a lot of ground work ahead of the Commission Meeting and notice we don't have the same angry public partners here today, so I think we've addressed their concerns and put together a pretty good package for you.

Patty McCubbins handed out their new good faith effort. I hope you will be very happy with it and as excited as we are to have this done. It has been a very long few weeks and a lot of work has gone into this. We took you very seriously and pulled together two members from MCA, Deb Poteet and Paul Thompson. Deb Poteet is a DBE and currently a member of MCA and Paul is a gentleman who has been involved with the DBE Program for about twenty years. He had a lot of history to bring and a lot of good ideas and suggestions. We had our Deputy Director Pat Wise, Bob Seliskar from FHWA and then Dave Ohler from legal to help us. So we had really good guidance and lot of input.

The first meeting was basically an educational meeting so people could have open discussion, bring up their concerns, the things they didn't necessarily agree with, and what kind of flexibility we had in some of that. We ironed out a lot of stuff; Bob gave us great guidance on where the Feds stood, and to keep us out of trouble and keep us in compliance with the Program. The second meeting we went to work and really peeled back the DBE good faith effort and looked at each and every category through that CFR to see where we had movement and where we didn't. There was a lot word smithing because some of those things you just can't change and you'll see that in the document. It is what it is. It is mandated by Congress and it's our job to try and interpret that and make it as workable for our Montana contractors as possible. I think we did that.

Out of that work group not only came the good faith effort but we actually formalized some things we had talked about to address transparency and involvement with our agency partners inside with engineering and construction as well as MCA. For a while we've had project specific goal setting to where we have a committee that comes in and reviews the project specific goals and how we set those. I'm not sure the contractors really understood how much we put in up front to try and make it as fair and reasonable for them as possible – not setting goals on every project but those where we think they can attain that participation and achieve success.

Once that good faith effort is done, we'll keep that committee in tact but they will meet yearly or more often if we need to revisit the good faith effort document. The other committee that came out of that will be good faith effort review committee. We currently just lost our DBE Program Specialist so we're in the process of filling that position. When we have good faith effort that comes in and if it's questionable, we will take that to a working committee that will review that to make sure the

recommendation that comes out of my office has been reviewed by the partners on that group. So it will be Construction, FHWA, the Deputy Director, myself and legal. We'll be making sure that we've crossed all our T's, dotted all our I's, and that we're doing what we need to be doing in regards to the outlines of those programs. If we put that out and we have a situation that comes up like it did last time, we'll use the appeals process. I'll let Dave Ohler talk about that. We've put that piece with the Department's appeals process. That is a three-four member team that is made up of MDT employees. So we've tried to set in place safeguards that will keep us out of that same situation and develop the transparency, the openness, the communication lines, with everyone being a part of it. Whether they like it or not at least it will be an understanding of what we have available and what we can and cannot do.

The additional things that came out of that meeting: we are also updating a lot of our stuff that is on line for our contractors. One of the confusing things to them was how to get to the DBE list and sort through who they could actually get bids from and who they should solicit. So we've worked on that piece and have a little bit more work to do on that. Our web page is a little fragmented and we need to do some more work on that and bring it all together.

The current goal is 5.83 percent. Will it maintain at that level? We hope so because with these safeguards in place, if we can move forward we think we'll be good by October 1st. We've got a program guide that we're currently updating. It talks about everything in the DBE Program from the time of its conception to where we are today and what contractors and what MDT needs to do to follow that program. So we've put a lot of work into trying to meet their needs.

We're also looking at expanding the DBE. We put together a recruitment package to recruit more DBE's that are set into the highway fields. Right now MDT certifies everybody. If you want to be a DBE it doesn't matter if you're going to have a bakery or if you're going to highway-related work, we certify everyone. They have the same qualifying factors in there. We're going to really enhance our recruitment to try and bump up that list. In addition at looking at other items they can bid on. Right now we have a pretty set small list and we're going to expand that as well. So I think we've done some really good work to make this program more acceptable and more workable and more transparent for contracting community as well as our own staff. Commissioner Howlett asked how MDT became the agent doing certifications for everyone. Patty McCubbins said it just falls under that program and every state does it the same way. Other states like Washington, the DBE Program actually is in the Governor's office not within Civil Rights. So they have that flexibility with their national folks and that is how they chose to do it.

Commissioner Griffith asked if the MCA accepted this. Patty McCubbins said I can't speak for them and I'd be afraid to say they've accepted it. Do we have their buy in? I think we do at this point. Do they like it? I'll be honest with you I still don't think

they like it. Can they live with it right now? I think they can live with it. I'm committed to making it as transparent as I can without changing what the law says. Commissioner Howlett asked about Federal Highways. Kevin McLaury said having been in this program for as long as I have, it is one of those things that Congress has just laid on us. I appreciate the efforts that you and the committee have done. One of the areas I was very concerned with when we were having the discussion is the contractors are not educated in this. So they dislike this program because they don't understand it and they don't know the rules. In your development of your program guide, have you looked at what type of training that we can do for the contractors? There are folks in this department that need this training and I would recommend that as part of good faith effort, there would be a requirement that they know the rules and have the training because without that they are not making decisions based on law and it becomes their own personal views. We don't want that. Maybe you already have that incorporated. Patty McCubbins said they did and it's on the list to put in the program guide and also to address at each one of those committees. To even take it a step further, each one of the committees will have a training as well. I went to the MCA meeting the other day and spoke directly to this and told them we would like to be on your agenda and have a training session with your folks. Whether it's the MCA meeting or whether they set up a separate meeting, we'll have staff go through the DBE Program, through the program guide, how to do bids, how to find the DBE's; we'll go through the whole thing. It may even take us two trainings but we've asked them if we can do that and they were very receptive to that.

Commissioner Griffith asked if they could go through the training at the next Commission meeting. Patty McCubbins said she would love to do that. Commissioner Griffith said it would help them better understand what their obligations are to this program. Patty McCubbins said the MCA had some legitimate concerns about making it as easy for them as possible and we need to put some work into that. Commissioner Griffith said he appreciated the work they did to try and bring everybody together. I was a contractor for 14 years and tried to do the DBE and I know how hard it is. This puts everybody on the same level playing field and that's the way it ought to be. I really appreciate the work you guys did to bring this together. Commissioner Howlett said he also appreciated the work to bring this to some resolution; it's a good step forward and we'll keep trying to perfect it as we move along. I'm appreciative of all the work all the agencies and all the individuals involved put into this. It's not something we have a lot of choice with; it's something we have to live with in terms of federal regulations and we want to make it as applicable and transparent and involved as we can in terms of giving people an honest opportunity to participate in the projects that this State commences and is supported with federal dollars. It's not an effort to set quotas or do anything other than to give people an honest, legitimate opportunity to participate in the work force. Patty McCubbins said it's definitely given us some good tools to work with. Commissioner Howlett said he was a little bit upset with the inference that we were clear out of bounds in trying to implement a DBE and we faced lots of opposition.

It was getting crazy and out of hand. We do the best we can with what we've got but also to ask if we're doing the best we can. Let's re-evaluate this and know with certainty that we are.

Commissioner Lambert asked if they were going to put out guidelines and will it go to all of the contractors so they know what the rules are? Patty McCubbins said they currently have that. Some of the confusion is on MCA's part but we have not made it as transparent or as easy for them as we should have. I recognize that and I'm hoping that within the next few weeks that we'll make those necessary changes. I'm working with IT to make sure the contractors can search our website and find the DBE easily. We've already tried to address that.

Commissioner Howlett asked if they had to formally adopt it. Deputy Director Wise said no. We were just providing you with the information and we will keep you updated on it. I know the public uses the Commission as a venue for conversations about this and we feel like we need you prepare for that.

Director Discussion

Director Tooley said my discussions with the Executive Director of MCA are not about DBE anymore so I think that's a sign of success and good work. I'm very happy with the way that turned out. We've all heard about the Mill Town Dam but do you know about the Mill Town Bridge? There are some issues with the bridge and they are coming to light with more public focus on the issue specifically the piers in the water. We are going to have to address the issue sooner rather than later. Dwane will brief you on where we stand today and what his thoughts are as far as how to remedy the Mill Town Bridge issue on I-90.

Mill Town Bridge

Dwane Kailey said the challenge is we're not overly warm and fuzzy with the fix that the Corp and EPA have done with that bridge. Is it failing today? Do we have any indicators that it is going to fall down tomorrow? No we don't. But at the same point in time we have not seen a good stable fix out there either. So we're not sitting on our morals waiting for something catastrophic to happen. We are putting together a design for a design-build type package. That means we are going to get it up to about 30% design, get the environmental document done, we don't believe we need any right-of-way out there but if we find out we do, we will acquire it. We're going to have that done by mid to late summer this year. Should we get additional funding, we will be ready to hit the ground running to replace both of those structures.

The issues are simple: (1) the channel is narrow and presents some severe safety hazards for anybody trying to float. At this time FWP has closed that stretch of river;

they are not going to open it this year because of the risks. We actually are in possession of a video where some rescue individuals went out there with a test dummy which represented 170-pound individual without a life jacket and floated it down the river. It disappeared as it hit the turbulence for the first pier, popped back up and out of that and then hit the turbulence for the second pier and we still have not found the dummy. We have no idea where it went. We don't know if it's lodged underneath the pier somewhere; we don't know what happened to it. There's a pretty severe safety risk. We've gone through one spring where the rip-rap has not failed. That's it – one spring. We're about to enter spring number two and we'll see what happens. There is a 10 year warranty by EPA that started in 2006. Again we haven't had a whole lot of stability out there. (2) FWP, while we do have some numbers showing there is fish passage, the huge intent of this whole project was to improve fish passage. The numbers do show there is fish passage but it's not to the level they would like. The only way to fix these issues is to widen the river opening. With the existing bridge the way it is, there is no way to do that; absolutely no way. I don't know if you've seen it but the mitigation they did expanded our piers underneath substantially and that actually restricted the river opening. The only way to fix it is to replace the structure. We're getting it ready, we're going to hit the ground running and when we get additional money or if we find the needs in the Missoula District lessen then we'll fund it.

Commissioner Howlett asked if there was any liability on EPA's part. Dwane Kailey said it depends on who you ask. We've had a lot of consultation with our attorneys and there are several state agencies involved in this entire superfund site – MDT, DEQ, FWP, and NRDA. We've had those discussions and I would defer to Chief Legal Counsel as to how he would characterize the legal aspects of it.

Tim Reardon said there is always a basis to file a complaint should it happen, but it would be in all likelihood something that would come out of the Attorney General's office and go to federal court. EPA's defense is they were required to clean up the polluted area, reopen the stream and clean out the dams. We had this discussion about bridges way back before we ever executed the agreement. I was involved with the negotiations with the Attorney General's office, superfund folks, the Department of Justice and all of these things were on the table. The assurances presented by EPA ... first of all they didn't want to do anything with these bridges, they thought it was entirely a state problem. When they opened up the Blackfoot, they just wanted to pull the dam and walk away and clean up the sediment behind the Mill Town Dam. That wasn't going anywhere. Jim Skinner and folks from the Planning Division were heavily involved as well over time along with Rob Collins who is probably the chief negotiator for the State. Eventually they agreed to design stabilization for long-term stability at the structures. That was never bought off by the department, but it was their money, their engineer, and we were sort of stuck with the bounds of that agreement. The record is pretty clear that the department questioned the fix early on and has consistently done so.

Commissioner Howlett asked if they did a fix and it didn't work. Tim Reardon said the fix was basically to add a bunch of material. They narrowed the channel in doing so. The material at the moment is holding but the consequence of that was by narrowing that channel, they increased the flow of that river and the speed of that river. Now they've exposed greater portions of the pier because there is nothing holding it back. When the dam was there, the water was up a lot higher on the pier but now that the river is down you can practically get to the bottom of some of those piers so they are at risk for additional scour. I don't even know if they are on bedrock anymore. That's really the risk and the argument is they did not adequately design the fix to address the consequence of the water flow and the depth of the water that is going through there. Do you have a legal argument? Yes we do. They also have a contract they are going to hold up and say you guys signed it and said you accepted it. We're not sure that's going to hold water. I've talked to Rob Collins several times and he has raised this issue with the Attorney General back in Washington D.C. I know that Director Tooley and Lynn Zanto have also brought it to the attention of the Congressional Delegation that we have an issue. The engineers say it won't fall down but it also isn't going to last. It's going to need fixing sooner rather than later. You sure don't want the catastrophic failure of that bridge. The floods we had in 2011 scoured out way more than they anticipated. That's where we are.

Commissioner Howlett asked if they were building a contingency right now. Dwane Kailey said yes. Commissioner Howlett said I'm confused about the bridge situation in Missoula. What is going on there? I would like to get a briefing on the status of all those bridges in Missoula. From the articles in the Missoulian, they found a pot of gold and they are going to fix all these bridges. I don't know how that's going to happen. From the McClay Bridge, Russell Street Bridge, the Higgins Bridge and the only one left is Van Buren Street. I would request a briefing on the status of those bridges and how we anticipate addressing those issues. Dwane Kailey said he would send it to them.

MDT Tribal Relationship Liaison

Commissioner Howlett asked Tim Reardon about a previous discussion about Native American Liaison in the department. I had a subsequent discussion with you and Director Tooley about the fact that at one time in my early years on this Commission we had a Tribal Relations Subcommittee that went out and met with the Tribes. As we know it is important to go to where they are and sit down and visit with them and hear what their concerns are because they are not always comfortable coming here to a Commission meeting. We found some success with that if nothing else in building relationships. I'd like to get a status report on that also.

Tim Reardon said he recalled the discussion. We do have a person in the Planning Division who has worked through the TERO Program, Sheila Cozy, and she had developed a fairly good working relationship with the Tribes and with law enforcement. I never did have the opportunity to finish getting a position description put together for a specific Tribal Liaison. I thought we had some good discussions about it. Through my office and the Gain Council we have an attorney, Eli Crockson, who is on a first-name basis with Tribal TERO officers and attorneys through the State and he has travelled to every reservation at one time or another. Officially we never did get around to getting a position description put together or a position filled. The Planning Office is routinely working with the Tribes on different things as are the Districts. That's as far as I got. Sheila has done work through the Safety Program with the Tribes. We have the Tribal Conference that has taken place for the last several years and has been well attended by the Tribes.

Director Tooley said Jason Smith came out and we had a very good discussion with him. He's looking at reorganizing the Gain Council. So we want to see what Jason does and coordinate with him so we don't have each department or division doing their own thing. I think coordination would be good so we don't send out mixed messages. I'm still supportive of the Subcommittee. Now that the legislative session is coming to an end I'd like to have further discussions because I wasn't here when that occurred and I want to get your thoughts on how to put that together and what the procedure would be legally to do such a thing.

Commissioner Howlett gave a little bit of history on that. It wasn't designated by name or by Commissioner, it was the Commissioner of that District and the Chairman of the Commission that would go to the Tribe or a Reservation located in that District. Three of us constitutes a quorum or we can't do business as a Commission, but two of us could go sit down and visit if we had a Reservation in that District. For instance if we wanted to visit the Crow Reservation then we obviously would want get the Commissioner from that District where that Reservation is located. So he and I would be able to sit down and talk with the Tribe about their transportation issues. Some things have changed obviously now where Tribes can go directly to DOT to get funding; that's changed the landscape some. Nonetheless I think there are US Highways and Interstates, bridges and other things that come into play that the Reservations Roads Program doesn't take care of. As far as the Gain Council, when we raised the issue about the role of the subcommittee we were specifically told that the Gain Council had been formed and they would be assuming that responsibility. So we just backed away. In subsequent discussions with the co-chair of the Gain Council, that issue was never brought to the Gain Council so this Commission was misled by that statement. I didn't take it personal although I had every reason to but nonetheless it was six years of lost opportunity to continue to build relationships that specific transportation issues were being addressed by the Gain Council when in fact they weren't. That's why I brought it back to you. If the Gain Council is actively engaged in discussing those transportation issues but I know

how important it is to be able to set down and listen to what the issues are out there and to continue to work to build a trustful relationship. A lot happened in terms of building relationships in Governor Schweitzer's term but I can tell you it is not a perfect world. It isn't just the lives of the native people that I'm addressing, it's the lives of people who travel those highways, it's the safety of those people, it's the integrity of the landscape, it's the integrity of the history. It's those kinds of issues that are absolutely important as this body looks at approving projects that cross native homelands.

Director Tooley said I'm excited to get out and listen. I don't want to get too far ahead of Jason. Commissioner Howlett said he understood that and was willing to be patient and see where that goes. Director Tooley said let's work together. Commissioner Howlett said he would visit with Jason as well.

Kevin McLaury said he wanted to part of that too. Obviously the Federal Highway Administration looks to the Tribes as a government-to-government relationship. We hold that relationship fairly dear to us. I had a former employee, Mark Zitka who was tasked with the ability to work with the Tribal Planners and the Tribal Transportation Program which as we know through MAP21 has increased in dollars. I am fortunate to have Craig Ginzlinger in my office who does not work for me but works for Federal Lands, but it is his sole responsibility to work with Tribes. Commissioner Howlett talked about some Tribes moving to the Federal Highway Administration; there is an opportunity for Tribes to move from BIA assistance to Federal Highways. That allows them to get their money quicker, easier, and faster in some instances. Today Fort Peck Tribe is only Tribe in Montana that is a Federal Highway Tribe. The remainder of the Tribes in Montana still work through BIA. Salish Kootenai Council has not fully signed off yet but it looks like they may be going. Wind River in Wyoming is a big player in this. Big John is very well known and he understands the program. If Wind River goes, it's our estimation that most of the rest of the Tribes in the state will go to Federal Highways. That means we will have a Federal Highway person for that. I've asked Paul Harker, my ADA and #2 guy, to be the Office Liaison for Tribal Relations. I look forward to working with whomever you have but I've worked in other states that have lots of tribal presence and to have a Tribal Liaison in the Department of Transportation is huge because the Tribes know who they can go to. Even if it's the Gain Council there would be a person that works cooperatively and closely with the department, it really does up the game. So we're looking forward to the opportunities to reengage with some of the partners that we've lost touch with over the last couple of years. Commissioner Howlett said he was appreciative of the fact that it isn't a dormant issue; it's one we keep working on to make it better. We're all the recipients of gridlock but we hope we're all working toward the same goal of maximizing a shrinking resource base.

Legislative Update

Legislature is coming to an end. The budget went through the House exceedingly well. I thank this staff for their hard work. We actually came out with more money than we anticipated on the State's side. It now has to go through the Senate. The issues have been that folks have had a big interest in directed funding from the Legislature. That's not any different than any other session but between that and attempts from certain special interests to hijack your authority, we've been very successful in defending the Commission against all of that and it should remain at the status quo for at least two more years. We're very happy that's about done.

MDT Personnel Issue

We had interviews for the Great Falls District Administrator position. I've made my decision and we'll have a decision by the end of the week. We've talked to the candidates and it was a great pool of candidates. You'll be very happy with who we selected.

Transportation Commission

The Governor's staff has been working through the major lists of people. Labor, with their 41 boards and commissions, slowed down the process quite a bit. The Governor's office staffer has been asking some questions, so I know they are working on it and I think the Governor will be making some calls very shortly. That issue should be cleared up soon and hopefully as much will stay intact as it is right now because you're doing good work Mr. Chairman.

Future Out of Town Commission Meetings

Commissioner Griffith said I would like to bring up two things that I think are important. One is we have some unfinished business on Hwy 93 that the Commission needs to get up to speed on. So as part of our Commission Agenda I'd like to get up to Hwy 93 and maybe Sanders County and look at that speed zone situation as part of one of our Commission meetings. Also I've taken heat on Carol's request on the Bakken. I truly believe we ought to make two trips this year. I hope the Commission agrees with that. I think it's been a long time since we've been in District One to look at the result of what's going on over there. Can we talk about that? Commissioner Howlett agreed. This state is too big for us to do one out-of-Helena meeting; it's huge and there's an awful lot going on in every district. The Bakken thing has had a great, great impact on the whole west side of the state. We don't have enough resources to do everything that needs to be done over there. Commissioner Howlett said we made a pretty good effort to invite the Tribes last year in Billings and improve that relationship. I think this is two areas where we can do that again and continue that dialogue. Commissioner Skelton said it is so important to see what's happening on the ground; to actually be there and see what the patterns are in the community I think is important. Commissioner Lambert said

until you've seen that Bakken you really don't get it. You can talk forever but until you see it and pull off the road and try to get back on the road, you really don't understand the impact. It's a huge impact. It's a huge area. The impact starts at the Wyoming line and comes clear out to the Rocky Mountain Front. The traffic is horrible and we lose a lot of people on that corridor. Commissioner Howlett said let's plan to do two trips, one to eastern Montana and one to District 1.

Director Tooley said the Bakken Impact Study Report is out on the website. You can see from that the economic modeling; they are anticipating the impacts to continue to 2027. It isn't going away unless the Saudi's drop the price of the barrel of oil to \$40.

Next Commission Meeting

The next Conference Calls were scheduled for March 26, 2013 & April 9, 2013. The next Commission Meeting was scheduled for May 30, 2013.

Adjourned

Meeting Adjourned

Commissioner Howlett, Chairman
Montana Transportation Commission

Mike Tooley, Director
Montana Department of Transportation

Lori K. Ryan, Secretary
Montana Transportation Commission