

# Montana Transportation Commission

January 28, 2016 Meeting  
Helena, Montana

## IN ATTENDANCE

Rick Griffith, Transportation Commissioner, Chairman  
Barb Skelton, Transportation Commissioner  
Carol Lambert, Transportation Commissioner  
John Cobb, Transportation Commissioner  
Dan Belcourt, Transportation Commissioner  
Mike Tooley, Director MDT  
Dwane Kailey, MDT Engineering  
Lori Ryan, Commission Secretary  
Dwane Kailey, MDT  
Dave Ohler, MDT  
Carol Grell-Morris, MDT Legal  
Lynn Zanto, MDT  
Dustin Rouse, MDT  
Rob Stapley, MDT  
Gregg Pizzini, MDT  
Pat Hurley, MDT  
Val Wilson, MDT  
Kelly Johnson, MDT  
Kevin McLaury, FHWA  
Lloyd Rue, FHWA  
Chris Riley, FHWA  
Paul Dennehy, Lamar  
Rick McAlmond, Lamar  
Matt Clyde, Premiere Outdoor Advertising  
Jared Johnson, YESCO  
Mike Holen, YESCO  
Gary Walrack, Chandler Communications  
Bob Jovick, Livingston Health Care  
Michelle Becker, Livingston Health Care  
Mr. Hazelbaker, Bozeman HRDC  
Christy Haggler, Congressman Zinke's Office

*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](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](mailto: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 Rick Griffith**

Commissioner Griffith called the meeting to order with the Pledge of Allegiance. After the Pledge of Allegiance, Commissioner Griffith offered the invocation.

## **Approval of Minutes**

The minutes for the Commission Meetings of July 30, 2015, September 8, 2015, September 24, 2015, October 6, 2015, October 20, 2015, October 28, 2015, December 1, 2015, and December 22, 2015 were presented for approval.

Commissioner Lambert moved to approve the minutes for the Commission Meetings of July 30, 2015, September 8, 2015, September 24, 2015, October 6, 2015, October 20, 2015, October 28, 2015, December 1, 2015, and December 22, 2015. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item 1: Missoula District Projects**  
**Slide Correction – Plains**  
**D1 – Slope Stability – Phase II**

Lynn Zanto presented the Missoula District Projects: Slide Correction, Plains and D1 – Slope Stability, Phase II to the Commission. The National Highway System (NH) Program finances highway projects to rehabilitate, restore, resurface, and reconstruct Non-Interstate routes on the National Highway System. Montana's Transportation Commission allocates NH funds to MDT districts based on system performance.

The Surface Transportation Program – Primary (STPP) finances highway projects to rehabilitate, restore, resurface, and reconstruct routes on the state's Primary Highway System. Montana's Transportation Commission allocates STPP funds to MDT districts based on system performance.

In response to emerging roadway safety needs on US-2 and MT-200, the Missoula District is advancing a pair of slope stabilization projects to prevent major slides from developing on these routes. The first project (*Slide Correction – Plains*) will address a slope failure on MT-200 near the town of Plains. The estimated total cost for all phases is \$381,000 – with the entirety of the funding originating from the Missoula District Primary (STPP) Program.

The second project (*D1 – Slope Stability – Phase II*) will address slope stability issues at several locations along US-2 and MT-200. The estimated total cost for this project is \$2,279,000. The Missoula District NHS Program will contribute \$1,690,000 to the project – with the remaining balance (\$589,000) being funded via the District's Primary (STPP) Program.

*Summary:* The Missoula District is requesting approval to add two slope stabilization projects to the highway program. The first project (*Slide Correction – Plains*) will address a slope failure on MT-200 near the town of Plains. The estimated total cost for all phases is \$381,000 – with the entirety of the funding originating from the Missoula District Primary (STPP) Program.

The second project (*D1 – Slope Stability – Phase II*) will address slope stability issues at several locations along US-2 and MT-200. The estimated total cost for this project is \$2,279,000. The Missoula District NHS Program will contribute \$1,690,000 to the project – with the remaining balance (\$589,000) being funded via the District's Primary (STPP) Program.

The proposed projects are consistent with the goals and objectives identified in the Performance Programming Process (P3) as well as the policy direction established in 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 these Missoula District projects to the program.

Commissioner Belcourt moved to approve the Missoula District Projects: Slide Correction, Plains, and D1 – Slope Stability, Phase II. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item No. 2: Rail/Highway Crossings**  
**Railroad Crossing – MT 141, Avon**

Lynn Zanto presented the Rail/Highway Crossings: Railroad Crossing - MT 141, Avon to the Commission. Rail/Highway Crossing – Protective Devices (RRP) projects are funded under the Highway Safety Improvement Program set-aside. Projects are selected by inventorying railroad crossings and identifying hazardous sites. MDT is asking the Transportation Commission to approve the following rail crossing project:

Project Name (Control No.)	Location	Description	Approx. Est. Cost	Funding Source
RR Xing – Hwy 141 – Avon (UPN 9079)	RP 0.3 on MT-141 (P-41) in Avon	Signal System Upgrade	\$195,000	RRP

*Summary:* MDT is requesting Commission approval of a railroad crossing project (shown above and on the attached maps). The total estimated cost for this project is approximately \$195,000. The proposed project is consistent with the goals and objectives identified in the Performance Programming Process (P3) – as well as the policy direction established in TRANPLAN-21. Specifically, traveler safety features will be enhanced with the addition of this project to the Railroad Crossing program.

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

Commissioner Cobb moved to approve the Rail/Highway Crossings: Railroad Crossing – MT 141, Avon. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item 3: Urban Pavement Preservation Project  
Helena – Urban**

Lynn Zanto presented Urban Pavement Preservation Project, Helena, Urban to the Commission. The Urban Pavement Preservation (UPP) program provides funding for pavement preservation work on urban routes throughout the state. MDT Districts work with local governments to advance nominations that align with system needs (as identified by local pavement management systems).

The Great Falls District is requesting Commission approval of an Urban Pavement Preservation project to address cracking issues on urban routes in Helena. A number of route segments have been selected to receive a "scrub seal" pavement treatment - which involves mechanical brushing of a polymer-based emulsion (into cracked areas) followed by a traditional chip seal.

The estimated total cost for all project phases is \$595,000 – with the entirety of the funding originating from the Urban Pavement Preservation (UPP) program. Project locations are listed below:

Project Name	Locations	Dept. Route	Length
Helena - Urban	Airport Road – Helena College to Carter Drive	U-5806	0.72
	Broadway – Colonial Drive to California Street	U-5816	0.38
	Broadway – Montana Ave to Sanders Street	U-5816	0.28
	Colonial Drive – Broadway to Hunter’s Pointe	U-5825	0.34
	Cruse Avenue – Broadway to 11 <sup>th</sup> Avenue	U-5815	0.44
	Henderson Street – Euclid Ave to Hudson Street	U-5810	0.38
	Lamborn Street – Broadway to 11 <sup>th</sup> Avenue	U-5813	0.39
	Main Street – Grizzly Gulch Drive to Cruse Ave	U-5805	0.47

*Summary:* MDT is requesting Commission approval of an Urban Pavement Preservation project in Helena. The estimated total cost for all project phases is \$595,000 – with the entirety of the funding originating from the Urban Pavement Preservation (UPP) program.

The proposed project is consistent with the goals and objectives identified in the Performance Programming (P3) Process as well as the policy direction established in TRANPLAN-21. Specifically, roadway system performance and traveler safety will be enhanced with the addition of this project to the program.

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

Commissioner Cobb moved to approve the Urban Pavement Preservation Projects – Helena, Urban. Commissioner Lambert seconded the motion.

The motion passed unanimously.

**Item No. 4: Glendive District NHS Projects  
Towne Street – River Ave to Merrill Ave (Glendive)  
Little Dry Creek – East**

Lynn Zanto presented the Glendive District NHS Projects: Towne Street – River Ave to Merrill Ave, Glendive and Little Dry Creek East. The National Highway System (NH) Program finances highway projects to rehabilitate, restore, resurface, and reconstruct Non-Interstate routes on the National Highway System. Montana’s Transportation Commission allocates NH funds to MDT districts based on system performance. In response to emerging needs on the National Highway System, the Glendive District is advancing a pair of projects to address operational and safety issues on Towne Street (in Glendive) and MT-200 (near Flowing Wells).

The first project will improve operations and safety on Towne Street (in Glendive) from River Avenue to Merrill Avenue. A recently completed traffic study is recommending traffic signal upgrades, intersection improvements, curb and gutter work, restriping (to a 3-lane roadway with parking), sidewalk improvements and resurfacing along the Towne Street corridor. The estimated total cost for this project is \$3,105,000. The Glendive District NHS Program will contribute \$2,875,000 to the project – with the remaining balance (\$230,000) being funded via the Highway Safety Improvement (HSIP) Program.

The second project will improve roadway geometrics and safety on a 7.4 mile segment of MT-200 (N-57) near Flowing Wells. The project will reconstruct the roadway (to current design standards) in order to address roadway departure crashes in the area. Additionally, the project will address pavement deficiencies and substandard structures in the area. The estimated total cost for this project is \$19,868,000. The Glendive District NHS Program will contribute \$18,368,000 to the project – with the remaining balance (\$1,500,000) being funded via the Highway Safety Improvement (HSIP) Program.

*Summary:* The Glendive District is requesting approval to add two National Highway System (NH) projects to the highway program. The total estimated cost for both projects is approximately \$22,973,000. The amounts originating in specific programs are listed below:

National Highway System	\$ 21,243,000
Highway Safety Improvement Program	\$ 1,730,000
	\$22,973,000

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 these Glendive District projects to the program.

Commissioner Griffith asked about Towne Street. Is that adding a lane or reconfiguring the existing lanes to accommodate the two-way turn bays? Lynn Zanto said right now it is a four-lane configuration and we would be reducing it down to three lanes – two travel through lanes and a center turn lane. The District anticipates that most of this will be within the right-of-way.

Commissioner Lambert moved to approve the Glendive District NHS Projects: Towne Street – River Ave to Merrill Ave (Glendive), and Little Dry Creek - East. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item No. 5: Highway Safety Improvement Program Additions to HSIP Program (Projects Attached)**

Lynn Zanto presented the Highway Safety Improvement Program Additions to HSIP Program (44 New Projects) to the Commission. The Highway Safety Improvement (HSIP) Program makes federal funding available to states to assist with the implementation of a data-driven and strategic approach to improving highway safety on all public roads. In Montana, the primary focus of the HSIP program involves identifying locations with crash trends (where feasible countermeasures exist) and prioritizing work according to benefit/cost ratios.

MDT is proposing to add 44 projects to the HSIP program – ten in District 1, five in District 2, eleven in District 3, six in District 4, and twelve in District 5. The projects on the attached list 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 \$27,751,000.

*Summary:* MDT is asking the Commission to approve the addition of 44 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 \$27,751,000. Staff recommends that the Commission approve the addition of these projects to the program.

Commissioner Griffith said we have talked about the bigger projects being identified. Lynn Zanto said she would go over projects which are \$1 million plus. Commissioner Griffith said there was one that is one thousand short of one million. Lynn Zanto said the list contains all the projects.

Frenchtown Median Rail Project is a median barrier for 10 miles which addresses cross-median crashes. That project is \$7 million. Commissioner

Griffith asked if Frenchtown got postponed. Lynn said this was a different project but she would double check to make sure.

Reserve Street Barrier Rail Project in Missoula addresses head-on side-swipe crashes. That project is just over a \$1 million to put in a median barrier.

Troy Trout Creek Area Project is just under \$1 million.

The fencing project in Browning due to animal crashes is \$1 million.

A rumble strip project at several locations in the Missoula District. That project is \$5.4 million.

The Ingomar Slope Flattening Project addresses road departure crashes on five miles of road. That project is \$2.2 million.

South of Wibaux Improvement Project is a shoulder widening and signing project to address roadway departure on five miles of road. That project is \$1.4 million.

The Hardin Slope Flattening Project is to address roadway departure on four miles of road. That project is \$1 million.

St. Xavier Curve Reconstruction to address roadway departures north of St. Xavier. That project is just under \$1 million.

Columbus Shoulder Widening Project southeast of Columbus is shoulder widening and rumble strips to address roadway departure. It is estimated at \$1.5 million on about two miles of road.

Lynn Zanto said you are missing the total for the Great Falls District which is just over \$7 million. The Frenchtown project is within the same limits as the reconstruct project and it would be up to the District to tie it in for cost savings and such.

Commissioner Lambert asked about the list for striping and rumble strips and if it was done under one contract. Lynn Zanto said yes it was under the same construction contract.

Commissioner Skelton moved to approve the Highway Safety Improvement Program. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item No. 6: Speed Limit Recommendation MT 200 – Eddy's Corner**

Dwane Kailey presented the Speed Limit Recommendation, MT 200 Eddy's Corner to the Commission. Eddy's Corner is at the junction of US 87 and 191. This is based on a request by Fergus County. They asked us to look at the speeds on US 87 in relation to this intersection. We looked at the crash history, citation data, and traveling speeds. At this point in time we're recommending a reduction in the speed zone:

A 55 mph speed limit beginning at station 541+50, project FAP 235(36) (2,050' west of the intersection with US 191) and continuing east to station 575+00, an approximate distance of 3,350 feet. It will go beyond the intersection about 1,400 feet. There will be no change on 191 at this time as it is stop-control and appears to be operating appropriately.

We have presented this to Fergus County and the letter of concurrence is attached for your review.

Commissioner Cobb moved to approve the Speed Limit Recommendation, MT 200 – Eddy’s Corner. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item No. 7: Speed Limit Recommendation Secondary 223 - Chester**

Dwane Kailey presented the Speed Limit Recommendation, Secondary 223 - Chester to the Commission. This is a joint request by the town of Chester and Liberty County. The Sheriff has requested to extend the 25 mph speed zone south approximately 4.5 blocks on Secondary 223. We have reviewed the travelling speeds as well as the crash history and based on what we found we are recommending the following:

A 35 mph speed limit beginning at station 515+00 on project S 303(4) (200’ south of the intersection with Harrison Avenue) and continuing north to station 570+00, an approximate distance of 1,200 feet.

We have presented this to the two local governments and their concurrence is attached for your review.

Commissioner Cobb said the Liberty County Commissioners talked about extending this 300 feet further to the south. Is that included in this? Dwane Kailey said that is correct. The report discusses that our original recommendation didn’t go as far as they had requested. Based on their comments as well as working with the District we did extend that zone to accommodate their request.

Commissioner Skelton moved to approve the Speed Limit Recommendation, Secondary 223 – Chester. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item No. 8: Speed Limit Recommendation Secondary 306 – Rapelje Road**

Dwane Kailey presented the Speed Limit Recommendation, Secondary 306 – Rapelje Road to the Commission. This is a request by Stillwater County officials to review the speed limit on Secondary 306. We have reviewed the crash history, the traveling speeds and characteristics of the roadway. At this time we are recommending the following:

A 50 mph speed limit beginning at straight-line station 0+00 (intersection with Old US 10) and continuing north to station 24+00, an approximate distance of 2,400 feet.

Transitioning to a 60 mph speed limit beginning at straight-line station 24+00 (700’ north of Centennial Road) and continuing north to milepost 2.9 (1600’ north of the intersection with Hersrud Road), an approximate distance of 1.325-miles.

We have concurrence from Stillwater County for your review and approval.

Commissioner Skelton moved to approve the Speed Limit Recommendation for Secondary 306 – Rapelje Road. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item No. 9: Speed Limit Recommendation  
Secondary 421 – Columbus South**

Dwane Kailey presented the Speed Limit Recommendation, Secondary 421 – Columbus South to the Commission. Stillwater County Commissioners requested a speed study on this route from the intersection of MT 78 to approximately milepost 8.8. We have reviewed the traveling speeds as well as the accident history and the roadway characteristics. At this point in time we are not recommending any changes. We have a letter from Stillwater County recommending an adjustment but we're not approving it at this time.

On the map you can see there are a number of fairly sharp curves along this route. I would also draw your attention to the rural nature of this area. We have curve warning signs on these curves but there is a fair amount of distance between each of the curves and asking the public in this rural setting to remain at the speed advice for the curves isn't realistic. They are not going to travel that speed in between the curves. At this time we believe leaving the speed limit as appropriate is the prudent direction.

Commissioner Cobb asked about the curve warning signs. Dwane Kailey said we recently reviewed all the signs. I've got a report if you want to look at it. For the most part the curves are advised for about 50-55 mph. These signs are advisory and not regulatory. Commissioner Cobb asked if that is where the cluster of accidents are happening. Dwane Kailey said yes in some of them. Commissioner Griffith asked if you could be pulled over for going 60-65 mph through that section. Director Tooley said you would have a tough time making your case in court. There are other considerations when you're enforcing speeds, for example if it appears to be reckless or too fast for the conditions of the highway.

Commissioner Cobb asked about the tree and brush encroachment on the roadway that caused the line of site to be impeded. Did you find that to be a problem? Can you see the curve in time to slow down? Dwane Kailey said we brought this to Maintenance's attention but the challenge we run into is a lot the trees and brush are actually on private property and at times the landowners are not conducive to allowing us to trim them so we are trying to work through that process.

No motion is necessary if you are not changing anything.

No Change

**Agenda Item No. 10: Speed Limit Recommendation  
Benton Avenue – U-5805**

Dwane Kailey presented the Speed Limit Recommendation, Benton Avenue – U5805 in Helena to the Commission. The City Helena requested to relocate the 25 mph and 35 mph transition from its present location near Carroll College north of the railroad tracks. We have reviewed the traveling speeds, the accident history and the culture of the roadway. At this time we are presenting the following recommendation:

A 35 mph speed zone beginning at straight-line diagram station 44+00 (north side of Meadow Lane) and continuing north to the intersection with Custer Avenue, an approximate distance of 2,100 feet.

There is a map attached that shows the proposed change which does extend the 25 mph speed zone to Meadow Drive at this time as requested by the City.

We have submitted that to the local officials and their concurrence is attached for your review.

Commissioner Skelton moved to approve the Speed Limit Recommendation for Benton Avenue – U5805. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### ***Elected Officials/Public Comment***

No public comment was given.

### ***Agenda Item No. 11: Speed Limit Recommendation Livingston East – Primary 11***

Dwane Kailey presented the Speed Limit Recommendation, Livingston East – Primary 11 to the Commission. This was requested by the Medical Hospital Center east of Livingston and the Park County Commissioners. A new hospital was recently built and opened on this route and we were requested to look at the traveling speeds. We have looked at the traveling speeds, the roadway culture as well as the crash history.

A couple of things I'd like to point out before we read the recommendation is I did hand out a map prior to the Commission meeting. As I mentioned with the Columbus study as well, there is a big "H" on the map that depicts where the new hospital has been built. Notice the rural nature of it. There aren't a lot of access points, there aren't a lot of businesses in close proximity to the roadway. We've also put on there the locations where we captured the speeds and the 85<sup>th</sup> percentile speed at those locations. I also handed out a report from my staff in bar graphs that shows the 85<sup>th</sup> percentile speeds and the 50<sup>th</sup> percentile speeds as well at these locations. You can see that even the 50<sup>th</sup> percentile is above the 55 mph speed limit that we're recommending. On the bottom draft you can see what we predict compliance will be – 55 mph in the green bars or 45 mph if that is chosen. With that staff's recommendation is as follows:

A 55 mph speed limit beginning at straight-line diagram station 40+50 (near milepost 56) and continuing east to the end of Primary 11 at the Interstate 90 East Livingston Interchange, an approximate distance of 1.98-miles.

Park County officials stated, "Park County Public Works appreciates the proposed reduction to 55 mph if there is no possibility for a more significant reduction and/or alternate solution to improve safety at this time."

One last thing I'll point out to the Commission. We have received a fair number of emails and letters from the public. The ADT in this segment of roadway is actually fairly low compared to what we see statewide. We are looking at about 2,500 vehicles in the middle and approximately 1,900 vehicles at the end of the route. We have a multitude of two-lane roadways in the state of Montana that are very similar to that ADT and function very well. There are a fair number of individuals here to comment on this.

Commissioner Skelton asked how far the hospital was. Dwane Kailey said I don't know but one of the individuals here is from the hospital and she can answer that more accurately than I can.

*Bob Jovick*

I'm a long time resident of Livingston. I was Livingston City Attorney for over 20 years. I'm here today representing Livingston Health Care who is extremely concerned about a portion of this recommendation. There is a portion of the recommendation as it relates to the specific turn-off to the hospital with which we are especially concerned.

By way of background and context. We are very proud to have opened our new hospital in October. This is a combined clinic operation with the hospital with rehabilitation, it is the total focus of health care now in the Livingston and Park County community. With this great new facility, its placement was on donated land that is on the eastern side of Livingston. It is significant to note that this particular land and the highway in question is in the City of Livingston. This is city property, city zoned; this highway is in the city. I know for years when you traveled through the area or even from the Google map here, you'd think maybe this was just Park County and Park County Commission area but it actually hasn't been for over 10 years since it was annexed. In that regard, there certainly has been anticipated development out into that area. There was proposed toward the Interstate a motel complex along with rest stops. We have the area around the hospital now slated for other commercial subdivision lots. So while you may not see anything there now, it is certainly anticipated for growth in the future.

With respect to the current speed area, as you go across the Yellowstone River on the nice new bridge, that bridge was set at a 45 mph speed limit. That is posted. But just after you get across the bridge, drivers see the present 70 mph speed limit. So this is presently posted at 70 mph on this highway. So as our new hospital facility opened, we've been faced with 70 mph speeds and users of the hospital, patients, and folks who aren't all that well sometimes, are pulling out into the 70 mph speed area. So that's what provoked our request for consideration of an interim study to get something in place as quickly as we could. As Mr. Kailey indicated, the Department of Transportation kindly hastened the studies to try and make this a permanent study so that we wouldn't just be struggling with interims.

With respect to the Livingston Health Care request, Livingston Health Care made a request to the Livingston City Commission that has proper jurisdiction, not the Park County Commissioners, to ask for a temporary limit. We asked for a 45 mph limit based on input from patients, staff and ambulances. We have no shortage of ambulance calls within the city but also on the cross section of highways both north and south and east and west. With respect to that request, the Livingston City Commission completely agreed with the Livingston Health Care request for a 45 mph limit. We then had the study completed by the state. The state study was then presented at the last City Commission meeting just last week. I don't know if it was because of the rapidity of this process, the Livingston City Commission wrote a very fine letter to the Commission and public comment that stated that the Livingston City Commission was requesting a compromise to the study that had been done to have a reduced 45 mph speed limit from the bridge to Swingley Road. Swingley Road is only about one mile from the bridge. The hospital turn-off is only about a half mile from the bridge. So really the request we are making is not a great deal of mileage, it's just for about a mile up to Swingley Road.

It is within that mile that we have a continued disagreement with the state recommendation in that we're requesting a 45 mph speed limit up to the area of Swingley Road and then after Swingley Road, per the Livingston City Commission's

suggestion of compromise, to be 55 mph out further than that. At least the 45 mph limit would be addressed with this compromise as reflected by the Livingston City Commission letter.

The input at the Livingston City Commission meeting was overwhelming... there were eight or nine comments, all of which were asking for the sake of public safety to have a 45 mph speed limit through there. There were expressions of problems folks have had. I've seen some letter sent in for public comment that commented about safety and some close calls.

With respect to the area of the study, we do have some particular local conditions which I think you're well aware of if you've tried to drive there through the wind. Unhappily we had another semi blown off the Interstate just last week. When those semi's blow off, we have electronic signs that suggest that traffic be diverted and not go on the Interstate, in fact go through a portion of the city and then use this roadway. So we've got semi traffic, all of the heavy Interstate traffic whenever there is a suggested diversion, and while you may see studies that talk about average conditions, we have to live with these conditions locally and see that heavy highway traffic using this very road that just throws things off with respect to normal studies. This is not an uncommon condition, there are at least half a dozen times when folks are required to use that diversion during the course of the winter wind season. Sometimes it can even be more.

This is Park County's largest employer – 240 employees especially as you hit peak times in the morning. You have peak times as employee shifts change especially the early morning shift.

We appreciate the state getting to this to take a look at a permanent study to make a reduction in speed that is certainly warranted. Where we disagree locally and as a community is just to a portion of that recommendation in the area I just described.

*Michele Becker*

I'm am President of Livingston Health Care, a position I've held for the last 12 years. In addition to everything Mr. Jovick said, at the City Commission meeting there was a lot of public comment and there was unanimous support for the 45 mph speed zone from not just employees but also Livingston citizens. In addition to the 45 mph speed limit, we also requested more signage – perhaps signage that would indicate “entering hospital zone, please slow down” or perhaps a flashing light, road markings. This is the only sign we have coming from town right now that indicates the hospital (referring to picture on phone). It is the typical blue “H” attached to a light pole and is approximately a mile and half from where the hospital is now. That's it. That's all we have coming from town.

The other thing is that the MDT person who had conducted the study has mentioned the concern about compliance and having to retrain drivers. One of the concerns is that when you come off the Interstate, and we're a mile and half from the interchange from the east, those drivers have just been traveling at the new speed now which is 80 mph and when they come off the Interstate they are in a 70 mph zone. So without proper signage and without enough indications, they are not going to slow down. We do have 240 full-time employees, actually our total employee count exceeds 330. In addition to that daily traffic, we have the ambulances, angel line, and we see over 40,000 patient visits per year. We have visitors coming to see friends and family in the hospital, we have daily deliveries of vendors. So it's more than just the traffic coming from Livingston or from the hospital, it's everywhere and you need to have that understanding. I can't impress upon you enough the emphasis that this community really wants to share and bring to your attention that the study isn't speaking to everything.

Commissioner Griffith asked when the speed study was done. Was it before the hospital opened or after? Dwane Kailey said I don't know when it was gathered. I do know that we were aware and worked with system's impact to the hospital. We were aware of the traffic that would be generated by the hospital because we actually looked at a left-turn lane for that but it did not meet that level. So I would make the assumption that this is incorporating the hospital traffic but I don't know that for a fact.

Commissioner Lambert asked if this is the current speed of the road and this is what people are traveling (referring to map). Dwane Kailey said that was correct. That was picked up in our speed study. I have two final comments. We did go out and review the signage in response to the comments. I want to commend staff because they actually had signs up October 21<sup>st</sup>. They removed the covers on October 26<sup>th</sup> when the hospital was opened. There are two additional signs 500 feet either side of the approach. If they're not there right now I can only assume they've been hit or removed. That is in accordance with what we do for all hospital signing throughout the state. Commissioner Griffith asked what that standard was. Dwane Kailey said it is the standard MUTCD approve blue sign with a big "H" on it. Commissioner Griffith asked if it was the same sign they saw in the picture. Dwane Kailey said yes. Commissioner Skelton asked if they were there now. Michelle Becker said they may have blown down but it wasn't there last Thursday when I took the picture.

Commissioner Griffith asked if the Commission had a letter from the County Commissioners. Dwane Kailey said the Commission was emailed a letter from the County Commissioners.

Commissioner Cobb asked if the turn lane was an issue. For safety reasons do we need to have a different turn lanes there? Dwane Kailey said when any developer comes in we have set a standard because money is finite and we can't build turn lanes for everybody. We have set a standard given the turning movements and average daily traffic where we believe turn lanes are most appropriate. Using that criteria, we looked at this development and it did not meet that criteria so we did not task that back onto the developer. However, just like any other developer, if they are willing to pay for it, we would allow those turn lanes to be built at this location. Commissioner Cobb asked if, in the future, we need to do something out there. Dwane Kailey said if this area continues to grow and additional businesses and additional traffic is out there, then yes there is a potential we will need a turn lane either for this facility or others in the future. If they meet our criteria as they propose to build, we're going to task the developer to do that. If it meets our criteria after they have built, then it is the responsibility of the Department of Transportation. Commissioner Cobb said they will just need to know your criteria. Dwane Kailey said that is correct.

Commissioner Griffith asked about future development in the area. Michelle Becker said it's all on the Watson property. The majority of it has been designated light industrial for commercial to Swingley Road. West of the hospital is all residential. The property has not been completely subdivided, however, there are active buyers already looking at the commercial property at this time. Commissioner Griffith asked if they would be using the same entrance and exit as the hospital. Michelle Becker said yes. We are on a city street named Alpenglow Lane. Meyers Road is slated to be redirected and straightened out so that it will intersect with Swingley Road. Swingley Road will be one route but Alpenglow will be another and we are on Alpenglow.

Commissioner Skelton asked how far the hospital was from the highway. Michelle Becker said the facility was located out of the 500 year flood plain. Watsons donated 20 acres and we pushed it back from the highway and bought an additional 10 acres in front of us. So maybe a block and a half and part of that is parking. Commissioner Lambert asked if there was a turn-off for the hospital. Michelle Becker said the only developed hard surface is Alpenglow, however, it will eventually connect with Meyers and Meyers will be straightened out to Swingley Road.

Commissioner Griffith asked if Alpenglow was their road. Michelle Becker said yes but it is a city street and is paved. Commissioner Griffith asked if there were turn lanes onto the highway. Michelle Becker said no.

Dwane Kailey said there are two things to consider. What we are showing in our report is that we predict there will be fairly limited compliance if we set it below 55 mph. We could potentially set the speed limit at 55 mph and if law enforcement participates and enforces it, then we will see compliance. Then we could go back out at the end of the summer and review it to see if we are getting compliance and then report back to the Commission. At that point in time you could choose to leave it at the 55 mph or, if you choose, you could lower it to 45 mph. If you're willing to set it at 55 mph and let it run its course. Then let Park County and Livingston provide the law enforcement that needs to be present to get compliance. Then if that takes place we can bring that information back to the Commission and let you review it. If you choose to go with the compromise that's been offered – setting 45 mph out to Swingley Road, then you are essentially setting a 45 mph for a little less than a mile from the interchange. Staff's recommendation is to set it for the entire length. Again, you're going to have challenges with compliance if you set 55 mph for that very short distance into the interchange. That's not an engineering recommendation, it's simply a guidance.

Kevin McLaury offered an educational piece about speed limits. We've had many discussions about this and setting the right speed. Setting speed limits is a very complex process. We have stamped licensed professional engineers that have training that do these types of studies. We don't question the bridge engineer who says we need a bridge this deep and this wide. That would be in the same realm. They are a knowledgeable stamped professional engineers who believe public safety is paramount and is a part of our code of ethics. Some of the misconceptions that we have about speeds is that we inherently have this idea of what's safe because we drive. Another misconception is that reducing speed limits will slow traffic. We know that is not true and we see that repeatedly. That reducing speed limits will decrease the number of accidents or decrease safety. That is also a misconception. Another misconception is raising posted speed limits will cause an increase in the speed of the traffic – again that 85<sup>th</sup> percentile is where people are comfortable driving and that is what people are going to drive. So going away from some of the recommendations that the professionals have given us follows not only Federal Highways guidance and law which states: "speed zones shall only be established on the basis of an engineering study that's been performed in accordance with accepted traffic engineering practices." Montana Code references that as well. The Commission has the authority to set speed limits, there is no question there whatever. I would ask that if we do adjust from the speed limits the professionals have recommended, we have some justification as to why. That would be the piece I would request. It's your decision but I'm trying to provide some educational pieces. As we move forward, again it's your decision but I would ask that, as we go through this, we use sound engineering knowledge that has had 50-60-70 years of study.

Commissioner Griffith said, we as a Commission, respect that. We just did six sound engineering guidance speed limits that the Commission agrees with. The Commission may or may not agree with the recommendation but part of our mission is not just the engineering, it's taking in the culture, the historical, and human community factors. That weighs on us and it's also part of what we were instructed to do or else they would just give it to the engineers and tell them to set the speed limit. They needed somebody to look at something different that engineering doesn't figure out. That's why we're involved but I appreciate your comments and thank you.

Commissioner Skelton moved to approve the Speed Limit Recommendation for Livingston East – Primary 11. Commissioner Lambert seconded the motion. All Commissioners voted aye. \*MDT staff will study the speeds and review enforcement summer of 2016.

The motion passed unanimously.

### ***Increase in Interstate Speed Study***

Dwane Kailey said I have some information and good news for you. I handed out a sheet which is related to speed studies and speed information. As you are aware the last Legislative Session approved an increase in speed on the Interstate to 80 mph. We were able to work with the Legislature and get some exceptions for areas we were concerned with. In working with Lynn Shaw they have Automatic Traffic Recorders out there at various locations on the Interstate. On the graph we are showing the 85<sup>th</sup> percentile speed was prior to October 1<sup>st</sup> and after October 1<sup>st</sup>. The last column is the increase to decrease that we're seeing. Interestingly we see the greatest increase at all of these locations is a whopping 2.25 miles per hour. On average we're seeing a 1.168 increase throughout the Interstate System. So even though we increased it by 5 mph, we're only seeing an increase in the traveling public of about 1.68 mph. Again that goes back to what we know – people drive what they are comfortable driving and we didn't see a huge increase out there.

Commissioner Griffith said I haven't changed my driving style since the speed limit increase. We haven't done anything to determine whether that one mile per hour has changed fatality rates on the highways. This is an average and there are plenty of areas that are still out of the average. I see a more entitled driver. The one thing that goes back to cultural and historical is they're almost road rage type. There is more weaving back and forth. Even though it is only a small amount, there is a different person in that upper percentile or causing that upper percentile to go up. I'm still not comfortable with the 80 mph increase and I won't be until I see the fatality numbers to verify whether there is a difference or not. Dwane Kailey said that is an excellent comment. We've got two things going on. My staff is working with Lynn's staff to try and use the ATRs to determine what the pace is. That will give us a better idea of what the differential is. We're still working on that and hope to report back to you before too long.

The other thing is we are tracking serious injuries and fatalities by system and by route. I hesitate giving you that information because it is so new and I don't want to start making leap judgments. We will start bringing that information back to you as time goes on. We would hesitate to make any real conclusive decisions until we have a little more time, maybe two to three years. Commissioner Griffith agreed but said as the information becomes available, even if we don't want to make a judgment about that information, we ought to have it because if there is a trend that's starting I don't want to be at the backend of the trend before we do something. Dwane said that is correct. We actually have seen a decrease in accidents on the Interstate but it's a very short period of time and it's way too early to start making any decisions. Commissioner Griffith said there also a big increase in the accident rates before the 80 mph speed limit went in. So we had probably six to eight months of really out of balance fatality rates and accident rates.

### ***Agenda Item No. 12: OAC Proposed Rule Notice***

*Carol Grell-Morris, Staff Attorney MDT.*

I am going to be speaking about the proposed rules for Outdoor Advertising Control. The draft of the proposed rule notice was included in your agenda book. It is rather lengthy so hopefully you had time to work your way through it. I'm going to present

a very brief summary of the rules and what we're proposing to change. Then our Right-of-Way Bureau Chief, Rob Stapley, is going to talk specifically about the LED electronic billboard part of it. I will speak about the remainder of the rules, amendments, and updates that we're proposing.

The Right-of-Way Bureau is the Bureau that houses Outdoor Advertising Control. Right-of-Way has been making an effort to update these rules. The last general update was in 2008. That was eight years ago so it really is time to go through and revise what we needed to. That is why it is such a lengthy process. Originally we were going to separate electronic billboards and our general housekeeping update but as time went on it became clear that the two were converging, so we've combined them on the one draft that you see in front of you. Electronic billboard is a brand new rule and the rest are revisions to our current rules but they are on one notice.

What we are seeking today is the Right-of-Way Bureau needs the Commission, as they are the authority that controls outdoor advertising in the state, to vote whether or not to initiate the rule making process. I'm going to talk about how the rulemaking process works so everyone is clear about it.

If the Commission votes to proceed with rulemaking then that's a statutory process and all the agencies have to follow the same process, it's in our statutes. This notice will be filed with the Secretary of State. They have two filing dates per month so we would pick one that will work for us. The Secretary of State then publishes the proposed rules. They have a register that comes out every two weeks with all the proposed rule notices from every agency in the State. This would be one of maybe eight or ten proposed rule notices. That triggers a public comment period. The point of rulemaking, the formal process, is to allow for public comment. That is what is sought through rulemaking. So we file with Secretary of State, a public comment period ensues, and in this case there would be both written comment and an opportunity for verbal comment at a public hearing. There would be a 28-day comment period and written comments would be accepted in emails, letters, US mail, and there will also be a public hearing scheduled in that 28-day time frame and people would be able to attend. That would be part of the notice telling them the date, time, and location and people would be able to attend. That would happen after formal rulemaking is initiated.

The notices are sent out to the interested persons list and to anyone who might be affected. That's how people know there are rule changes underway and they can see when the hearing is, and they can see how to submit written comments. Those notices are actually sent via email or regular US mail. The comment period ends on a certain date. The comments are then gathered and summarized by the hearings examiner that conducted the hearing. Since a lot of the comments are repetitive, it is good to have a report that summarizes everything that came in. Then the department and the Commission respond to each of the comments. If there is a comment that you hadn't thought of, we can make some changes to the proposed rules based on the comments or you can drop certain proposed rule changes based on the comments and keep others. That happens at the end of the comment period when we see what was gathered. Then a final adoption notice is filed with the Secretary of State and that makes your rules effective. That's a very brief step-by-step of the formal rulemaking process. All we're doing today is voting whether or not to initiate that formal rulemaking process.

To turn your attention to our actual proposed rule notice. I'm going to speak about the general rule update and clarification of some rule language. I mentioned it hasn't been done for eight years. We've had some minor rule changes in that ensuing eight years, fee increases and smaller things like that. This is a very general update. I want to direct your attention to statutes on rulemaking that require each proposed rule change be accompanied by a statement of reasonable necessity. In our draft, after each proposed rule, is a section that is entitled "reason". That's our statement of

reasonable necessity. Some of them are long and some are short but they give the reason that the proposed change is being made. That allows people to see what the thinking was and why it was necessary – that's the key why it's necessary to make the changes. So if you have questions on why a particular rule is being changed, that is the section you should turn your attention to.

OAC is under the auspices of FHWA, it is a federal program under the federal statutes and rules, and state statutes and rules as well. Because it is through FHWA, they must approve all of our OAC rules. So in this case, this particular draft you're looking at has been reviewed by FHWA and has been approved by FHWA. That's all been done in advance because there is no use in proceeding forward if FHWA doesn't approve. That's been done in this case. It was approved in December of 2015.

To bring your attention to the rules that are being changed and I'll briefly state what the reason was for the change. The first rule is New Rule I, the numbers aren't assigned until the end of the process, so when there are brand new rules they just get roman numerals. New Rule I – Electronic Billboard Standards. Rob will speak about how that was drafted and what went into that.

The next section is rules that are being amended. We start with 18.6.202 Definitions. This is lengthy because quite a few definitions are being changed – some are being deleted, there are some new ones being added, and some are being clarified. From working with the Legislature, these are terms that are used elsewhere in the rules. So we need to define them here and when we need to add them, it is because that phrase is being used elsewhere in the rules.

18.6.203 Unzoned Commercial Activity. That is amending an existing rule. Again we're clarifying language on what would qualify an area for an outdoor advertising billboard. There must be a qualifying activity for off premise outdoor advertising. This rule addresses that and clarifies how those locations are determined.

18.6.204 On Premise Signs. Again some clarification for one of the smaller subsections on how that is determined. On Premise Signs are not regulated by MDT and this rule will help us and our staff clarify what qualifies as an On Premise Sign.

18.6.205 Off Premise Sign Locations, Compliance with Statute and Rules. This is the rule that contains the transit bus shelter language. I point that out because I know there are a number of people that want to address you on that issue. When you start flipping through your notice, this is where that language is located. There is new language being added on bus shelter advertising.

18.6.206 Unzoned Industrial Activity. Again these clarifications are making the language match on commercial activities. We've separated them into commercial and industrial but naturally the language must match where it can on how those locations are determined and what makes them qualify for outdoor advertising.

18.6.211 Permits. We're amending the existing rule. We're just updating some timelines on it and certain requirements about transfers, etc. Again its clarification and housekeeping type updates.

18.6.212 Permit Applications. This is updating, adding GPS requirements. Previously that wasn't commonly available but it is now so we're adding it. Adding some language on what accompanies an application for a permit.

18.6.213 Permit Attachment. A very simple update talking about what happens to a permit plate is revoked.

18.6.215 Fees. This is a fee increase. Everything increases in cost of course and the inspection fee is increasing from \$100 to \$150. In our Statement of Reasonable Necessity, we explain that this covers increased cost of travel because we have different staff that must travel to each of these locations to inspect a sign and of course some of these are in eastern Montana and an increase in cost will help pay for that.

18.6.221 New Sign Erection. Again some update in the language to make sure we're consistent with what we call these controlled routes. Rather than the word highways and talking about failure to abide by the rules and the penalty would be revocation of the permit. Which is again the same all throughout the rules and we want to make sure it's consistently stated.

18.6.231 Off-Premise Sign Standards. That's again updating and amending an existing rule. We are deleting some language for a couple of reasons: (1) some of it repeats statutory language and under the existing statutes you can't unnecessarily repeat statutory language. So we need to get it out of there; it's in the statutes already and there's no need to repeat it. Some of it is standardizing where the standards are found so we're just going to cross-reference everybody back to our sign standard rule so we don't have to repeat it over and over again. Kind of streamline it.

18.6.232. The next one I would specifically like to direct your attention to is 18.6.232. This is the rule that currently prohibits electronic billboards. So obviously if New Rule I allows them, then we need to update and amend this rule to remove that prohibition. So the rule would be amended to simply prohibit commercial variable message signs which is an older type of sign. Before we added LEDs there were signs that had little shiny things on them that would blow in the wind. Those type of signs would be prohibited here and it has nothing to do with LED. Those older commercial variable messages would remain prohibited if they are flashing and moving in intermittent lights but LEDs would be removed from this rule as no longer being prohibited.

18.6.238 Community Welcome To Signs. Again an update; we're trying to add that cross reference back to sign standards and therefore streamline and cross out a bunch of unnecessary language which makes our rule kind of long and cumbersome.

18.6.239 Mobile Advertising Devices. That's amending the current rule to just add portable objects that cannot display advertising. That's become necessary as we see that happening around the state.

18.6.240 Temporary Signs. Again it's a cross reference to sign standards and crossing out unnecessary repetition.

18.6.241 Church and Service Club Signs. The same.

18.6.243 Directional Signs. The same.

18.6.246 Political Signs. Again referencing the sign standards.

18.6.247 Official Signs. This is a change to the wording for sign standard reasons and for clarity sake.

18.6.251 Repairing of Non-Conforming Signs. This is an actual change from what our program is currently doing. MDT has a need to monitor and repair non-conforming signs. By statute they can only be repaired up to a certain level. MDT needs a way of tracking that. This would require a sign owner who is repairing a non-conforming sign to make application to the department and advise what the repairs will be so MDT can monitor whether it's meeting the statute. That's a new procedure and that's laid out in 18.6.251 again for monitoring purposes.

18.6.252 Upgrade or Relocation of Conforming Signs. Again conforming signs are handled differently so they don't have a statutory level of repair. Nevertheless MDT has no way of tracking the changes being made, so this is an attempt to allow that to be monitored by MDT. Relocation is also under here. It's possible to relocate a conforming sign but MDT has to know where that is going to be moved and get out there and inspect the sight and make sure it qualifies.

18.6.262 Sign Structures that are Blank, Abandoned, Dilapidated, etc. That's a very small change. We're just going to put all of those different types of signs into Abandoned Signs. So we made the rule language consistent with that.

18.6.264 Determination of Illegal Outdoor Advertising. That's our final amendment and that is simply a grammatical change for some wording.

So I would conclude just by stating that we are repealing two rules: 18.6.244 on Cultural Signs and 18.6.245 on Non-Commercial Signs. Again the reason for each those repeals is written here so everyone can see what we're doing. Cultural Signs is duplicative – we don't need both directional and cultural so they can be combined. That eliminates some of our lengthy rules. Non-Commercial is being eliminated because Non-Commercial is not regulated so we do not need a separate rule on that. So two repeals, of course, which will cut down on our total number of rules.

Again I'm going to conclude by saying what we need today is a vote on whether the Commission wants to propose the formal rulemaking process – initiate that process, trigger the public comment period, and we would kick that off with our 28-day written comment and hold a public hearing as well.

The electronic billboard rule was created separately. Again it's been combined under this notice but we're going to have our regular Bureau Chief talk about the process and what is contained in our New Rule I on Electronic Billboards. Of course I'll remain to answer any questions. Thank you.

Commissioner Lambert asked if they could go back to 18.6.251 Repair of Non-Conforming Signs. Obviously you've been in on this and I can't imagine why they want to make a sign repair last for a month. Why did they change a rule so that it takes so long to repair a sign? Carol Grell-Morris said I don't think the rule is trying to make it longer to repair the sign. The intention is that 30 days prior to performing the repair, the sign owners will submit a repair application. Commissioner Lambert said then the department has 30 days to reply. Carol Grell-Morris said that is correct. Then after the department approves it and the idea is that the department must make certain that the repairs meet the statutory requirement. So if you can only repair up to 75% of the value of the materials, we need to verify that. Once it's verified then the sign owner can proceed with the work. So it's not an attempt to hold them up in the repairs, we just need to be able to verify that they are meeting the statutory requirement. They can go ahead and do the repair. We do give them 90 days for that and then they verify that they've done it. Of course, extensions can be requested as well if there's winter weather that prevents repairs. Commissioner Griffith said it is almost like a new sign application in that you have to make sure the repairs are up to standard. So it's not like a rubber stamp application, it's like you have to go through a noose in due diligence.

Carol Grell-Morris said that's correct because the sign owner is going to be in the best position to ascertain what the value of the materials are and that's how the statute words that; 75% of the materials. So the sign owner is in the best position to ascertain what that value is and MDT would be able to see whether the 75% is being exceeded or not. So it's not an application in the sense that they don't need to talk about their qualifying business and those type of requirements, they already qualify.

There already in place. So it's somewhat different. Commissioner Griffith said my point is there is some review required. Carol Grell-Morris said that's correct.

Commissioner Griffith said my pet peeve still gets back to non-conforming illegal signs. If we made language more restrictive than what this is right now, do we have to go back through the process or can we do that as part of this process? Carol Grell-Morris said if the Commission wants to vote on different wording in the notice, absolutely now is the time to do it then it becomes part of the file and published notice that people are allowed to comment on. It can also be done as a separate notice. So if this Notice to Proceed goes through public comment, comes out the other end with however it looks, another notice is possible at any time. If there is a particular rule that the Commission would like to amend or a particular wording the Commission is looking for, that can be done at any time by the Commission.

*Rob Stapley, MDT Right-of-Way Bureau Chief*

Part of my job is overseeing the Outdoor Advertising Program. As Carol talked about we have a proposal for allowing digital billboards, we refer to them as electronic billboards or EPBs in the rule. Last year you had asked the department to draft a rule allowing electronic billboards for your consideration. After that request we met and invited a number of sign companies to attend those meetings and we drafted a rule that is in front of you. At this time I don't have a lot to add to what Carol said. I would ask if you have questions, we can go right into that.

There are two areas that a little more contentious in that rule. The first is the location where those are allowed around the state; they are not allowed just anywhere. We looked at our urban areas around the state and there seemed to be a higher demand for outdoor advertising in those areas, so we have narrowed that. The other one is spacing from other signs, spacing from intersections, spacing as a whole is a fairly contentious area as well. If you have questions I'd be happy to answer them.

Commissioner Griffith asked if there was anything that would make it easier for you to keep people from putting up illegal type signs. I know it's hard to enforce. Is there anything that would be a suitable tool to add? Rob Stapley said there are two areas that potentially help us. One is letting the public know what the rules are. Most people who are putting up illegal billboards, signage, illegal advertising are not aware that they can't put it up most of the time. The second is a resource issue. This is a big state and we have a lot of miles that we control and regulate and it's getting people out there and seeing what's there. It is a struggle to be honest.

*Gary Walrack, Chandler Communications*

For the last 10 years we've been implementing the bus shelters around the state for the transit systems. I'm here this morning to talk about the proposed rule that impacts the advertising on these bus shelters. The MUTC section 1(a).08 explicitly leaves the option for advertising in their right-of-way. Section 1(a).08, paragraph 1 in part states, "advertisements within the highway right-of-way shall be placed only with the authorization of a public authority or the official having jurisdiction." That's what we've been doing for 10 years. We have contacted FHWA in Washington D.C. to inquire about the regulations regarding bus shelter advertising in the right-of-way and their written response is that they are unaware of any prohibition on the topic of bus shelters in the right-of-way. That's straight from Washington. The email that I'll quote that he referred to. This is from Don M. Horran, FHWA in Washington: "The Federal Highway Administration has not issued any memos or guidance on this topic. However, FHWA's long standing position on bus shelter advertising is that it is permissible within the right-of-way on any highway system other than Interstate systems if the state provides satisfactory assurance to FHWA that such use will not adversely affect the highway or interfere with free and safe flow of traffic."

I know there's been a lot of things bantered around the highway department for months and years about this, that the feds say no advertising in the right-of-way. We have several states surrounding Montana that have bus shelters in right-of-way with advertising. The feds are not making this decision for you. This is your decision to make as Commissioners.

Now I'd like to tell you why bus shelter advertising in the right-of-way is important to the State of Montana. It is no secret that public transportation is growing in importance in our society. In Montana we have fantastic transit systems and they are growing in our cities and rural areas. We spend a lot of money on buses in this state and there's no place for the people to be in. With growth comes struggle. Our busses around the state are running before the sun comes up in the morning and they are running long after the sun sets. Our riders wait on these rural areas in the snow, in the dark, hoping that the bus driver sees them before a car slides into them. I know in Bozeman, the college students, the young female college students are literally waiting in the borrow pit in the dark in the morning in the snow waiting for the bus to go to class.

Now every society is judged on how they take care of their people, their handicapped, the riders and poorest of the poor and we have a mechanism, a business model, that works. It's allowed by the federal government and I hope it's allowed by your folks that a good transit system has transit shelters. Either the riders or the taxpayers will pay for this. Each transit shelter costs about \$16,000 to put in. To keep it clean and keep it lit, to remove the snow which is hand dug every morning sometimes several times thanks to the snow plows, mow the grass, sweep the sidewalk, replace the ballast and the tubes, remove the trash from the surrounding area, and scrub off the dirt is about \$3,000 per shelter to do this. And you have to have people on staff for these emergencies particularly broken glass. We have employees all around the state that take care of these shelters. If you restrict the advertising on these shelters in the right-of-way, you'll either place the burden of the shelters on the taxpayer or worse the riders will go without shelters at all. We carry that burden and we will continue to do so; you don't have to make that choice.

The current permit system has worked very well. Every city is different. It begins with the MDT Engineer visiting the site that the transit system allocates a bus stop for. They have heavy uses of passengers and they say they want a bus shelter here, then one of the engineers goes out and does a complete assessment. Next comes the approval of the District Maintenance Chief. This doesn't always go the way we expect it to. We have chiefs who turn down locations all the time because of very stringent rules. So these are permitted. These engineers, these chiefs have years of knowledge of the local traffic, he uses his knowledge and judgment to regulate the program so it works for that city. Our job is to do the leg work, the tedious site planning, gets the shelters permitted by the city and the landowner if necessary, as we get the building permits. We have the shelters manufactured and trucked to the cities and installed and assembled. We pour the concrete pads and install the shelter and then have the glass company come in and put the glass walls on the shelter. Then of course, if the power isn't entrenched then we have to have the power trenched in underground and we have to have a meter set up just like you have for a building or home, and then we have to have an electrical permit. There's a lot of things involved in putting these shelters up. We carry \$3 million liability insurance policy on our shelters; about three times what is required. By the way our insurance policy just doubled last year.

The simplistic way to look at this is we will just put in our own shelters; we'll buy our own shelters off the shelf. Well the excitement of new bus shelters wears off real fast when the reality of garbage, graffiti, broken glass, power bills, etc. go on month after month after month. As a side note a city that has nice, clean bus shelters that all look alike says something about that city. I know they have had some contractors build some shelters that were a little different.

Your choice today is simple and can save all that headache. We're here footing the bills day after day after day. This requires having people on the payroll to handle snow, broken glass and graffiti, and emergencies. You have a committed company here. I've personally been committed and with a laser focus on my company for 46 years. We are here to do the job. Please throw out this rule change and let us get back to work. He offered a picture of shelters to the Commission.

One of the things about these bus shelters that we do in Montana, in a lot of cities they are cloistered. We have glass walls which people really appreciate and they fit into the environment very well. For the females waiting for the bus at night, they can be seen. These are manufactured and shipped to every city in Canada, the US, and South America. The same business model is used because somebody has to pay for it. I know the funding is stretched at MDT and this ensures that somebody is there all the time. The federal government allows it, the statute allows it, so please let us continue to do what we're doing under the stringent permitting of the Maintenance Chiefs in each District. They watch us like a hawk.

Commissioner Griffith asked if this was \$16,000 (referring to picture). Gary Walrack said we tried to use solar in the flathead up towards Whitefish in that area because there is a very important stop between Kalispell and Whitefish. We tried and tried and tried and we couldn't keep those batteries going on that solar system. Finally, the Power Company said they had power right down the hill but it turned out to be a 770 volt mainline power line. We had to put in a vault, a transformer, a meter, trench up to the shelter – it cost us \$10,000 to put lighting in that one shelter. That \$16,000 is an average over the whole company. We've got constant inquiries from transit systems saying they need a shelter here or there, so while most of my friends are down in Phoenix playing golf, and I'll be 70 years old in six months, I'm putting my signature on the line at the bank for \$400,000 to build more shelters.

Commissioner Griffith asked if it was wrapped on the outside or is it clear glass. Gary Walrack said it is clear glass. One side has the lighting and the displays, the sponsors, a logo for First Interstate Bank. If it wasn't for Main Street businesses opening their checkbook and saying they'll sponsor this – it's a sponsorship like you have for soccer fields or baseball or hockey or golf tournaments. It's a sponsorship to help the public wellbeing and they see that. This may not be as exciting as a big electronic billboard that's big and bright and shiny, this is very mundane. It's just a sponsorship advertisement to pay for the system. In some cities there has been broken glass from a shelter laying on a sidewalk for 90 days. Is it the transits job to clean up that glass, is it the department's job, the city's job, the local business owner's job to clean up the shelter – it's nobody's job, nobody does it. There has to be somebody in charge of taking care of mass transit shelters and we're willing to do it.

Commissioner Lambert said she was having trouble trying to decide exactly what you want us to do. Is it 1(a).08 you want not changed? Do you want us not to do the rulemaking process? Gary Walrack said he would like the Commission to throw it out because we have been operating under a permitting system that has worked very well for 10 years. It is very stringent, it's in the right-of-way; it's a right-of-way park. They have put these rules and regulations that talk about size – size of the ads and all these things that just encumber the whole transit system shelters. It's just a complicated rule that I'd like to see thrown out. Just that rule. Let us continue to operate, let us get back to work and do what we do well. We're insured, we work well with the highway department. I love the people here, I've worked here for many, many years with them and we get along great. I've never had a black mark. We've operated by the book for years and we take care of things. I'd like to see you strike that.

Commissioner Cobb said in reading this, it doesn't stop you from having bus shelters, it says you can't have more than 21 square feet of advertising. That would be most of

the ads you do now isn't it? Gary Walrack said that is true. Commissioner Cobb asked if it was the exterior he was worried about and not the interior. Gary Walrack said exactly. It's a light box with a back-to-back display. Number one it gives us advertising ribbons from both sides of one wall – it's hard to visualize it. It also talks about incidental notice ability from the street which means little tiny signs – it has to be a logo or symbol that is readable by the traffic. Commissioner Cobb said but basically most times you wouldn't have more than 21 square foot sign anyway. Gary Walrack said its 21 feet on each side. We don't care about the exterior, that's for safety. As the bus driver approaches, they have to be able to see the passengers. Commissioner Cobb said it can't exceed 24 square feet on each shelter panel – that's what the rule says. But it also says you can't place it on the roof or on exterior panels of the shelter. So I'm trying to find out what the concern is. I don't think people are against shelters. Is it because of the advertisement on the exterior that would prohibit you from doing that?

Gary Walrack said it is confusing. Showing the picture – where the bus schedule is, this is the light box and there is a display on either side. We don't care about this. Commissioner Cobb asked how that affected what he was doing now. Gary Walrack said the way I understand the rule change it says there cannot be a display outside of this light box. Lori Ryan said what Commissioner Cobb wants to know is what part are you struggling with? Gary Walrack said for us to stay in business we have to have a display on either side of this box on one wall (referring to picture). Commissioner Cobb asked what it would say. Gary Walrack said it would say "First Interstate Bank or McDonalds." They have to open their check book and pay for the ad. Commissioner Cobb said so it's the exterior wall you're concerned with; the interior wall is not a big thing. Gary Walrack said this is used all over the country.

Commissioner Griffith said essentially 50% of the advertising would be gone, that's what you're upset about. Gary Walrack said yes. Another thing it says "commercial advertisements may only be placed on the interior shelter panels with a font size message intended for viewing by shelter occupants." Of course for it to be commercially viable, it has to be seen by passersby.

*Lee Hazelbaker, HRDC*

I'm the Transit Manager for HDRC Streamline and Gallatin Transportation in Bozeman, Montana. I've worked with Gary for a number of years on shelters. Trust me when I tell you that no place in the State of Montana is tougher to put a shelter than Bozeman, Montana. They have numerous regulations. We have gone to the City Commission time and time again and we are still making progress in that regard. Right now we have nine shelters in Bozeman and seven of those are directly related to Gary and his company. We did have one shelter that was put up by the Senior Center and one by the North Seventh Improvement District but they are the same design as what Gary presented.

Our problem is that given our budget and given our work schedule, we believe that our operation is the priority for our company. We have a fixed route system that started 10 years ago and during that time we are now averaging 300,000 rides per year. That's for a system that people said wouldn't work – you won't have 200 people per day. We have many days where we have over 1,000 riders per day. To get back to the point, we could not afford any shelters if it weren't for Gary and his company. He's been great to work with. He and Meagan have come down and have done a lot of footwork for us with the City Commission. I appreciate his appearance here today. I would stand in support of doing away with that particular change in the language. It would be very advantageous to us to continue our work with Gary and with Chandler Communication. As I said, we would not have the shelter that we have without Gary.

Commissioner Griffith asked if the rule change affected the nine shelter that are there now. Rick Hazelbaker said yes it would. Commissioner Griffith asked if they were on MDT right-of-way or city. Rick Hazelbaker said there are five that are on MDT right-of-way. They stretch from Huffine Lane which goes out to Four Corners, we have four shelters out in that area and we also have one on North 19<sup>th</sup> that is in MDT right-of-way. They put in a new Town Pump there and they allowed us to put a pad and shelter at that location as well.

Commissioner Lambert said obviously some of these aren't on state or government land. Rick Hazelbaker said yes. Commissioner Lambert asked if they had to get permission to put them up. Rick Hazelbaker said yes. Commissioner Lambert said if the Garden Club puts up a shelter, do they maintain it? Who maintains those? Rick Hazelbaker said the only one that is maintained is the one by the Senior Center. The Senior Center was sort of a trial run for us. They wanted something that reflected their building as a shelter so they took it upon themselves to build their own and they maintain it. The one on North 7<sup>th</sup> that was put up by the North 7<sup>th</sup> Improvement District is a problem because nobody maintains it. I end up going by their quite often and collecting garbage and that sort of thing. Commissioner Lambert said the reason they want this rule is so if you put it in state right-of-way then the state is going to take care of it, right? So if you don't put it in state right-of-way they don't have to take care of it. Is that their idea? Rick Hazelbaker said if we can't put it on state right-of-way, we won't have one. If Chandler Communication cannot put a shelter up and advertise in it, then we would not have a shelter in that spot because we can't afford it with the money that we have.

Commissioner Griffith asked about HRDC. Rick Hazelbaker said it is Human Resource Development Council. We run the Streamline Bus System which is the fixed route system and also our parent transit Galavan System which is our door-to-door system. Commissioner Griffith asked if there was another bus system in Bozeman besides theirs. Rick Hazelbaker said no. Commissioner Lambert said where I live you call them a couple of days ahead of time, they come to your house and pick you up. Rick Hazelbaker said that is what Galavan does. Commissioner Griffith asked if HRDC was part of our loan and grant program. Lynn Zanto said yes. Commissioner Griffith asked if bus shelters were not allowed under the grant. Lynn Zanto said they were allowed in our Capital Improvement Program.

*Paul Dennehy, Lamar Advertising*

We've been through several meetings with you and I'm not here to regurgitate all the facts. On behalf of Lamar I would like to say we appreciate the work that your staff, directed by Mr. Stapley, has put together in rewriting these rules and we also would appreciate you moving forward with approving these. I would like to ask one question – Carol stated that FHWA approved the process but I'm not sure if she meant approved the rules as written or approved going to the public and moving forward. Commissioner Griffith said they approved moving forward. Carol Grell-Morris said FHWA approved the rules as drafted.

I've spoken with some other outdoor companies, Sign Doctor and Insight Media and Freeway and asked if they would allow me to speak on their behalf. They said yes. We appreciate the possibility of moving forward with working rules.

*Matt Clyde, Premiere Outdoor Advertising*

I wanted to talk today about some of these proposed rule changes. I am also speaking on behalf of six or seven other companies here today and some of the Mom and Pop individuals who also own signs. A couple of things that caught me right away was that Commissioner Lambert already keyed in on something within one minute of reading some of these rules that are going to throw up a red flag. There is obviously a long history with billboard regulations in Montana and across the

country. FHWA obviously put in rules a long time ago and they were stringent rules that we had to follow at that time. Since that time there have been a couple of regulation guideline changes by FHWA that I think are important going forward with these new rule changes. Some of the relaxations on these guidelines from FHWA are important going forward. One thing I also caught that I would like to mention is you said it was your pet peeve about illegal and nonconforming signs and I want to be clear that there is a difference between a nonconforming sign and an illegal sign. For the record I want it to be clear that a nonconforming sign in general is “a sign that was built at a certain point in time that met all of the current regulations at that time but no longer meet the current regulations as they are in place.” That is the definition of a nonconforming sign. Although there are a couple of a minor issues that I think we have as a group of small companies and individuals, I want to focus on one in particular today. That is section 18.6.251 which is specifically regarding the repair of nonconforming signs.

The first thing I want to point out is section 1(a) and Carol pointed out the fact that there is a certain percentage that a sign company or an individual can go out and repair a sign – it’s 75% of the value of the materials used to replace the sign new. That is a subjective number. You could ask 10 people to come up with a number and you’re going get 10 different answers. So I would say we need a little bit better clarification on that.

Second, section 1(b), and this really hits home for a lot of small companies and small business owners that have their own sign because it states, “that the sign may be replaced if damaged by vandalism, criminal act, or tortious acts, up to and including 100% of its replacement cost.” That regulation was put in place a long time ago and it was based on FHWA regulations and almost quoted word-for-word. I wanted to make it clear that since 2009, FHWA has issued a recommendation that they do understand there are other things beyond the control of the sign owners that can be a detriment to those signs. (1) Act of God – we can’t control tortious acts, we can’t control if somebody goes out and cuts our billboard down because they are an anti-billboard group, we can’t prevent somebody setting fire to it. It allows for us to go back in and replace those if those things happen to us but there are other things that happen, such as, the ridiculous winds we’ve had over the last couple of years which have caused substantial damage to our billboards. We can’t control the wind! None of us can control the fire. I couldn’t control last year when an RV parked on the side of the road on fire and started my billboard on fire. I can’t control those things either.

So one of the things we are asking as a group is for the Commission to recommend that other things be an option for us to be able to rebuild a sign, a nonconforming sign, if it’s destroyed by an Act of God; something out of our control. When these issues have been brought up before in previous years, it’s always been referred back to FHWA but they don’t allow you to do that. That’s not true. FHWA has given the state guidelines and given a little bit more flexibility in 2009 to understand there are other things that can impact these nonconforming signs other than just criminal or tortious acts. So we would ask that we could move forward with possibly incorporating ... as Wyoming has done in recent years. Wyoming understands they have extremely high winds there and a person should not have to go to bed at night in 40 mph winds and wake up the next day wondering if he is still in business or not. Wyoming has made an exception for things, Acts of God that are out of the control of the permit holders.

Commissioner Griffith asked what the point was. Matt Clyde said if a nonconforming sign blows down in a horrible wind storm, we want to be able to just put that sign back up. We’re not asking to go from a 12 x 24 billboard and go build a 14 x 45 billboard. We’re not asking for that. All we’re asking is to protect the assets that we are currently invested in and what currently run our businesses. My business has about 70% nonconforming billboards because a lot them were built 25 years ago

when the rules were completely different. Some of these windstorms we've had over the last year, I have literally laid awake all night wondering if I wake up in the morning and have to tell my five kids I'm looking for a new job. If I lose even 20% of that 75% of nonconforming sign due to a wind storm, something I can't control, I think that's ridiculous. It's the only business in the world that I know of that you can be put out of business by something completely out of your control. If a restaurant burns down, he has insurance and can rebuild his restaurant and go back out and start his business again. Yes it was a pain but he at least gets to start over. Commissioner Griffith said but he gets to start under the new building laws. If he didn't have a fire system in his building and it burns down, he can't rebuild it without putting in a fire system if that's what the codes require at that time. So he has to rebuild to whatever new standard there is. I think that is what the department is asking. Matt Clyde said we're not asking ... like I said if a 10 x 30 billboard blows over, we just want to go back and put that 10 x 30 billboard back up in its pre-existing condition. We're not asking to build bigger, we're just asking to protect the investments that we have right now and the assets we have.

Matt Clyde said the second part that is the most important part is 18.6.251, section 3(a), 3(b) 4, 5 & 6. This is all new addition in this set of rules going forward. We are definitely asking for that to be completely removed. Here's why – the department is actually creating their own nightmare. This is essentially a rule that has just now been put in place that if any sign owner wants to do any repair or maintenance, we have to submit an application to the department. I heard it numerous times and I heard Carol again today state that the department already doesn't have the resources to be driving out and checking this and doing that. The department doesn't have the resources for that. Are there about 30 permits per year for new sign applications? Carol Grell-Morris said yes. Matt Clyde said I can tell you that with this law in place, you're going to get 30 a day or 30 a week but I can tell you I would have already submitted four this week. You're basically saying in this regulation that if we want to go out and replace a light bulb in one of our signs, we have to submit an application to the state and they have 30 days to respond and during that time that light bulb is out, we have to credit our advertiser for a non-illuminated sign. Is the state ready to pay that bill? Because now you're taking the liability.

The other thing in that is if we have a non-conforming sign damaged by the wind. I've had some specific examples that are perfect in this scenario over the last couple of years with the enormous winds we've had, where two or three sign polls will break in the wind but the sign doesn't come crashing to the ground. We can get out there right away, the next day, and get that sign propped up, get the repairs made so that it doesn't cause any further damage to the sign or the neighboring property or if that jostles things lose and you get another wind storm and you have panels blowing out into the Interstate. I literally watched a car get hit by panels in one of those wind storms. A car in front of me got hit in Missoula by panels blowing across the highway. What you're saying right now is if that happens in a wind storm and our sign is barely hanging on, we have to submit some application to you and you have 30 days to tell us whether or not we can go fix it. I can tell you in 30 days it's probably going to be on the ground. So it's a total loss to us but it's now your responsibility because we could have gone out there fixed and repaired that sign the next day and brought it back to a safe position. But from the time we submit an application to your department, it's now on you because if you don't approve something that could be fixed tomorrow and that sign causes further damage, falls down on four cars parked in the parking lot, that's not our responsibility anymore. We could have fixed it. I think you're creating a giant nightmare, not only for us, but for your own department. This week I would have submitted at least four of those applications just to go out and fix a light bulb.

Commissioner Griffith said all of these things will be able to be expounded upon when this goes out to the public process. Is there something else?

Matt Clyde said the last part of it is when you have a rule in place that says you can't repair a sign that blows down, you end up with people that go out with 2 x 6's and prop up things to try and prop up an old sign. We just want the opportunity to go fix the sign right. We want to make some of these nonconforming signs fixed up so they look nice. Right now we would have to submit an application to do every one of those things.

In closing, we already have enough restrictions. It's already hard enough to build new billboards in Montana. We're just asking to be able to protect the ones we currently have in place and be able to go do the work to those signs as we see fit. The one other part of that to hopefully help your department, the comment about not having the resources to go out and monitor all these nonconforming signs and find out whether or not a sign company took a 10x20 sign and then next year it's a 14x48. To prevent that is simple, every three years when our permit fees are due require the sign companies to submit an updated photo of the sign. You don't have to drive all over the entire state to monitor the signs then. You have photos from years ago and now you have new photo. If it was a nonconforming sign and it has changed dramatically, then you can address the permit holder.

Commissioner Griffith said today we are deciding if we should proceed or not proceed. Matt Clyde said correct and we would like to strike all of that section out of that particular rule and proceed. Commissioner Lambert said I did have that question. Can we strike some of these rules? Commissioner Griffith said you can amend, you can do what you like and still proceed. Carol Grell-Morris said the Commission can certainly make changes to the rule draft as they see fit.

Kevin McLaury clarified, Carol had mentioned that Federal Highway had approved this. I want to be very clear – we have not approved this. We have been in close coordination and contact with the department. We are comfortable with the discussion and what's written. If there are any changes with what is written, then we will have to go through that process again to ensure that it meets all the federal rules, laws and regulations. I want to be clear about that – this has not been approved.

Kevin McLaury said I'm not sure where the speakers were getting their information. Depending on when you say "the federal government", FTA does have some rules that allow some advertising as long as the shelter was put up with FTA funds. It's very clear in the law that advertising in the right-of-way is prohibited and quite honestly where we are with the advertising at bus shelters, I feel that we're more than being reasonable with our approach there. Regardless, allowing the process to go forward and hearing comments, I think that's a good thing, it's a healthy thing to hear what other people say. We've had a couple of commenters that are against some of the things, great! Why are you against it? We also might have some people who aren't here that want the opportunity to comment to say no we want it to stand. So allowing that process to move forward is well intentioned. Just for clarity I want to make sure you know that any changes to this will require going through our process again.

Rob Stapley said we are asking the Commission to decide whether or not to go ahead with the rule making process. We're hearing lots of comments today but there's going to be a formal process for all of these folks as well as anybody else to make comments, so we're going to get a chance to see their comments and hear their comments again and make decisions down the road as we consider these rules.

*Jared Johnson, YESCO Electronics*

I wanted to thank the Commission and thank your staff for having us participate. We are a manufacturer of digital signs. We've spoken to you in the past on the particular issues in this rule that relate to digital signage. We're grateful for the opportunity to work with the Committee. I'm grateful for Commissioner Lambert's participation.

In working with the rest of the industry, we would love to see this Commission move forward into the public process. As you can see there are a couple of things that aren't appropriate for right now but need to be worked as we proceed with public comments. So we think it would be great if the Commission would maybe offer some advice and move the rules to the public process. Offer some advice to the staff that they recognize there is still some fine tuning that needs to be done. We have submitted, in the process, federal guidance from FHWA on the digital signage issue and worked work rules that meet that guidance. We also submitted traffic safety studies that were conducted by FHWA and other private firms and universities and we tried to address each of those issues and submitted that to the National Advertising Association (AAA) and submit it to Montana permit holders to this process as well. That's all on the record. I wanted to assure you we had a pretty thorough opportunity to look at each issue from traffic safety from the federal regulatory guidance angle and from specific issue to Montana. We see room for corrections in the public process and we certainly support moving into that process and having the opportunity to address those issues and make changes as necessary.

*Mike Helm, YESCO Outdoor Media*

I just wanted to say thank you for your time and thank the staff for allowing us to be part of this rule change. YESCO would like to see the draft move forward and address any concerns later in the public hearing.

Commissioner Griffith said there are two things we need to look at. This process will be long and some people may get what they see as a necessary change and some may not. It's a privilege to be able to advertise along the highways. It's not a right, it's a privilege granted by this Commission. To do so contains some obligations for each of us. Way back when Lady Bird Johnson envisioned advertising along the highways, I think we have an obligation to make sure that the vision of good clean advertising is protected by that privilege. While we do take that responsibility seriously, it's not our responsibility to a make sure everyone is healthy to do that work. In other words, not all of us can afford to have a spot, to buy a sign, and be able to maintain that. Anyone can do it if you can afford the application fee, anyone can do it. It's not our responsibility to make sure that everyone that applies is healthy enough to make sure of that. In this whole process, we assume that when you apply you truly meet the spirit of what this Commission wants – a clean highway, a green highway. We don't want to interfere with the drive, we want to enhance the experience. That's our goal. It's not to make everybody happy and healthy, it's to try to accommodate the driving experience down the road. It is a privilege.

Commissioner Cobb thanked Dave and Carol for their work on the project. Regarding the nonconforming billboards, in my opinion, how do you narrow down getting too many reports in and still get your work done? Regarding the bus shelter, from my viewpoint, is it legal or not legal seems to be one of those grey areas. I don't know what the law is because I keep getting different viewpoints. So you need to clean that up somehow. Commissioner Griffith thanked Carol for all the work done and asked that she inform the Commission of the next phase.

Commissioner Lambert moved to approve the OAC Proposed Rule Notice.  
Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item No.13: Abandon the Old Highway 10 (Hwy 10)  
Right-of-Way (R/W) Located in Government Lot  
5, Sec. 8, T 1 N, R15 E, Sweet Grass County, MT**

Val Wilson, MDT staff attorney presented Abandon Old Highway 10, Right-of-Way located in Government Lot 5, Sec 8, T 1 N, R 15 E, Sweet Grass County, MT to the Commission. This is a request from MDT Right-of-Way Bureau that the Commission issue an order to abandon a portion of the Old Highway 10 right-of-way that traverses a 14-acre parcel that MDT has purchased in Big Timber for its maintenance site. Although the Right-of-Way Bureau is bringing this forward, it was actually initiated by a neighboring landowner and their title company that they would like to have an easement across the west boundary of that maintenance site parcel to access their existing subdivision.

If I could just draw your attention to Exhibit A. The maintenance site is that bow shaped 14-acre parcel that's in between Highway 91 and is depicted as the Overland Express Subdivision. The portion in red is the Old Highway 10 right-of-way that we're asking the Commission to abandon that traverses that portion of the future maintenance site. Then the location of the proposed 30-foot access easement is depicted in yellow on the west boundary. MDT's Right-of-way Bureau in researching this request by the Overland Express lot owners determined that back in 1977, when MDT realigned the Frontage Road from Old Highway 10 to what is now Highway 91, we made a commitment that we would perpetuate access to what is now the Overland Express Subdivision. It was not perpetuated in the form of an easement, so what they are asking for now is this right-of-way to be abandoned so that MDT can issue those easements.

The department is recommending that the Commission take this action. It will allow us to grant the easement as we promised back in 1977. It will perpetuate the access and will have no negative impact either on our future maintenance site development or the neighboring landowners.

Commissioner Lambert asked when you abandon a highway, you're saying we don't want this anymore, can you just give it to me for Christmas? What do you with it? Val Wilson said when we purchased it, we purchased an easement. So generally what happens when it's abandoned is that it goes to the underlying landowners but in this case, since we purchased this 14-acre parcel, when we abandon it, it just absorbs into the fee that we own in that 14-acre parcel. So no Christmas presents.

Commissioner Griffith asked her to explain the difference when we abandoned Woodville Hill in Butte it wasn't for a fee but there was a million dollars that was given to the department for future use. My question is why should somebody get a bonanza of property without paying fair market value for that property? Val Wilson said the portion that we're abandoning is actually going to convert to the department. So the department will own, in fee, the portion you're abandoning. The question then is why should MDT grant an access easement without payment to the Overland Express Subdivision owners? The reason we're making this recommendation is that back in 1977 when we realigned the Highway 10 right-of-way to the new frontage road in a right-of-way agreement that we entered into with what was then government lot 5 and is now part of the Overland Express Subdivision, we agreed that we would perpetuate their access and we never formalized that agreement in an easement. So all of these years they have been using what is Thompson Lane just to the north of Highway 91 and that road goes through what is now MDT property. It has been used historically since 1977 by the previous owners and now the current owners of the Overland Express Subdivision to access that property.

Commissioner Griffith said it was never reduced to writing. Val Wilson said it was reduced in writing in a Right-of-Way Agreement. Commissioner Griffith asked if it was previously agreed to as part of the acquisition of another right-of-way parcel. Val Wilson asked the Commission to look at Exhibit B, the portion that is marked Lot 6, Section 18. When we acquired the property necessary for the frontage road in its current location, there was a Right-of-Way Agreement by MDT that we would

perpetuate access to Lot 6, Section 18, which is now the Overland Express Subdivision. We can certainly provide copies of that Right-of-Way Agreement.

Dwane Kailey said I wasn't here in 1977 so I don't know what transpired but I will tell you in looking at this diagram, they had access from the existing Frontage Road that we hadn't moved, so we are bound to perpetuate that access. More than likely what transpired is we had to give them that easement to perpetuate access to their property. We do this regularly through the right-of-way acquisition process all the time. Again it was a requirement of us for moving the road to grant that access. They already had access, we had to perpetuate that.

Commissioner Lambert said she did not have any problem with the right-of-way easement. Obviously we have to do that. Fourteen acres is a lot of land. The county abandoned a piece of road that went through our place but we had given it to them to start with. So when they abandoned it, they just gave it back but the state purchased it. Fourteen acres is a lot of land. That's what I want to know about – what happens to it? Val Wilson said the 14 acres is not going to be abandoned. I don't have the exact dimension of the right-of-way which MDT is seeking to abandon. If the Commission issues an order abandoning that right-of-way, then all of it will revert back to MDT. So MDT will own the 14 acres in fee along with that right-of-way. All that we anticipate conveying is a 30-foot easement on the western boundary of that property. So by abandoning the right-of-way, then the entire easement will revert to the department. So that 14 acres won't have any encumbrance on it.

Commissioner Griffith said essentially they had access through the old highway before it was abandoned. Because we were building a new roadway, we took away their access and gave them an easement but we didn't transfer it? Val Wilson said we gave them a commitment but it was never formalized. Commissioner Griffith said we gave them a commitment because we cut off their access. So this is a way to give it back to them.

Commissioner Belcourt said we received an email yesterday saying they wanted more from you. Val Wilson said I did not receive that email. If you look at Exhibit A, MDT can convey a 30-foot easement to the boundary and how people get there we can't control. Dwane Kailey said we have members from the public here if they want to speak. An unidentified person said they had a copy of that email and gave it to Val Wilson. Val Wilson said it looks like this is a concern with the Title Company and the County Attorney over access between Lot 3b and 3a. We will deal with the easement but how the lot owners get in between their lots is not our concern. Commissioner Cobb said you're just giving them land access and that's it. Commissioner Griffith asked if that changed her opinion on the recommendation. Val Wilson said no.

Commissioner Lambert asked for clarification. You have the authority, without the Commission, to give them the easement. Dwane said that was correct. Commissioner Lambert said it wasn't in the motion. Dwane said that is correct because you're just abandoning the roadway. Dwane said we sell excess land all the time and we do go out and appraise it and in fact are required by law to get 90% of the appraised value. We do that quite regularly. We are not giving land away. Nobody's getting a big Christmas present. Dustin Rouse said we do have lots of easements. We buy it in fee sometimes. In the past we were only allowed to buy it in easement but when we bought it by easement we only had the right to that land so long as it's used usually for that highway. We usually just discharge the easements when we don't need them and we don't get a payback for those. We paid almost the same amount of money to buy those easements as what we started doing to buy the fee. We certainly get the fair market value when we see the fee. If we're getting rid of an easement because we determined we don't need it, we don't get paid for those. It sounds like that's what this was, primarily a highway easement. So we wouldn't get

paid. Commissioner Griffith said the confusion for the Commission is the title of the request. It really wasn't a right-of-way abandonment, it was granting easement. Correct? Val Wilson said in order for MDT to grant an easement, this right-of-way had to be abandoned. Step one is the abandonment and step two is the easement. Commissioner Lambert said I'm surprised it wasn't two motions.

Commissioner Lambert moved to approve the Abandonment of Old Highway 10 (Hwy 10) right-of-way (R/W) located in Government Lot 5, Sec. 8, T 1 N, R 15 E, Sweet Grass County, MT. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item No. 14: Certificate of Completion September, October & November 2015**

Dwane Kailey presented the Certificates of Completion for September, October and November 2015 to the Commission. We have included additional information such as the DBE goal as well as the DBE payment that was made on these projects. We have also included some additional information regarding the changes on some of these projects. You will see the original bid versus the final amount. We've included some information in the back to help explain those changes. If you have any questions, feel free to ask.

Commissioner Cobb said Dick Anderson Construction went over with about \$383,000 in Change Orders and most of it was on that West Bozeman Interchange. What happened that cost so much more money. Dwane Kailey said there were a fair amount of quantity overruns not necessitating a change order, it was just an increase in the quantities. We ran into some challenging soils in and around the region.

Commissioner Cobb moved to approve the Certificates of Completion for September, October & November 2015. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item No. 15: Project Change Orders September, October & November 2015**

Dwane Kailey presented the Project Change Orders for September, October and November 2015 to the Commission. If you have any questions, please feel free to ask. Commissioner Cobb asked about the Billings District Change Order on fencing that you placed chain link fence down by traffic for \$110,000. What did they do to the fence? Dwane Kailey said most likely what happened is we had a traffic accident. We have that a fair amount with guardrail as well. When a vehicle impacts it during the project and it is outside the control of the contractor then we pay them to replace the damaged material because when we're done with the job, we want a good job. Commissioner Cobb asked about the change in the contract to exclude working the weekend for the Construction Conference in February. Why do you do that? Dwane Kailey said that's our annual construction conference and we bring most of our employees in for their annual training and we have nobody in the field to monitor the contracts. We don't want to charge contractors time for that.

Commissioner Skelton moved to approve the Change Orders for September, October & November 2015. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

## **Agenda Item No. 16: Liquidated Damages**

Dwane Kailey presented Liquidated Damages to the Commission. These are presented for your review. We have four projects to present to you today:

Safety Improvement Big Fork. The Contractor was LG Construction Group. They have one day of liquidated damages for a total amount of \$993.

Safety Improvement North of Havre. The contractor was Riverside Contracting Inc. out of Missoula. They are not disputing the liquidated damages. They had 17 days for a total value of \$33,881.

Baker West. The contractor is Prince Inc. They are not disputing these liquidated damages. They had one day at \$2,756.

Judith River Trestle. The contractor is COP Construction, LLC. You will see that there is no dispute. At this time we have five days of liquidated damages for a total value of \$13,780. You will also noticed that we have included a letter from COP. Originally we had a value of 20 days in liquidated damages. When it was submitted to Helena, we continued to work with COP. They did dispute it and we worked with them and we were able to come to an agreement at five days, forgiving 15 days. At that point in time they dropped their dispute. They are in agreement with the assessment of five days of liquidated damages at the value shown in the contract. That's why we're showing it as non-dispute.

None of these are disputed therefore the Commission need do nothing at this time.

Stand

## **Agenda Item No. 13: Letting Lists**

Dwane Kailey presented the Letting Lists for the month of January letting the 21<sup>st</sup> through the month of June letting the 16<sup>th</sup>. They are presented for our review and approval. Commissioner Cobb asked if anything changed. Dwane Kailey said their might be a slight tweaking from month-to-month depending on issues but this is all in conformity with the TCP the Commission approved.

Commissioner Cobb moved to approve the Letting Lists. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

## **Directors Discussion & Follow-up**

### *Long-Term Transportation Bill*

Director Tooley said we finally have a long-term Transportation Bill. Commissioner Cobb has asked some questions which I'll answer. We're very happy to have that. We're still working through the details. The first thing that happens when one of these bills passes is there is a bunch of rulemaking that goes with it. So we'll be dealing with that for the next couple of years. The department has done some analysis and we can say we're very happy with it. It's been good for Montana. We're going to see some increases in apportionment and funding over the next few years; 5% this year and 2% each year thereafter. In 2016 our obligation authority is looking like \$388 million. That will allow us to support the TCP you approved in October. So we're in good shape. There are no additional funds for larger projects; we still

don't have a set-aside. There is provision in there for larger projects and I'll explain that in a little bit. For us there is no particular set-aside for larger projects, we'd have to apply for competitive funding. We got what we wanted out of it policy wise; higher funding, multi-funding, flexibility to the state in most areas, and achieved some relief in repeat offender provisions. We didn't have to collect data on gravel roads. There was a very harmful provision in some of the drafts that would have required planning to go out and collect crash and other traffic data on gravel roads which are most of the roads in Montana and there wouldn't have been any funding attached to it so it would have been very difficult.

### *The National Freight Program*

Commissioner Cobb asked about the National Freight Program and how that is going to affect Montana. Director Tooley said it will affect Montana. First off until the rulemaking is complete and hopefully it stays positive. It's a \$12 million program that we anticipate spending those funds on Interstate projects because the Interstate is the only part of our system that was recognized by FHWA as being part of the freight network. The original language in MAP21 only gave 27,000 miles and we have zero on that system so they went back after much complaining by states like ours and declared that the expanded freight system can include the Interstate which was a sensible decision. So we can use some of that money on projects on the Interstate. We will have to have a Freight Plan and a Committee; we're looking at that right now. Lynn Zanto has been proactive enough to include a possible expansion of a contract for the TRANPLAN-21 Consultant to potentially include that work within the existing contract. That was a good move on her part.

On Nationally Significant Freight and Highway projects, the big projects, there is \$900 million set aside for competitive grants managed through the USDOT for those types of projects. Montana does not fare well in those types of competitions. We're not Chicago with crumbling infrastructure and massive amounts of congestion and when those are the measurements, we just don't compete. There is a 10% set-aside, a small set-aside, for rural states but you also have to have a \$100 million project. Lynn Zanto said regarding the 10%, they will accept a minimum of \$5 million set-aside. The regular funding is \$100 million but again we'd be competing nation-wide for that very small 10% and typically with these discretionary programs, they don't give you all the money so we'd have to have the rest of it to fund the project. Director Tooley said that portion for the project doesn't really look good for Montana so I wouldn't expect a major project to come out of it. We've applied in the past and have never won one. The specific question was regarding 27<sup>th</sup> Street in Billings. That is eligible but like Lynn said, the risk with that is if the expenses exceed the grant which already has a match, it comes back to the MPO to make up the difference and they're already cash strapped. So I think they'd see that as an incredible risk and probably wouldn't want to apply. So that problem will continue until we can actually program a project that is going to be pretty expensive.

How does this money affect our State Fund in matching with the federal money? Right now we can match it but toward the end of this long-term bill, we will have trouble matching the funds. Something will have to happen on the state side by the end of the fiscal 2018 otherwise we will start having trouble matching those funds. We still have conversations with the Budget Office and the Revenue Transportation Interim Committee and also stakeholders. A lot of conversation take place and I don't know what that will look like in the end. They keep coming back to the DOJ portion of the Gas Tax Fund, of course DOJ objects very strongly to being forced out of that into the general fund. That's a legislative issue. We just provide the information and try to help them make their decision.

*Safety*

Now that we no longer have to pursue a long-term Transportation Bill, I'm going to turn my attention to safety. We've seen a spike in highway fatalities, not just here but it's a national trend. For example we saw 32 people killed over 2015 and those numbers weren't there in 2014. Oregon saw more than eight and nationally it's just a trend. We're trying to figure out just what that reasoning is. Usually people look back to the economy and although the million miles driven don't really reflect a lot more travel, there is something related that encourages people to get out more and have more exposure. We think that's a major factor. We're still looking at zero. We cannot understand why that isn't the number we should be striving for and we will continue to do that and you'll see more of an emphasis.

One disappointment in the FAST Act was a loss of flexibility to the states in highway safety improvement funds. Under MAP21, by the time we figured it out and got some traction on it, we realized we could use some of that money for behavioral. The projects you approve here are all engineering projects and you know from your experience on the Commission that what's really killing people is all behavioral. So we're still looking for ways to incorporate more funding on the behavioral side with damaging the overall highway program. We know engineering is important and our engineers have done a great job and even the engineers are now saying this is a behavioral issue and we need to address that. So we're going to spend some time on that. Lynn's shop has helped a lot in putting together a new Executive Committee which is going to be comprised of myself, the Governor who accepted yesterday, the head of the Department of Health and Human Services, the head of Revenue; high level government officials who have the authority and decision-making power to direct resources and attention to the issue. This is a public health issue. DHPPS should be at the table with MDT and the other stakeholders to address this. They may have ideas we haven't thought of before and this group will be able to direct state and other federal resources toward the issue. We're pretty excited about that. That's where I'm spending my time now.

*Rest Areas*

You had some questions on Rest Areas. Lynn has some information on that for you. Lynn Zanto said we put a table together with the traffic counts that the design of the Columbus Rest Area was based off of. The methodology we use for determining the number of stalls is based on the daily peak DAR counts. We have counters above our rest areas so we can get a better feel for use in Montana and not just rely on national standards. So the design that we based our design on has eight stalls for each facility and there are two facilities, one on each side of the highway is based on that daily peak DAR count and designed for a 40-year design life. After the meeting I can send you the table with that information if that would be helpful.

Commissioner Cobb said my concern is that the report said you need this many stalls and that was on the website for a month before you bid on it. Then the next thing I see is it changed to eight stalls and I wondered how you got from here to there. At some point someone made a decision, after it was on the Internet, that we needed so many stalls and somehow the number was raised. All the information was sent to the bidders that we only needed so many stalls and at some point that changed. I'm curious about what happened. Lynn Zanto said some of the confusion may be the report you're looking at. You say it was on the bidding? Commissioner Cobb said yes, it changed. There are reasons for doing things but I'm just curious why that changed. Commissioner Griffith said in other words somebody engineered it to twelve and someone else made a decision to change it. Commissioner Cobb said the one in Missoula changed too. Someone is making a change but who is it and why are we doing that? Dwane Kailey said before we build a rest area we go out and do a site assessment and verify that we can actually install and build a waste water treatment facility on that site. We do a preliminary layout and then we take that site assessment

and that's what we package up into our RFP and put out for the design build contract. I believe what you're seeing is the site assessment showed 12 stalls but the RFP that went to the contractors showed 16 stalls. Commissioner Cobb asked how that was decision made. Dwane Kailey said my memory is that the site assessment was based on the national formula for the number of stalls but when we set up the contract we went back and used Montana specific data to recommend 16 stalls. Let me get back with staff and verify that for you. Lynn Zanto said we have been trying to size rest areas the right way. We did have methodology some years ago based on the national standards and then average annual ADT but peak hour daily after is what we're using now. So there's been an evolution.

Commissioner Lambert said safety is important to me. I personally think it is the heavy use of electronic devices that is causing so many of these accidents. It has changed our whole culture. You don't say hello to anybody because they are not looking at you, they are on their smart phone. You go in a café and you can't get waited on because the people who are working are too busy on their smart phone to come and take care of their customers. I see people driving all the time on their phones. That will open a real can of worms if you can discover that that's a big thing. I'll bet you're going to find out it is. Director Tooley agreed. The big killer is roadway departure and distraction is a big part of that. Engineering has discovered is that rumble strips are big life savers and they are very cheap to put in. They keep you on the road. I agree with you. That's part of what we're going to be doing; digging into the data and making sure we have the right approaches to fix that. Have we done everything we can with the road research? We're getting pretty close to it.

Commissioner Griffith said the statistics don't break that out specifically. Director Tooley said you're looking at the MHP and that doesn't show that breakdown. That report is compiled from a database that was built in 1983. Commissioner Griffith said I'm in agreement that there's distracted driving going on but even in the national statistics they call it distracted driving rather than texting. Individual accidents can happen because of texting on the road but when it gets wrapped up into the statistics it goes under distracted driving. That could be eating a hamburger and coke going down the road. Commissioner Lambert said it could be talking to the passenger in the car. Commissioner Griffith said I think we need to figure that out; you've got to know where you're at before you can fix the problem. You're dealing with 25 year old information. Director Tooley said our own system is much better. We've constructed a safety management system that is nationally recognized. Commissioner Griffith asked why they weren't seeing that. Director Tooley said because MHP is pretty easy to get and ours would be a little more difficult. I'm sure between Lynn and Dwane we can get you a report that tells you on a high level what you want to know. Anything you want to know is just a matter of how much staff time you want to put into it.

Commissioner Griffith said Mike and I had this discussion, we do everything we can to build the road safe but unless you change the culture of what's going on around you which include a lot of things like speed zones etc. There's a lot of things we don't have control over but it shouldn't keep us from trying to be informative to the public. I never see the department doing ads to tell people what's going on. Our roles on the Commission sometimes don't include that but in the end we care about it because we can't fix one end of safety and let the other go off the radar screen. Director Tooley suggested bringing in a presentation on what we're doing for safety. You don't see a lot of TV commercials but you would see a ton of social media targeting specific groups. Commissioner Griffith asked if they could do that for the next meeting.

Director Tooley said it's pretty exciting – we've got Highway Traffic Safety and Engineering with their own safety group. I'm most excited about the new cross-over between the two and the things they're doing. It's going to be pretty amazing and I'd be happy to give you a briefing on that. It's important and it's really all that matters.

Lynn Zanto said you are not our targeted demographic that's why you're not seeing it. Commissioner Griffith said it does miss my demographic but it shouldn't because I can make a mistake just like anybody else. Commissioner Lambert said you commented we need to change the culture, well I see the culture changing but not in a good way. For instance back when they did the meth project, they put up signs and it cost a lot of money in advertising but it really saved lives because Montana went down in meth use.

Commissioner Lambert asked if we have education dollars. Can we do education projects? Director Tooley said safety funding relies only on NITSA funding that is pretty much strictly seat belt and DUI. That's it! And only during certain times of the year. That's why we're trying to find new resources and expand it to all year around. The meth project ads weren't as effective as people thought. What really changed the meth use was the ability to make the drug easily. You could steal cold medicine and some other chemicals and make your own meth. They took care of that issue. It did grab attention but it grabbed the attention of people who weren't going to use meth anyway. So the biggest change was making it difficult to get the ingredients. We did have a pretty edgy campaign. You've got to have a campaign that reaches all those different type of folks. Edgy gets the attention of some but I didn't think we were doing enough. So we did do an edgy campaign and I knew it was working because we were getting yelled at by people who didn't want to see "bloody Mary" on the billboard. So it was getting seen and grabbing attention. That was all about roadway departure and failing to use seatbelts. Since then we've done other campaigns specific to roadway departure and we didn't get so many complaints but it showed the effects of these types of actions. You don't want your family to see your dead body in the ditch. So those are out there now; watch for those. Commissioner Lambert said I really enjoyed the one with the compact car. Those were really clever and it did catch your attention and make you think. There's got to be something we can do. It's not just kids but they are the ones I see. It has changed our whole culture and I don't think it has changed it for the good. Director Tooley said I agree. We have plans along those lines as well. So plan on a lot more of those things. Commissioner Griffith said when he went to the fair in Bozeman, the car was impactful and dramatic.

*New Chief Legal Counsel is Dave Ohler*

Director Tooley introduced the new Chief Legal Counsel, Dave Ohler. He has been on the job officially for 20 days and this is his first Commission Meeting. We're excited to have Dave. I think you will enjoy working with him hopefully for many years. Welcome aboard. Commissioner Griffith said we've had a chance to work with you in the past and yours is a trusted face.

### **Next Commission Meeting**

The next Commission Conference Calls were scheduled for February 4, 2016, February 18, 2016, March 10, 2016 and March 22, 2016. The next Commission Meeting was scheduled for March 24, 2016.

### **Adjourned**

Meeting Adjourned

Commissioner Griffith, Chairman  
Montana Transportation Commission

Mike Tooley, Director  
Montana Department of Transportation

Lori K. Ryan, Secretary  
Montana Transportation Commission