

# Montana Transportation Commission

**June 21, 2018 Meeting  
Best Western Plus – Havre Inn & Suites  
1425 Highway 2 NW  
Havre, Montana 59501**

## IN ATTENDANCE

Barb Skelton, Transportation Commission Chair  
Greg Jergeson, Transportation Commissioner  
Carol Lambert, Transportation Commissioner  
Dan Belcourt, Transportation Commissioner  
Mike Tooley, Director  
Pat Wise, Deputy Director  
Dwane Kailey, MDT Engineering  
Lori Ryan, Commission Secretary  
Val Wilson, MDT Attorney  
Lynn Zanto, MDT  
Brian Hasselbach, FHWA  
Laura Pankrat, Malta Trails  
John Carnnhan, Malta Mayor  
John Demery, Phillips County Commissioner

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

## **OPENING – Commissioner Barb Skelton**

Commissioner Skelton called the meeting to order with the Pledge of Allegiance. After the Pledge of Allegiance, Commissioner Skelton offered the invocation. Commissioner Skelton thanked everyone for a great tour in Havre.

## **Approval of Minutes**

The minutes for the Commission Meetings of February 15, 2018, April 10, 2018, April 19, 2018, April 24, 2018, May 8, 2018, and May 22, 2018 were presented for approval.

Commissioner Jergeson offered a correction on Page 40-41 of the April 19, 2018, Commissioner meeting. It was recorded that the tour would be from Havre to Hardin twice, and challenges from Chinook to Hardin. Maybe that caused some of the angst about the tour; the daunting thought of touring all the way from Havre to Hardin. It should be Harlem.

Commissioner Lambert moved to approve the minutes for the Commission Meetings of February 15, 2018, April 10, 2018, April 19, 2018, April 24, 2018, May 8, 2018, and May 22, 2018 including the change to the April 19<sup>th</sup> Meeting. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

## **Agenda Item 1: Local Construction Project on State Highway System – West Glacier RV Park and Cabin Village, Flathead County**

Lynn Zanto presented the Local Construction Project on State Highway System – West Glacier RV Park and Cabin Village, Flathead County to the Commission.

Under MCA 60-2-110 “Setting priorities and selecting projects,” the commission shall establish priorities and select and designate segments for construction and reconstruction on the national highway system, the primary highway system, the secondary highway system, the urban highway system, and state highways. This statute exists to ensure the safety of our system, protect transportation investments, and encourage coordination on public and private infrastructure improvement projects that impact MDT routes.

West Glacier RV Park & Cabin Village – Flathead County

The developers for the West Glacier RV Park & Cabin Village are proposing modifications to the Going to the Sun Road (P-65) to address increased traffic generated by their facility. Proposed improvements would include intersection upgrades (widening, etc.), signing, new left-turn lanes and ADA work at the intersection of Going to the Sun Road and River Bend Drive.

Flathead County has given preliminary approval for improvements at this location. Additionally, MDT headquarters and Missoula District staff have reviewed and concur with the recommended improvements.

The developers for the West Glacier RV Park & Cabin Village will provide 100 percent of project funding and will be required to complete MDT’s design review and approval process (to ensure that all work complies with MDT design standards).

*Summary:* The developers for the West Glacier RV Park & Cabin Village are proposing modifications to the Primary Highway System to address increased traffic generated by their facility. Specifically, they are requesting intersection upgrades (widening, etc.), signing, new left-turn lanes and ADA work at the intersection of Going to the Sun Road (P-65) and River Bend Drive in West Glacier.

Staff recommends that the Commission approve these modifications to Going to the Sun Road, pending concurrence of MDT’s Chief Engineer.

Commissioner Lambert asked about ADA compliance work; are you going to make it wheel-chair compatible to get onto the sidewalk? Lynn Zanto said yes there will be wheel-chair access.

Commissioner Lambert moved to approve the Local Construction Project on State Highway System, West Glacier RV Park and Cabin Village – Flathead County. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item 2: 2018-2022 Statewide Transportation Improvement Program (STIP)**

Lynn Zanto presented the 2018-2022 Statewide Transportation Improvement Program to the Commission. In order to spend funds on federally supported surface transportation projects, federal law requires Montana to submit a Statewide Transportation Improvement Program (STIP) to the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) for approval. The STIP includes projects that MDT plans to program for preliminary engineering in the current federal fiscal year as well as other phases necessary to move projects forward during the next five federal fiscal years. The following is a list of most of the federal funding programs included in the STIP:

- Federal-aid highway programs such as the National Highway Performance Program (NHPP), Surface Transportation Block Grant Program (STP), Highway Safety Improvement Program (HSIP), Congestion Mitigation and

- Air Quality Improvement Program (CMAQ), National Highway Freight Program (NHFP), and the Transportation Alternatives Program (TA).
- Federal Lands Transportation Program
  - Federal Lands Access Program
  - Tribal Transportation Program
  - Federal Transit Programs
  - Discretionary Programs
  - Aeronautics Program
  - Earmark Projects

The STIP provides an opportunity for the public to comment on new projects. It also demonstrates that funding is reasonably expected to be available for the various project phases that will move forward in the next five federal fiscal years. If a project has already entered a phase and funds have been obligated, that project phase will not be shown again in the STIP.

FHWA and FTA approval is based on their finding that the STIP was developed through a process consistent with federal statute. Montana's STIP has been developed according to federal planning requirements. The STIP meets the policy goals and objectives of MDT's long-range transportation plan, TranPlanMT; the Performance Programming Process (P3); and the metropolitan transportation plans developed in Billings, Missoula, and Great Falls.

Prior to submitting the STIP to the Commission for approval, the state is required to conduct a formal public involvement process. This process began on April 17<sup>th</sup>, 2018, when the Draft STIP was posted on MDT's Web page and the public was notified that it was available for viewing and comment (at the following website address - <http://www.mdt.mt.gov/pubinvolve/stip.shtml>).

On April 17<sup>th</sup>, 2018, MDT distributed the STIP edition of the *Newsline* newsletter (construction projects only) and invited public comment. An archived copy of the *Newsline* newsletter (including STIP projects and comment guidelines) can be found at <http://www.mdt.mt.gov/publications/docs/newsletters/newsline/2018/newapr18.pdf>.

The public involvement process ran through May 18<sup>th</sup> and was carried out according to all pertinent federal laws including the following:

- 23 CFR 450, Subpart B
- 23 CFR 450.218
- 49 CFR 613.200
- Title VI of the Civil Rights Act of 1964
- Title VI assurance executed under 23 USC 324 & 29 USC 79
- Americans with Disabilities Act of 1990
- 49 CFR 20—restriction on influencing federal activities
- 40 CFR Subpart A of CAAA

MDT mailed the 2018-2022 STIP document to the Transportation Commission on June 7<sup>th</sup>, 2018. Any comments it receives during the public involvement period will be addressed at the June 21, 2018, Commission meeting.

The STIP includes proposed highway projects for each of the five financial districts as well as statewide programs. The proposed highway projects include nominated projects that will enter the preliminary engineering phase of project development upon Commission approval. These project lists are attached to this agenda item.

Once the Commission approves the 2018–2022 STIP, MDT will submit it to FHWA and FTA for their review and joint finding that the STIP is based on a statewide planning process that meets the requirements of federal law (23 USC 134 and 135, 49 USC 5304 and 5305). Following the federal finding, MDT will program new projects entering the preliminary engineering phase using FFY 2018 funds.

*Summary:* MDT is presenting the federally required 2018-2022 STIP to the Transportation Commission for approval.

MDT staff recommends that the Commission approve the 2018–2022 STIP and add the projects listed in the 2018–2022 STIP (that will be entering the preliminary engineering phase during federal fiscal year 2018) to the program. Following approval, these projects will be submitted for programming.

Val Wilson noted that with our social media process and the ad that was paid for with the STIP, the Department has about 56,000 followers across the state that all had an opportunity to see that ad more than once.

Brian Hasselbach, FHWA, said they had an opportunity to look at the document and made a couple of comments on it. We are comfortable with it at this time.

Commissioner Jergeson said due to the lateness of us receiving this document, I'd asked in an email the other day how we could put off consideration of this document until our August meeting. Apparently, there are time lines reasons for the proper positioning of projects that would create problems. So, I'm not suggesting that we defer action on this document until then. I think I'm going to ask frankly, in light of the discussion about our planning process, that we need to schedule a significant discussion at our August meeting even after having approved the STIP document today, regarding the issues and the information that's within this document. It might satisfy the Feds but quite frankly I'm not satisfied with this as a planning document for the Commissioners and the responsibility we are supposed to exercise as a Commission. I think there are improvements that must be made. I understand some of them can be blamed on IT software but there are others that we need to have a real discussion about. For example, the whole notion that when a project is not in phase that it disappears from the STIP, when everything I've ever seen from our website to the description of what our responsibility is by the Legislative Auditor from the selection and prioritization of projects means to me that you know what other projects are out there and where they are positioned. It is a time and space kind of system and it drives me nuts that we have projects we approved last year but they are not in a phase this year, so they don't show up in the STIP. So how do we know, then, when we get a proposal for a new project, or a constituent asks us about a certain section of road and where is it, if we can't find it in the document. That is one of the things we really need and quite frankly to satisfy the Legislative Auditor – I think we need to have some extensive work involving the Commission because our needs are important too for our responsibilities. That's what I'm asking for.

I raised as an issue several times last year about the phenomenon that is the STIP, in the district sections, we have engineer's estimates down to the dollar but when you go on line for the STIP available to the public, it's in a range. One of the comments I made in my essay was there was a whole new set of ranges until you get to \$20 million, so you really don't have an idea if it is a \$30 million project through a swamp or a \$50 million bridge project in an Interstate. Over \$20 million doesn't give anybody the sense of magnitude of what's going on. I raised the question and the rationale given to us was that we don't want to disclose the engineer's estimates

because that would contaminate the bidding process. But there are other pages in here that at least give the engineer's estimate down to the nearest \$100,000. In light of the constitutional provisions of the public's right to know, it only really provides one exemption and that is personal privacy. Statute has inserted that trade secrets are protected because they are considered property. But I'm not sure if there is a rule based on state procurement law that says we not provide to the public the same cost of a project the Commissioners and the top department officials have. How do we tell them, this is a decision document, but they are not being afforded their right to know because they don't get to see what we have?

Val Wilson was asked for clarification of the question. Commissioner Jergeson said I was told we weren't supposed to disclose it to the public because the contractors would find out what those estimates are, and it would contaminate their bid. Dwayne Kailey said that is an age-old question we've dealt with within the agency. We had a fear many years ago about releasing our estimates, because should they get out to the contracting community it would skew the bidding process. We've dealt with this nation-wide. There has been research into it. There have been discussions about it nation-wide and we've taken the stand at this point in time, and we're still trying to deal with some of that discussion, but the only estimate we're not going to release to the public or to anybody is our order review estimate which is the estimate we develop right as we go to advertisement; that's the engineer's estimate that we use in the bid review when we ask you to award the contract. Up to that point in time, from an engineering and department standpoint, we have no issue with releasing those estimates. The issue you raise is down to the dollar, and to be honest we don't know those estimates down to the dollar. We're getting better, but we also understand we don't know down to the dollar or penny. Lynn and I and our staff have been working very diligently since your memo, to produce a document and a web page that is going to answer your question. Lynn has addressed it very well. The STIP is not the tool we should be using for the public or for the Commission. It is a bureaucratic document required by the Federal Government. We're in the process of building a document that is useable by you and the public that will answer your issues. I hope to have that available to you in August. We're just about there. We need to use this for what it's designed for which is satisfying a federal requirement but we're building a tool that will answer your questions.

Commissioner Skelton said I've been on the Commission for a long time. The STIP has evolved, like so many documents do and so many processes do, from being a document this big and we used to spend a week at Red Book and now we spend one day, and you can see the STIP document is smaller. The staff is working diligently to make this a more reader-friendly document and we all know the Federal Government requires a lot more detail than we understand as lay people who sit on this Commission. I would like to commend you and I think it's a good idea that we have a full disclosure about the new process. I think that would be helpful to everyone and helpful to the public. Thank you.

Commissioner Jergeson said I appreciate that we can have further discussion. Sitting here looking at this document, go to page 46, the "incidental construction phase" which is a small portion of a larger project. In every one of those, a three, a two, a seven, and a six are the ending numbers. This whole prioritization process is kind of a budget process; that's what it's all about. We have a general idea about how much money is available for different kinds of project categories. Then prioritization comes about what kinds of projects you can fit in and where the need is the greatest. These are numbers that are plugged into that budgeting process, but you go on line and see the ranges. On page 46 on line, those numbers are all in ranges. There is the copy I received in the mail and then there is this copy with the costs in it – can we give this to the press? Director Tooley said absolutely. That is one of the changes staff has made over the last few months since you asked the question.

Commissioner Jergeson said it was my understanding we were discouraged from doing that. Director Tooley said at that time, that was correct. Dwayne was talking about the change of culture from “this can’t be disclosed in the format that the contractors could pick up and jump to the conclusion of their bid.” We know now, that never happened. So now this information should be available, and staff has come to that conclusion. The questions I was raising about our planning process, it didn’t seem like the staff understands all the process. I think our staff does a great job; yesterday Steve and Doug hit the ball out of the park. They were prepared and ready and did a great job of presenting the facts on the ground. They answered all the questions. I think everyone is trying to get all this done in the right way but there is so much of it that just disconnects. We’ve got this where we can look at it in an easy picture and don’t have to guess about what’s not shown.

Commissioner Lambert said I’ve been on the Commission for a long time. The staff has made tremendous changes since I’ve been on the board. It did used to be a week-long process at first to get the STIP to a point where we could start working on it. I think you’ve done a fantastic job. I will be glad to see that it will be on the website, so the public can see a more exact total of what we’re doing.

Lynn Zanto said there was some information I did not provide. I’m as frustrated as you are but we are trying to do the best we can with the resources we have. The process for the STIP was approved by the Legislature and it is super complicated to put the business requirements together over the last year. There are over 450 federal requirements that we need separate books for to do everything that the public wants to know. So, we’ve approached it from a RIF standpoint which will close July 12<sup>th</sup>. Once we assess whether we can afford it, we will move to an RFP process and I’m happy to see that. Estimates are not down to the dollar but that is how our systems work to pull up information. We don’t estimate down to the dollar, so I share your same frustrations.

Commissioner Skelton moved to approve the 2018-2022 Statewide Transportation Improvement Program. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

## **Public Comment**

### ***Laura Pankrat, Malta Trails***

I work non-profit at Malta Trails. It is a community-based non-profit that works pedestrian and bikes for our community. I ride my bike and walk a lot in our community and we have a lot of intermingling with the traffic. We have Hwy 2 and Hwy 191 going through our town. We are the cross roads from Canada to Billings and we have a lot of transportation through there plus a lot of Bakken on the highway too.

I’ve been working on this plan for ten years with our City Mayor and our County Commissioners, John Carnnhan and John Demery. We’ve gotten a lot of projects done; we’ve got our pedestrian bridge going and with CTEP money we purchased another pedestrian bridge across the Dotson Canal which runs in a residential area to get our kids to the high school. We have another pedestrian bridge that gets our kids to the elementary school on the other side of town. Shane Mintz has been wonderful to work with and he has helped us form a plan to get across Hwy 2 which doesn’t even have a cross-walk to our baseball fields. He’s been working on that and he finally got our trail to connect to Hwy 191. I was ready two years ago to put this in, but he said wait because we’re going to a 10-mile construction projects and we’ll put

it all in as one project since we're going to be down there, and all the equipment will be there.

So, I got out the program guidelines from 2017-18 and it said that we had to have an Engineer help with the project. Our trail will be one mile to both schools. I called Dave Haleen, the new guy, and he said he could give me an Engineer for one hour but five hours from Malta to Helena isn't going to help us. I talked to Shane again about needing an Engineer and he mentioned Mick Johnson who lived in Billings. He called me the next day and offered to help. He came to Malta in February and we went over our whole project. We've been working on our connectivity for eight years and we also have a new skate board park in one of our Hillcrest residential parks. So, we started working on it and then I went to a meeting last month at MDT, the Statewide Bike Plan they had in Havre, and told them what we were doing and just wanted to know what the state plan was. They said anything in the MDT right-of-way will have a 13.42% match. I didn't see that on the on-line site, so I called Shane and asked him if he knew about that. He said no. So, I called the Commissioners and anyone else who might have heard of that. This is going to be detrimental to our project. 13.42% in our county is a lot. We own over three million acres and 52% is owned by federal/state/local/and tribal land. We don't have the tax base to even hit a match of that size. We're basically an agricultural community and we're in eastern Montana.

That's what I'm here to talk about. I know you're making a change now but it's within the five years of this whole transportation plan. I've read it many times and I would like to see that change not come until the five years is up, so our project can at least be put in the hopper because we don't have that kind of match. We can't make \$75,000 to \$100,000 match on a one-mile paved trail. I didn't know where to go so I called Kevin McLeary who is a friend of mine. I said I'm stuck and I don't know what to do. He's known about our projects and thinks it's great. He gave me the option to come here. So, I'm doing this for us and our community. It's very important to us. We're very rural; we don't have the population. Most of the ones awarded are in Western Montana and they're on the system. Anything off system is Tribal and they are covered too. Eastern Montana has only received five and three of those were Tribal, so you can see we don't get a lot of help with these projects. I think we should have some reconsideration on it.

Commissioner Lambert asked her to state again what she was asking for. Laura Pankrat said we have a Marion Hills residential area being developed out on Hwy 191 south. We have a Hillcrest residential area and a park that we're connecting to the grade school and a skate park that just went in. We're trying to get all that off the highway because we have so much semi traffic on the road. We want a one-mile paved trail to keep the kids off the road. All the Safe Route School money is in and that is what we're trying to get. Anything on system didn't have a match for the last four years and now it does, and it's hurt our projects because we've been waiting to get with the Hwy 191 reconstruction project to coordinate it together. We're right there, we've got three phases of our project done and this is the last phase. This just came up last month and kind of squelches our project. We don't have the match.

Commissioner Skelton said so many of our bike trails in the Billings District are adjacent to the highway. Do you want a trail similar to the one we saw yesterday that is completely separated but on the right-of-way? Laura Pankrat said yes. The kids ridding to school with the semi's is just too dangerous; the traffic is too fast. We don't want the kids on that.

Dwayne Kailey said under the CTEP Program we didn't match any of those projects. MAP21 came around and eliminated the CTEP and then created the Transportation Alternatives Program. Under the initial solicitation for the TA Program, MDT took the stance that anything off-system would have to have a local match and if it was on-system MDT would go ahead and match. Fast forward a little bit, everyone on the

Commission is aware that we started running into some very significant financial challenges. Under the last solicitation, prior to the last Legislative Session, we didn't know if we were going to get any kind of a fix or not. So, when we sent out the solicitation for TA, we notified the local governments that we may or may not have the money to match. If you want to assure your project will be forwarded, if it is on-system, you may want to consider providing the match. There were a fair number of local governments that did it that way and offered up the match, there were some that did not. As you know we ended up with HB 473 which gave us a short-term intermediate fix, not long lasting, so we ended up taking those local governments up on their offer to match their projects and those that didn't, we went ahead and matched them. After that we sat down in Helena and looked at our funding long-term and decided we don't know if we can continue to afford to match these projects. Our priority is preserving the existing system. So, our decision was if it is on-system, if it's a new pathway, we're not going to match it on-system. If it's an existing pathway or sidewalk that someone is proposing to preserve or rehabilitate, we will match those projects. It was a two-fold issue: one is trying to preserve our Special Revenue Fund, and secondly trying to preserve the systems that are already out there today. Many of us walk and bike along our routes, and it is amazing to me how many of our sidewalks and bike/ped paths are in poor shape and we owe it to the public to preserve those and bring those into a useable system. Every year when we get our TA applications, we're seeing more and more that are building new infrastructure that we're concerned will not be maintained. I absolutely understand your concern and your plight, but again from an infrastructure standpoint, from an asset management standpoint, we've got to start looking at preserving the systems we have out there today and not build new ones that we don't know if anybody can afford to maintain.

Laura Pankrat said the guidelines say the county and city must maintain the MDT trail. We can handle that. We're not doing a 22-mile road, we just want a one-mile trail to get our kids to the school. We did a bike/walk school day in October, and we had to take four patrol officers to bring those kids in. It's one mile! I've biked a lot in Billings and they've got miles and miles of trails, but we're just rural Montana and want one place the kids can get to town. We will take over the maintenance of it.

Commissioner Lambert said one of the frustrations is this started being planned five years ago and there was no match. So, it was planned on that basis. It's the match that would be impossible for them to come up with. They are asking if there is some way we can do this without the match – another program possibly. Commissioner Skelton asked about Safe Routes to Schools. Lynn Zanto said Safe Routes to Schools was eliminated. Commissioner Skelton asked if the trail was new. Laura Pankrat said we've got some Fish, Wildlife and Parks funding and we connected the park to the high school, but Shane wants to wait until they are doing a reconstruct on that road. There is nothing there now. It is county property and the city owns part of it.

### ***John Demery, Mayor of Malta***

Thank you for your time today. I would just like to say we have to watch out for the kids. Money is nothing. I understand about saving money, I'm a Mayor and I try to save money too, but we had a kid get hit at the top of our underpass. He was lucky. The other night I was going fishing and two kids pulled right out in front of me and I could have hit them but didn't. This is what we have to look at – kids are more important than anything. That is my thought. I understand we have to save money and we have to train our kids too. They aren't thinking most of the time. This is very important. The trucks are going by so fast. You can put up all the traffic signs you want, but they don't work. We need a path to tie this together. I'd hate to be going to a funeral of a kid that we saved a dollar for. It's very, very important to save these kids. We only have so much money to work with.

Val Wilson said she thought that the Commission had the authority to waive the matching portion under certain circumstances. So, that might be something you can consider.

Commissioner Belcourt asked if they had done that last year. Lynn Zanto said yes. It was Hwy 75 at the Marion Hills Tin Cup turn-off. There was an old-folk's home up there and the people drove slowly, and the trucks wouldn't see them. We proposed it, and we got it.

***John Carnnhan, Phillips County Commissioner***

Thank you for what you've done for our community. We are getting a block bridge on Hwy 2 that is going to help considerably. There are lots of people walking across the bridge and it's very dangerous. You've been to Malta and you know that bridge. They are in the process of building that now. Thank you for that.

The one thing I'd like to say is that Laura and John have been working hour after hour and Laura has never received payment for any grant she's written or anything she's done. It's for the love of Phillips County and the people in Phillips County. That means the world to me; I've lived there my whole life except for a stint in the Air Force. I love my community and my county; we're all from there. Children, as John said, are number one. I've had seven boys going through my household and I'm now at the last one. In all reality, we're trying to understand completely the money, but this was started years ago when everything was in order and there was not going to be any match. Laura has come to us at the Commissioner's office and we don't have that kind of money. We're agriculture and we don't have anything else going on any more. We want this pathway to go. I run a wrecker service and had to haul a vehicle up here early this morning, so I parked up in the parking lot and walked down. The speed limit out here is 45 mph and I'm walking on a sidewalk downhill and cars are coming at me at 45 mph. I wasn't comfortable; not at all. Now you take a pathway and you set it off; I can live with that, but we can't have a pathway hooked to the highway. What Laura is proposing is to get it away from the highway and we will maintain it. If you come to Malta and check the trails up there now, they are mowed, clean, there are no weeds, and people use them all the time. We're very proud of our community; it's a clean community and we just want more people to move there. That is one of our assets – we have a walkway, we have baseball, summertime swimming, drag racing, we've got many, many things going on. Hwy 191 south of Malta, thank you for slowing the traffic down but we've got a lot of children out there and we want them to get to town safe and sound. We were all children once and did we want to ride in a car to town; no. We wanted to walk or ride our bikes or take a skateboard. I'm just saying that if there is any way possible to help Laura and John, it would be greatly appreciated by the county of Phillips, the Commissioners, and everyone there. Thank you for your time; I appreciate what you do.

Commissioner Lambert thanked them for bringing this up. If the Commission has the authority to waive the match, tell us what steps we need to go through. Dwayne Kailey said first off, I would caution us from doing too much right now. First off, we're going up with a solicitation later this year in the fall. We don't even know if this project is going to prioritize out for funding yet, so waiving the match right now is a little early. Let us talk internally and see where we want to go internally and let us provide some additional information back to you and then let's go down that road. Again, waiving the match for a project that we haven't even prioritized through the solicitation project concerns me a little.

Commissioner Jergeson had a clarification question: When you're talking about waiving the match, you're talking about whether MDT covers the match? Director Tooley said we had a very short discussion on HB 473 and I think it's important to remember what HB 473 did for the Department and what it did on behalf of local

governments. There are two parts to that bill. The intent of the Legislature was to allow MDT to match the Federal Aid Program as it stood at that time – to match the projects that you approved. We get approximately one third of the proceeds of the foreign assets from the new gas tax and the rest goes to local government. Of course, local government has needs way beyond what that covers but the fact is that local government also now has a different revenue source they didn't have before for transportation. There is no way Phillips County can do everything Phillips County needs to do with their share of foreign assets, but they can also participate somewhat in these types of projects with that money. I can't commit your money, but it is something else to consider while you're determining what to do as a Commission as these projects come before you.

Commissioner Skelton asked if there was a cost for this project? Dwayne Kailey said MDT does not know. We've had discussions with Malta and Phillips County on this project, but nothing official. Commissioner Skelton asked if there was an estimate? Laura Pankrat said Mick Johnson said about \$500-\$700. I don't know how much it is and that's why we had to get an Engineer to look at it. Commissioner Skelton thanked them for their thoughts.

### **Agenda Item 3: Certificates of Completion March & April – 2018**

Dwane Kailey presented the Certificates of Completion for March & April – 2018 to the Commission. They are presented for your review and approval. If you have any questions or comments, please feel free to ask. Staff recommends your approval.

Commissioner Lambert moved to approve the Certificates of Completion for March & April 2018. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item No. 4: Project Change Orders March & April – 2018**

Dwane Kailey presented the Project Change Orders for March & April – 2018 to the Commission. They are presented for your review and approval. If you have any questions, please feel free to ask. Staff recommends approval.

Commissioner Jergeson asked if the projects in Missoula came in under award. Dwayne Kailey said the first project was Russell Street. We had an item in the contract when we advertised the project for a sewer line that the city was paying for. After we bid the project and awarded it, the city chose not to proceed with the sewer line. We had numerous discussions with them to assure it wasn't a risk to the project, i.e., that it might burst after we got done and need to tear up the roadway again. After those conversations, we agreed to go ahead and change order that work out of Russell Street and that saved us \$334,000.

Commissioner Jergeson moved to approve the Project Change Orders for March & April 2018. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item No. 5: Liquidated Damages**

Dwane Kailey presented the Liquidated Damages to the Commission. They are presented for your review and approval.

With liquidated damages, you need do nothing and they stand as is. If you want to adjust them, then you need to make a motion. If you have any questions, please feel free to ask. There are three for your review:

Lolo to Missoula. The contractor is Riverside Contracting. They do not dispute the charges. They have seven days of liquidated damages for a total value of \$20,783.00.

Safety Projects – Great Falls District, Rumble Strips. The contractor was High Mark Traffic Services, Inc. They do not dispute the charges. They have five days of liquidated damages at \$11,900.00.

JCT MT 200 South. The contractor is Riverside Contracting. They do not dispute the days. They had 19 days of liquidated damages at \$39,596.00.

Commissioner Skelton asked if Riverside was weather related – 19 days is kind of long. Dwayne Kailey said I think we're running into a couple of things. With the economy going the direction it is going and the unemployment rate as low as it is, I think contractors are struggling hard at hiring additional staff. My Construction Engineer goes out and tours every district ever year and when he was on the Hungry Horse project, he was talking to the Superintendent for Sletten who had just hired two new employees who went to lunch and never returned. We heard from the MCA that all the contractors are really struggling to get staff. To add to that, we're starting to see that some of our contractors are not bidding. When we do the award meeting next Tuesday, you're going to see the bids came in fairly high on one project, but we are going to recommend award. We think that contractors are getting full and they are very challenged to bid right now just from a staffing level. I think that is what is happening. MDT is seeing the same thing – we've got several job postings internally and we're getting very few applicants and many of the one's we're getting are not good employees; they are not meeting the qualifications. Billings has had a position posted for four or five months for a Traffic Engineer and they've gotten zero applicants. Great Falls has the same thing, they've gotten zero applicants. We're very challenged right now.

STAND.

### **Agenda Item No. 6: Letting Lists – April through October**

Dwane Kailey presented the Letting Lists for April through October to the Commission. They are submitted for your review and approval. One note that is not in here, but you had already approved the letting dates for the next year. We've been contacted by the MCA, one of those letting dates in January coincides with their annual meeting, so we will be approaching you in August to move the January letting date so that it does not conflict with their annual conference. Right now, it is not in here but I'm giving you this for your information.

Commissioner Lambert said I thought by now we'd be ready to do bridges, but I haven't seen a lot of bridge work on the letting list. Dwayne Kailey said we're doing a ton of bridges and at the award meeting on Tuesday you're going to see a fair number of bridges. That is where the issue is right now, one of the projects is in your district, Miles City Bridge Deck Rehab, came in substantially over the Engineer's Estimate. There was only one bidder and in reviewing the information we have, we do think it is a case where there are not a whole lot of contractors out there right now, and the ones we have are hitting capacity. So, we are going to recommend award.

Commissioner Jergeson said if we decided there aren't enough hungry contractors this year, do we wait until next year and maybe the unemployment rate will pick up

and we'll get some qualified people looking for jobs. If we don't award it and we don't get the money rolling, does that mean we run the risk of not using all our federal money for the year and instead of gathering up money other states don't use, we will be one of the contributing states to that process? Dwane Kailey said that is an excellent question. The answer is yes, no, and maybe. We had a very robust discussion yesterday when we met, I don't think delaying it will make a huge difference because strategically we saw the condition of our bridges statewide and added additional money to that program. In the meantime, we've seen a few contractors that used to be very prevalent in our bridge rehab, but we're not seeing them anymore. We don't know what's going on. For example, Copp Construction, we see almost no work going to Copp. Tammy-Eddy used to do a ton of work for us and I think they've done one bridge. The majority of work is going to Sletten Construction. We've got Frontier West who used to do two or three bridges per year, and they are essentially limiting themselves to one. They've got the Bonner Bridge in Missoula.

Add to that, we've also changed our philosophy on what bridge work we're going to do. In that past we used to do a lot of major rehab and full bridge replacements, but we've changed and we're going to bridge preservation so there's a lot more deck work. That is less expensive versus the entire bridge, so it's putting more jobs out there and spreading those bridge contractors thinner. We are hearing that Tinnhall and a few other contractors are looking at coming in out of Washington, but we've haven't seen that just yet but we're hearing they might be coming this direction. I don't think that workload is going to alleviate and just delaying it until next year will not solve the problem. We're going to have to get creative and figure out how to grow or we're going to start seeing contractors from North Dakota, Minnesota, Utah, and Washington start coming into the state. I think this is the wave of what we're going to see if the economy of the state is the way it is. I'm not wishing anything ill on the economy for the record.

Commissioner Lambert said we work on the here and now, so the fact that the economy might get worse and people will be hungrier next year doesn't matter. Dwayne said we do try to look to the future and forecast what we see coming down the pike. We work with planning, and nationally to see what is coming and that's how we build a lot of our estimates. But you're right on, we also have the requirement of obligating all our federal funds every year. So, we try to mill all those issues together and make the best choices and decisions we can for the department and agency. We work with federal partners, planning, maintenance as a big team and try to make the best decisions we can but a lot of it is just simply out of our control. Fuel is up, asphalt cement price is going up and we have no control over that.

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

The motion passed unanimously.

### **Agenda Item No. 15: Discussion and Follow-up**

Director Tooley welcomed Val Wilson, a member of the legal staff, and is our Acting Chief of Legal replacing Dave Ohler who retired at the end of May. We're going to take some time to replace to Dave for a couple of reasons, budgetary and we have a great Acting Chief. Thank you for taking the job and I hope you continue to enjoy it.

#### *Performance Audits*

Director Tooley said we have two performance audits before the audit committee on Tuesday. One is the Maintenance Audit and the other is the Audit required by HB 473. The audit staff did a great job especially in the 473 audit – they are trying to tell

a 500-page story in 40 pages. They captured it pretty well. We had a long discussion with the Auditors before they generated the final report. They listened, we listened, and when we looked at the report we do concur with all their recommendations. The whole point of a Performance Audit is to make us better and I think there are some pathways to do that. We're looking forward to that meeting on Tuesday. Thank you for your part in that.

#### *Gas Tax Issues*

There are some bill drafts starting to appear in some of the Interim Committees. We were surprised by two that showed up in the Environmental Quality Council. We don't typically watch that Committee very closely but there are two bill drafts before the Interim Committee that would divert a significant amount of state gas tax funds to off road use and snowmobiles – over three million for the biennium. That is contrary to the Legislative intent of HB 473 as far as the department goes, that was to match the Federal Aid Program. They have studies that say the snowmobile and off-road users deserve more. We don't necessarily disagree with that, but this was an issue that should have come before the Legislature during the session when the debates over the fuel tax were occurring. To come in now and look at diverting some of that money only serves to shorten the length of the new fund. If Larry Flynn were here, he would tell you that as things stand right now he estimates a six-year length that this will allow us to match Federal Aid Projects before the Legislature has to act again. Every time one of these things happen, it draws it back a little bit. This could take it down to four years which nobody wants to see happen. So, for your radar, we're paying attention to it.

#### *Other Distributions*

We had a good discussion on a multi-use path in the Malta area this morning. Local government has received some significant allocations for that. In the case of this morning for a partial year distribution, Malta has \$17,500 in their account and Phillips County has \$43,168. Again, I know in the business we're in, \$17,000 doesn't do much but in a case of something that is important to a community like they spoke of today, they can leverage quite a bit of state and federal money by applying that to those priorities should they chose to do so. I think that is a half-year distribution, so double that, and between the two governments they get about \$120,000 per year. So, they can spend it on transportation-related projects and the rules are spelled out and I think "match" is one of them they can use. Something for you to consider, because this isn't the last community you'll hear from, there are some resources locally that weren't there before.

#### *Department's Legislative Priorities*

We right now have ten potential bill drafts in the hopper that on July 10<sup>th</sup>, I will at least mention to the Revenue and Transportation Interim Committee. They've asked for an update on what we're thinking. Our top three will be occupant safety. We're going to attempt to take a different tactic on primary seatbelt than we have in the past. Get away from enforcement and get more to compliance; encourage people to comply and not necessarily through enforcement. Using the Utah model where it is a primary offense, but the first one basically you can take an on-line course and show the judge that you took that on-line course on education on seatbelt safety and then that citation is dismissed. It's a pretty easy way to gain compliance and it worked well in Utah with a sunset provision. Utah removed the sunset provision in their last Session. It was highly successful there. They are a very conservative state as we know and mirrors ours in many ways. We're looking at taking a run at that.

Another priority is we have a lot of complaints over traction-control devices not being used on mountain passes by commercial vehicles. Trucks go up a hill and pass the warning that says, "chain up" and they don't and some of them get stuck which

then shuts down the Interstate or a primary highway until they can get out of there. It's a pretty good risk for them, because if they stop it costs them time and money, if they don't stop and make it, it doesn't cost them time and money. If they don't make it, then it's a \$50 fine. The only people who can enforce it are sheriff's deputies and Highway Patrol officers which, when the weather hits, are both busy. We want to give our MCS officers the ability to enforce that section of code. That makes sense, this is exactly what they could be doing. So, that's a priority.

A third priority is we are going to look at ending the speed differential on two-lane highways. Right now, when you go home, you are going to drive on roads that say you can drive 70 mph and you come up behind a commercial vehicle that can only driving 65 mph. It doesn't save you any time to be driving 70 mph vs. 65 mph especially when you encounter a slower moving vehicle. We've had success in other parts of the state where you've allowed that change to be made, i.e., Highway 16 between Glendive and Sidney. It dropped the crash rate substantially by getting the traffic all moving at the same speed and it was highly successful. So, we're talking about taking a run at that on a statewide basis. The trucking association will be supportive. Of course, they don't want to go faster, and they are happy where they're at, but for years they have expressed frustrations about the speed differential. So, we'll see where that goes.

The other one we will put forward is the highway code cleanup. It is straightening out some of the definitions in state law in what kind of highways and how funding goes to them. He asked Lynn Zanto to explain that more. Lynn Zanto said back in 1991 at the federal level, they eliminated several federal aid highway programs, including federal aid on primaries, secondaries, and urban. Our state Legislature continued those as an eligible use of federal funds – they are state programs but use federal funds. In that drafting, they didn't catch all the sections of code where those systems are talked about and so we still see terms like Federal Aid on Primaries, Secondaries, and Urban. That is one of the clean-ups. The other has to do with our Primary Highway System funding and that provision is extremely old as well. It essentially says that we will distribute the primary highway system funding based on a sufficiency rating. That is an old mechanism back in the early 90's that I can't even explain. We know that's been outdated, that piece of law has not kept up with the industry practice of asset management for allocating funds and every legislative session we talk about updating that piece of law, but we did have a memo signed by the former Deputy Director of Planning about how we use that law and link it to our asset management. So, we had a linking piece that we've been audited on several times by the financial compliant auditors but with the Performance Audit, the recommendation is to clean that up and we agreed. As that legislation moves forward, we will propose something to basically catch the law up with current industry practice and what we're doing from an asset management standpoint.

Commissioner Jergeson asked about the differential speeds. I was there when we passed the speed limit bill, and the concern was velocity times mass equals death and destruction at certain levels. Obviously, trucks, by their very size and weight when they are loaded, magnify that and there was rational for the differential. I consider it every time I'm driving. One of the things I've wondered especially for those of us who drive a low-profile car. We get behind a truck on a hill and they are slowing down, I've got plenty of power to pass but it is still on a hill and my profile is lower to see what's coming. If we're going to let trucks go 70 mph and you know people are going to use the ability to go 80 mph to get around a truck, but if we're going to let trucks go faster, then we need to limit that amount of space with those painted lines. Director Tooley said I'm not suggesting trucks go 70 mph, I'm suggesting cars go 65 mph. Commissioner Jergeson said that's going to make a lot of people mad. Director Tooley said it is the right thing to do. I don't know if it will work or not, but it's worth trying because we have the data that shows it works. If we did it the other way, we'd have to look at the passing zones and possibly adjust some.

*Billings District*

Director Tooley said we're wondering why we haven't received any requests to do work on our system from the City of Billings. While Great Falls, Missoula and everybody else is doing work on our system and asking for concurrence from the Chief Engineer and your concurrence to do that work, why haven't we heard anything from Billings. Staff looked at what they are doing and found Billings has \$6.8 million worth of work proposed and has one active project. So, we're going to try to catch up with them and get them to come back into compliance with the law and bring those before you for concurrence. We think maybe there's some confusion since these are routes that they maintain on our behalf within their jurisdiction and maybe they think they don't need to seek your approval for those projects. But we want to make sure we're on the same page with them and get that back to where it needs to be. We'll have more of a discussion in August about the projects. One of them right now, 32<sup>nd</sup> to Shiloh, is something you should have concurred in. We will have the Chief Engineer look into it and we'll get back to you. Billings is very competent in what they do, and we don't think we need to go down with a "Cease and Desist Order" but we definitely want them to come through this body. Commissioner Skelton said it should.

*Beartooth Frontage Road*

Dwayne Kailey said I apologize for having a big gap in the ER Program updates. Staff has been scrambling like crazy. Hopefully those are being received well and the information is adequate. A quick update – the last one I sent was on Sunday and since then things have not been static. The Bearmouth Frontage Road is closed right now. We identified an area that was having some movement, with all the rains and everything, it started to move again. We are concerned for traveler safety, so we have closed the Frontage Road and staff is headed out. They wanted to wait until the moisture came out of the ground a little bit, so Monday they are headed out to the site. It's a very risky site and we didn't want them out with high risk. They are going to assess it on Monday and determine whether to open the road or not.

I'm sure you've all heard what's going on in Augusta. We have at a minimum at least one bridge that is now closed until we can replace it. We have one culvert on US 200 on Roger's Pass that is closed as well. Staff is assessing it and we're trying to get them fixed. I don't know what else is going to cause some major issues because the water was so high we couldn't assess everything just yet, but we do have staff out there. I'm going to try and stop in and see some of it on the way back to Helena.

I did send you a notification on at least two of the sites, we're trying to get them out expeditiously. In fact, I ordered one culvert for Jefferson City yesterday I signed the Requisition to order the culvert for Gilford, and then we're scheduling the bidding for the contractors to come in and place those culverts as expeditiously as we can. That requires we set up an additional conference call for the Commission or we can ask you to delegate the authority either to the Director, Deputy, or myself to award those. July 12<sup>th</sup> is when we're going to let two of those projects – the Bearmouth I-90 Project and the Jefferson I-15 Project and then we'd like to have award on the 13<sup>th</sup>, the very next day, so that we can get the contractor out there because the culvert will be arriving by that time – get them on the job and reopen the Interstate. I'll leave it up to you as to what you'd like to do. Commissioner Skelton asked legal if they had the authority to do that. Val Wilson said they could make that decision to delegate today.

Commissioner Lambert moved to give MDT the ability to move forward on these emergency projects and report back to the Commission. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Commissioner Jergeson asked about Roundup; has the washout gotten worse? Dwayne Kailey said the water has started to come down and we were seeing the rate of erosion decline. I haven't checked this week with the Billings District to see where they are at now. We have a contractor already contracted and they are supposed to be on site mitigating that very soon. I want to say thank you to our federal partners, they've recognized the exigency of all this and they've been working hand-in-hand with us; we couldn't do it without them.

Commissioner Lambert said I thought we had a law that in emergency situations, the department could go ahead and delegate work. I thought the law already provided for that. Dwayne Kailey said I'm not aware of that. There is the ability for us to declare exigency which exempts us out of the procurement laws, meaning we don't have to go get three bids. We use that very sparingly because we don't want to be creating issues out there, we want to get competitive bids. Commissioner Lambert said the counties have the right to declare an emergency and close roads, put up speed limits, but the state doesn't? Dwayne Kailey said we have the authority, based on the law, to do what we need to do and go get it done. If we're going to bid anything out, I believe that it falls under the Commission's authority to award those bids. We can go grab a contractor with an excavator, like on Jefferson City I-15, to bring him on site and start excavating material and subsequently we got Bullet Construction and Mountain West Holdings and started setting up and building detours; we did not do any kind of bid, it was simply under exigency. However, once we go to bid, I believe it then falls under your authority to award or delegate authority to award those contracts.

Commissioner Jergeson asked if we've had any word from the Governor's office on how their search was going for a replacement for Dave. Director Tooley said we haven't had any feedback yet. They have a couple of names they are looking at, but I don't know who they are. They are working but haven't selected anybody yet. Commissioner Jergeson said we were asked if we knew anybody in that District, either a Republican or an Independent. It would be good to be back up to full speed. I want to thank my fellow Commissioners for your participation in the tour yesterday. It was a great experience; it finally all came off. Commissioner Skelton said thank you to Hill County and the press – thank you for being here.

### **Next Commission Meeting**

The next Commission Conference Calls were scheduled for June 26, 2018, July 24, 2018, and August 21, 2018. The next Commission Meetings were scheduled for August 23, 2018 and October 24, 2018.

### **Adjourned**

Meeting Adjourned