

Montana Transportation Commission

**December 16, 2021 Meeting
Commission Room
2701 Prospect Avenue
Helena, Montana**

IN ATTENDANCE

Loran Frazier, Transportation Commission Chair – District 3
Tammi Fisher, Transportation Commissioner – District 1
Shane Sanders, Transportation Commissioner – District 2
Noel Sansaver, Transportation Commissioner – District 4
Scott Aspenlieder, Transportation Commissioner – District 5
Malcolm “Mack” Long, Director MDT
Julie Brown, Deputy Director MDT
Lori Ryan, Commission Secretary
Dwane Kailey, MDT
Dustin Rouse, MDT
Jake Goettle, MDT
Val Wilson, MDT
Valerie Balukas, MDT
Rob Stapley, MDT
Darin Reynolds, MDT
Dwane Kailey, MDT
Rod Nelson, MDT
Bob Vosen, MDT
Shane Mintz, MDT
David Relph, MDT
Bob Heiser, MDT
Jason Gilliam, MDT
Chris Nygren, MDT
Justun Juelfs, MDT
Katie Dalton, MDT
Ryan Dahlke, MDT
Representative Denley Loge
Mark Melief, Quinn’s
Denise Morin, Quinn’s
J.V. Moody, Sanders County
Carol Booker, Sanders County
Lucia Olivera, FHWA
Brian Hasselbach, FHWA

Please note: the complete recorded minutes are available for review on the commission’s website at https://www.mdt.mt.gov/pubinvolve/trans_comm/meetings.shtml. You may request a compact disc (containing the audio files, agenda, and minutes) from the transportation secretary Lori Ryan at (406) 444-7200 or lryan@mt.gov. Alternative accessible formats of this document will be provided upon request. For additional information, please call (406) 444-7200. The TTY number is (406) 444-7696 or 1-800-335-7592.

OPENING – Commissioner Loran Frazier

Commissioner Frazier called the meeting to order with the Pledge of Allegiance.
Commissioner Sansaver gave the Invocation.

Approval of Minutes

The minutes for the Commission Meetings of October 5, 2021, October 21, 2021, October 26, 2021, and November 9, 2021 were presented for approval.

Commissioner Aspenlieder moved to approve the minutes for the Commission Meetings of October 5, 2021, October 21, 2021, October 26, 2021 and November 9, 2021. Commissioner Fisher seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 1: Construction Project on State Highway System – Contract Labor South 19th Avenue, Bozeman

Rob Stapley presented the Construction Project on State Highway System – Contract Labor, South 19th Avenue – Bozeman. East Yards Development Under MCA 60-2-111 “letting of contracts on state and federal aid highways,” all projects for construction or reconstruction of highways and streets located on highway systems and state highways, including those portions in cities and towns, must be let by the Transportation Commission. This statute exists to ensure the safety of our system, protect transportation investments, and encourage better coordination between state and local infrastructure improvements.

South 19th Avenue – Bozeman

The City of Bozeman is proposing modifications to South 19th Avenue (U-1201) to improve traffic operations and safety near West Babcock Street. Proposed improvements include signal upgrades, sidewalk improvements, turn-lane modifications and ADA upgrades near the intersection of South 19th Avenue and West Babcock Street in Bozeman.

MDT headquarters and Butte District staff have reviewed and concur with the recommended improvements. The City of Bozeman will provide 100 percent of project funding and will be required to review and approve project design elements (to ensure that all work complies with applicable local, state, and federal design standards).

When complete, the City of Bozeman will assume all maintenance and operational responsibilities associated with these improvements.

Summary: The City of Bozeman is proposing modifications to South 19th Avenue (U-1201) in Bozeman. Proposed improvements include signal upgrades, sidewalk improvements, turn-lane modifications and ADA upgrades near the intersection of South 19th Avenue and West Babcock Street in Bozeman.

Staff recommends that the Commission approve these modifications to the Urban Highway System and requests that the Commission delegate its authority to let, award, and administer the contract for this project to the City of Bozeman – pending completion of their design review and approval process.

Commissioner Sanders moved to approve the Construction Project on State Highway System, Contract Labor – South 19th Avenue, Bozeman. Commissioner Aspenlieder seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 2: Interstate Maintenance Program Additions to IM Program (1 New Project)

Rob Stapley presented the Interstate Maintenance Program – Additions to IM Program (1 New Project) to the Commission. The Interstate Maintenance (IM) Program finances highway projects to rehabilitate, restore, resurface, and reconstruct routes on the Interstate System. Montana’s Transportation Commission allocates IM funds to MDT Districts based on system performance.

At this time, MDT is proposing to add one new project to the IM program in the Billings District, Lockwood Interchange. The project meets the criteria set forth for IM-funded projects. The estimated total cost for all project phases is

\$49,968,000 (\$45,591,000 federal + \$4,377,000 state match) – with the entirety of the federal funding originating from the Interstate Maintenance (IM) Program.

Summary: MDT is requesting Commission approval to add a new project, Lockwood Interchange, to the Interstate Program. The proposed project is consistent with the goals and objectives identified in the Performance Programming (Px3) Process – as well as the policy direction established in TranPlanMT. Specifically, roadway system performance and traveler safety will be enhanced with the addition of this project to the program.

The estimated total cost for all project phases is \$49,968,000 (\$45,591,000 federal + \$4,377,000 state match) – with the entirety of the federal funding originating from the Interstate Maintenance (IM) Program.

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

Commissioner Sansaver asked about the \$4,377,000 state match. When you say the entirety of the federal funding is paying for this, is that bundled into that or are we still matching that? Rob Stapley said there is a state match just shy of \$4.4 million. So that match plus the roughly \$46 million equals the \$50 million for project total.

Commissioner Aspenlieder moved to approve the Interstate Maintenance Program – Additions to IM Program (1 New Project). Commissioner Sanders seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 3: National Highway System Program Additions to NH Program (1 New Project)

Rob Stapley presented the National Highway System Program – Additions to NH Program (1 New Project) 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.

At this time, MDT is proposing to add one new project to the NH program in the Billings District. The project, Montana Avenue crosswalks, meets the criteria set forth for NH-funded projects. The estimated total cost for all project phases is \$1,616,000 (\$1,399,000 federal + \$217,000 state match) – with the entirety of the federal funding originating from the National Highway System (NH) Program.

Summary: MDT is requesting Commission approval to add a new project, Montana Avenue crosswalks, to the National Highway System Program. The proposed project is consistent with the goals and objectives identified in the Performance Programming (Px3) Process – as well as the policy direction established in TranPlanMT. Specifically, roadway system performance and traveler safety will be enhanced with the addition of this project to the program.

The estimated total cost for all project phases is \$1,616,000 (\$1,399,000 federal + \$217,000 state match) – with the entirety of the federal funding originating from the National Highway System (NH) Program.

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

Commissioner Sanders moved to approve the National Highway System Program – Additions to NH Program (1 New Project). Commissioner Aspenlieder seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 4: Secondary Roads Program Additions to STPS Program (2 New Projects)

Rob Stapley presented the Secondary Roads Program – Additions to STPS Program (2 New Projects) to the Commission. The Surface Transportation Program – Secondary (STPS) finances highway projects on the state-designated Secondary Highway System. Secondary Roads are those routes that have been selected by the Montana Transportation Commission to be placed on the Secondary Highway System.

Secondary Roads Program funding is distributed by formula and is utilized to resurface, rehabilitate and reconstruct roadways and bridges on the Secondary System. Capital construction priorities are established by the Counties and pavement preservation projects are selected by MDT (per the guidance in MCA 60-3-206).

At this time, MDT is proposing to add two new projects to the STPS program – one in District 4, Junction Montana 23 South and one in District 5, Musselshell County Line South. The projects on the attached list meet the criteria set forth for STPS-funded projects. If approved, it would be MDT's intention to let these projects individually.

The estimated total cost for all project phases is \$20,901,000 (\$18,096,000 federal + \$2,805,000 state match) – with the entirety of the federal funding originating from the Secondary Roads (STPS) Program.

Summary: MDT is requesting Commission approval to add two new projects (Junction Montana 23 South and Musselshell County Line South) to the Secondary Roads Program. The proposed projects are consistent with the goals and objectives identified in the Performance Programming (Px3) Process – as well as the policy direction established in TranPlanMT. Specifically, roadway system performance and traveler safety will be enhanced with the addition of these projects to the program.

The estimated total cost for all project phases is \$20,901,000 (\$18,096,000 federal + \$2,805,000 state match) – with the entirety of the federal funding originating from the Secondary Roads (STPS) Program.

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

Commissioner Aspenlieder moved to approve the Secondary Roads Program – Additions to STPS Program (2 New Projects). Commissioner Fisher seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 5: Surface Transportation Program – Urban 6th/Walnut/Ash – Lewistown

Rob Stapley presented the Surface Transportation Program – Urban, 6th/Walnut/Ash – Lewistown to the Commission. The Surface Transportation Program Urban (STPU) provides funding for improvements on the Urban Highway System in Montana's 19 urban areas. STPU allocation amounts are based on a per capita distribution and are recalculated after each decennial census. Priorities for the use of STPU funds are established via local planning processes with final approval by the Transportation Commission.

At this time, MDT is requesting the addition of the following project to the STPU program:

6th / Walnut / Ash – Lewistown

This project is located within the City of Lewistown on 6th Avenue (U-7107), Walnut Street (U-7110) and Ash Street (U-7110). The project scope will include new curb, gutter, sidewalks and resurfacing work on Walnut Street (from Ash Street to Casino Creek Drive), bridge replacement and reconstruction work on Ash Street (from Walnut Street to Upper Spring Creek Road) and a chip seal on 6th Avenue (from Ash Street to the City Limits).

The estimated total cost for all phases is \$3,064,000 (including indirect costs and inflation). Lewistown's annual STPU Allocation is \$147,086 with an anticipated letting year (FFY 2026) balance of \$3,400,000.

Summary: MDT is requesting Commission approval for a Surface Transportation Program Urban (STPU) project on 6th Avenue, Walnut Street and Ash Street in Lewistown. The estimated total cost (for all project phases) is \$3,064,000.

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

Staff recommends that the Commission approve the addition of this STPU project to the highway program. There is a letter from the City Manager of Lewistown as well as a letter from the Fergus County Commissioners, both supporting this project.

Commissioner Frazier said the scope items that are mentioned in the letter from the City of Lewistown and Fergus County, are those included in the scope of the project? Rob Stapley said that is correct. Commissioner Aspenlieder asked for clarification on where the funding is coming from. Lewistown's annual allocation is fairly small and I was not sure if this is their saved up balance they are spending. How is this coming out? Rob Stapley said yes, this is their saved up balance. When this project is anticipated to be let in Fiscal Year 2026, they should have a balance of \$3.4 million still remaining.

Commissioner Sansaver moved to approve the Surface Transportation Program – Urban, 6th/Walnut/Ash – Lewistown. Commissioner Aspenlieder seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item 6: Bridge Program Projects
Additions to Bridge Program (3 New Projects)**

Rob Stapley presented Bridge Program Projects – Additions to bridge Program (3 New Projects) to the Commission. MDT’s Bridge Bureau reviews bridge conditions statewide and provides recommendations for construction projects to be added to the Bridge Program. At this time, the Bridge Bureau recommends adding three (3) new projects to the Bridge Program, Orange Street Tunnel in Missoula, Crow Creek 10 Miles SW of Ronan, and Muddy Creek 3 Miles W of Medicine Lake.

If approved, it would be MDT’s intention to let these projects individually. The estimated total cost for all project phases is \$19.6 million (\$17.0M federal + \$2.6M state match).

Summary: MDT is requesting Commission approval to add three (3) new projects to the Bridge Program. The breakdown of project costs (by program) is listed below:

| | |
|--|---------------------|
| Surface Transportation Bridge (STPB) Program | \$ 5,500,000 |
| National Highway Performance Bridge (NHPB) Program | <u>\$14,100,000</u> |
| Total | \$19,600,000 |

The proposed projects are consistent with the goals and objectives identified in the Performance Programming (Px3) Process - as well as the policy direction established in TranPlanMT. Specifically, roadway system performance and traveler safety will be enhanced with the addition of these projects to the Bridge Program.

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

Commissioner Fisher moved to approve the Bridge Program Projects – Additions to Bridge Program (3 New Projects). Commissioner Sansaver seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item 7: Transportation Alternatives (TA)
Program Projects
Capital Improvement Projects (10)**

Rob Stapley presented the Transportation Alternatives (TA) Program Projects – Capital Improvement Projects (10) to the Commission. The Transportation Alternatives (TA) Program provides assistance to local governments, tribal entities, transit providers, resource agencies and/or school districts for community improvements deemed eligible to receive TA funding. MDT solicits proposals (from eligible entities) for construction projects, ranks each proposal, and then advances the highest priorities (without exceeding available TA funding).

Federal guidance mandates that MDT select TA projects via a competitive process. Further, federal guidance states that metropolitan planning organizations (MPO’s) and state agencies (such as MDT) are not eligible to submit applications for TA projects.

At this time, MDT is advancing the capital improvement projects from the most recent round of Transportation Alternatives (TA) Program project evaluations. If approved, it would be MDT’s intention to let these projects individually.

Summary: MDT is requesting Commission approval to add ten (10) new Transportation Alternatives (TA) projects to the program. The estimated total cost for all projects is \$6,498,898 (\$5,626,746 federal + \$69,732 state + \$802,420 local) – with the entirety of the federal funding originating from the Transportation Alternatives (TA) Program. The breakdown of the projects are four of those TA projects are in the Missoula District, one is in the Butte District, three are in the Great Falls District, and two are in the Glendive District.

The projects are consistent with the goals and objectives identified in the Performance Programming (Px3) Process as well as the policy direction established in TranPlanMT. Specifically, traveler safety and bicycle/pedestrian features will be enhanced with the addition of these projects to the program.

Staff recommends that the Commission approve the addition of these Transportation Alternatives (TA) projects to the highway program.

Commissioner Fisher said I will note that for District One at least two of these projects are providing safe routes to schools which I think is a worthy use of all state funds, in particular in Evergreen. There are no school busses in Evergreen, they don't have any school transportation, so kids are walking on highways to get to school and this will allow them to get their safely. I appreciate these projects being added to the list. Commissioner Sanders said I second what Commissioner Fisher just said. I've been approached by many of the representatives out of that district, they are walking on a dirt path; they are either on the road when it's snowy or on a dirt path. I commend the Evergreen community because they came up with a match, they came together and made it happen. That's a win-win.

Commissioner Fisher moved to approve the Transportation Alternatives (TA) Program Projects – Capital Improvement Projects (10). Commissioner Sanders seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 8: Speed Limit Recommendation MT 86 – Bridger Drive

Dustin Rouse presented the Speed Limit Recommendation, MT 86 – Bridger Drive to the Commission. The City of Bozeman sent in a speed study request along Bridge Drive, which is also known as MT 86, from Bridger Center Drive to the east city limit boundary. A concerned citizen had concerns about speeding motorists and desired a reduction in the speed limit. The study begins at signalized intersection with East Griffin Road, continues east along Bridge Canyon, to the pull out parking area at mile post 4. The first segment is more urbanized and then the segment to the east is posted at 45 mph.

The speed profile and other traffic operational information gathered does not support a change to the existing zone. Within their respective boundaries the 35-mph and 45-mph speed zones have prevailing speeds consistently above the posted speed limit.

The Bozeman City Council concurs with the no change recommendation based on current data. As development continues, the City of Bozeman would like MDT to consider reducing the speed limit and improving the pedestrian facilities.

Staff recommendations MDT recommends “NO CHANGE” in the existing speed limit configuration.

Commissioner Aspenlieder said Mr. Roslin with the local jurisdiction asked us to stay engaged or keep an eye on this as development continues, so how do we do that? Is there a function path to do that or do we wait until they formally request another speed study? Dustin Rouse said I'm familiar with MDT's interaction with the City of Bozeman and they meet monthly at staff level so those communications are on-going. They also have a Transportation Committee that meets as well quarterly. So that engagement is on-going. It would take a request from the city for a new speed study.

Commissioner Aspenlieder asked how it worked in areas where they don't have that level of staff structure, like in eastern Montana. How do we do that or do we formally wait for a request again? Dustin Rouse said most of our districts have monthly meetings set up and if not they will have regional discussions or they will meet with individuals counties to keep that communication open and talk about development in the county and to have those discussions. That is one avenue. It does take a request from a county to initiate a speed study.

Commissioner Sanders moved to approve the Speed Limit Recommendation for MT 86 – Bridger Drive. Commissioner Fisher seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Public Comment

No public comment was given.

Agenda Item 9: Speed Limit Recommendation City of Bozeman, South 19th Avenue – U101 and S345

Dustin Rouse the Speed Limit Recommendation, City of Bozeman, South 19th Avenue – U101 and S345 to the Commission. The City of Bozeman submitted a request for a speed limit study along 19th Avenue for the purpose of evaluating the existing speed limit. South 19th Avenue has been reconstructed and improved under multiple projects. The typical section south of Main Street is comprised of two thru-travel lanes and a bike lane with adjacent curb & gutter in each direction separated by a raised median. Dedicated left-turn lanes are in place at intersections with local cross streets. This entire segment is illuminated. The typical section begins transitioning to a two-lane facility south of the intersection with Kagy Boulevard with additional roadway width or a presence of auxiliary lanes around major intersections. Major intersections are signal control. Between Blackwood Lane and Patterson Road the primary typical section is comprised of two 12-foot travel lanes with eight-foot shoulders and intersection improvements at select locations. There is a break in the suburban setting south of Blackwood Lane.

From Main Street south to College Street the volume ranges 20,400 to 18,700. The highest volume of 25,800 was recorded north of the intersection with Lincoln Road. South of Lincoln Road the volume of traffic steadily declines; 17,400-Remington Way, 13,300-Stucky Road, 7,440-Blackwood Lane, and down to 1,900 near the intersection with Hyalite Canyon Road.

The speed profile based upon the 85th percentile and pace speed supports reducing the existing speed limits by extending both the 40-mph and 50-mph speed zones. The 40-mph speed zone may be carried south to encompass the intersection with Stucky Road, replacing what is now a 50-mph speed zone. While the 50-mph speed zone would be shifted south approximately 1-mile to include the intersection with Blackwood Lane. The speed profile shows a distinct change in operation south of

Blackwood Lane. At the far end of the study segment, the 60-mph speed limit may be reduced to 50-mph along this geometrically unique segment between the intersection with Hyalite Canyon Road and the stop-controlled intersection with Cottonwood Road.

Gallatin County concurs with the recommendation but would prefer to see one continuous 50-mph speed zone from Blackwood Road to Cottonwood Road. This is due to the significant number of recreational bicyclists using the route to access the Hyalite area.

MDT recognizes South 19th Avenue is utilized by some recreational bicyclists to access the Hyalite Canyon area especially during the month of April when Hyalite Canyon Road is closed to motor vehicles. Quantifying the effects for the presence of bicyclists on rural highways is difficult at times. A two-foot shoulder is present in this area forcing vehicles and bicyclist to be in close proximity to each other. Prevailing speeds in the proposed 60-mph speed zone by MDT are around 65-mph or approximately 15-mph greater than the 50-mph speed zone preferred by Gallatin County. Previous research performed by MDT shows an increasing trend in crash rates when the speed limit is set greater than 10-mph below the prevailing speeds.

Bozeman City Commissioners generally agree with the recommendations but would like MDT to consider extending the proposed 40-mph speed zone to the south side of the intersection with Graf Street.

Curb and gutter is present along sections of the roadway between Stucky Road and Graf Street making it similar to the rest of the 40-mph speed zone north of Stucky Road. However, when the data was collected in 2020 based upon the 85th percentile speed and pace speed, the prevailing speeds in this region are between 51-mph and 54-mph. Although not staunchly opposed to extending the 40-mph speed zone just south of Graf Street, MDT would like the commission to be aware that previous research shows an increasing trend in crash rates when the speed limit is set greater than 10-mph below the prevailing speeds.

MDT recommends the following special speed zones:

A 40-mph speed limit beginning about 150-feet south of College Street (straight line station 395+00) and continuing south to about 450-feet south of Stucky Road (straight-line station 339+00), an approximate distance of 1.06-miles.

A 50-mph speed limit beginning about 450-feet south of Stucky Road (straight line station 339+00) and continuing south to about 200-feet south of Blackwood Lane (straight-line station 288+00), an approximate distance of 0.97-miles.

A 60-mph speed limit beginning about 200-feet south of Blackwood Lane (straight-line station 288+00) and continuing south to about 300-feet east of Hyalite Canyon Road (straight-line station 60+00), an approximate distance of 4.32-miles

A 50-mph speed limit beginning about 300-feet east of Hyalite Canyon Road (straight-line station 60+00) and continuing west to the "Stop" sign-controlled intersection with Cottonwood Road (straight-line station 0+00), an approximate distance of 1.14-miles.

Commissioner Sanders said this wrapped up in 2020, correct? Dustin Rouse said correct. Commissioner Sanders asked when they considered a study obsolete. I know this in high growth area in Bozeman, when do we consider it obsolete

because of the high growth rate? There is significant construction going on in the Stucky Road and Graf Road area plus Arnold now connects also. So my question is when do we consider this not a relevant speed study anymore because there has been so much growth? Dustin Rouse said MDT is constantly in communication with locals and looking at the growth in areas. We will go out and take another look at areas after a two-year period. So typically that is the time frame. On this one because of the influence of Covid, we recognize that, and we are monitoring that and staying in communication with the City. Typically we would not go back out unless two years have passed. Commissioner Sanders said when I make the motion it will to not concur with the change.

Commissioner Sanders said I make a motion to concur with staff recommendation with the following exception, I'd like to concur with the inputs from the City of Bozeman and actually move the 40 mph down to Graf Street. So it would be as written but the 40 mph speed would go from 150 feet south of College in a straight line to station 385+00 down to Graf Road. That will include the significant construction going on now to the west as well as Arnold Street, which is not on this map, but if you go to Stucky and Graf about half way down Arnold Street now comes in there as well. I think the boots on the ground with speed studies, we have to listen to that and combine that with the regional analysis which is very thorough and I don't dispute the engineering analysis, but I think the boots on the ground folks and I've seen it myself as well, it would be more prudent for us for future growth to come down to Graf Street with the 40 mph speed. Therefore My motion is to approve as recommended with the addition of the 40 mph down to Graf Street.

Commissioner Sanders moved to approve the Speed Limit Recommendation, City of Bozeman – South 19th Avenue – U1201 and S345 with the modification of moving the 40 mph speed zone down to Graf Street. Commissioner Fisher seconded the motion. Commissioners Sanders, Sansaver, Fisher and Frazier voted aye; Commissioner Apenlieder voted nye.

The motion passed.

**Agenda Item 10: Speed Limit Recommendation
MT 35(P-52) Fairmont Drive to
Secondary 206 – Kalispell**

Dustin Rouse presented the Speed Limit Recommendation, MT 35 (P-52) Fairmont Drive to Secondary 206 – Kalispell to the Commission. Flathead County requested for a speed study to be completed along MT-35 between the intersections of Fairmont Drive and S-206 with the primary focus on the 70-mph speed zone.

This portion of MT-35 was improved in 2018. The typical section is comprised of two 12-foot travel lanes with 8-foot shoulders. When the speed limit changes from 70-mph to 55-mph the typical section transitions to include a 14-foot two-way-left-turn lane along with the two 12-foot travel lanes with 8-foot shoulders. AADT volumes begin around 9,500 vehicles at the beginning of the study and increase to 12,500 vehicles nearing Fairmont Road. The roadside environment can be described as rural until reaching the 55-mph speed zone. However, there is development occurring within the 70-mph speed zone including the new development of Robinsons Way. The development along the highway is primarily residential with some businesses.

The prevailing speeds within the 70-mph statutory speed zone fluctuate between 60-mph to 70-mph. All areas where the prevailing speed matches the statutory 70-mph have passing zones where drivers are permitted by law to travel 10-mph above the posted speed limit when passing. Otherwise, the prevailing speeds are around 65-

mph. The 55-mph speed zone has prevailing speeds 5-mphs to 10-mphs above the posted speed limit. MDT therefore recommends replacing the 70-mph speed zone with a 65- mph speed zone from the existing 55-mph speed zone to 1600-feet south of the Lake Blain Road intersection. Flathead County concurs with the recommendation.

After posting the recommendation Commissioner Brodell requested removing this speed study with a request to look at the updated traffic numbers predominantly in the area.

MDT recommends the following:

A 65-mph speed limit beginning approximately 1600-feet South of Lake Blain Road (straight-line station 598+50) and continuing North to the existing 70-mph to 55-mph Transition (straight-line station 760+75), an approximate distance of 3.07- miles.

No Change to the 55-mph Speed Limit

Commissioner Fisher asked if there was anybody on line that would like to comment. I received a rather lengthy email last night regarding this speed study. Lori Ryan said they requested a zoom link and requested the opportunity to join us. There were no comments.

Commissioner Fisher said I live in this area and I agree that it needs a speed reduction. I think this request came from the county commissioners to do the speed study and while I appreciate that one commissioner has asked for a modification, I think we do have to rest on what we have in the public record for the full commission's recommendation. As you folks know I feel strongly in local control and the people who live there have to live with the decisions we make and I think we should honor their request as well. I do think this area is an area of high growth in Flathead County. I drove through there yesterday and there is no doubt there is some intersection issues there. I think there is opportunity for high crashes. I certainly respect the viewpoint of the Fire Chief who runs the only EMS service out there but I defer to local control and if we have a letter from the Commissioners saying they concur with MDT findings, I think that is appropriate. As growth occurs as we heard on the last agenda item, in two years if it is appropriate to do another speed study, that would seem appropriate and I would guess this area will need that.

Commissioner Fisher moved to approve the Speed Limit Recommendation, MT 35 (P-52) Fairmont Drive to Secondary 206 – Kalispell. Commissioner Aspenlieder seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item 11: Speed Limit Recommendation
MT 135 – Camp Bighorn to Quinn's
Hot Springs Area**

Dustin Rouse presented the Sanders County Request for Speed Limit Recommendation, MT 135 – Camp Bighorn to Quinn's Hot Springs Area to the Commission. This was a tabled item from the June Commission Meeting. Sanders County submitted a request for a speed limit study for the purpose of lowering the existing 70-mph speed limit from Camp Bighorn at milepost 18.5 to Quinn's Hot Springs near milepost 19.5. The safety concerns are due to growth and the pedestrian traffic in the area.

MDT went back and reviewed the speed statistics along with an extended review of the crash data. Further discussions were made with representatives from Quinn's Hot Springs regarding the pedestrian traffic. Previously MDT recognized a drop in the speed profile for 2,300 feet in front of Quinn's Hot Springs. This was originally deemed too short a distance for introducing a 65 mph special speed zone. The crash data shows no elevated crash rates to indicate the need for lowering the existing speed limit. There was previously minimal pedestrian crossings observed, however, further discussions with representatives from Quinn's Hot Springs indicate an elevated number of pedestrians crossing the highway.

The speed profile based on the 85th percentile shows a slight dip in the speed profile at Quinn's Hot Springs Resort. Prevailing speeds are around 66 mph. No change in the posted speed limit was observed at the Camp Bighorn crosswalk or east of Quinn's Hot Springs. Guidance at MUTCD dictates that speed limits should be set within five miles per hour of the 85th percentile speed. In this case, the recommended speed would be 65 mph within the area in front of Quinn's. MDT however recognizes the fact that there are elevated numbers of pedestrians crossing the highway there. MUTCD does allow other factors to be considered when setting a speed limit such as pedestrian activity. Therefore to accommodate for the pedestrians, MDT can support introduction of a 60 mph special speed zone in front of Quinn's Hot Springs.

The Sanders County Commissioners and Quinn's Hot Springs recommends introducing a 55-mph speed limit from the intersection of MT-200 to milepost 20 followed by a 45- mph speed limit encompassing Quinn's Hot Springs and Camp Bighorn from milepost 20 to milepost 18 before resuming the statutory 70-mph speed limit. The letters from Sanders County and Quinn's Hot Springs are attached.

MDT would like to further note the following two facts. Quinn's Hot Springs is 15 mph below the proposed engineering recommendation between Quinn's Hot Springs and the intersection with MT 200. Southwest of Quinn's Hot Springs their request is 25-mph below the prevailing speeds and the engineering recommendation based on the 85th percentile.

Previous research conducted by MDT shows the speed limit set greater than 10 mph below the prevailing speeds have an increase in crash rates. The roadside culture around Quinn's Hot Springs is the only area in which roadside friction can be observed to be effecting the speed profile. Therefore MDT recommends:

A 60 mph speed limit beginning approximately 1,600 feet northwest of milepost 19 and then continuing north-east approximately 1,200 feet southwest of milepost 20, an approximate distance of 2,350 feet.

Mark Melief, Quinn's Hot Springs President

Thank you Mr. Rouse for your analysis. We have a couple of things. The analysis that has been done has focused a lot on, in fact it seems based on, the June meeting minutes where Mr. Rouse focused very much on the pedestrian aspect and that is certainly an important piece of why we're asking for a further reduction below 60 mph and are requesting 45 mph but it is also the vehicle traffic, especially turning out of Quinn's into the eastbound lane of traffic coming from the west around the corner.

We actually brought a short video to show this intersection – we have video from both sides as well as the pedestrian aspect. (Showing video) This is traveling west bound from the east. This is the less concerning side of things. This is the intersection where we've restricted our crossings and access points to just this point on the highway. This is from the north side looking south. This is crossing from north to south and you can see the curve coming around here. This is some dash-

cam footage coming eastbound from the west. This is yesterday morning. This is coming from the east heading westbound. Pardon me for the amateur footage – dash-cams and cell phones.

One of our biggest concerns about the whole thing is vehicle traffic in and out of that main entrance to the south side of the road. The majority of our employees live in Paradise or Plains and many in Dixon and they are turning right out of that main intersection into the east-bound lane and the traffic coming eastbound around that corner you can have a very difficult time seeing especially as you're tracking the corner especially at night. Reading the minutes from June, there was definitely some concerns about lighting and signage and we are extremely open to working with MDT. Unfortunately under previous ownership, Quinn's had a history of begging forgiveness rather than asking permission from MDT, which is certainly not the way we like to do things now. Of course those conversations haven't happened but we are certainly open to doing that in terms of lighting and signs but we feel that the reduced speed limit is the biggest piece of it in that you have all the lights but as you're coming around that corner and tracking the curve especially in light of the number of logging trucks and semi's that use that as a through-way, it can be difficult to pick up that driveway on the right-hand side where people are crossing and vehicles are entering the roadway from there.

We have officially requested a 45 mph speed limit through that area. We are certainly not opposed to reducing the distance of it. The original request back from June, Mr. Rouse would recognize it as extremely ambitious. We are certainly open to shortening that to the recommended size. We are just trying to keep our guests and our employee's safe as they are entering and existing and crossing the road there. But I did want to emphasize that it is not just about the pedestrians, it is also about vehicles not only turning onto the road but also crossing the road there in terms of housekeeping and people selling services down to the restaurant on the other side. I believe we also have a couple of Sanders County Commissioners on the line as well.

Commissioner Frazier said I know you were at the last meeting and procedurally we moved it to now, so I appreciate you coming back for this.

Denise Morin, General Manager of Quinn's Hot Springs Resort

Thank you for allowing me to come. I have been the General Manager of Quinn's Hot Springs Resort for the past 21 years. We have gone from 30 employees to 140 employees. We know that we are somewhat responsible for the growth but we also contribute to the community and employ a lot of people. Some of those people come from St. Regis, from Mineral County, from Dixon and Plains. Our entire area has a huge influx of people; everybody wants to move to Montana because they think it's safer. Housing is an issue with a lot of challenges and problems. Our new pool is going to draw people as well. From our estimate we have over 300 vehicles coming and going daily and I think those numbers count. There's 83 facilities to lodge in. We've limited it to two on the riverside that allow children to reduce children traveling over the highway. So we've done what we can.

As Mark mentioned before and I think this Commission is aware that we've reduced to one access to cross whether it be for cars or pedestrians because safety is crucial. Our biggest concern here is that we are going to have a major fatality or accident and that's why we really want to have the speed limit reduced. As Mark shared, we took our first request and reduced our "ask" – we're willing to do what we need to do. If that means crosswalk signs, we would like to do that as well. We would like it to be safe for our community members who also come to see us; it's not just our lodge guests. Thank you.

Representative Denley Loge, House District 14

Full disclosure, I worked for the Chairman at one point in time. I had 17 years of building roads and then 28 years of maintaining roads, so I have a little experience on the road. I know what is being asked goes against the engineering scheme of things. Engineers build a road to have a surface that is a safe surface. We have some circumstances now that are creating the side of that surface. I will tell you that Quinn's corner – just this week I went up there again to do a timing and I put a mark on the stop sign where the crosswalk is where people have to go from the river side to Quinn's. When I saw that mark, at 70 mph I was at the intersection in seven seconds. I don't know how many of you walk across the highway but if you have any problem, I'm not sure seven seconds is going to get you across the highway. It is a blind corner and it really can't be fixed.

Everybody has a little bit different idea of what needs to be done, and I have my ideas too. I think if you start coming off Hwy 200 heading west, to put a 55 mph speed limit there because the first quarter of a mile there is a little hill anyway and those trucks coming off Hwy 200 are not going to get up to speed right away anyway. You'd be going about a mile and half and then you'd come to where you have to start thinking about Quinn's traffic. I know the west-bound lane is a lot safer because there is pretty good visibility there. You don't exactly know where the crosswalk is but it's a lot safer. But when you get to the other end when you're going eastbound, I would propose a 55 mph speed limit there at about mile marker 18, so that whole stretch would be 55 mph. Then right around the approach put a 45 mph speed limit with a flashing 45 mph sign. I've talked to some Highway Patrolmen and they said enforcement out in that area, they aren't going to be there very often, but they said a flashing sign really gets the attention and to them it's personal. That's flashing sign gets the attention. Then the other thing, if you put a light on the intersection or crosswalk, then also on those pedestrian signs if you have a flashing yellow light that when a person was going to cross they could push the button like on an intersection. That way people would know what's coming. I think slowing it down to 45 mph going by that approach and with those flashing 45 mph signs would get driver's attention.

I notice back in the minutes it talked about Paradise which is about five miles away on Hwy 200, it said in your notes that it slowed traffic to 45 mph but it actually slows traffic to 35 mph. The amount of pedestrians and people living in Paradise is less than what comes out of Quinn's because of their workers and the visitation not at Quinn's has really changed. It's not just a summer place where people go, but in the wintertime it's probably busier. So there again, at 55 mph you're going to have some shade on that corner and a little bit of ice so slowing it down to 45 mph for that short stretch. You talk about the inconsistency in putting a 55 mph speed limit when the road is designed for 70 mph but if you go the next three miles west of Quinn's Hot Springs there are corners that are marked with the yellow and black warning signs. One is 55 mph, one is 60 mph, one is 60 mph, one is 45 mph, one is 60 mph and another one is 55 mph. Those are on the next three miles of road and those are warning signs. I've driven semis through there and when it says 45 mph, with a semi you go 45 mph. The one corner I know a logging truck tipped over twice on the same corner – that was the 45 mph corner and he didn't believe it.

I know that when you have engineering reports, and the engineers do come into play on those corners because it is very obvious but now we're talking about pedestrians and surface trucks trying to pull out of Quinn's too on the blind corner. A lot of them come from the east so they have to pull out again into that east-bound lane on that blind corner. We're lucky that we don't have the statistics to say we have to do this, but it's just a matter of time. It's up to you to build a little bit – like I say the flashing 45 mph right near the Quinn's approach and then the flashing pedestrian and then 55 mph through a three mile stretch. It's going to slow traffic down not even a minute in the big picture, but if a minute saves a life ... and it's a tourist

route, so just besides being a destination, it a tourist route. St. Regis loves it because it lets everybody come through town to go to Glacier Park. Last year you approved the 55 mph speed limit the first three miles coming out of St. Regis and the locals really appreciate that because it saves some really close calls for those folks.

Glenn McGare, Sanders County

We do support that proposal – the slower the speed limit, the better reaction time people would have if there was an incident that took place there. The one thing that wasn't pointed out is Quinn's is right against the North Slope. This time of year there is very little sunlight in there and if we do get storms that come in that highway can remain pretty slick and icy. I'm 5th generation here in Sanders County, I wasn't smart enough to go anywhere else and I've been here for 64 years. I've seen the traffic increase in the whole county over the years to where in the summertime when I'm going home from work, it's rare to see a Montana plate on the highway. MT 135, 228 to 93 is the main flow from Spokane to Kalispell – people going to Glacier Park and Big Mountain in the wintertime; we've been discovered. Growth is happening and it's going to happen and we have to adjust to it and I would appreciate your consideration to reduce the speed limit in that area so that people would have a chance to react if anything would happen. Thank you.

Commissioner Fisher asked about the date of this study, what year was it done. Dustin Rouse said unfortunately I was not in my current position when it was done. I want to say it was around 2019; the original was concurrence and then that was rescinded with the current comments. We've been working with Quinn's trying to get this study through so that data is definitely older. The district has been having some discussions with Quinn's on the possibility of adding a rapid rectangular flashing beacon. If and when that would be installed, we'd be more than happy to go out and review this area again. Commissioner Aspenlieder said this was presented in January of 2020, so it would be in line with 2019.

Commissioner Fisher asked if there was any data on how the population of either Sanders or Mineral County has grown between 2019 and 2021. I've experienced it and it feels like a ton of growth in that area. It could be just tourist traffic but my guess is there are people moving to Montana. Do we have any idea on the growth? Dustin Rouse said we do track growth rates around the state but I don't have that information with me today but I can get it to you.

Commissioner Fisher said I have a few comments. The last time we had this issue and I want to thank the Commission for the "table" so additional information could come to light and there could be additional discussion between MDT, the Commissioners and the Quinn's owners. I think that was a very beneficial thing to do in engaging the public and engaging a relationship between MDT and the local business owners. Quinn's continues to grow and I know I utilize Quinn's; it is really a nice place. They are busier in the winter than they are in the summer. The population of Quinn's is greater than that of Paradise. So if they have 140 employees and Paradise's population is 316, Quinn's at least exceeds that amount between their guests and their employees on a daily basis. If you go through Paradise, one side is a railroad track and stock yards and the other side is the town. Unlike Paradise, Quinn's actually straddles both sides of the highway so you actually do have crossing traffic on the highway whether it's pedestrian or vehicle traffic. I've even seen people on the river side at Quinn's take their car over to the restaurant which is fascinating. So they are crossing the highway there; there is actually quite a bit of crossing, and as you come around it is a blind corner, you are surprised that there's Quinn's because you come around the corner and "there it is".

It was the same kind of issue outside of Lolo. When you come into Lolo ... there was a speed study done there because there is a school on the highway in Lolo. So you come around that corner and there's the school. So we reduced the speed limit

in response to the fact that you come around the corner and you don't know it's there. The other thing is this is a canyon, and to Representative Loge's point, you're going around corners where the sign are inconsistent with the actual speed limit. It's telling you to slow because there is a corner coming up even though your speed limit is still 70 mph and that's all over Montana. I think that is a relative point too because there is nothing that really tells you this is coming up so be careful you're coming around a corner and you are going to essentially hit a small town in Montana. I think the owners have made a ton of efforts – they had a bunch of accesses to the highway that they've reduced down to one to try and limit pedestrian and vehicle exposure to the highway. The last part of the video is at 7 a.m. and it's pitch dark except for Christmas lights – I don't know if they keep up Christmas lights up all the time but otherwise at 7 a.m. it will be pitch dark because they are in the middle of a canyon. Again, I appreciate the Commissioner referring this matter back so MDT could work with the local jurisdiction. So I would defer to the Commission on this as well.

Dustin Rouse said you've heard it multiple times from me on our caveat of posting speeds that are 10 mph or more below the engineering recommendation. My folks at Traffic Engineering were absolutely more than willing to work with Quinn's and we definitely want engage with them to look at lighting, possibly rapid rectangular flashing beacons that shows there is a pedestrian crossing ahead. I think there are definitely some engineering solutions that we can utilize to help in this location as well. Regardless of where we go, I want to bring that up and we definitely appreciate Quinn's offer and we will definitely be willing to work with them to make that happen. I do believe that once that is in and once that is there I think we'll see the speeds start to reduce as well.

Commissioner Frazier said since we tabled this in June, I happen to be working in the area. If you saw a 28 year old Ford pickup with a Curmudgeon in it hanging around watching people, that was me. I went up there on three different occasions just to observe traffic and observe pedestrians. I think the original "ask" was a little bit much to have 1,900 people a day drive exceptionally frustratingly slow from the intersection all the way down. However, there are other things – highway safety isn't just a speed and I've said it before that a speed limit sign is a piece of sheet metal on a stick, there are a lot of other things that go into it. There is geometrics, sight distance because people need to see each other for what's going on, there's a lot more to the roadside environment than just setting a speed limit, it is a concert of things. I think there are some things that could definitely help. One of the things in the dark on intersections just installing a light to light that intersection reduced actual accident trends. It is a concert of things. I wanted to make that comment.

Commissioner Aspenlieder said you've indicated that there's a lot of conversations and Quinn's had offered to help participate and put some lighting in or some signage in. How do we know, as a Commission regardless of what we do with this, that this is moving forward? Dustin Rouse said certainly in a situation like this we would approach this similar to a system's impact when they are proposing modifications and changes to our highway. We would go through our process and want to make sure it is safe for the traveling public and pedestrians. We can certainly inform you of that communication as it moves through. Commissioner Aspenlieder said I don't know about the other Commissioners but regardless of the action we take here, because it is all tied together, I would appreciate being updated as anything moves through system impacts and how that is going and then the correspondence and communication back and forth. I too early on in my tenure stuck my foot in my mouth about following the engineering information because I am an engineer. This is one of those grey areas and engineers try and live in a black and white world. I am still going to support the findings of our traffic engineers with the caveat that we are moving forward with some lighting and vehicular awareness and notification coming in coordination with the folks at Quinn's. For me I think it is the first step to making an improvement in the area. We are already going to be

two years down the line when we collect all this data, so if we give that some time to impact the traveling public and then revisit this after a year of operation, I think that is prudent and a step in the right direction. So my support of the staff's recommendation is solely contingent upon us working with Quinn's on lighting and notification and some pedestrian awareness in that area.

Commissioner Sanders said I fully support engineering. When I look at the study we've done by MDT, I think we do need to make sure that our assumptions are correct as we make decisions. As you read this study, that five mph below the engineering recommendation is the sweet spot, we know that. The reduction in collisions, by their definition, is statistically significant when you go five mph below the recommended engineering speed study. That's the sweet spot. Ten mph below the reduction in collisions, however, increases fatalities and personal injury. So 10 mph is not so good – yes you have a reduction in the actual amount of collisions but more people get hurt and die from it. Fifteen to 25 mph, it says there is not enough data to base any assumption off. There is not enough instances of that being done so we don't really know what 15-25 mph brings. When you go that far below then certainly rear-end collisions have to be a significant factor but that is not really supported by the small data set they have. It recommends that if someone were to do that that they use that as a study in and of itself to find out how that affects traffic and see if it reduced crashes or fatalities. So as we proceed forward and make a decision about this, I think we all need to make sure our assumptions are correct in that 15 to 25 mph below the speed limit, we can't say that is going to decrease collisions or fatalities or personal injury. If we do proceed down that road, it would be a data point for us to proceed forward on a more holistic sense and a larger sense or macro look – is this something we need to consider more when people come forward because we're talking about a significant reduction.

Commissioner Sansaver said I'm living out in an area where you can see a sign from 100 miles away. I certainly feel for the folks over at Quinn's, you can come around a blind corner at 70 mph and try to make a change in direction or slow down fast enough to avoid an accident in area is of great concern to me. I know that if you're doing 35 mph and you come upon an intersection with high traffic flow, it is very difficult to even slow down at 35 mph before impact. Studies show that if you're texting as you're driving down the highway, just one simple "hello" text on your phone, it will take you a mile before you look up at 60 mph. With the information we have here, I agree with both Commissioner Aspenlieder and Fisher. I certainly appreciate the problems that we're encountering here but as Commissioner Aspenlieder said, we need to move forward. We talk about putting up signage and flashing lights, will this change, will there be a cause and effect of this and if not then we need to make some drastic changes as the County Commissioners are requesting. I agree that our engineers know a whole lot more and that is why they are engineers on speed studies and we need to respect that and confirm their findings as a Commission. But we don't live in that area, we don't experience the traffic flow at high rates and at times it's high traffic flow, and the speeds of those coming through that community. Again, I would agree with Commissioner Aspenlieder that we need to move forward and we need to get that signage up and those lights up, and we need to try to address some of these major concerns that this county and certainly Quinn's Hot Springs have. That's my input and I hope we can come to a happy medium with the community, the Commissioners and the State of Montana.

Commissioner Fisher said I'm reading the Sanders County Commissioner's recommendation, I make a motion that the speed be reduced in this area as follows:

55 mph from the junction of Hwy 200 and 135 until mile marker 18 and from mile marker 20 to mile marker 18 the speed be lowered to 45 mph.

Commissioner Aspenlieder said he would not support the motion for the reasons I discussed before. We have to be very careful about arbitrarily doing things without the data to support it. I feel for the folks at Quinn's, I think we can do this in a step-wise manner but I think we start to ride a very slippery slope in setting speed limits based on feeling and not supported by data. So I'm not going to support it. Additionally my hope was that if we follow the staff recommendation of a 60 mph reduction that we could work with Quinn's on signage, whether we participate through one of our programs to find a place for us to participate on one of the programs under Pedestrian Safety or all the different avenues available that we could find an avenue to assist them. I don't know that I would be supportive of us assisting if we're going to go arbitrarily and set the speed limit by feeling and feel like we fixed the problem. Again even if we go this route and this motion passes, I would request that the Commission is kept in the loop on anything that comes through traffic impacts regarding the Quinn's facility. So I won't be supportive.

Commissioner Fisher moved to approve the Sanders County request for Speed Limit Recommendation, MT 135 – Camp Bighorn to Quinn's Hot Springs Area. Commissioner Sansaver seconded the motion. Commissioners Sanders, Sansaver, and Fisher voted aye; Commissioners Aspenlieder and Frazier voted nye.

The motion passed.

Agenda Item 12: Speed Limit Recommendation Old US 10/P-91 from US 191 to I-90

Dustin Rouse presented the Sanders County request for Speed Limit Recommendation, Old US 10/P-91 from US 191 to US 191 to I-90 to the Commission. The Sweet Grass County Commission submitted a request for a speed limit study for the purpose of reducing the existing 45-mph and 55-mph speed zones on Old US 10 to 35-mph and 45-mph respectively due to existing and ongoing development.

This highway was reconstructed in the 1930's and last improved in 1998 with a pavement preservation project. Beginning with a three-lane typical section including a two-way left-turn lane at the US 191, the roadway transitions to a two-lane section with 12-foot lanes and 2-foot paved shoulders east of Busha Street. The existing speed limits were approved by the Transportation Commission in 2014. Average annual daily traffic volumes for 2019 were reported to be approximately 2,400. Adjacent land use primarily includes rural and urban residential housing and highway commercial uses throughout the study area.

The speed profile does not provide support for a reduction in the speed limit within the 55-mph speed zone. The 85th percentile indicates a prevailing speed on average four-mph over the existing speed limit. In the existing 45-mph speed zone the 85th percentile indicates a prevailing speed approximately five-mph over the existing speed limit. When looking at the pace, the existing speed limit for each speed zone is approximately the middle of the pace. There is minimal crash and citation data to indicate speeding to be contributing factor of the observed crashes. Drivers for the most part are self-enforcing the existing speed limit. The citation data indicates law enforcement is present and targeting those motorists traveling outside the norm. From our experience a reduction in the speed limit would be an artificial attempt to change driver behavior and would be unsuccessful.

The Big Timber Council and Sweet Grass County Commissioners disagree with the "No Change" recommendation. No further comments were provided besides the desires indicated in the original request. Both emails are attached.

Staff recommendations MDT recommends the following:

“No Change” to the previously approved speed zone layout.

J.V. Moody, Sanders County Commissioner

I've been a Commissioner for about three years. Prior to that I was a Montana State Trooper for 22 years and I worked that stretch of road a lot. The biggest reason that we don't agree is we look at this area as an extension of the city limits pretty much. How it came to play for me bringing it to your attention was a guy I know very well who came into the office and was pretty shaken when he almost saw his daughter and grandson get hit at an intersection there making a left-hand turn onto one of the residential driveways. It upset him a lot and he couldn't understand why the speed limit hadn't changed in so many years from 55 mph down to 45 mph even though we've had an influx of residents in that area.

The next thing I'd like to do is go over to the map and point out a few things. I did make a few mistakes – after this got denied or you didn't find in our favor, I went back and looked and started counting everything. I missed a few things. The original proposal said we had 14 residential accesses but we actually have 16. We have five subdivision entrances statin here (referring to map) and working our way down you can see some of the physical subdivisions we have. Some of them are outside the scope of the map. We have nine commercial businesses – we have gravel pit here, another gravel pit at the end, along with a concert venue that you can't see right along the river and that will come into play shortly. We have your facility here with two entrances. All along this road we have 16 residential entrances, five subdivisions, nine commercial businesses and we also have three school bus stops along this route. We used to have four but it got to be too dangerous so they started going into the subdivision to pick up the kids.

One thing to note: this is our golf course entrance right here (referring to map), from here down, this is a hill dropping into Big Timber, it's pretty blind right at the point at the turn-off into the golf course. It's blind this way and you really have to pull out to see everything coming this way, especially if you're in a shorter vehicle. Our golf course is exploding like every other golf course in Montana. It's getting busier, and busier and busier all the time. So you can see lots of stuff going on.

Past this point we have another we have another subdivision or religious gathering point. We have a group called the Heritage People that are really expanding down in the Grey Cliff area. You've probably seen the old mill as you drive to Billings from here that is theirs, and they bought the KOA campground that used to be there. They are doing lots of different things but one of the things they are really doing is bringing in a lot of people and they are building a lot of houses. All that will come into Big Timber because they have businesses in town as well. All of these entrances and exits off Old Hwy 10 are not restricted.

It scares me in a lot of ways because of what I used to do. I've heard it at least four times now about the engineering part of it. I one hundred percent respect that part of it because there's three aspects that go into crash reduction – engineering, enforcement and education. One does not live without the other. I'm involved in the educational phase. I used to be involved in the enforcement phase being on the Highway Patrol. Even though I'm retired, I still give Driver's Ed speeches to the kids that come through the school so I do pass on that information to them and I always bring up the engineering part of it too. The reason the stripes are where they are, the reason why the signs are where they are is because you guys have figured all of that out and have made it the safest spec you can. The only thing I can say about the engineering part of it, I don't think the engineering part of it takes in the human factor as much as the enforcement and the education. When you're engineering a speed study or part of a roadway, I guess you don't see the human effect that you do on the other two sides of it. You're not looking into the

eyes of the violator or the student and you're not getting the pulse of either one of those when you're doing the engineering studies. Again, one can't live without the other but I think the other two are pretty important as well.

It was brought up in one of the other speed studies about reaction times and perception points. I was not a crash reconstructionist but I was a technical crash investigator which is just one step below. I do know one thing, I know that there is no such thing as a set reaction time and there is no such thing as a set perception time; there is not. It is based on the person and it is based on the vehicle they are driving and it's based on the environmental conditions.

I guess my biggest thing being from there and knowing that all these subdivisions house young kids because of the bus routes, they house young drivers, they house crappy drivers too, crappy drivers that effect that stretch of road. It is very important to me to try to reduce that speed limit from the bridge going across the main bullet river out to probably the south side of the Interstate overpass to 45 mph. I was telling someone earlier, I did a fatality crash on this stretch of road. We've had 16 crashes since 2008; that is not that much but it is only a mile stretch of road and those are only the reportable crashes that people called in. There was probably many, many more than that we'll never know about. But I did a crash involving a Montana Department of Transportation snowplow on that, and I don't want anybody to have to do that again. I don't want anybody to have to experience what I experienced on that day. I think a 45 mph speed limit would help the immensely. People will violate that; I think there are several classes of people that perceive speed limit signs differently, but it's been such a long time that speed limit has not changed, I think it's time to put a 45 mph speed zone in there because again that is basically as extension of the city. I know the city had an unsuccessful attempt prior to this one to get it changed and I don't know what year that was but please, please consider our request and take into consideration the enforcement and the educational part of that.

Commissioner Frazier said as an engineer that has been in the business for about 38 years and do traffic studies, the human factor is in there. If you look at a traffic data and the very first one I was involved in was Harrison Avenue in Butte and if you plot up time of day, speed by number of vehicles, you get kind of bell curve and most of it kind of peaked but then you start getting into the ones we always looked at – that 10% that need enforcement. Most of the people were driving within 30-35 mph, but every day at 8:02 there was somebody going 75-80 mph down Harrison Avenue because they were late for work. At noon they were coming back and at 1:01 they were going the other way. But it assumes and it is in the statistics that most drivers are reasonable. So the human factor is in there but engineers like statistics. If there is one fault with that, I would say that the human factor is that you're assuming that most people are reasonable.

Commissioner Sanders asked about the enforcement commitment. I'm sure that enforcement is a key, so what is the commitment for enforcement. Do they support this? J.V. Moody said they do support this as do the other two Commissioners; I'm not just doing this myself, they wholeheartedly support this and I have some letters from some of the businesses out there. If something does change, our Sheriff is an elected official also and you can't tell him what to do, but I know that speed is not high on the priority list of the Sheriff Office and I'm not so sure it is on the Highway Patrol either. There are so many more things going on now than there used to be when I started and they don't have time. You don't see law enforcement going down the highway anymore, you just don't and if you do, they are usually hauling butt somewhere to take care of a call. I guess my answer is I don't know what the commitment would be but I will push it. I have a good relationship with the Highway Patrol out of the Columbus office that supports this area.

J.V. Moody said there was one thing I failed to mention, there was a concert venue and I just learned yesterday that the person who owns that is going to put on three to four major artist concerts down there right on the Yellowstone River this summer. He is expecting 4,000 people at each one. That creates a huge problem up there because of that unrestricted access and entry going down to that area. I've worked those concerts down there before and we do set up manual traffic control on that but it would be a lot easier if it were 45 mph than 55 mph because we're right on that blind hill, right on it. Thank you for your time.

Commissioner Aspenlieder said when we do a reduction in the speed limit, we as a Commission tend to reduce the speed. In this instance if we reduce it to 45 mph and follow up in two or three years to see if the statistics still support what our original prediction was, do we as a Commission have the authority to raise the speed limit back to what it was or do we need approval from the County Commission to do that? How does that work? My understanding is we can lower it but we can't raise it without local concurrence. Dwane Kailey said back in 2007-2009 we were requested by local government to do a speed study, but when we went out there we found that the traveling speeds were well over the posted speed limit. So we brought to the Commission a recommendation to increase the speed. The counties didn't like that so they went in and changed the law. The way the law reads now is we have to have a specific request by the county or local government to increase the speed for us to present to the Commission a request to increase the speed. So you would not have the sole authority to increase the speed in the future, you would have to get a request from Sweet Grass County to increase the speed.

Commissioner Aspenlieder said this is my comment and this is my concern with all of this stuff. So what we just did with Quinn's is to lower something far lower than what we would have ever recommended and we have no ability ever in the future to go and correct that without a local request. So we probably created an incident there that we're never going to be able to correct which is why I'm so opposed to us arbitrarily doing this without have any factual data. I apologize to the Commissioners because this is my district and I've had a lot of conversations with our Traffic Engineer in Billings and with our District Administrator. The district staff is more than willing to entertain trying to come up with a solution. Again, statistically if we don't have the data to support this, we can create a problem without having any mechanism to come back and fix it. So without that, again, my position is I can't support doing something that isn't supported by the data and statistics because functionally we can't ever go back and correct it if we make a mistake. So again, I'm going to support the staff recommendation based on that.

Dwane Kailey said if I can just throw some numbers out. If you look at the fatality report right now, as of Sunday, we are now 33 fatalities more this year than we were last year. Last year we were 17 more fatalities than the year before. The reality is it is behavior. The reason I'm bringing that up is we tried very hard to put very important signs out there, and we all know the public ignores those signs but we strive very hard to put those important signs out there so that they do pay attention and they do perceive them. When we start to progress down the road of putting signs up that are arbitrary and not in line with the statistics and the data that we have, I think we're encouraging the public to begin to further ignore those signs. I wish I had a silver bullet to solve this but it's behavioral and we have to be very critical in the messages that we send the public. So it's within your authority and I'm not disagreeing with any of that, I just wanted to bring up the fatality report because I do think it is important.

Commissioner Fisher said the mechanism, if we screw it up and if we make a bad decision ... there's engineering data and then there's real life scenarios of the people who live there. The engineering data sometimes doesn't catch up to the fact that there are multiple subdivisions and other huge events going on so it can't capture real life on the ground of what's going on and that is constantly an evolving

situation. To your point of having no way to remedy any issues that we create that is responsive to local government, local government actually has that remedy. They bring it back and say this isn't working here. So they can come back again and say you know what this didn't work. We've had that done outside of Lewistown, the Commissioners did come back at some point. The statute was written in response to the desire for local control over these things. While MDT roads run through every city and town in Montana, it was deference to local control and the basis of that statute is this is what we see occurring in our community. They make the request. If in fact it doesn't work for their community and they have given us factual data on the ground experience, and we say "ok we defer to you, that's fine" and they come back here and make a change. I certainly agree that we cannot make feelings-based decisions; I totally agree with that, but the data is not just in a traffic study, it's the real life on the ground experiences at the local communities that count. I haven't been to Big Timber in a long time; the last time I was there I thought it was really windy and that's what I remember about Big Timber. So I'm looking at people on the ground, where they live and where growth is going and it's unfortunate that MDT can't constantly evolve to keep up with that. I do think there is a remedy if, in fact, a decision is made and it doesn't cause the right effect on the ground. To the point of human behavior, every accident is a human behavior type of thing, it's rarely because of how the road is designed or the speed limit. There are some drivers that look at a speed limit and think I can go five mph above before I get busted. So there is a recognition of the speed limit signs. Do I think everybody obeys them? No. If the behavior thing is true, then no sign works. I don't know the facts or data supporting that assumption either.

Dustin Rouse said if there are large events, they typically get a permit with us and we'll review the proposed speed reductions – there's a lot of steps we can take to make sure that folks can safely get to these events. On the growth and that's been a topic today, we do have the ability and we can go back out – when we do these speed studies it is a snap-shot in time and we recognize that. If the growth continues and we believe it's there, we can go back out and do another study. Right now we would be arbitrarily lowering these speed limits below what we're seeing. When we do that we end up with a different type of crash. So I just want to convey that.

Commissioner Aspenlieder said I understand what Commissioner Fisher is saying and I respect where the locals are coming from but the local jurisdiction also has the ability to provide us with data to support their position. We talk about development, as an engineer who works in the development industry, we are required on a number of occasions to provide our own traffic impact studies as we develop it. Those generally follow along the lines of looking at intersection impacts and how traffic coming in and out of our proposed developments impact intersections, what we're adding to the annual daily traffic loads. Those requirements which are set by the counties in their subdivisions rules usually fall short of saying what impact are you having on speeds in this area. They look at the impact to intersection function. That is the missing piece that these counties that are experiencing explosive growth are not capturing to then be able to provide us the information that you as a Commissioner are requesting us to make a decision on. I think local control comes with a responsibility to have the data to support the decision and request you are making of us. I'm with you, I would like to defer to all the requests but I would like those local requests to come with some supporting information that says this is what's happening. MDT doesn't see those traffic studies, generally speaking, and the traffic impact studies that we submit from a subdivision where we're adding approaches to intersections, does not include impact to speed. They analyze what we're doing to turning movements and intersections and how we are impacting that. If we are truly going to go down that road, and I'm not an advocate for adding more requirements onto the cost of doing business and development, but that's a subset of data and any information that we are continually arm wrestling over in this body that is out there and is easily

collected if it's requested. I think that is something at the local level that should be considered in some of these areas and that's something that the Commissioners, through the subdivision rules and regulations, have the full ability to request when people continue to develop in these areas. That then gives us the data to support what you're looking for. That will be the one thing that I would encourage all of these local jurisdictions to consider when you're looking at these places with explosive growth and you're concerned about safety. Let's expand what we're looking at the local level from impacting the intersections to how we're actually impacting the traveling public.

Commissioner Sanders said there are mistakes you can live with and mistakes you can't. I would argue that if this is truly a mistake dropping these down arbitrarily, that's a mistake we can live with. In other words, that's a mistake that isn't going to kill anybody. I would argue on the other side of that, leaving the speed limit higher than the area warrants is a mistake we can't live with. Potentially our guest talked about a clean-up he had to do on a fatality in this area as a Highway Patrolman with 22 years of experience and has seen a lot. He is seeing this as an area that this is a mistake that we can't live with; people will die potentially if we don't drop this down. I know that is a little dramatic but when I look at it from my viewpoint, the mistake we can live with is dropping it down lower than it should be but the mistake we can't live with and people may die from, is if we leave it higher and people end up dying from it. I know that is a "feels like" but at some point we have to have a balance between our engineering and our "feels like" and I think that is what this Commission tries to do. Thank goodness we're not all engineers and thank goodness we're not all liberal arts majors as well. I think that's why this works because we have different view-points on that.

The other point I'll make on the engineering side, from a speed study we had done, speaking to operating speed zones on two lane roads which is a lot of what we deal with, I've heard it said that a sign doesn't matter, but right out of this study it quotes, "the posted speed limit is the primary factor that influences operating speeds on Montana segments." So saying that having a speed sign up is just a sign, this study says that is not true. That is the primary factor that influences operating speed zones. I think on the engineering side, this study says that signs do matter.

Commissioner Frazier said I do frequent this area several times a year. I'm considered by my kids to be a very conservative driver, I find myself having to hit the brakes through here because I'm trying to do more than 5 mph through that section just driving comfortably. That is how I feel personally when I drive through there. Looking at the pace, looking at the 85th percentile and all those things I think it is signed appropriately. That's my comment.

J.V. Moody said there were a couple things brought up. Regarding stats and the gathering of the stats, I am embarrassed to say I looked but it's not like the Patrol where I had it at my fingertips all the time, you're looking at a small sheriff's office. We don't have an IT department, storage, or any kind of program that allows us to pull a set of numbers, it's just not possible unless you physically go through all the tickets and look at them as well as the crash reports. Crash reports should be in Helena but you never know if they make it through or not. So yes, I did try to do that, I did pull up the crash stats from the Patrol. That is one thing we could do better. Another thing, the biggest problem I have on this stretch of road is from town out because of the left-hand turn. We all know that left-hand turns are a problem anywhere you go. That is my biggest concern is going the other way. I guess the third big thing you brought up was if we make a mistake, how we go back the other way. How will you ever know going from 55 mph to 45 mph is a mistake, how will you ever know if you made a mistake? I don't understand that part of it. Without a complaint, without a crash, without something, how would you ever know that you made a mistake by dropping the speed limit 10 mph?

Commissioner Frazier said regarding driver behavior, you do get someone that follows the sign and if that is a speed that most drivers on the road perceive as being slower than what the normal pace is, they get frustrated behind that person and then they do what I call “stupid human tricks”. They pass when they shouldn’t, they take chances to get around and then your accidents start going up. If the number of accidents go up, you will see an increase in severity. That is something I’ve noticed and I believe the department did a study looking at those. Dustin Rouse said that is what we see and typically if we go back in and do another study and look at it, you can look at prevailing speeds and in a lot of those cases they are 10 mph over that posted speed limit. When you have others who are compliant, you can see rear-ends, stupid human tricks where potentially you have head-on’s and more severe crashes.

Commissioner Sanders asked the Sanders County Commissioners what their request was. They said it was from the south side of Interstate to take in the Interstate access points. We’ve had two fatalities right here (referring to map). This is a bad area so I would say just to the south of the existing Interstate access and both on and off ramps. Commissioner Sanders said your request would be for a reduction in speed down to 45 mph from east of Interstate 90 overpass to the main Boulder River bridge.

Commissioner Sanders moved to approve the Sanders County request for Speed Limit Recommendation, Old US 10/P-91 from US 191 to I-90. Commissioner Fisher seconded the motion. Commissioners Sanders, Sansaver, and Fisher voted aye; Commissioners Aspenlieder and Frazier voted nye.

The motion passed.

**Agenda Item 13: Speed Limit Recommendation
US 191/P-45 from Old US 10 to
Yellowstone River Bridge**

Dustin Rouse presented the Speed Limit Recommendation, US 191P-45 from Old US 10 to Yellowstone River Bridge to the Commission. The Big Timber City Council submitted a request for a speed limit study for the purpose of extending the 30-mph to the east side of the Yellowstone River Bridge. This portion of US 191 was reconstructed in 2001. The typical section is comprised of a two-lane with 12-foot lanes and 2-foot paved shoulders. Average annual daily traffic volumes from 2019 were approximately 1,650 vehicles. Adjacent land use primarily includes urban residential housing and highway commercial uses within the city limits transitioning to rural residential from the city limits to the bridge.

The speed samples show the 85th percentile at or above the posted speed limit with an exception near the Old US 10 intersection. This is likely due to the presence of the nearby stop-controlled intersection. The current posted speed limit is near the middle of the pace or near the lower end of the pace in most locations. This information suggests the posted speed limits are matching current driver behavior. From our experience a reduction in the speed limit would be an artificial attempt to change driver behavior and would be unsuccessful.

The Big Timber Council and Sweet Grass County Commissioners disagree with the “No Change” recommendation. They are here to provide public comment.

Staff recommendations MDT recommends the following:

“No Change” to the previously approved speed zone layout.

J.V. Moody, Sanders County

J.V. Moody said I didn't know about this part until I saw it on the Agenda. I could explain a couple of things to you on the map if you'd like. It is truly a speed zone that doesn't make any sense to me because it is in the city, in a residential area on the right business section, industrial area on the left. We did not instigate this change, the city did because a resident's dog got run over. From this point right here (referring to map) to this street by the DOT shop it is 30 mph from this point to this point and then it goes to 40 mph. I live on this road, across the Yellowstone Bridge. Even when I was a State Trooper it didn't make any sense to me that was 30 mph and not 25 mph like most residential street in Big Timber. I think the best fix for this is to move the 30 mph sign down to the last city street where there is an apartment complex and keep it at 40 mph the rest of the way. Literally it's probably a two-to-three block change and that would satisfy the person who actually made the complaint in the first place. Again, we didn't instigate this speed study request.

Commissioner Sanders said from the engineering side as well as the behavioral side, this did not warrant change. The quote I said earlier that signs matter was for two-lane highways and this is not a two-lane highway. The City Commissioners are not here to tell us why this is not warranted and I like dogs, but one dog dying is not a reason to change the speed limit.

Commissioner Sanders moved to approve the Speed Limit Recommendation, US 191/P-45 from Old US 10 to 8 Yellowstone River Bridge. Commissioner Fisher seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 14: Certificates of Completion September & October, 2021

Jake Goettle presented the Certificates of Completion for September & October, 2021, to the Commission. We are presenting them for your review and approval. If you have any questions or comments, please feel free to ask. Staff recommends approval.

Commissioner Aspenlieder moved to approve the Certificates of Completion for September & October, 2021. Commissioner Fisher seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 15 Directors Discussion & Follow-up

Infrastructure Bill Update

Director Long said the Infrastructure Bill was passed and signed. It gives you a snapshot of what MDT sees coming our way. It is going to help Montana; it gives us more money and with that comes the state match. It also helps give us five years of what we can plan on. The FASTACT expired and we were in limbo and now we're not because the Act has passed and has been signed, now it is waiting for Budget Reconciliation. That may or may not happen even this year, so we're operating under a Continuing Resolution. FHWA just put out three bills giving us some clarity – okay you're going to get some money but you're not going to get the cash, but go plan. It will be good for Montana. We, as a department, have done what we do best, which is try to look in the future and be ready without over committing. So we are ready if the Continuing Resolution, which is probably what's going to happen, goes through budget and if we get the money we'll get it out there and start building. We have

enough state funds to keep going. What we did in October already looks at a lot of this and we'll just keep building. We are working with the Governor and starting to work with Legislators like Representative Loge to see how to meet the state funding match. We have some ideas, do we do it like we've always done it, do we look at new ideas, etc.

Entry Level Driver Training Program (ELDT)

This was passed by Congress asking for additional training before you get your commercial driver's license. From what I understand, it's for all 52 states, provinces, and territories, all of which have accepted it and implemented it and Montana is the last one to do it. We tried to get it into the Legislature this year but it did not pass. So what we're facing in February is that Federal Motor Carrier will no longer recognize any new CDL's issued in Montana. That's problematic in itself but it also comes with a financial penalty. So we're looking at a reduction in funding from the feds. That is an issue we're trying to work through and see if we can work with our Motor Vehicle Department to come up with options that meet what the Federal Motor Carrier Service requires and get a temporary patch until the Legislature reconvenes in January 2023.

Commissioner Fisher asked if he was optimistic that the patch will occur. I'm assuming it is Montana's resistance to being told what to do. Director Long said we talked about getting lawyers to fight it, but I said excuse me when you're the last one and 51 have accepted it, you might not have the strongest standing in court. So we're working through it. I'm optimistic, yes.

Commissioner Fisher asked if it was through inter rule making. I don't understand the mechanism for you to do that. Val Wilson said the area this falls under in the statute isn't in MDT's area, it's DOJ's area. Although we were presenting great arguments about why we needed this passed, there was a quite a bit of resistance from the Department of Justice on changing that. So the state was not working in concert and it turned out that it flew through the House and then stalled completely in the Senate. The one thing I'm thinking is we're not going to get hit with those penalties until FY2022, October. Perhaps we can get something passed so it would be just six months of penalties. We think, but it's murky, whether or not our CDL Program is going to get decertified and what's going to happen to our CDL license drivers starting in February. That seems to be more of a DOJ problem, but overall it is a problem for the State of Montana. The penalties are paid by the state itself. I misspoke – it's not a penalty it would just be withholding funds. Commissioner Fisher said it's still a penalty.

Agenda Item 16: Outdoor Advertising Control Adopt Final Order for Permit #10168 Lincoln County

Val Balukas presented the Outdoor Advertising Control – Consented Case Proposed Order – In the Matter of the Outdoor Advertising Structure Permit #10168, Lincoln County, owned by Freeway Marketing, LLC to the Commission. We have four of our MDT Outdoor Advertising staff here to talk about this: Right-of-Way Bureau Chief Jason Gilliam, Outdoor Advertising Program Manager Robert Heiser, MDT staff attorneys Valerie Balukas and Hanna Walskie. The reason we're all here is because this is the first time there's has been an Outdoor Advertising case in front of the Commission in quite some time. I wanted to make sure we had the staff resources here to answer questions as we go through this.

What is the Outdoor Advertising Program

In 1965 Congress passed the Highway Beautification Act. The express objective of the Act is to control the erection and maintenance of outdoor advertising signs and

billboards. We use the term outdoor advertising but it is really billboards that are adjacent to both the Interstate and Primary Highway System. The purpose of the Act is, “to protect the public investment and to promote the safety and recreational value of public travel and to preserve natural beauty.”

In essence to limit billboards, regulate billboards and have some controls on the erection and placement of billboards along the highway system. The Highway Beautification Act requires each state to effectively control outdoor advertising and to meet the requirements of the Montana Outdoor Advertising Act, passed by the Montana Legislature and placed enforcement under the jurisdiction of the Transportation Commission. The Act is supplemented by Administrative Rules which are approved by the Transportation Commission. So it's a program that is administered through the Montana Right of Way Bureau and Bob Heiser has been the Manager for many years. Hanna Walskie is co-counsel with me on this particular contested case. Outdoor Advertising Control (OAC) staff enforce the Act and the associated rules. On a day-to-day basis it means issuing permits, insuring compliance with the OAC rules and where necessary removing unlawful signs.

How Does That Happen?

If OAC program staff determines that the placement of a sign or something has happened that has violated the program rules, there is quite an official process for how the department goes through the steps to initiate a sign removal. The first step is the department has to provide the sign owner with written notice that a sign has been determined to be in violation of the rules. Step Two, as part of that written notice, notify the sign owner that they have a right to request a hearing on that determination. Step Three, if a sign owner requests a hearing, the department requests through DOJ, to get a Hearings Examiner appointed who makes an initial legal determination on whether the department can move forward with a sign removal. The Hearings Examiner's Proposed Order is presented to the Transportation Commission, which may adopt the Proposed Order or reject and modify the Conclusions of Law. The Findings of Fact can only be modified or rejected if the Commission determines that they were not based upon competent substantial evidence. That is where we are in the process today with the Proposed Order in front of the Commission. The sign owner has been notified of the Agenda Item and they can attend the meeting that is on today's Agenda. I don't believe they are attending but they have been notified and have the opportunity to appear. Step Four, if the sign owner disagrees with the decision of the Transportation Commission, they can appeal that decision to District Court. That is some of how this works and why we're here in front of the Commission today.

Facts of the Case

This was a removal action initiated by the department on a sign that was owned by a company named Freeway Marketing, LLC. The materials are in the agenda item and I'll run through the basic facts for you.

Freeway Marketing owns a sign that is on US Hwy 93 in Lincoln County. The sign was originally permitted in 1989. In August of 2019, an OAC staff employee was conducting regular maintenance – they drive around and look at signs and verify compliance. They were driving on driving on Hwy 93 and noticed that the sign was broken, the posts were broken, and the sign was lying on the ground. There is a photograph in your packet. It looks like the wind knocked it down although no one knows exactly how the sign got knocked over. The sign is a non-conforming sign which means that the sign was lawfully erected at the time it was installed but no longer complies with current OAC rules. These signs are grandfathered in which means if they wanted to put a sign in that allocation today, they would not be able to but the sign when it was put in was lawful so as long as it is maintained it can be kept in place.

So the sign was knocked over, MDT notified the company of that and the sign owner put the sign back up. Shortly after the sign was put up, MDT notified the sign owner that under the current rules for non-conforming signs, the sign could not be put back up and the department intended to revoke the permit. Freeway Marketing requested a hearing and that started the process.

MDT filed a motion for Summary Judgement in this matter because the parties don't dispute the basic facts. So we didn't need to have a hearing to establish who did what when or some of the factual findings. Really it is a legal interpretation of the definition of what constitutes a destroyed sign under the rules and what constitutes allowable maintenance. The department's historic interpretation of what constituted a destroyed sign was a sign that was knocked over. So a non-conforming sign had been knocked over and the department had determined that to be a destroyed sign and revoked the permit.

This is the first time a sign owner had pushed back on that interpretation. Their argument was if you look at the definition of a destroyed sign, the rules as defined that are in existence today, say "a sign that is no longer in existence due to factors other than vandalism, criminal, tortious acts." The reason there is an exception for vandalism criminal tortious acts – the idea with these non-conforming signs and the Highway Beautification Act is that over time as the signs get knocked over they wouldn't get put back up. That is the intent of the Highway Beautification Act, not to just eliminate billboards but in the locations where they don't meet the rules and regulations, when they fall over they can't be put up.

Determination

If you look at the photo, the sign is in existence, it's was just lying on the ground. Our rules define a sign to be no longer in existence. However, the Hearings Examiner determined that the sign actually was in existence, it just wasn't standing up and that the maintenance you can do on a non-conforming sign includes replacing those posts. Therefore, the Hearings Examiner found that what the sign owner did in this case, to just fix the post and put the sign back up, was allowed under our definition of maintenance.

So OAC and legal are looking at this. Starting in 2019, working with OAC staff and looking at the Administrative Rules in the whole OAC Program, we found the Administrative Rules could use updating and could use some revision. That revision is already underway and is something we're looking at bringing to the Commission hopefully in the spring – which is revising a number of the Outdoor Advertising Rules which include some of these definitions and the maintenance. There is FHWA guidance and a memo on how to deal with signs that are knocked over because this has happened in other states before it came to Montana.

At this point, given the efforts that we are put in revising the rules, OAC and legal are recommending the Commission adopt this Hearings Examiner's Order instead of continuing to fight it and going into District Court. We agree the rules are ambiguous. Is the sign no longer in existence? If you look at the photo it is still right there, it didn't go away and go through a wood chipper. It's not in existence as a sign, it is not standing upright. You could spend hours and hours of time arguing about that instead of fixing the rules and fixing the definition and make it clearer and less ambiguous and allow this sign to remain in effect.

OAC Recommendation

Our recommendation and request to the Commission today is to adopt the Hearings Examiner's Proposed Order. We drafted a Final Order for the Transportation Commission's signature if you're in agreement with our recommendation which is to accept this Order and let that contested case resolve. Then we'll be back in the spring or early summer with revised rules for consideration which will address this specific problem along with other things that are in the rules that need to be updated.

Commissioner Sanders said I have a question on how you're proposing to change the rules. I've been approached by others in this industry about these issues. Mainly about non-compliant signs and how they can be repaired. It seems like a lot of the issues come around damage due to Mother Nature. The industry seems to contend that they should be able to re-erect them much like this Order found. Are you proposing to change the rules to allow for that or are you proposing to change the rules to very clearly not allow for that? What direction are you going?

Jason Gilliam said the language we are proposing comes directly out of the FHWA Guidance Memo on how states should be looking at destroyed signs. It goes into details about putting a certain percentage on the value of the sign and when that destroyed percentage gets exceeded then that sign would not be allowed to be maintained and put back up. If it is below that threshold, then they would be allowed to do maintenance and put it back up.

Commissioner Aspenlieder said it seems like we're taking a very simple issue and making it a convoluted mess that nobody can understand except for attorneys to fight. I don't understand what the issue is with us clarify the rules and allowing for repairs of these issues, unless there is some kind of financial hammer from FHWA. That's my first question. If there isn't, why are we making this so complicated.

Jason Gilliam said to answer your first question, I will defer to FHWA and there is a financial implication for not doing this regulation of this program. Commissioner Aspenlieder asked what it was. Jason said we are subject to a 10% reduction of the overall program. It would be a 10% withholding. Commissioner Aspenlieder said I would request some follow-up information from you Mr. Chairman on what exactly these calculations are, a copy of the FHWA Guidelines, and all that information so I can look further and better understand this issue. Jason said that is not a problem and that is part of this next ... part B of this is to clarify these Administrative Rules that includes some of this language so that all parties, including the sign industry and those on the regulation side, have a more clear concept of what exactly is allowable.

Commissioner Aspenlieder asked how we are engaging the industry in developing these rules. Are they actively participating or are we going to put the rules out for comment and then allow comment? Jason said during the process of modifying any of the Administrative Rules, they are out for public comment and the industry is invited to be engaged and make their thoughts part of that process. Commissioner Frazier said the rules as adopted come back to the Commission for approval, so there would be some public involvement then? Jason said it is my understanding that the rules are presented to the Commission to get authority to proceed forward with the public comment period and then when all that is taken into consideration, it comes back to you for further discussion and potential adoption. Valerie Balukas said that is correct. So before we can solicit public comment, we have to get approval and work with the Commission to get a final draft of the proposed rules. That will be an Agenda Item coming up.

Commissioner Sanders said this is where we have to do a better job of engaging our industry partners and sometimes we don't do that very well. I understand procedurally that we put this out for public comment and then we take comment. That is interpreted very differently than calling them and telling them this is what we're working on, here's how we're doing this, this is what we're proposing to do, and engaging them prior to making the rules and them thinking this is a done deal. I would encourage you to engage them prior to putting the rule out for public comment as opposed to jamming rules out for public comment, for them to bring comment back to you than for industry to show up here. That is a general complaint I've gotten over the last two weeks from this industry in particular who said that we are not very good at listening or engaging. So I would encourage you to do that as we're anticipating rule changes.

Commissioner Sanders asked if there is an association. Jason said there is a handful of them. Director Long said you're right and we have been trying to do that, especially with the new leadership from the Governor's Office on down. I myself have even been caught crossways where we've talked to the transportation people but the Association in Missoula still didn't like it and went right to the Governor. She misunderstood and after many conversations I still don't know but we have tried to do that. Please as the Commission, let us know and we will try and talk to the individuals but we don't always succeed in talking to everyone. Sometimes even when you talk out in the field, it doesn't get to the association level. With the Montana Contractors Association it is almost the opposite, we can talk to the MCA but it might not get down to individual contractor sometimes because they missed that meeting. So, yes sir, we hear you and we agree and we will do our best but understand it won't be perfect because there is always going to be someone that doesn't get the message. That's where we appreciate you, as the Commission, working with us so we do try to answer those when we can.

Valerie Balukas said the FHWA Memo is in the packet you have. What we're looking for today is for the Commission to adopt the Proposed Order as drafted by the Hearings Examiner. Commissioner Frazier said so the sign fell down and wasn't really destroyed and they are allowed to put it back up. Valerie Balukas said the sign is already back in place and we just need to get the permit to match.

Commissioner Fisher said since this is approving the position that was taken by Freeway Marketing LLC, is there an attorney fees component that we approve. Valerie Balukas said there is no provision for attorney's fees so each side pays their own.

Commissioner Fisher said I like the definitions as they are, I think if a sign falls down they should be allowed to put it back up. Jason Gilliam said the point is well taken and I totally understand and respect it but I would offer that there are situations when a sign is erected that it is conforming and legal at the time but conditions change, requirements change, and something may change that causes it to be non-conforming. There's two approaches that can be taken in those situations – a more heavy handed approach of federal requirements and then by extension the state dictating that those signs be removed immediately or conversely, what the program is hoping to achieve by allowing it to be self-correcting in that sense. Bob spoke to this, when the sign where the numbers just don't pencil out with the value of the sign or doesn't get to the point where re-erecting it makes any sense, then that is where the self-correcting thought comes into play that the sign would not be allowed to be re-erected. We've already clarified that and I'm not sure that gets us any further down the road but that's the premise behind the program – to allow that grandfathering to occur with the understanding that there will be some self-correcting actions to the program because as those signs depreciate in value, they will not be allowed to continue. That is the thinking behind it.

Commissioner Aspenlieder said I appreciate the perspective, I fundamentally disagree with that. I don't think government should be determining what value is appropriate for that. So from that perspective, I will never agree in principle with this. That's a federal rule and we don't have any ability to change that, but this is my position.

Commissioner Fisher moved to adopt the Hearing Examiners Proposed Order and Issue a Final Order Affirming Summary Judgement in Favor of the Respondent, Freeway Marketing, LLC, holder of OAC Permit #10168. Commissioner Sanders seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item 17: Change Orders
September & October 2021**

Jake Goettle presented the Change Orders for September & October, 2021, to the Commission. These are informational only. If you have any questions, please feel free to ask.

Agenda Item 18: Letting Lists

Dwane Kailey presented the Letting Lists from November until April 28. These are being presented for your information.

Next Commission Meeting

The next Commission Conference Calls were scheduled for November 30, 2021 and December 21, 2021. The next Commission Meeting was scheduled for February 17, 2022.

Adjourned

Meeting Adjourned

Commissioner Frazier, Chairman
Montana Transportation Commission

Malcolm “Mack” Long, Director
Montana Department of Transportation

Lori K. Ryan, Secretary
Montana Transportation Commission