

Montana Transportation Commission

**August 27, 2020 Meeting
Commission Room
2701 Prospect Avenue
Helena, Montana**

IN ATTENDANCE

Barb Skelton, Transportation Commission Chair, District 5
Greg Jergeson, Transportation Commissioner, District 3 – Zoom Call
Noel Sansaver, Transportation Commissioner, District 4
Mike Hope, Transportation Commissioner, District 2
Tammi Fisher, Transportation Commissioner, District 1
Mike Tooley, Director MDT
Duane Kailey, Chief Engineer, MDT
Pat Wise, Deputy Director MDT
Kevin Christensen, MDT
Lori Ryan, Commission Secretary
Dustin Rouse, MDT
Jake Goettle, MDT
Paul Johnson, MDT
Val Wilson, MDT
Lynn Zanto, MDT
Darin Reynolds, MDT
Jim Wingerter, MDT
Rod Nelson, MDT
Bob Vosen, MDT
Lucia Olivera, FHWA
Ross Butcher, Fergus County
Carl Seilstad, Fergus County

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 Barb Skelton

Commissioner Skelton called the meeting to order with the pledge of allegiance.

Approval of Minutes

The minutes for the Commission Meetings of June 25, 2020, June 30, 2020, July 17, 2020 and July 28, 2020 were presented for approval.

Commissioner Sansaver moved to approve the minutes for the Commission Meetings of June 25, 2020, June 30, 2020, July 17, 2020 and July 28, 2020.
Commissioner Fisher seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Director Tooley – Email Clarification & Apology

Director Tooley said at the last meeting we had a pretty robust discussion about alternative contracting. You will recall that staff was upset with the tone in an email received from Commissioner Fisher and there were concerns about the possibility of a disgruntled third party making that an issue. If you read it a certain way it could look like somebody was trying to influence the process. The thing is, everything in that email were concerns brought to Commissioner Fisher by somebody else and we learned that from phone conversations after the fact. If we would have had those conversations prior to the meeting, the majority of the concerns that staff had would

have been dispelled and pretty much all the evidence among staff would have gone away and the whole tone of the discussion would have been different. We should have called before and not after the fact and spared all of us the discomfort and the anger that wound up being a part of the record. I don't believe Commissioner Fisher did anything other than pass along questions that were brought to her.

I apologize to the Commission and Commissioner Fisher. It is my job to make sure that doesn't happen and from now on I guarantee if the department has concerns like this, we will contact you directly prior to the meeting for clarification. We will also work with you to establish a more formal avenue to deal with what may appear to be a conflict of interest. We value our relationship with you; we do good work together. We also appreciate your oversight and your questions, I think it makes us a better department.

Commissioner Skelton thanked him for his comments. Commissioner Fisher said she appreciates the conversations we've had since the last meeting, both myself with Kevin Christensen and Director Tooley as well Commissioner Skelton. I very much appreciate you clarifying the record. However, I don't want to dwell on this issue, I would just like to move forward. If it would be possible I have some comments in writing that I would like attached to the minutes. That would clear the record.

Commissioner Jergeson moved to have Commissioner Fisher's comments attached to the Commission minutes. Commissioner Hope seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 1: Highway Safety Improvement Program Additions to HSIP Program (22 New Projects)

Lynn Zanto presented the Highway Safety Improvement Program, Additions to HSIP Program (22 New Projects) to the Commission. The Highway Safety Improvement (HSIP) Program makes federal funding available to states to assist with the implementation of a data-driven and strategic approach to improving highway safety on all public roads. In Montana, the primary focus of the HSIP program involves identifying locations with crash trends (where feasible countermeasures exist) and prioritizing work according to benefit/cost ratios.

At this time, MDT is proposing to add 22 new projects to the HSIP program – eight in District 1, four in District 2, five in District 3, three in District 4, and two in District 5. The projects on the attached list (Attachment A) meet the criteria set forth for HSIP-funded projects. If approved, it would be MDT's intention to let these projects individually.

The estimated total cost for all projects is approximately \$18,365,000.

Summary: MDT is requesting Commission approval to add 22 projects to the Highway Safety Improvement 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, traveler safety will be enhanced with the addition of these projects to the HSIP program.

The total estimated cost for all projects is approximately \$18,365,000.

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

Commissioner Jergeson asked when the Commission approves the projects, do they go into the STIP. Lynn Zanto said that is correct. You approve them, then we have to put them into the STIP through Federal Highways and get their approval. Then we program the projects over the months coming up as we have obligation authority to do so. You won't see these in the TCP until next year. Then they will be scheduled into the particular year that fits their schedule and budget.

Commissioner Jergeson said that raises another question. Typically in our June meeting we receive the STIP and go through the process but I don't remember getting that this year. Is there a reason for that? How do I put these projects in the context of everything from this year through the next five years that show up in the STIP? Lynn Zanto said in June we brought the new projects by program area to the Commission. We had some bridge projects and projects on each of the highway systems. Those were the new projects that went into the STIP. Every time through the year that I bring a new project to you, if you approve them, my next step is going to Federal Highways via an amendment to the STIP. We show them the fiscal constraint sheet and they confirm that our funding is adequate and that we had appropriate public involvement. It all does flow into the STIP and then into the TCP which is where you see them and how they fit into our funding. Commissioner Jergeson said then the STIP document that we used to get, we aren't getting anymore? Lynn Zanto said Paul Johnson who produces our STIP is here and I believe we emailed you the draft to look at.

Paul Johnson said we did send that out. Just to be clear, the role and responsibility of this Commission is to approve projects; it is not to approve the STIP document itself. We have to clarify that because the two entities that approve the STIP document are Federal Highways and FTA. Your role is to add the projects to our program. You took that action and you saw the document. We typically send out copies of the STIP document for comment. If for some reason someone didn't get a copy, it is theoretically possible that between mail and email there might have been some confusion because we have a long list of folks including the Commissioners that typically get that information. We also had a very robust involvement period where we put it out on the news line. There are a lot of opportunities to comment and we give the Commission a specific opportunity. All the projects were on the news line, it was noticed in libraries; there was a whole effort of public involvement that meets the federal standard because that's who we have to please for that document. There are two parts: (1) you got all the new projects that went into the STIP, all of those project have been programmed and will show up in the TCP this year; (2) the role of FHWA and FTA is to review the document for conformance they require, which they have done and approved. If for some reason folks didn't get the final copy, we can certainly send a copy directly to them. It is also on line. I hope that clarifies the difference between the approvals the Commission has and the approvals our federal organizations have.

Commissioner Jergeson said that is not satisfactory. I haven't gotten it and I assume none of the other Commissioners have gotten it. What's on line typically has not had the various project estimate amount; they just have a range of numbers. I think what's going on here is you are trying to hide it from the public and it is unsatisfactory that we're sitting here in the dark. This whole notion that somehow you don't have to show the public everything because it's not coming to the Commissioners is in error. When you approve it within the department and send it off to the federal government, that becomes a public document and I want to know the public is getting to see everything that's in those documents and every engineer's estimate for every project.

Commissioner Skelton said she received the STIP document. I have a paper copy. Commissioner Jergeson said he didn't get it and I'm pretty careful to make sure I track every piece of material I get from the department. Kevin Christensen asked Paul to reiterate the public involvement portion of that document so Commissioner

Jergeson would know how we face that to the public. Paul Johnson said it is a very involved public involvement process which is outlined in a federal statute. The concerns this Commissioner has are amplified by about one million at the federal level. So basically one of our first facing areas is the website. If you go to the website, it shows the STIP specifically and it shows you how to comment on the STIP and gives you all of the comment information including every single project location and I believe that the map has a cost range. It has every single project, every area with proposed new projects and the existing projects. That's the first facing area we have. The next is we sent out mailings to every single city and county. We have guests here today that probably received the document or the opportunity to comment on the document. That invitation goes out. It's in libraries, on our news line, we put ads on Facebook, so every media that we could reasonably and affordably put this out to the public we do that. We give them a chance to ask specific questions about any project they want.

The reasoning for the cost estimates is not to hide anything, its so folks don't just focus on the cost estimate itself. It's to find out if it sounds reasonable or not. Believe it or not, back in the old days we used to give our specific cost estimates to the public but we found there was more of a discussion on whether it was this or that, rather than it being part of the program. It's not to hide the cost estimates, it's so we don't diminish the fact that the project is developing and that it is fiscally constrained with the cost estimate itself. When we're done, we have to provide all this evidence directly to FHWA and FTA in an approved format and they approve that process. In addition to all of that, every single cost with every single estimate goes to the Commission directly for the new projects. So these new projects have all been, with their individual costs, given to the Commission. So you get to see all of that.

Additionally, the last part of this process is the prioritization which you do in the TCP. So we get the newest cost estimates that will updated in about a week so that everybody has the same sheet of cost estimates and we're all working from the same page and that's when we actually prioritize the projects. So it's an incredibly involved, extensive process; we maintain all of the comments that come in, and we have those available that we also provide to FHWA and FTA. What we're trying to do is clarify roles. We're not trying to step on anybody's toes but to say here is the part you're responsible for. I can say we had huge challenges both electronically and with hard copies in trying to distribute materials. I actually couldn't get anything out of the planning area for a while, so anything could have happened this year. No excuses. That doesn't mean we can't provide additional information. With that all said, this Commission saw every new project and approved every new project.

Commissioner Jergeson said we see new projects that might be ten or fifteen years out and approve those but we're being told now that we don't get to see the changes and cost estimates from one year to the next on projects that have been approved? You go from one year to the next and things change due to inflation and for a variety of other reasons, new information comes to light to our Engineers and we don't get to track those changes? I'm just absolutely befuddled at the rationale that this Commission and the public can't be trusted to look at those numbers. And the rest of the Commissioners ought to be pretty concerned about this too because it looks like the department has decided they're making all the decisions and the Commission is just window dressing.

Lynn Zanto said I just checked the TCP to get the exact numbers and our fifth year we have balances ... we're trying to make sure we have a program of projects moving forward and that we can fully obligate our federal funding. When I look at our fifth year of the Highway Safety Improvement Program the balance is about \$22 million, the fourth year has a balance of \$13 million. What we'll be doing with this next TCP is adding in additional years. We basically use that as a tool to see where we need new nominations; we need to make sure we're loading our program and we have

enough work moving forward to fully obligate our funds. One other thing I will say is that within the STIP document, there is a page called a “fiscal constraint page” and that’s what Federal Highways approves. That shows everything we have committed over five years and then every time we do an amendment we do a running sheet that shows where we sit with our money so that we’re not over-obligating the agency.

Commissioner Fisher said when you bring us projects like we’re looking at today to approve, that becomes an amendment to the current STIP. So the purpose of amending the STIP and adding these projects is you’re looking at the ending fund balance year-to-year to see if we have money left over that needs to be filled with projects, then you seek these new projects as amendments to the STIP to obligate those funds? So then once the Commission approves these projects in front of us, then do you amend the STIP and then that goes to FHWA for final approval, is that correct? They are approving an amended product that just simply amends the original STIP? Lynn Zanto said that is correct.

Commissioner Skelton asked Lori Ryan to make sure Commissioner Jergeson gets a copy of the STIP that was sent out? Paul Johnson said he would send it to him. Commissioner Jergeson said the final ending fund balance number isn’t the only number that’s important to us. We have constituents out here that ask what a project is going to cost. There was a big controversy when I first got on the Commission about the roundabout at Grass Range and there was a bunch of misinformation being spread by a bunch of opponents of that project about what the costs were going to be and there was no straight answer to anybody from the department and certainly not in the STIP that was made available to the public. I’ve been after this forever and it seems the department’s reaction is to make things less visible to the public rather than more visible. I think that’s just a huge tactical mistake in dealing with the public much less what’s even legally required. Lynn Zanto said one other tool we have to inform the public where our projects are and the cost of them is our active project map. That gets updated frequently as we are adjusting our cost estimates, so I’ll make sure we send that link out again as well. That’s visual and you can click on the area of interest and read about the project and see the cost range. Commissioner Skelton said it is very good and I look at that quite often. Commissioner Skelton said Commissioner Jergeson’s comments were noted. Commissioner Fisher asked about the benefit cost ratio column, the higher the number means the higher need to fix it? Lynn said yes.

Commissioner Fisher moved to approve the Highway Safety Improvement Program, Additions to HSIP (22 new projects). Commissioner Hope seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 2: Secondary Roads Program Addition to STPS Program (1 New Project)

Lynn Zanto presented the Secondary Roads Program, Addition to STPS Program (1 New Project) 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 a new project to the STPS program (in District 4). The proposed project (shown on Attachment A) meets the criteria set forth for an STPS- funded project.

The estimated total cost for all project phases is \$13,400,000 (\$11,600,000 federal + \$1,800,000 state match) – with the entirety of the federal funding originating from the Secondary Roads (STPS) Program.

Summary: MDT is requesting Commission approval to add a new project to the Secondary Roads 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 \$13,400,000 (\$11,600,000 federal + \$1,800,000 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 this STPS project to the highway program.

Commissioner Sansaver moved to approve the Secondary Roads Program – Addition to STPS Program (1 new project). Commissioner Fisher seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Public Comment

Ross Butcher and Carl Seilstad from Fergus County were in attendance to speak to a speed zone issue. They opted to speak to the Commission when that Agenda Item came up later in the meeting.

Agenda Item 3: Performance Planning Process (Px3)

Lynn Zanto said our Performance Programming Process (Px3) is one of the initial steps in moving toward our Tentative Construction Program (TCP) development. We take a look at our pavement condition data and our bridge condition data across the state and across each district and we compare that to our performance goals and state and federal law requirements, we run various scenarios and try to come up with the most optimal funding fix for the core highway program and bridge program. Paul Johnson with Planning is responsible for this program and he is going to present this to you today. At the end we will be looking for your approval of the funding distributions across the districts and also there are a couple of set-asides that we've done through the years that we'll ask you to approve.

Paul Johnson presented the Performance Planning Process to the Commission.

Commissioner Fisher asked about the ride index. If the ride index is good, does that also establish that the structural integrity of the pavement is good? Is that a good measurement? If the ride index is good, then can you safely assume that structurally the pavement is also good? Paul Johnson said generally speaking yes. Ride Index is like an odometer; it's an indicator. It is an overall indicator of structural stability but it doesn't tell you everything. It's not going to tell you details at the district level, state-wide level, and system level. It is very good at telling you where the needs are but if you're doing a project you also have to supplement that with engineering

knowledge. It's very good at the network level but it doesn't replace engineering judgment.

Commissioner Fisher said when we have something that is reconstructed, in the agreements with contractors do we tell them it has to meet this ride index in order for it to be approved. Paul Johnson said by default the conditions we set on a project will make it that. Commissioner Fisher said then the test is the ride index and then it can be signed off. Paul Johnson said in the end we inspect it and run a road grader over it to make sure of the ride. The conditions we set at the engineering level will lead you in that category. A new road would be a ride index of 95. Again it is an indicator but it's important to note that it doesn't tell you exactly what to do.

Commissioner Fisher asked a question regarding bridges. How many NHS bridges do we have? Is it far less than the off-system bridges that need work? Paul Johnson said I can't answer that off the top of my head but I'll get the number for you. The total of NHS bridges is probably similar to the total number of bridges that we have on the other systems that are MDT related. There are a lot of bridge decks out there. It is a struggle especially at the local level at county and city level. That is probably where the issue is more pronounced. So it's important to prioritize those things. He came back with some statistics: on the Interstate 817, NHS not on the Interstate 527, Primary 446, Secondary 392, Urban 29, and other state routes 278. That means we have about 2,500 on the state system and about 1,300 of those are on the NHS. We have a few more NHS bridges than we have on the other system. There about 2,000 local bridges. Commissioner Skelton asked that he send the number to all the Commissioners.

Commissioner Sansaver asked about the funding issue for bridges. How much work can they do over what period of time? Paul Johnson said we look at it within the five year plan. We will re-evaluate what we have going now and what MDT can handle in the future. It turns out to be around \$10 to \$15 million more in funding. If we get additional funding can we give it to bridges as long as they have the projects available and can handle the work. Commissioner Sansaver said at this point in time you don't give the districts more money for bridges than they can handle but what does that mean? Paul Johnson said if we have \$10 million in additional funds that could go toward bridges, the bridge program has accepted all of it. So any available funds we have the bridge program has been able to accept it because they have been ramping up. The challenge has been with the actual letting of the contracts but that is improving.

Funding Recommendations: The funding package is shown on this slide. The funding is not equal because we have more needs in some districts than others and the driver for that is lane miles. In actual dollars, we're expecting about \$310 million in funding. The picture is similar to last year.

Commissioner Jergeson said when did we evolve into the process we have today? How many years ago did that happen? Paul Johnson said I've been doing this for about 15 years. The groundwork was laid prior to that. Back 15-20 years ago we realized we needed good data; we can't make good decisions without good data. So there was an effort to rate all the pavements and check all the bridges. We created computer systems that could handle all the information. We wanted to predict performance, so we created the Management System. Then we decided we needed to be able to emphasize different things. So the evolution started out with gathering data, building the systems, doing what if analysis, to the point we're at now in knowing the things that really matter the most. So it's evolved and now there is so much data that it is hard for our system to deal with. Commissioner Jergeson asked what the future looked like. Paul Johnson said it looks a lot like what you see now. The great value in what we have is in the State of Montana the money for transportation goes to good projects. We don't let politics get into the situation. The

money goes to good projects based on scientific information and it's known, and understood, and fair. I hope that's where it stays.

Commissioner Fisher asked if Commission Sansaver has more miles in his district than I have in mine. Paul Johnson said yes. The funding is based on lane miles but it is need specific. Commissioner Sansaver asked if it ever turns political. My district has quite a bit more needs and gets quite a bit more money, so over the next five years does the money move to other districts. Paul Johnson said it is strictly the needs. If emerging traffic will deteriorate more quickly, then that will show up in the models. You can't fool the system. Next year we will start from scratch again and assess the needs and then compare it with the projects we have in the program and look at the fair and equitable solution. You can't game the system – if you truly follow what the models are saying and what the science is saying then it leads to a fair and equitable solution. Politics can't trump this.

Commissioner Fisher asked how you know how much is needed for the funding reserve plan. Paul Johnson said for example about 15 years ago, the Rest Area Program was in sad shape and a Legislative Audit said we needed to address certain issues across the board and to this day we're still addressing those issues. We started out at \$5 million which was based on needs. Asset Management prioritizes which rest areas need to be addressed first. Each year we look at the needs of each individual rest area and try to find the most cost effective way to deal with the issues we see. That will probably go down in the future. We have a whole strategy to determine that and our plan is one of the best models in the nation. For other categories we go on what we spend each year and we track that very closely. The other part is set by the feds which is fluid.

Commissioner Hope said you mentioned the Rest Area Program would go down in the future. Say it goes from four to three, what do you do with the extra million? Does it go into the rest areas immediately or somewhere else? Paul Johnson said we look at all the funding available as well as the state match. We look at the funding at the federal level and where it can be distributed, i.e., safety has a category, transportation alternative has a category and the rest of it is in a pot of money that can go to bridge or pavement or whatever. If we have a million we look at where that can best go. We ask that every year. One million from the Rest Area Program can go anywhere but most likely right now would go to bridges. That's the direction most of our spare nickels and dimes are going. Lynn Zanto said bridges is our most pressing need now. In the past it has gone to core funding.

Commissioner Sansaver moved to approve the Px3 funding distribution plan. Commissioner Fisher seconded the motion. All Commissionees voted aye.

The motion passed unanimously.

Commissioner Fisher moved to approve the P3 funding reserve plan. Commissioner Hope seconded the motion. All Commissionees voted aye.

The motion passed unanimously.

Presentation of Bridge Named after Tim Reardon

Director Tooley introduced Tim Reardon who was my immediate predecessor as Director of MDT. He is a long-time state employee who did a lot of great things for this state as your legal representative for many years. You'll remember that a few weeks ago we had a special call and talked about naming the Toston structure after Tim Reardon. So I want to introduce him before the presentation.

Tim Reardon said this is the most humbling thing that's happened to me in all my years in state government. What you did with the bridge was the most humbling experience of my life and I was truly speechless when you came to my house to tell me what you had done. I'm someone who had the good fortune of working at a place where I loved to come to work. Things like naming a bridge always struck me as ordinary people doing extraordinary things and I never felt I did anything extraordinary. I loved my job; working here was an incredible experience. Working with the Commission over 21 years, I have so much respect for the work you do which some people might think is easy but it's not. You never have the money you need to do everything that needs to be done. In all those 21 years I had the help of a lot of great people here at MDT. I always had this support team and people thought I was being great but frankly all I did was get out of the way and let people who knew how to do things just do it. If that made me look good, I probably took too much credit. The last few years I worked for Mike Tooley were particularly enjoyable. We went through a few tough times but we got through it and I think we're better for it and I think every day the agency gets better. I'm very grateful for what you did and I'm grateful I had a chance to go see it and knowing that the structure is going to be such a huge improvement for the people in this state for safety and the guys in maintenance are going to take care of it, is a really big deal. Thank you seems to be such useless words but in my heart I really do appreciate it.

Director Tooley said not only do you get a bridge but you get some things to commemorate that and that is why I wanted you here. I wanted you to see the folks that voted to make this happen. Thank you very much.

Commissioner Skelton said I just can't say enough about how great it was to have the opportunity to work with such a fabulous, intelligent, kind, and humble man. You taught me so much. Thank you.

Director Tooley said Mr. Cain gets a little bit of credit for this. The bridge isn't done yet but it's going to be. Here is a rendering of what it will look like when it's done. This is for you. This is a shadow box of a miniature version of the sign that will adorn the bridge.

Tim Reardon said thank you seems like such a miniscule way to show my appreciation. One thing I learned here is there are so many people who work so hard to get any project going and this one is at least ten years in the making. There was never enough money to get this bridge going and it was badly needed for a long time. There are dozens if not hundreds of people who have put their heart and soul into this from right-of-way, to design, to environmental who worked so hard at it. Then for me who doesn't know how to design a bridge or drive a snowplow, it's very special and I'm very humbled. Thank you so much. You know I had such a support team the whole time I was here and at home I have an incredible support team and always have had. At this point in my life they are even more special. He introduced his son Brad, daughter Leah, and sitting in for my sister and brother-in-law is my cousin Pat Hafey. I get support everywhere I go. Thank you.

Agenda Item 4: Speed Limit Recommendation MT 287 – Alder North Follow-up

Dwane Kailey presented the Speed Limit Recommendation for MT 287 – Alder North Follow-up to the Commission. You may recall at the last meeting we did an Alder speed limit on the south side. Madison County asked us to look at the speeds in and around Alder. We discovered that on the north end there was a posted speed limit that was not in conformity with what the Commission had previously approved. Unfortunately it was greater than what the Commission had approved. When we did our analysis we actually supported a greater speed limit. The law is pretty clear that we cannot increase the speed limit without clear support of the local government and

their support wasn't real clear. So we delayed bringing that to the Commission until we got clear direction from Madison County. We have now secured that. So based on our review and analysis we are recommending the following:

A 50 mph speed limit beginning at straight-line station 90+00 (1,650' north of Madison Ave) and continue south to station 82+00, an approximate distance of 800-feet.

A 40 mph speed limit beginning at straight-line station 82+00 (850' north of Madison Ave) and continue south to station 74+00, an approximate distance of 800-feet.

A 30 mph speed limit beginning at straight-line station 74+00 (50' north of Madison Ave) and continue south and east to station 59+00, an approximate distance of 1,500-feet.

A 40 mph speed limit beginning at straight-line station 59+00 (300' east of No Name St) and continue east to station 51+00, an approximate distance of 800-feet.

A 50 mph speed limit beginning at straight-line station 51+00 (600' east of Virginia Ave) and continue east to station 43+00, an approximate distance of 800-feet.

A 60 mph speed limit beginning at straight-line station 43+00 (450' west of Judy Ln) and continue east to station 2+00, an approximate distance of 4,100-feet or 3/4-mile.

That has been presented to Madison County and they support increasing that speed limit.

Commissioner Sansaver moved to approve the Speed Limit Recommendation for MT 287 – Alder North Follow-up. Commissioner Hope seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 5: Speed Limit Recommendation US 191 – Hilger

Dwane Kailey presented the Speed Limit Recommendation for US 191 – Hilger to the Commission. This is in Fergus County. We're going to have two speed studies in Fergus County. The first recommendation is supported by the County and the second one is not. We did review the traveling speeds as well as the roadway characteristics, the Highway Patrol as well as law enforcement crash history and based on our investigation, we are recommending the following:

A 55 mph speed limit beginning at station 8+00 (metric), project STPP 43-1(25) (85 meters south of Swope St.) and continuing north and east to station 15+20 (metric), an approximate distance of 640 meters or 0.4-mile.

Fergus County's comments and approval are attached.

Ross Butcher, Fergus County Commissioner

Fergus County does agree with the conclusions and recommendations of the department. This is one where we've had quite a few comments from folks that the speed limit was too slow. We want to say that we support the increase.

Commissioner Fisher moved to approve the Speed Limit Recommendation for US 191 – Hilger. Commissioner Sansaver seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 6: Speed Limit Recommendation US 87 – Grass Range

Dwane Kailey presented the Speed Limit Recommendation for US 87 – Grass Range to the Commission. They are requesting a reduced speed limit. We studied the roadway culture, the traveling speeds, the highway citations as well as the crash information and based on what we observed, we are not recommending an adjustment in the speed limit. Fergus County has included a letter with comments asking for the speed limit to be reduced to 55 mph through this area. Fergus County Commissioners and the Town of Grass Range submitted a request for a speed limit investigation along US 87 where it passes along side of Grass Range and continuing north approximately one mile to the four-way intersection with MT 200 and MT 19. There is a map demonstrating where they would like that speed limit reduced attached to your packet. Based on the engineering, I have to stick to the recommendation by staff, however, under statute the Commission has authority to set the speed limit as you see appropriate.

Carl Seilstad, Fergus County Commissioner

Basically we did a speed zone study in 2015 and it was recommended not to do a reduced speed through Grass Range. We did not comment on that at the time it came out but there have been a lot changes in five years. Basically we have four or five business along there. What the traffic counters don't show is the near misses that occur – somebody slamming on their brakes or whatever. This was a ground up approach.

We weren't going to do it again but we were presented with a Petition from folks not only from Grass Range but from around the various communities. There are a hundred signatures requesting a reduced speed. Going through the department's recommendation, there were 19 speed related citations through Grass Range. Nineteen speed citations over that course of time is quite a few in my estimation. I would like to point out that we made a mistake. The residence wanted it from the four-way stop all the way through. After looking at it and talking to them, we said that was a long way to drive 45 mph, and I don't think it will ever fly. We backed it off to the Wrangler Bar right here (referring to graphic) which is 1,000 feet from there and we carried it out past East 2nd Street because the school is here and it gets a lot of bus traffic, sporting events on the football field which is right here. That's why we carried it past East 2nd Street.

Commissioner Sansaver asked if the red line is where you're proposing to have the speed limit reduced. Carl Seilstad said correct. The red line is what we're proposing as 55 mph. The speed zones work in Fergus County. We've got a 55 mph speed limit through Roy, MT, where the businesses are off the road a little further. We've got a 55 mph speed limit through Eddy's Corner. I think every town in Fergus County other than this one has a speed limit. We would sincerely hope the Commission would look favorably on the 55 mph speed limit we're proposing.

Ross Butcher, Fergus County Commissioner

When the residents come out that strongly, I realize it is anecdotal but when you have folks that are nervous about pulling out on the highway because of the semi-truck speeds rolling off the hill, I think it is a legitimate concern which is why we came up to plead our case.

Dwane said the Commission needs to be clear on what you are approving and not approving.

Commissioner Sansaver moved to approve the Speed Limit Recommendation for US 87 – Grass Range submitted by the Fergus County Commissioners. Commissioner Hope seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

By-Pass West Project Speed Limit Request

Ross Butcher, Fergus County Commissioner

Ross Butcher addressed the By-Pass West Project. When it was first implemented they did away with the Viaduct and the Overpass and put in the new intersection. Of course there was a time lag between readjusting speed limits and that project being completed. So at the intersection we had a lot of people shooting off the end of the road and learning the new layout. In that we requested a speed zone study. The Commission had asked for quite a reach out. This is the intersection here (referring to graphic). This was the truck bypass coming from Lewistown heading west toward Great Falls. There is an intersection out here that has a fair amount of traffic and prior to this there was a terrible crash there and a couple of young people were killed. This influenced us and we thought we might need to slow the whole thing down. So that was our request. In retrospect it probably was ... it was quite a distance for 55 mph and its open with good visibility and speed probably didn't have much to do with this accident at the time. It is one of those things where the science would have said you don't need to do it. At the time, that influenced our request. Since then we've had lots of requests from people that are getting pulled over here all the time saying "what are you doing". In retrospect the safety concerns of slowing traffic down coming to the intersection and through the intersection, there's a lot of houses on the bypass. You're pulling up on the highway and trucks are coming by at high rates of speed and it was very important to have this slowed down but this was probably an overreach and a bigger request than necessary. So our request now is a re-consideration of this back to highway speed. This is about 1,000 feet. The experts will say whether you should do staged slow-downs. My understanding is you don't need to do that, you can come up to a 45 mph and that is the speed zone. I'll leave it up to the experts. Our request would be that from this point to this point, we open it back up to highway speed.

Carl Seilstad, Fergus County Commissioner

I feel just the opposite. Like at Hilger, you go from 70 mph and then hit a 45 mph speed zone. It looks better to me that you would have a 55 mph speed zone and then the 45 mph speed zone. Like he said, we'll leave it up to MDT to give us a recommendation from the 45 mph speed zone clear out here passed the Cotton Creek Road junction.

Dwane said this is a new one for me. Under the statute you have to consider an engineering investigation. One has been conducted in here and it is current and valid. You have considered that, and the Commission went in the direction with the recommendation from the County. I think that's all timely. The only thing I'm on

the fence about is public notice. This was public noticed the last time we visited it and it was not on this Agenda, so I'm a little nervous about that. Val Wilson said we would need to notice this and have it as an Agenda Item at the next available meeting which is in October.

Commissioner Sansaver said you've already done the study and now we're going back to what was recommended by MDT. You said "sorry we didn't mean it, can we change it." I think there needs to be a notice and wait for the next meeting. The reason for that is if we don't we're going to have 200 Commissioners from all over the State of Montana coming in here and presenting something and "while we're here" can we have this. Not that I'm opposed to it at all but I believe in due diligence of Kevin and his crew and MDT, so I think we need to follow that protocol and stay with it so we don't have piggy backs coming in on issuers.

The Fergus County Commissioners said they would do anything necessary to submit this to the Commission. Dwane asked if they could send an email to Zac, the Billings District Traffic Engineer, clarifying what they are requesting and then we can add that to the Agenda for the next meeting. They said they would do that.

Carl Seilstad said this may not be appropriate to answer this question now but am I to understand the department has removed the temporary flashing warning lights around the state. Dwane Kailey said we have done a fair amount of analysis of some of those and we have removed some but not all. Are you talking about the flashing lights ahead of signals? We do have a report that guides when and where we put those in. We are evaluating that right now and we're not sure if we're totally in alignment with what that established but we are taking a look at that. Carl Seilstad asked for a copy of that report. Dwane said the actual standard or policy is actually fairly short and I would be more than happy to send that to you.

Agenda Item 7: August 13, 2020 Project Awards

Jake Goettle presented the August 13, 2020 Project Awards to the Commission. Three (3) projects were advertised and a total of nine (9) bids were received. We are only recommending two for award because we didn't receive any bids on the third. Staff recommends awarding projects to the responsive low bidders. Project 103 Dena Mora Rest Area Rehab will be re-advertised at a later date.

Call No. 101 Great Falls North, NHIP 10-1(32)4. The engineer's estimate was \$15,779,366.03. We had four bidders on the project. Low bid was Schellinger Construction Co., Columbia Falls, with a bid of \$16,374,975.00. They were 3.77% over the engineer's estimate but within guidelines for award and had 2.42% DBE participation

Call No. 102 Valentine Road Repair, ER 35(22). The engineer's estimate was \$823,679.67. We had five bidders on the contract. Wickens Construction, Inc., Lewistown, was the low bidder at \$529,492.79. They were 35.72% under the engineer's estimate and had 1.3% DBE participation.

Call No. 103, Dena Mora Rest Area Rehab. The engineer's estimate was \$364,770.00 but we received no bids on that contract. It will be re-advertised at a later date.

The department is recommending awards of Call Nos. 101 & 102.

Commissioner Skelton asked why there were no bids on Call No. 103. Jake Goettle said we reached out to a couple of contractors. One contacted us right after the bids were due and said they just simply missed the date. We believe they will bid it when we re-advertise it. Then we've since had another contractor call us and say they'd like

to consider bidding it. Since we received no bids, we made a decision to de-obligate the project at this time and re-advertise it later. We haven't decided exactly when and we are going to reach out to a couple of contractors and make sure we have some interest. It is a very unique project which is likely why we didn't get any bids; it's not a normal highway contractor. Commissioner Skelton asked if they would re-advertise it sometime in the future. Jake Goettle said yes.

Commissioner Sansaver asked when you de-obligate, does that mean you have to wait another year to re-obligate? Jake Goettle said it just takes it out of this year's funding and it will end up in next years. If we obligate it in the next fiscal year, it would be a 2021 obligation. Commissioner Sansaver said you are basically taking it out of this year and putting it into the next year. Jake Goettle said yes. Commissioner Sansaver said you don't have to wait to bid it until next year, you can bid it now and take the money out of 2021. Jake Goettle said yes. Commissioner Sansaver asked the timeline for repackaging it. Jake Goettle said it depends on the input we get from the contractors and if we believe we need to make changes to the plan package to make it more appealing, there may be more of a time lapse but from everything I've heard, it sounds like it will be very similar to what we put out so it shouldn't take very long to get it back out.

Commissioner Fisher asked what makes it unique as opposed to other rest areas. Dustin Rouse said it is between St. Regis and Lookout Pass. We've had a lot of problems with the waste water system at that site. We've had one other rehab project of the waste water system and this is our second rehab of it. We're resealing some of the manholes and septic tanks, we're replacing a couple of them and replacing some water lines. There is so much run-off in the area and so much groundwater that it is actually leaking in and increasing our flow rate inside our waste water system. Commissioner Fisher asked if it was mostly construction underground in the waste water system; it's not the actually facility itself. Dustin Rouse said there is a chemical storage building on site that we're adding some additional capacity in the waste water system. We call these sophisticated waste water systems and we have to have that because of the high concentration of nitrates. For most people at their houses, most of their waste water is grey water whereas at rest areas most of it is black water. Therefore we have to have these sophisticated sewage systems.

Jake Goettle said when we didn't get any bids we wondered if it needed to be repackaged or connected to another contract, but we didn't have any other contract we could add it to because it is so unique. The work won't be done until next spring because of the weather, so we'll hold off and contact some contractors and re-advertise it at a later date.

Commissioner Jergeson moved to approve the August 13, 2020 Project Awards. Commissioner Hope seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 8: Certificates of Completion May & June 2020

Dwane Kailey presented the Certificates of Completion for May & June 2020 to the Commission. They are presented for your review and approval. Staff recommends approval as presented. If you have any questions, please feel free to ask.

Commissioner Sansaver moved to approve the Certificates of Completion for May & June 2020. Commissioner Fisher seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item No. 9: Disputed Liquidated Damages
Contract 01C14-Bynum South
(SK Construction \$41,650)**

Dwane Kailey presented the Disputed Liquidated Damages, Contract 01C14-Bynum South (SK Construction \$41,650) to the Commission. I'll give you a quick overview in general. Again a reminder that the Commission need do nothing and they stand as is. If you want to adjust them, you have to do a motion and adjust the liquidated damages. If you do adjust the liquidated damages, be aware there is a high potential that it will be federal non-participation, meaning that it will have to be paid for with state funds. I say potential because I don't make the decision, FHWA does, but I can tell you that it has almost always been federal non-participation.

Also one interesting issue that we've had historically, for some reason our old specs allowed contractors to circumvent our claims process and bring liquidated damages to the Commission. Our claims process is very effective in trying to resolve issues during the project but our old specs allowed contractors to not use the claims process and simply come appeal to the Commission. Our new specs have now required that they file a claim and they can't simply just come appeal to the Commission, but this is under the old specs.

So getting into the clam: SK claims that while under construction, the weather was so inclement that we should not have been charging time. Keep in mind that project time does not start until April 15th. They are claiming that the weather was so inclement that they could not work for the months of April, May, and June. However, in their own documentation that they supplied to you, they are showing that the weather reports for those months – April received 1.76 inches for the month and the average temperature was on average greater than 50 degrees every day. In May they show a total rainfall of 2.38 inches and the average temperature was at 66.9 degrees. Then in June the total rainfall for that month was 3.18 inches and the average temperature was 69.3 degrees. I've lived in Montana most of my life and those rainfalls in those months are not extreme in any way. I would also add that, if you go through the notes that were supplied by SK, you will also notice that we did give them eight (8) days of no charge. We don't charge on Sundays or Saturdays unless they work, so those are typically no charge days. There are eight (8) Monday through Friday days that we did not charge.

Thirdly, according to our spec in the contract 108.07.3 it says we charge if work is taking place. During this time frame, while the prime contractor wasn't out there working on the road, they did have a sub out there working performing fencing activities. According to our specs, those are chargeable days. Furthermore, as you go through the packet that was submitted to you by SK, you see the daily charge reports. We fill these out every week and then hand them to the contractor, and according to the spec, they are supposed to protest within 30 days if they have any issues with this. When I say protest, I mean written protest and not just verbally. We never received a written protest by the contractor.

If I may, in my opinion and I think it's documented in the diaries, the real issue here was that SK was actually tied up on another job. I will read three excerpts from the daily diaries which are ours but these are documentations of what's going on with the project.

Specifically on May 10th, a communication between one of the project staff and the contractor states: "I spoke with Jim B, who is the sub doing the fencing, and Bob W with SK, about the fence that goes in at stations 300 to 323. There was some debate whether some of that needed to be temporary fence or could be permanent fence now. The main problem is Bob W, SK representative, is so busy at Nashua that he really doesn't have time for

Bynum South questions at this time. You were mistakenly misled by Bob. All was discussed. Permanent fence will be installed.”

Moving forward to May 29, 2018, again documentation by one of the MDT staff. “I spoke with Bob Wilson, SK, about their schedule and he said the CPM...” Again that’s the Critical Project Management schedule that the contractor supplies showing us when they are going to come to work on a project. “Throw the CPM schedule away. It would be two weeks but more than likely three weeks before they would be able to get to Bynum. The reason being that they lost seven employees and also had some problems with the project at Nashua.”

Fast forwarding to June 18, 2018. Again a conversation between MDT staff on the project and SK. “I spoke with Bob Wilson today. He stated he may have someone to strip borough areas next week. Didn’t think he would be able to start dirt work until the week of July 9th.”

Again this demonstrates in my opinion that they were tied up with Nashua, they were not working or even available to do work at Bynum. They did have a subcontractor working on site at the time which does comply with spec 108 to allow us to charge time.

The last point I’ll make is that in SK’s letter, they are talking about the actual time SK worked on the job and they show that really SK only consumed 96 days, then they go on to say: “These days represent a savings to MDT in labor and traffic control costs.” I don’t concur with that because our staff was out there working, having to monitor the work being done by the subcontractor during the timeframe that we were charging time. We have had a liquidated damages challenge all the way up to the Supreme Court. It was supported by the Supreme Court and it does allow MDT to recapture our administrative costs by a contractor taking longer to perform the job than was originally allocated. SK obviously isn’t here. They weren’t real clear on whether or not they were going to attend. I don’t know if they are on the phone. They did not announce themselves earlier. With that, at least in my opinion, I think it is very clear that the weather really was not an issue, it was the bigger issue that they were tied up on another job, and it is staff’s recommendation that the liquidated damages stay as administered by our staff.

Commissioner Fisher said in the SK letter they indicated that they attached archived weather data, is that attachment here? Dwane Kailey said it was toward the end of the packet. Commissioner Fisher said it is my understanding from the response letter that MDT talks about the fact that a subcontractor working on the job still counts as being on the job. Do you have evidence that SK said they were tied up on another job? If so can I get a copy of that because that is pretty compelling evidence as well. Dwane Kailey said that would be the diaries. I only have this copy but I can make more copies. Commissioner Fisher said I don’t need them today but if we have this in the future I would like to look at that. The working day contracts is the provision you are relying on? Dwane said yes.

Commissioner Sansaver asked what the budgeted amount was for that particular project. Dwane Kailey there were 120 days in the contract. Commissioner Sansaver asked about the dollar amount. Dwane said he did not have that but would get it. Commissioner Sansaver said it seems like \$41,000 is a minimal dollar amount being charged against them for liquidated damages. Obviously they are not here to make a fuss about it; they have offered some documentation of the weather. It’s not substantial enough, in my opinion, to not support our staff. From that perspective I totally support our staff in continuing to collect these liquidated damages. Jake Goettle said the awarded contract amount was a little over \$5.7 million.

Commissioner Fisher asked if there was something that says the subcontractor was on the job working and that constituted a day of work. Dwane Kailey said it says there was work taking place. We don't discriminate between the prime and the sub because the sub works for the prime. If they are working, then work is taking place. Commissioner Fisher asked if "contractor" was defined as the prime contractor and any sub. That is what I'm looking at. If the contractor is defined as the prime and any subs, any guys working on the job under the same contractor, then I'm comfortable with that provision. Is that defined somewhere? Jake Goettle said we don't have a contract with any of the subcontractor; our contract is with the prime. Again I don't know if it's defined anywhere, but the way we've always treated it is that if the prime is not on the job and a sub is on the job, they are a representative of the prime contractor. Commissioner Fisher said that makes sense to me and I see the logic that flows through that. I understand that if "contractor" is defined as anybody who does work pursuant to the contract on behalf of MDT or Montana taxpayers. That makes total sense to me. I can't imagine why MDT would have any agreements with the subs.

Kevin Christensen said if the Notice to Proceed is April 15th and they don't show up until July 15th and the weather is fine, they get charged those days whether they are there or not as long as it is workable as long as the weather didn't prohibit it. Commissioner Fisher said what you are saying is that even in inclement weather, which is when this provision would come into effect, you can still have a sub working at least six hours a day then that is considered a work day. Dwane said that is correct. Commissioner Fisher said their position is that it is not a work day because we, SK, weren't on the job because the weather prevented us, SK, from being on the job but in the global sense, "us" means anybody working on this particular contract whether it a sub or SK or anybody else. That is the collective "us". Dwane said that is my interpretation of SK's claim.

Stand

Agenda Item 10: 2021 Letting Dates

Dwane Kailey presented the 2021 Letting Dates to the Commission. We have coordinated with the Montana Contractor's Association because they typically have a couple of events each year that we want to avoid impacting. They have reviewed the schedule and are okay with the days. So we would recommend that the Commission approve these dates as presented.

Commissioner Fisher moved to approve the 2021 Letting Dates. Commissioner Hope seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 11: Discussion & Follow-up

Director Mike Tooley

I have a couple of follow-ups for you and one new item that has just arrived. I'll start with follow-ups.

Global Agreements with Local Government

We had a pretty good discussion on approval of local constructed projects on MDT routes and the interaction between us and the local governments. Since that time, engineering, planning and legal have been talking amongst themselves and are reviewing the laws, evaluating some options regarding Commission approval. We are going to bring some recommendations to you when that work is done. At the same

time, our side is pretty much done on some global agreements with some of the larger communities. That work has been going on for almost two years now with the League of Cities and Towns and would pretty much take care of a lot of these one-offs that you have been seeing. Basically they will commit to taking care of these things before you ever see them and there may not be a specific agreement for every project. We want to get these done pretty quickly. Staff sent it over to the League of Cities and Towns yesterday for their final look and it will be presented at their conference in October and we'll move on from there. Commissioner Sansaver asked if that had to do with the incident in Billings with the maintenance side of things. Director Tooley said that is exactly right.

Funding

The federal fund allocation is questionable. We are coming to the end of the FAST ACT which is the end of next month. We expect that we won't have a long-term bill for quite some time. Congress is out right now and the election is going to take place so we don't expect Congress to push this right now. So you are going to see what you've seen before, a series of extensions. We would prefer a long-term bill that we can actually plan longer term with and we're not going to get that but the work will continue, it will just be a little bit more stressful for us to manage all of that as well as Lynn's shop. You'll see a little bit of juggling projects between lettings to align the funds available with each of the extensions that come along. Hang on because it could be an interesting ride.

Naming a Bridge for Veteran

The other issue is we had a request come in from an individual in April wanting to sponsor a bridge for Charles Komppa who was a construction electrician with the Navy. He was a reservist based in Montana and was killed in Anbar Providence in Iraq in 2006 by an IED. Our procedure in the past has been that we'll take a look at these but what we really want is this vetted from a veteran's organization. That's on the advice of General Quinn. You definitely want somebody who knows or is willing to say yes that this was an "in-the-line-of-duty" casualty and not an accident or some other incident that took this person's life. We have a letter now from the VFW Post 1703 in that area. They are asking for a bridge on Hwy 78 in the Billings District crossing the Yellowstone River to be named after this service man. So I will present that to the Commission for consideration. Commissioner Skelton asked if he needed a motion. Director Tooley said that's a good question – does this need to be noticed or not. We should check with Chief Legal and see if that's appropriate.

Commissioner Fisher asked where the bridge was. Director Tooley said it is Hwy 78 down toward Absarokee. Commissioner Fisher said it would be nice to know if any of the commissioners or anybody there has any comment on it. Director Tooley said I can't imagine any opposition but we should give them a chance to support it. Commissioner Skelton said it would be a good thing to notice it. You might want to tell the VFW that we are going to notice it and we're proceeding with it.

Commissioner Sansaver said out on the highways you see a lot of areas where we have a sign up for a deputy or an officer of the Highway Patrol. Who puts those out? Does it go through the Commission? How does the process work? Director Tooley said what you see with the law enforcement memorials is that typically it is a legislative action. The families want two things: they want the memorial sign and they also want it on the highway map. To do that they typically contact their local legislator who writes a bill and takes it through the Legislature. They meet every other year and it is an extremely cumbersome process to get it placed into state law. In these situations, the Commission has authority to do this and it's a much more stream-lined process. All we ask for is somebody to say this is valid so we're not putting a sign on your behalf on something that really shouldn't been there. The legislative process deals with law enforcement because they want to have the hearing

and put their loved one's sacrifice on the record. With that comes the appropriation and everything else. It's a completely different process. The Legislature has made it extremely clear they want to hang on to that although I think you could do it as well but they are very interested in that.

America's Transportation Award for Van Buren Street Interchange

Commissioner Sansaver said he understood that MDT was awarded some national award. Director Tooley said the Van Buren Street Interchange won one of America's Transportation Awards. We were tied with Arizona for a regional quality of life in a small category project. Thank you to staff that put in that application. It is judged by the Triple A, the Chamber of Commerce and some other folks. It rose to the top in that category. We are happy to say we beat Idaho and they are out on the regional aspect. The reason that is important is that Idaho has a media machine and if you get into the finals like we are now, they have the ability to generate votes. Now what happens is you'll have two different groups looking at this project. You have the Triple A looking at it and then you'll have the people's choice awards. For each one of those, the national winner will receive a check for \$10,000 to go to the charity of the agency's choice. Idaho does extremely well at that because they just put on a media blitz and everybody wants their project and they typically win. So we're glad to have eliminated them early. If our project wins the \$10,000, the choice is to have it go to the Poverelle Center in Missoula. You're very aware of the homeless issue underneath the Reserve Street Bridge. This is a Missoula project and we think it's a good fit and very timely to be able to help out the homeless shelter. Commissioner Sansaver congratulated the Director and the staff for getting that award. I'm so impressed with the personnel you have here. The questions are always handled in a professional manner. Paul blows my mind; he is a machine. I'm so impressed with the professional people we have in the department. Congratulations on your award.

**Agenda Item No. 12: Change Orders
May & June, 2020**

Dwane Kailey presented the Change Orders for May & June, 2020, to the Commission. They are presented for your review. If you have any questions, please feel free to ask.

Commissioner Jergeson said the front cover says informational item but it still says that staff recommends approval and calls for Commission action. I appreciate the template probably hasn't changed yet. Apparently at one time the Commission had to approve these. When was that change made? Dwane Kailey said I don't recall the exact meeting but we did have a discussion about it. The hick-up with change orders is the timeliness of them. Should the Commission chose not to approve a change order, the work has already been completed and I'm not sure how we could ever rectify that. Commissioner Jergeson said the horror stories I've told about somebody building a new home and one spouse or the other decides they want a change in something and tells the contractor to change something. The contractor shouldn't be out for that but on the other hand if the necessary review and approval process had gone into place that kind of misunderstanding wouldn't occur. Dwane Kailey said I can guarantee you that there is extensive review of these change orders. Jake here in Helena has reviewers that work for him, we have the technical experts whether it be Bridge, Traffic, Road Design, GeoTech, and Hydraulics just to name a few that review these for the technical issues. We also have financial ends such as the District Construction Engineers and the District Administrators who are on those approval lists as well as Jake and some of his staff to review and make sure we're approving it for financial, engineering, and compliance with our contractor. Kevin Christensen said I would add that as an internal performance measure for our department, one of the measures is project cost growth. Most every state in the nation has that as a performance measure. So we strive to keep our project cost within the bid price. Of

course sometimes you just run into stuff that is unexpected. Our consistent value, over many years, we've been around 2%-3% for our actual cost growth on projects which is pretty good. Our goal is 5% or less. A lot of states have a goal of 10%.

Commissioner Jergeson said I can appreciate the rationale for it, but from time-to-time I think we need to review the explanation. Commissioner Hope said I would assume that most of the change orders are driven by circumstances in the field. Dwane said that is correct. Commissioner Fisher said I'm looking at the statute that tells us what our jurisdiction is and it talks about "letting contracts"; it doesn't talk at all about change orders. So it doesn't seem to me, unless a change order is considered a let, but it's not by competitive bid because it alters the competitively bid prime contract original contract. The change order would not fall within our jurisdiction to approve because it is not a "let" contract because the statute refers to our jurisdiction being letting of contracts on state and federal highways. It says: "all contracts for the construction or reconstruction of the highways and streets ... must be let by the Commission." So we only let competitively bid or design build contracts and not change orders. If I'm reading the statute correctly, our jurisdiction is over the original letting and not the change orders. So when these come to us, it is for information only on the change orders.

Kevin Christensen said I believe that is accurate. At one point we were presenting these to the Commission for approval but it was a timing issue because if the Commission didn't approve them, the money had already been spent and the work is done. So if you rejected a change, we don't know what we would do. Commissioner Fisher said it looks like we wouldn't have the authority to reject it so it would create a quandary that need not exist because we wouldn't have jurisdiction to begin with. I appreciate that it is brought here for information only because I think it is very helpful for me to see what the original let price and then what the change orders really are because if the change orders get to be out of whack then we've got a problem with the original. Dwane Kailey said you are hitting on a very valid point. We've had numerous discussion along these lines. What we tend to find, if you look at the evolution of the Department of Transportation and the Department of Highways, the head used to be the Chief Engineer. Then it progressed into having a Director and then a Commission. I think what we're finding is that historically not all the statutes have kept up to speed and not all of our processes have kept up to speed with all those changes. When I came to Helena ten years ago, we did present the change orders to the Commission for approval. Subsequently we've now re-evaluated that and realized it wasn't good and it puts MDT in an awkward position. I think that is a legacy from the past organizationally how the department was set up. I think you're hitting on a very valid point.

Informational

Agenda Item No. 13: Letting Lists

Dwane Kailey presented the Letting Lists through October 22nd to the Commission. They are submitted for your information and review. If you have any questions, please feel free to ask.

Commissioner Sansaver said this may be subject to change due to not knowing how much federal money we will get and then having to take one project out that doesn't fit and move another one in, is that right? Dwane Kailey said in particular the October 22nd bid letting is predominately redistribution projects and that is very dependent on whatever we get in redistribution.

Informational

Next Commission Meeting

The next Commission Conference Calls were scheduled for September 15, 2020 and September 29, 2020. The next Commission Meeting was scheduled for October 22, 2020.

Adjourned

Meeting Adjourned

Commissioner Skelton, Chairman
Montana Transportation Commission

Mike Tooley, Director
Montana Department of Transportation

Lori K. Ryan, Secretary
Montana Transportation Commission

**Commissioner Fisher’s statement attached to minutes of August 27, 2020,
Transportation Commission Meeting.**

I appreciate the opportunity to clear the public record in an effort to ensure transparency and in the hope of improving the manner in which perceived ethical and conflict of interest concerns are addressed by the Department and the Commission. I regret the length of this statement, but I want the record to be clear and transparent about what has transpired.

I was appointed to the Commission by Governor Bullock in 2019. I attended the first meeting after my appointment in March by phone. Before the next in person meeting occurred, the first Alternate Contracting project in my District was let. It is called the Salmon Lake project. Due to concerns that I had and that were sent to me by contractors, I wrote the following email to the Commission and MDT:

----- Forwarded message -----

From: **Tammi Fisher** <tammifisher1@gmail.com>

Date: Tue, May 14, 2019 at 4:04 PM

Subject: Fwd: FW: Salmon Lake CM/GC Concerns

To: <mitooley@mt.gov>

Cc: Greg Jergeson <gjergeson@gmail.com>, Mike Hope <mkwahope@aol.com>, Noel Sansaver <Sansaver@hotmail.com>, <skelgatz@gmail.com>, Tammi Fisher <tammifisher1@gmail.com>, Kevin <kechristensen@mt.gov>, Dwane <dkailey@mt.gov>, Mike <mitooley@mt.gov>, Patricia <pwise@mt.gov>, <etoavs@mt.gov>

Director:

As you know I have voiced significant concerns over the most recent CM/GC process. While I have been an ardent supporter of alternative contracting – proclaiming the same in our recent in person Commission meeting- I cannot support the most recent alternative project award under the current information I have reviewed. It is my understanding that MDT determined Kiewit should be awarded the project. I have reviewed all of the scoring tools, and attach them here.

I am concerned about MDT scorer #3, as he/she appears to be an outlier with a bias towards Kiewit. Reviewer #3 gave Kiewit the highest score out of all six reviewers; only two reviewers (other than #3) gave lower scores to LHC, and reviewer #3 gave Schellinger the lowest scores out of all six reviewers. Now, I don’t know much about math, but as I recall, outliers in any mathematical formula must be struck when a median or average score is determined. So, in this instance, if reviewer #3 was struck and only the other 5 reviewer scores were counted the results would be:

1st = Schellinger Construction - Score = 86.79

2nd = Kiewit - Score = 86.62

3rd = LHC - Score = 85.51

I have also attached a spreadsheet that utilizes MDT’s scoring formula (as presented in the RFP), and yet comes to a different result where Schellinger and Kiewit tie in scoring when the technical proposal sheet breakdown score of 74,810 is utilized. I can’t figure out why Schellinger’s score on the "As Read List" is stated as 74,650 when the technical proposal score sheet breakdown per reviewer shows Schellinger’s score as 74,810? (See attached.) When I review the RFP (attached) the math doesn’t appear correct:

Construction Phase Multiplier Sample Calculations:

- Proposer A = 11.50%
- Proposer B = 14.00%
- Proposer C = 16.50%
 - Average of A, B, C = 14%

$$\text{Proposer A: } \frac{100 - |14 - 11.5|}{100} = 0.975$$

$$\text{Proposer B: } \frac{100 - |14 - 14|}{100} = 1.000$$

$$\text{Proposer C: } \frac{100 - |14 - 16.5|}{100} = 0.975$$

*this is not correct math
the correct answer = 1.0*

Please recognize that there was no math or science in law school (which is precisely why I went to law school) and math isn’t my forte. But I can’t reconcile these issues using basic math and the published formulas. And if I don’t understand the math here, how can I inform the public that the formulas are fair to all involved?

Beyond the scoring, I can't help but harbor concerns about appearances to the Montana Contractors and the taxpayers. It took years to secure the legislative and contracting industry support for alternative contracting. Once it was finally implemented in statute, an out of state contractor (Kiewit) secured not just the first (Trout Creek), but now the proposed second CMGC in Montana – both in my district. I am very familiar with the contracting industry in the western half of the state and the local contractors are now highly skeptical of the value of alternative contracting and the credibility of the alternative contracting process is now at risk. The cost to put together a technical proposal and prepare for interviews is in excess of \$50k to our local contractors. For the Kiewits in the industry, they have the bandwidth to create teams dedicated to submitting CMGC proposals, meaning they are the experts at the proposal stage because that's all they do. In particular, when a technical proposal is weighted higher than the interview, no Montana contractor can compete with a large out of state contractor who has a team dedicated full-time to writing technical proposals across the nation. And if past CMGC experience is given any weight, no Montana contractor can compete with a large out of state contractor because this process is entirely new to our state. So the process is skewed by weighting towards out of state contractors. However, in the building stage, our Montana contractors meet or exceed large out of state contractors in ability. And since this is an alternative process where aspects other than hard bid numbers are considered, the cost savings associated with local contractors and their building ability must be considered.

I cannot state with any degree of confidence that paying the travel expenses for an executive team from Kiewitt to fly into Montana, rent vehicles, dine and stay in motels is a good value for our taxpayers, when local contractors make a day trip and can drive to the meetings. I have spoken of the value to MDT engineers in learning from local contractors how they bid projects. Our MDT engineers are not going to learn from Kiewitt how to create better estimates for projects when the bulk of bid-build projects in Montana are let to Montana contractors. This is especially true since Kiewitt was \$6million over the nearest in-state competitor when it bid the Toston structures job. While I support alternative contracting because of the risk sharing components and valuable education to our MDT staff in learning how the private sector bids projects, the profit margin on CMGC vastly exceeds that associated with bid-build. This is a good trade-off, but only if the contractor selected provides tertiary gains to the taxpayer and MDT.

Finally, the Salmon Lake project is in an wildlife corridor and it is critical that the contractor understand, appreciate and have knowledge of this sacred area of Montana. When local contractors have hunted and fished this area their entire lives, and know the surrounding communities, the taxpayers benefit. So if the technical proposals are weighted higher than the interviews, the taxpayers will never realize the benefit of having users of the wildlife corridor with a vested interest in protecting the area build the project. While I understand that on a go-forward basis MDT will adjust the scoring weight to 50% technical proposal, 50% interview, that adjustment comes too late for this critical habitat area when the weighting was unfairly biased against Montana contractors from the outset.

Upon the foregoing, I cannot support this project being let. Fixing the failures in the process after the fact assumes Montana contractors will trust MDT to make up for the inherent deficiencies in the process when the next CMGC is let. That is a bridge too far. I suggest that if a third unbiased and objective interview or proposal can be added to the Salmon Lake project to account for the discovered inherent deficiencies, it is implemented in order to restore credibility to the alternative contracting process. Otherwise, I support returning to the bid-build process that Commissioner Jergeson continues to champion.

Tammi Fisher, District 1

I received no response to my email from any MDT staff member. So, I assumed that in the next meeting, MDT would respond to my questions at an open meeting as the MDT staff attorney cautioned the Commission that all discussion should occur at public meetings. But in the next meetings my email wasn't discussed, referenced or even brought up by staff. So, then I figured I must need to have it as an agenda item. So, I asked for it to be an agenda item. After a full year of waiting for responses to my questions, the item was placed on the Agenda- as a discussion item (because the Commission can't vote on Alternate Contracting). In preparation for that meeting, I sent the following email:

From: Tammi Fisher <tammifisher1@gmail.com>
Sent: Sunday, June 14, 2020 9:38 AM
To: Ryan, Lori <lryan@mt.gov>
Cc: Greg Jergeson <gjergeson@gmail.com>; Mike Hope <mkwnhope@aol.com>; Noel Sansaver <Sansaver@hotmail.com>; skelgatz@gmail.com; Tooley, Mike <mitooley@mt.gov>
Subject: [EXTERNAL] Re: Commission Meeting - Helena

My husband would like to take me to Vegas next week - can I attend remotely?

Also, I see alternative contracting discussion isn't on the agenda. Could we please place this discussion on the agenda as an agenda item for the next in person commission meeting in Helena so that contractors wishing to participate in the meeting have notice in advance if they plan to attend? I have a series of questions that I'd be happy to send in advance for staff to prepare responses to.

If I can't attend remotely, I will try to fly back to Helena to attend in person. Thx!!
 Tammi

----- Forwarded message -----

From: **Ryan, Lori** <lryan@mt.gov>
 Date: Mon, Jun 15, 2020 at 12:27 PM
 Subject: RE: [EXTERNAL] Re: Commission Meeting - Helena
 To: Tammi Fisher <tammifisher1@gmail.com>
 Cc: Greg Jergeson <gjergeson@gmail.com>, Mike Hope <mkwnhope@aol.com>, Noel Sansaver <Sansaver@hotmail.com>, skelgatz@gmail.com <skelgatz@gmail.com>, Tooley, Mike <mitooley@mt.gov>, Christensen, Kevin <kechristensen@mt.gov>

Hi Tammi,

I updated the meeting notice with a Skype link so you and others if they would like can attend remotely. Alternative contracting in on the agenda and noted in agenda item #12, contractors are welcome to attend and speak during public comment. Thank you

The Chair of the Commission then responded to my inquiry as follows:

----- Forwarded message -----

From: **Barb Skelton** <skelgatz@gmail.com>
 Date: Sun, Jun 14, 2020 at 9:59 AM
 Subject: Re: Commission Meeting - Helena
 To: Tammi Fisher <tammifisher1@gmail.com>
 Cc: Ryan, Lori <lryan@mt.gov>, Greg Jergeson <gjergeson@gmail.com>, Mike Hope <mkwnhope@aol.com>, Noel Sansaver <Sansaver@hotmail.com>, Tooley, Mike <mitooley@mt.gov>
Tammi, I am sure you can attend remotely.....right Lori? And I do think the questions in advance would be very helpful, maybe send them to all of us Commissioners as well so we don't duplicate. Thank you.
 Barb Skelton

I responded to the Chair with "Great! Will do! Thx!" and then sent this email to staff (and commissioners) with my collected questions:

----- Forwarded message -----

From: **Tammi Fisher** <tammifisher1@gmail.com>
 Date: Tue, Jun 23, 2020 at 7:42 PM
 Subject: Alternative Contracting Concerns
 To: Barb Skelton <skelgatz@gmail.com>, Ryan, Lori <lryan@mt.gov>, Kevin <kechristensen@mt.gov>, Tooley, Mike <mitooley@mt.gov>, Greg Jergeson <gjergeson@gmail.com>, Noel Sansaver <Sansaver@hotmail.com>, Mike Hope <mkwnhope@aol.com>

As we have an agenda item to discuss alternate contracting on Thursday, I am providing the concerns that I have in advance of the meeting.

1) Weighting of written proposals vs cost to build.

The scoring/weights given to each part of the Design Build process favors the proposal versus the cost to build (bid). MDT weighs the proposal as 75% of the scoring, and the bid to build at 25%. This is different than surrounding states who have utilized alternate contracting for much longer than Montana. It seems in a state where we have highly limited funding for road projects, that weighting the cost to build higher gives the taxpayer more benefit. The proposal is written by professional writers. The project is built by professional builders. Getting the projects off the ground, and built for a fair and low price strikes me as vastly more important than flowery written proposals. Other states see the wisdom in saving dollars on the build portion of the project:

• UDOT (current & bidding)

- o West Davis Corridor - ~\$500 mil project, 100 max proposal points, price is weighted @ 90%*
- o Porter Rockwell Bridges - ~\$20 mil project, 100 max proposal points, price is weighted @ 85%*
- o Bangerter Three Bridges - ~\$45 mil project, 100 max proposal points, price is weighted @ 80%*

• NVDOT (recent past projects)

- o Project Neon (Las Vegas) - ~\$365 mil project, 100 max proposal points, price is weighted @ 60%*
- o Garnet Interchange (N Vegas) - ~\$58 mil project, 100 max proposal points, price is weighted @ 60%*

• WashDOT (consultant report for DOT)

- o 90% Price and 10% Technical*

Taxpayers don't see the benefit of a flashy proposal. They see a benefit in a built project for a competitive price. I don't see how MDT scoring the technical proposal at 75% and the pricing at 25% meets the taxpayer expectation of focusing every limited dollar on low cost, high quality construction. While I appreciate that Montana Contractors seem to be more competitive in proposal writing with out of state billion dollar contractors who have teams of writers (versus builders) on staff, the weighting used by MDT can have significant consequences. For example, on the Foy's Lake project, the scoring was:

Engineers Estimate: \$16million

Graham: \$21million, Technical Proposal Score: 69.250; Build Score: 75.03

Schellinger: \$18,950,000, Technical Proposal Score: 65.720; Build Score: 74.16

LHC: \$14,700,000 Technical Proposal Score: 71.705; Build Score: 84.75

While LHC scored well both on the Technical Proposal and Build categories, if LHC's Technical Proposal Score was the same as Schelling's, by the weight of the scoring, Graham would have been the successful bidder on the project and yet Graham's build estimate was \$7million higher than the low bid to build. The taxpayers would have, in my opinion, received nothing more than a fancy proposal versus a low bid built product and an unnecessary \$7mil hit to the coffers. Taxpayers want product, not proposals. The weighting doesn't appear to account for the taxpayer need when funding is limited in my opinion (and that of contractors who have contacted me).

2) Virtually no Commission oversight of the highest dollar transportation projects let in Montana. The only involvement by the Commission is to approve a bid to build that is not competitively generated, but sole source generated. The Commission has no say or involvement in ensuring the taxpayer gets the highest value for the money spent as alternate contracting falls outside of Commission jurisdiction. When contractors complain about the process, they have no avenue for oversight involvement. For example, I wrote an email complaining about the disparities in the Salmon Lake CM/GC process and it fell on deaf ears because there is no forum for discussion of the project before the Commission. We have heard from Contractors during the low bid process where their process concerns can be investigated by the Commission. For the alternate procurement process to fall almost entirely outside of the public process seems to fly in the face of open and transparent government. As the "scoring" jury is made up entirely of MDT staff without any oversight of the scoring process, contractors and concerned public are left to appeal MDT staff decisions to the MDT staff. MDT staff acting as judge, jury and executioner in evaluating proposals where scoring is subjective to the scorers versus objective in the low bid process creates a high degree of distrust in the process and too much perceived power by staff. And, while after the Salmon Lake CMGC when the skewed scoring was discovered MDT decided hence forth it would change the CMGC scoring to 50% interview and 50% Technical Proposal versus 30% interview and 70% Technical Proposal, all of the time and effort the contractors put into the Salmon Lake process was all for not. After the fact changes don't give confidence in the process. Had the scoring been fair to begin with, the Trout Creek Project would have gone to Dick Anderson Construction, and Salmon Lake would have gone to Schellinger or LHC. Because the scoring was flawed, the project went to an out of state contractor who knows nothing about the Salmon Lake corridor and who the taxpayers now pay all travel expenses for the multi-year project development and build. I am hard pressed to see how the taxpayers benefit from paying for out of state air travel, time, food, hotels and rental cars when the taxpayers shoulder virtually none of these expenses with an in-state contractor equally qualified to do the job and who would have been awarded the job(s) had the scoring been appropriate at the outset. How much will the scoring oversight(s) by MDT staff cost the taxpayer? And neither the taxpayer or the contractors have any venue of appeal as they do with the low bid process with the Commission. Again - these are the highest dollar projects let in the state of Montana with a subjective scoring tool subject to high variability and no Commission oversight until the project is ready to build. This means up to 3 years of no oversight before the project is sole source bid by the CMGC contractor versus competitive bid by multiple contractors.

My arguments are not based upon a slight towards out of state builders, My concerns are based upon ensuring every taxpayer dollar is spent conservatively for the best product. If all are equally qualified builders, then the taxpayer shouldn't pay a premium for a fancy proposal that is subjectively scored or for out of state travel, time and expenses for an executive team to fly to Montana. Free market pricing competition is completely left out of the alternate procurement process as it is currently designed. I have multiple in-state contractors who have expressed zero desire to be involved in alternate procurement because the form (proposal) is valued higher than the substance (build). And the time, effort and MONEY expended on preparing and proposing these projects is significant and arduous with no ROI. The value in using alternate procurement is supposed to be the innovation and ability for MDT to learn how projects are bid from the private side. It's become clear the benefits achieved (assuming they are achieved) do not exceed the consequences to the taxpayers in a higher cost process, and the much higher profit margin contractors are given on these projects versus the low bid process.

I regret I will not be able to attend the meeting in person. Thank you for considering my concerns.

Tammi Fisher

Director Tooley kindly responded to my email as follows:

----- Forwarded message -----

From: **Tooley, Mike** <mitooley@mt.gov>

Date: Wed, Jun 24, 2020 at 6:39 AM

Subject: RE: [EXTERNAL] Alternative Contracting Concerns

To: Tammi Fisher <tammifisher1@gmail.com>

Thank you for taking the time to send this Tammi.

I am sure it will generate some thoughtful discussion on Thursday and after. Have fun in Vegas, and if we suddenly lose your signal at some point I will understand ha!

The June 25, 2020 Commission meeting begins. I am the only Commissioner not in physical attendance, and have remoted in by my iphone/Skype. I had invited David Smith, the Executive Director of the

Montana Contractors Association, to attend as his members are split (by my perception) on the value of Alternate Contracting. I figured he could listen to the discussion, offer his comments on behalf of the members, and take back to his members a summary of the responses to the concerns I raised as it is his members and some out of state contractors that have contacted me with questions. Everything is going well until we get to the agenda item. And the minutes of the meeting reflect what happened. I was blindsided by the comments made by the MDT staff attorney, and I was flabbergasted that she issued a de facto gag order preventing discussion of the questions relevant to the agenda item I had accumulated over the past year.

After the meeting, I sent this email:

----- Forwarded message -----

From: **Tammi Fisher** <tammifisher1@gmail.com>

Date: Fri, Jun 26, 2020 at 6:54 AM

Subject: June 25, 2020 Transportation Commission Meeting

To: Mike Tooley <mitooley@mt.gov>

Cc: Greg Jergeson <gjergeson@gmail.com>, Noel Sansaver <Sansaver@hotmail.com>, Barb Skelton <skelgatz@gmail.com>, Mike Hope <mkwnhope@aol.com>

Hi Mike:

As you probably guessed, I am quite flabbergasted at the content of our June 25, 2020 meeting with respect to Valerie's (I forget her last name) refusal to allow the questions I sent by email (at the request of the Chair) to be discussed with staff at a public meeting and her baseless attack on my integrity as a member of a quasi-judicial public body. No doubt, Valerie's summation was compelling (while full of conspiracy theories and void of salient facts) and deserves an appropriate response. The irony of the attack is that my husband's employer and my husband would be very upset to know I was asking questions and expressing doubt about alternate contracting as a mechanism for building Montana's infrastructure. My concerns as a Commissioner are fairness among all parties and the protection of tax dollars. That's it.

It's troubling that staff is more concerned about determining who is asking questions than they are with answering the questions posed. It should make absolutely no difference if I created the question myself or if the question came from an inquiry of a member of public or industry. It simply should not matter as the answer should uniformly be the same from a highly competent, credible public agency (MDT). I applied to this Commission because much of my professional life has been working with the construction industry- I even married into it. And since I know your integrity and leadership from our work together in law enforcement, I was excited for the opportunity. I had no idea that my motivations would be the cause of suspicion.

I have also spent a large part of my professional life questioning government in order to obtain a more credible government to assuage both my concerns and those of Montanans. I believe in checks and balances in government and this Commission was developed as a "check" on MDT as a service to Montana taxpayers. I have to say, I have not encountered as much resistance to inquiry from any public agency like I have experienced with MDT. My motivations for asking questions – even assuming a conflict of interest were present (which is preposterous) – don't negate the validity of the question nor the necessity of providing a credible response. (Despite Valerie's legal gymnastics, asking questions replete with supporting data does not create a conflict of interest.) This is especially true when the Chair of the Commission asked me to put into an email my questions in advance of the meeting. So, I follow procedure, and I am then ambushed with defamatory personal attacks and a directive for staff not to discuss the email I was told to send. No one will apply for the job as commissioner if, in response to questions, their integrity is attacked.

To the statement that MDT isn't hearing similar questions from other commissioners: could the same be due to the fact that 3 of the 4 alternate contracts let in the last 18 months have been located in my district? Doesn't this seem to be the logical reason for more inquiry and concern versus some nefarious conspiracy theory? Notably the next project slated for letting is also in my district. I didn't pick the projects; MDT did. So of course it logically follows that alternate contracting is a hot topic item in my district and perhaps the other commissioners aren't receiving the same feedback.

The content of the public attack against me created under the auspices of a "legal concern," creates the impression mud is being cast by those who stand waist-deep in the wallow. Valerie has called me on the telephone in the past to inquire about my recusal from bid award agenda items, yet altered past practice and instead chose this public forum to condemn my character and lodge her "conflict of interest concerns." Her choice of ambush versus a phone call that would have resolved all of her conspiracy theories substantiates this was a targeted attack. To assume I am spoon-fed questions by my husband or his employer and I am simply a patsy for him or his employer is not only patently false, it's sexist. (And the irony of a sexist attack occurring on the same date that Non-discrimination training is also on the agenda is not lost on me.) I have my own accomplishments separate from my husband, thank you. And I don't need my husband's input to formulate my own opinions. I may ask for evidence of any complaints he may have (as I do from anyone with a complaint), but believe me, he is not my only source of information when it comes to infrastructure or the construction industry. I am capable of doing my own research and

reaching out to other industry leaders for data or examples of issues that they raise. The insult associated with the assumption that my husband is the only one that I talk to about industry issues reflects stunning ignorance. How embarrassing it is that I have never experienced sexism in the contracting world but yet I receive it from a female colleague who represents a government agency. Government is supposed to set the standard in non-discriminatory conduct, in fact, it's required to. The discriminatory nature of the attack is further evidenced by the fact that Valerie was unprepared to discuss the TWO statutes relevant to the agenda item. This fact makes clear her focus was on ambushing a woman she believes is incapable of independent thought from her husband and her husband's employer. Advising the Commission on relevant statutes would seem to be part and parcel of a staff attorney's job. It's not like she was asked to review the criminal code; she was asked to speak to the two statutes delineating the requirements associated with CMGC and DB- two statutes an elementary student could decipher. If she had bothered to review those statutes she would find my questions fell squarely in line with statutory requirements. I don't even know Valerie's last name and she knows nothing about me, so her baseless targeted harassment of me is unrelated to my personality or professional defects and strikes more of a 17th century view of women as incapable of a separate identity from their husbands.

Obviously, the behavior must be addressed. If you could obtain answers to the following and provide the information below, I'd greatly appreciate the same:

Please provide all of the emails between MDT staff present at the June 25, 2020 Transportation Commission Meeting from April 1, 2020 to July 1, 2020. If a form is necessary to secure these public records, please forward the same. This question implicitly contains a "do not destroy" admonition for spoliation of evidence purposes.

Please provide a copy of the recording of the June 25, 2020, Transportation Commission meeting from start to finish.

Who provides the authority to research metadata on emails from the public or from a volunteer Commissioner of a public board? Should the public be made aware that if they ask a question of MDT that their email metadata will be searched? I don't care if mine is (I am not sure I even know what "metadata" is), but I think other members of the public would like advanced notice that the content of their emails are subject to search because the source of any questions asked is critically important to MDT. How many other commissioner emails have had a metadata search placed on them? Is the target only me?

If a member of the public wants to remain anonymous in asking me a question I then ask for comment on from MDT- is there no mechanism to do that? Whether the fear is real or feigned, fear of retaliation has been discussed with me (I have always thought the fear was misplaced, but in light of today's attack, perhaps I'm wrong).

If industry personnel is asking me questions I don't have answers to- am I supposed to just ignore them? What if industry personnel isn't satisfied they are getting the straight skinny from MDT – are they barred from asking me to get info on the same question (since the answer should be exactly the same to me as it is to any member of the public)? Is this bar in gathering and providing information limited to industry personnel or the rest of the public too?

For the two emails I sent to the Commission and staff, I asked folks from industry to send examples of their issues. I then cut and pasted those examples into the emails to staff. How does using that info invalidate my questions? Indeed, doesn't having all of the salient information provide for a more robust and comprehensive response? In other words, instead of me saying "I'm hearing complaints about an outlier scorer", isn't it better for me to say "I am concerned about an outlier scorer, for example: xxxx"? Doesn't the second question allow for a specific response versus generalization?

How is the source of questions relevant to providing an answer to questions posed? Is there a requirement that the source of my questions be revealed? Please forward the requirement if it exists. Can't I ask questions provided to me by constituents? Isn't this what we are charged with doing as Commissioners? I have called District Administrator Bob Vosen on many occasions to ask him questions that I received from constituents and he's never asked the source of the question nor did I think that was necessary information to provide. Is asking Bob Vosen questions from constituents without revealing their names now barred behavior because my husband works in the contracting industry? I also collect information from Google – do I need to provide that source information as well?

Please explain my pecuniary benefit from asking questions on an agenda discussion item over which the Commission has no modification ability (i.e., we can't make a motion to do anything with alternate contracting)? Can I now not ask questions about projects that my husband's firm may or may not bid? For example, if I see West Reserve in the Red Book, and I say "I think that should be a priority project, why isn't it?", can staff just ignore my question because of who I am married to and the fact that the company he currently works for might bid the project?

Why can my questions, asked in an email in advance of a Commission meeting AT THE REQUEST OF THE CHAIR OF THE COMMISSION, not be discussed when the agenda item is reached by the Commission? How are the questions rendered invalid for perceived "ulterior motives" in the asking?

How are my husband's emails to MDT staff (which I don't read and don't have access to) relevant to my questions? And if I happen to have the same concern that my husband has expressed, is my concern then invalid? Can I not have an identity separate from my husband? Or am I considered his chattel?

One of your staff was overheard to state before the meeting, "We are going to put this Commissioner in her place" – can you please investigate and confirm whether the statement was made by a member of your staff attending the meeting, and if so, what "place" would that staff member like me to be in? I also overheard Lori say after the meeting "well if [Tammi] would have just told us who was asking the questions that would have been different". Can you find out how things would have been different if MDT knew that I generated my own concerns, and I also passed on the concerns I have heard from both in-state and out of state contractors and members of the public?

I ask questions to generate discussion over a topic that is important to taxpayers. I think CMGC and DB are too much of a slush fund for private industry with limited objective controls. But that's just my opinion and I guarantee those contractors (including my husband) who have secured these projects do not in any way agree with me. I had hoped to be persuaded by MDT of the ignorance of my opinion via an open and transparent public discussion. I asked David Smith from the MCA to attend so that all questions could be answered in an open, transparent manner. And instead of discussing the concerns I raised and Commissioner Jergeson raised, we were informed that my concerns lack merit because I am merely a shell for my husband and his employer. To add insult to injury, my assumed lack of independent thought was coupled with a tortured conspiracy theory about pecuniary gain developed via a complete lack of investigation or a simple phone inquiry.

No doubt, some of your staff would prefer I resign and stop asking questions. That sounds like an easy resolution, but it doesn't help Montana. I was asked to "do good things for Montana" by the Governor and I intend to keep that commitment. That commitment means asking questions, lots of questions, and living by the "trust but verify" credo that has always served me and Montana well. MDT seems to not understand that professional responses to questions from anyone at any time actually builds their credibility as a fair and professional organization.

I am open to hearing any possible resolution to the now-imbedded-in-public record baseless attack on me. But a blatant sexist attack against a volunteer servant of Montana taxpayers requires a response by MDT. Especially when the attack was generated in response to questions I was asked to present in an email.

Thanks, Mike. Neither you nor I could have predicted we would ever encounter a situation such as this. Have a good weekend.

*Tammi Fisher
Transportation Commissioner, District 1*

Director Tooley responded with the following:

----- Forwarded message -----

From: **Tooley, Mike** <mitooley@mt.gov>

Date: Mon, Jun 29, 2020 at 7:51 AM

Subject: RE: [EXTERNAL] June 25, 2020 Transportation Commission Meeting

To: Tammi Fisher <tammifisher1@gmail.com>

Cc: Greg Jergeson <gjergeson@gmail.com>, Noel Sansaver <Sansaver@hotmail.com>, Barb Skelton <skelgatz@gmail.com>, Mike Hope <mkwnhope@aol.com>

Commissioner Fisher,

Good morning and thank you for the email.

As you have requested I will ask for the emails to be gathered and held for that period of time regarding this subject. Release of those to you may require our standard information request form and I will make sure that you have one.

We will secure the recording and supply a copy to you. That is a public record much simpler to secure than the emails.

You have asked several other questions. Some of which I can answer and others I will require staff input. I will share appropriate questions with appropriate staff and hopefully get back with you within five working days.

I appreciate your willingness to remain on the commission. My desire was and remains an engaged commission which we clearly have and you are an important part of it.

Thank you again, and I hope you had a better weekend.

Mike

Kevin Christensen, COO also contacted me and we had a very fruitful discussion. He was kind, professional and expressed regret for the manner in which the staff's questions about my motivations in asserting my opinions/questions were handled. I also expressed my regret that he did not understand where the content and the tone of my emailed questions came from. It was clear we both had misconceptions. Mr. Christensen was forthright, transparent and highly professional in our discussion.

Mr. Christensen then responded very professionally to the questions I asked in the email I sent prior to the June 25, 2020 meeting.

I have no objection to anyone at anytime questioning whether conflicts of interests are present with any commissioner or any other public servant. Indeed, I welcome the same. But the process used to address perceptions of conflict of interest in the June 25, 2020 meeting cannot stand or be repeated. The manner in which perceived conflicts are identified, investigated, and resolved must comply with Montana law. The Commission does not have a policy that addresses these issues, but Montana has codified the process at Title 2, Chapter 2, Part 1. The process deployed by the MDT staff attorney on June 25, 2020, is not found within Montana law. Indeed, at no time did Ms. Wilson identify which conflict of interest delineated in Montana law was violated. Likely, because no conflict existed. Additionally, the gag order restricting discussion of my emailed questions is not authorized by Montana law. In sum, the method utilized by the MDT staff attorney to address a perceived conflict of interest was inappropriate, not found within Montana law, and resulted in a diversion from Commission business at this meeting to ensure correction of the June 25, 2020 public record occurred. I am grateful to the Chair of the Commission that she has agreed to work with me and with staff to develop a policy -consistent with Montana law- on raising, investigating and resolving conflict of interest issues that arise with the Transportation Commission. A policy that ensures transparency, that is respectful of both staff concerns and Commissioner concerns, and prevents a scenario like that which occurred on June 25 from ever happening again.

I appreciate Director Tooley's and Mr. Christensen's professionalism in addressing this issue, and the Chair's grace in allowing me to fully clear the public record in a manner that is meaningful and transparent.

Respectfully submitted,
Tammi Fisher
Transportation Commissioner, District 1