

# Montana Transportation Commission

**December 17, 2020 Meeting  
Commission Room  
2701 Prospect Avenue  
Helena, Montana**

## **IN ATTENDANCE**

Barb Skelton, Transportation Commission Chair  
Greg Jergeson, Transportation Commissioner  
Noel Sansaver, Transportation Commissioner  
Mike Hope, Transportation Commissioner  
Tammi Fisher, Transportation Commissioner  
Mike Tooley, Director MDT  
Pat Wise, Deputy Director MDT  
Kevin Christensen, MDT  
Dwane Kailey, MDT Engineering  
Lori Ryan, Commission Secretary  
Dustin Rouse, MDT  
Jake Goettle, MDT  
Val Wilson, MDT  
Lynn Zanto, MDT  
Darin Reynolds, MDT  
Jim Wingerter, MDT  
Shane Minta, MDT  
Brandon Graff, MDT  
Lucia Olivera, FHWA  
David Smith, Montana Contractors Association  
Leslie Feigal, Livingston Chamber

*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](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](mailto: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.

## **Approval of Minutes**

The minutes for the Commission Meetings of October 22, 2020 and November 2, 2020 were presented for approval.

Commissioner Jergeson moved to approve the minutes for the Commission Meetings of October 22, 2020 and November 2, 2020. Commissioner Fisher seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

## **Agenda Item 1: Billings District Project US 191 Slide Repairs Mobridge - Billings**

Lynn Zanto presented the Billings District Projects – US 191 Slide Repairs – Mobridge, Billings to the Commission. The National Highway System (NH) Program finances highway projects to rehabilitate, restore, resurface, and reconstruct Non-Interstate routes on the National Highway System. Montana's Transportation Commission allocates NH funds to MDT Districts based on system performance.

In response to emerging operational and safety needs, the Billings District is proposing a slide repair project on US-191 (N-61) near Mobridge. The project scope will include slope stabilization, drainage improvements and restoration work to mitigate future damage to the roadway.

The estimated total cost for all project phases is \$19.4 million (\$16.8M federal + \$2.6M state) – with the entirety of the federal funding originating from the National Highway System (NH) Program.

*Summary:* The Billings District is requesting Commission approval to add a slide repair project to the National Highway System (NH) 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 \$19.4 million (\$16.8M federal + \$2.6M state) – with the entirety of the federal funding originating from the National Highway System (NH) Program.

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

Commissioner Skelton asked if the project would be done in phases. Lynn Zanto said yes. If you add this project to the program today, we will then get Federal Highway programming approval and incorporate it into our Statewide Improvement Plan. The very first thing we will request is programming of the design phase. Once we get far enough along in design, we will then move into the other phases as needed. Right-of-way, incidental construction, and general construction which will be programmed individually by Federal Highways. Commissioner Skelton said I know this piece of highway and it's a mess, she asked when the repairs would be started. Lynn Zanto said it is up to the Engineering Division because it's a pretty big project. Duane Kailey said we are targeting the 2024-25 time range. We won't know until we get it programmed and then get a schedule built for it and get it into the TCP. We'll know more and be able to answer that question at our TCP meeting in October.

Commissioner Jergeson said about the time I came on the Commission, weren't we finishing up the project in this same exact area. Has that failed already so we need this project only eight years after that one had been done? Duane Kailey said I'll give you a little bit of history. When I first started with MDT I was in the Billings District doing road design and we actually looked at a project in this area but the Geo Technical Engineer said there was no reason to ever build a road in this area. His recommendation at the time was to build a bridge from the top of the hill across the river to the other side of the hill because the soil is incredibly difficult to stabilize. However, we did bring in a nationally known Geo Technical Engineer to do a study in the area. You are correct we have had projects throughout my entire career in this corridor. We are hoping that by bringing in that nationally known Geo Technical Engineering firm that we have some fixes that will be more long term. Yes, we've done work out there very recently and we're hoping that these new repairs will be more long lasting than what we've seen in the past.

Commissioner Jergeson said if this project is coming in 2024-25, frequently when we approve a project it may be up to ten years before it actually gets brought in. The magnitude of this project means it could force us to push back or not move other projects forward on our National Highway System in that particular district. Is that correct? Lynn Zanto said that will be looked at through the project

development. Our intent would not be to move other projects back. They will consider other projects, the funding available, and then bring it into the TCP where it fits. Our intent is not to bump other projects that are already scheduled. I think it was suggested back in the 1930's when the highway was first considered, that Senator Robinson from Malta decided the highway was going through that corridor that it was a really bad idea and it would never hold up.

Commissioner Sansaver moved to approve the Billings District Projects – US 191 Slide Repairs – Mobridge, Billings. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

## **Agenda Item 2: Speed Limit Recommendation MT 16 – Glendive North**

Dwane Kailey presented the Speed Limit Recommendation, MT 16 – Glendive North to the Commission. We've had some development in the area and based on that Dawson County asked us to do a speed study. We've conducted the speed study and based on the additional development, mainly a Town Pump and another business, we are recommending to extend the 40 mph speed limit. Staff's recommendation is:

A 40 mph speed limit beginning straight-line station 18+00 (800' south of EB I-94 ramps) and continuing north to straight-line station 41+50 (900' north of WB I-94 ramps), an approximate distance of 2,350 feet.

We have letters of concurrence from both Dawson County and Montana Highway Patrol. Staff recommends the reduced speed.

Commissioner Sansaver moved to approve the Speed Limit Recommendation for MT 16 – Glendive North. Commissioner Fisher seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

## **Agenda Item 3: Speed Limit Recommendation MT Secondary 269 – Eastside Highway**

Dwane Kailey the Speed Limit Recommendation, MT Secondary 269 – Eastside Highway to the Commission. This is just south of Stevensville. The recommendation to look at it is based on additional growth and development in the area. As you are all aware Western Montana is definitely growing quite a bit. We've investigated the situation, looked at the roadside culture, the traveling speeds, etc. and staff is recommending the following:

A 55 mph speed limit beginning at straight-line station 277+00 (mp 17.1-400' south of Higgins Lane) and continuing north to station 320+00, an approximate distance of 4,300 feet or 0.81-mile.

A 45 mph speed limit beginning at straight-line station 320+00 (1,100 feet south of Beaver Lane) and continuing north to straight-line station 392+50 (300 feet south of the intersection with Middle Burnt Fork Road, an approximate distance of 7,250 feet or 1.37-miles.

We have presented this to Ravalli County and they concur with our recommendation. Therefore staff recommends approval.

Commissioner Fisher said I see Ravalli County is asking for two other things that weren't in their initial request. Do you still need to evaluate the additional request? Duane said they asked for additional speed limits but under state law we have to investigate and then present the Commission with our recommendation.

Commissioner Skelton asked about the two other things requested. Commissioner Fisher said it was in the Ravalli County letter concurring with MDT. They put three prongs in there and the last two haven't been evaluated by MDT because they weren't in the initial request.

Commissioner Fisher moved to approve the Speed Limit Recommendation, MT 269 – Eastside Highway. Commissioner Sansaver seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

#### **Agenda Item 4: Speed Limit Recommendation Park Avenue (U5805) – Helena**

Dwane Kailey presented the Speed Limit Recommendation, Park Avenue (U5805) – Helena to the Commission. This is between the intersections of Broadway and Cruse Avenue. The City of Helena has requested that we reduce the existing 35 mph special speed limit to 25 mph. We have conducted our investigation and based on our review we are in concurrence. However, because 25 mph is actually the statutory limit and 30 mph was a special approved speed limit, we actually have to modify the 30 mph speed limit and allow the segment to go back to statutory. So what I'm presenting to you is a modification to the 35 mph speed zone that will allow it to be reduced to 25 mph. With that, staff's recommendation is:

A 30 mph speed limit beginning at straight-line station 37+00 (500' south of Reeders Village Dr.) and continuing south to station 62+00, an approximate distance of 2,500 feet.

Again, that allows for the segment they are asking for between Cruse and Broadway to fall back to the statutory limit of 25 mph. We've presented that to the City of Helena and their letter of concurrence is attached.

Commissioner Jergeson moved to approve the Speed Limit Recommendation, Park Avenue (U5805) – Helena. Commissioner Sansaver seconded the motion. All Commissioners voted aye.

The motion passed.

#### **Agenda Item 5: Certificates of Completion September & October 2020**

Dwane Kailey presented the Certificates of Completion for September & October, 2020, to the Commission. We are presenting them for your review and approval. If you have any questions or comments, please feel free to ask. Staff recommends approval.

Commissioner Fisher asked if there was a statute or rule that says we approved Certificates of Completion or are Certificates of Completion considered to fall within our bid approval authority? Duane Kailey said it is the conclusion of the contract which you approved and therefore it is the final acceptance of the contract and its completion. Val Wilson from Legal said I'm comfortable with that answer as well. You are absolutely on point, the Certificate of Completion is the completion of the contract that was let and awarded. It is also the final stage of the project that starts the timeframes for some different remedies between the contractor and the agency.

Commissioner Sansaver asked if this was more of an acceptance by the Commission than anything else. Do we need to have an official motion or is it just information from staff. Duane Kailey said it does require a motion to accept final acceptance of the projects as listed.

Commissioner Sansaver moved to approve the Certificates of Completion for September & October, 2020. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item 6: Directors Discussion & Follow-up**

Director Tooley said there were an additional two items added to the Agenda last week and you've received information on them. The first was Quartz Flats Rest Area. The second is Jim Posewitz Roadway Dedication which we can do first and then move back to Quartz Flats.

#### *Jim Posewitz – Roadway Dedication*

Two bodies have authority to establish memorial roadways in the state. One of them is the State Legislature and the other is the Transportation Commission. We've recently been approached by members of the Hunting Wildlife Conservation community to memorialize Jim Posewitz. He had a long-term impact on preservation of stream flows and wildlife in the State of Montana and probably had an impact on anybody who hunts and fishes in the West through a number of books he wrote. Jim passed away in July. Besides having an impact on the preservation of wildlife and water quality, he had many comments on the completion of I-15 between Helena and Butte. He preferred that the route actually go through Whitehall but the engineering folks determined that was not the route it was going to go. With that being said, he worked to make sure that water quality was maintained during that work and now the Interstate goes from Helena to Butte. So the preferred option to memorialize him by that community is to memorialize I-15 between Helena and Butte. You have the information in front of you and I submit it to the Commission for your consideration and approval.

Commissioner Skelton said I knew Jim personally and I have to say he had an opinion on most anything besides the roadway. He was a fabulous advocate for hunting, fishing, streams and a lot of issues in the State of Montana. I think this is an honor that should be bestowed upon him. Commissioner Jergeson said I also knew him. In fact he and I were both co-authors along with Dorothy Bradley, Bob Brown and a list of people that just completed a book with a series of essays from each of us about the change in Montana with the advent of the new constitution. Actually that roadway was part of the discussion. Dorothy Bradley also championed the notion of taking the interstate down to Whitehall but the boys from Butte insisted on and put on a lot of political pressure to have the Interstate go up the gulch over to Butte so that transportation would be a hub at Butte. When the group of us who worked on the book were mourning the loss of Jim this summer, our notion was that there be something in the infrastructure of Montana that would be designated and named for Jim Posewitz. So I would make the motion to approve this designation.

Commissioner Jergeson moved to approve the Roadway Dedication for Jim Posewitz. Commissioner Fisher seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

*Quartz Flats Rest Area – Design Build*

Director Tooley said we had quite a discussion on design build and the awarding of this contract on our conference call and we need to discuss this again. Staff recommendation is still that the project be awarded as recommended and the stipends be awarded as recommended. We know there needs to be some further discussion before that actually occurs. So I will turn this over to Kevin Christensen for comments and then let the Commission proceed as they will. Kevin Christensen said I'm going to kick it over Jake Goettle who has all the information we need to hear this morning. Jake Goettle said I apologize for missing the conference call on this project. I had the honor of meeting with the Governor regarding a Governor's Award which was quite an experience.

This is presenting the Quartz Flats Rest Area. Rather than re-presenting the staff letter I'm going to jump into Commissioner Fisher's questions. He thanked Commissioner Fisher for sending the questions in advance. It was very helpful and gave us a chance to talk with the alternative contracting folks and get you and the Commission a good answer.

*Question:* Commissioner Fisher asked why this was a Design Build project versus low bid. What makes this project unique?

*Answer:* Our rest area projects and program – years ago we really understood that rest area projects are vertical construction versus our normal transportation linear projects. They are unique in that way. One main key is MDT doesn't have an architect on staff so we can't actually design the buildings in house so we have to go out to a consultant anyway. To add to that, our construction crews are used to linear projects and are not used to building buildings. With design build we can put a little bit more of that risk and quality control onto the design-build firm and require them to take a higher level of control. It is a good fit and is unique in that way – we can't design it and our crews aren't used to inspecting those projects.

*Question:* Commissioner Fisher asked did the proposers need to higher special staff in order to put together a proposal.

*Answer:* Yes, especially with a rest area project that is quite unique. There are several key staff that we ask for in the proposal so we can review their qualifications. Those are the Civil Engineer, Structural Mechanical Electrical, Water and Waste Water Engineer, Architect, and obviously due to the foundation requirements a Geo Tech Engineer as well. Then various others environmental specialist, traffic control plan, and obviously the Contractor as part of that team and many of their key subs which are critical as well.

*Question:* Commissioner Fisher asked how MDT determines \$100,000 stipend is the suggested appropriate amount.

*Answer:* Good question and this is the question that garnered the most conversation from the conference call. Again, for the rest area projects it requires a lot of personnel and a lot of key players that aren't normal on our projects. We did do an internal estimate on the number of hours it would take to get through the Statement of Qualifications and Technical Proposal. They do give us about a 60% plans package in their proposal. For reference I did grab a Technical Proposal on an older project and as you can see it is quite substantial. It contains a full set of plans as well as the schedule – they are big and there's a lot to them. When we did it internally we estimated around \$270,000 for the level of effort to put that proposal together. Keep in mind that doesn't count the Statement of Qualifications and the Contractor's time to bid it. We have a set value or percent that we try to follow. We're generally around one percent of the overall cost of the construction project and we estimated this project around \$10 million and bids came in a little bit less. That's how we set

that \$100,000 stipend at about one percent of the project cost. We have increased that through the years based on input from the industry. The substantial effort to put that proposal together and our stipends cover maybe one third of the cost of proposing. With our small contingent of design build firms in the state, we have been trying through the years to entice more competition and a little bit higher stipend has increased that competition. The risk of losing these projects and the risk of losing that amount of money has kept some of them from competing on these projects.

*Question:* Commissioner Sansaver asked if our budget withstands that additional \$100,000. When you put these projects together, do you estimate a certain amount of contractors possibly bidding the projects and the dollar amount at \$100,000 per contractor?

*Answer:* We do. We put the stipend amount and we generally estimate that we will short list three firms which is normal. We can short list between three and five firms but most of the time it's three. So we usually estimate two or three stipend payments and only the two unsuccessful firms get the stipend.

*Question:* Commissioner Fisher said I assume that the stipends, if they are granted, are added to the total cost of the project. When the project is finally complete and everything is done, the public is aware of the actual total cost of the project with respect to taxpayer dollars expended toward the project?

*Answer:* Yes, I believe the stipend payments are captured in our CE cost that we include in our final project cost.

*Question:* Commissioner Fisher asked if all our rest areas were done through the design build process.

*Answer:* Most of them are done through the Design Build Program and most of the new construction for rest areas are design build. There are some rehabs, in fact you just awarded Denamora Rehab Project which was design-bid-build because it was just that piece of the project. When they are the entire project and the entire rest area and site and waste water system, they are much more complex and there's a lot to them as you can imagine. Most of those have gone design build for the last ten years.

*Question:* Commissioner Fisher said if they didn't do these in the past because you didn't have an Architect or Waste Water Engineer or Electrical Engineer on staff before design build was available to you, would MDT have to hire an Architect to help you design the project for contractors to bid through the low bid process?

*Answer:* There are two ways to do that, we could go through Consultant Design and have a consulting team do that for us and they could bring an Architect on board and design it there. In the past we may have gone through the Department of Administration's Architect and Engineering process to build some the old rest areas years ago.

*Question:* Commissioner Jergeson asked if the engineer's estimate that is opened at the same time you open the dollar bids from these three contractors, was on the magnitude of \$10 million.

*Answer:* Yes it was \$10,027,989.

*Question:* Commissioner Jergeson said as you know I try to go back and compare the engineer's estimate with previous estimates from MDT. When I looked at STIP 2019-2023, the estimated phase cost for this project is \$4,800,000. How from June of this year to now did the estimate of our own engineers change much, what occurred to cause that estimate to go up by the magnitude of \$6 million?

Answer: Historically our rest area costs have been a little lower but not that low. I'm surprised it was in the \$4 million range in the original estimate. We've been estimating through the years maybe \$3-4 million per building. If it's a double site like Quartz Flats, it would be double that. This site has a lot more complexity to it and there is a campground next to it, there's Forest Service property, the waste water system on this project is much more complex and costly because of the proximity to the river, and there are some challenging soils in the area that made this waste water system fairly highly advanced. This one is in the area of Denamora and you are aware of all the challenges we've had with waste water at Denamora. This one should fix that in a similar type of location. I know that contributed to the cost. Our estimate was \$10 million and the bid came in at \$8.8 million. So we were a little high

Commissioner Jergeson said that was from June of 2020 and I can't find that document in my stack but maybe that number would be higher as you've done more work on this project.

*Question:* Commissioner Jergeson said I have another question and it's not based so much on the specifics of this project, but it's based on my "skittishness" of design build and alternative contracting because of my devotion to low bid contracting. In a low bid scenario, all the contractors are given the same project description and design and they all start working from the same playing field. When finally their bids are submitted in secret and are finally opened on a specific date, it's clearly an objective decision that the low bidder gets the project. So these companies all shoulder the same risk that if they bid too high they don't get the project and they don't keep their equipment and employees employed and if they bid too low they could lose money on a project. It's all pretty straight forward. On this one we have this review process that can account for up to 75% of the total points. Are the contractors given the score sheets as to how the scoring teams evaluate the contractors who submitted proposals? Do our contractors get to see what it was so in case they had questions or wanted to appeal to the Commission, is there any process for them to see how they were scored and what it was that caused their score to be what it was versus what the other contractor's score was?

Answer: There is a process for a protest; a contractor can protest. We don't release the scores or the individual scoring sheets other than showing the total Technical Proposal score if the bid prices are responsive. We review the bid prices just like we do with design-bid-build. If they are responsive, then we show them the Technical Proposal score, we show them their bid, we insert their bid. They don't see that proposal score at all until the moment the public can open those bids, and then we insert it into the calculation and it shows us the best value. There is a protest process if they think there is an issue with the award. We have a written process for that. Once the Commission approves the award, then we do open them up and immediately the firms are allowed to debrief. We debrief on every project and we encourage every firm to debrief with us. We go through every score sheet, we give them all the comments, we give them all the scores and we provide anything they want to see. We try to hold the reviewers names out of it; the individuals who reviewed the proposals and scored them are kept private if we can. However, if they want to know, we'll tell them but we'd rather not. At that point it's already been awarded. The protest could continue but it's been awarded by the Commission at that point.

*Question:* Commissioner Jergeson said they have to protest without having the information available to them as to how many points they were awarded for the timeliness of the date when they are going to do a project by and without knowing what the evaluation was for what they set their schedule of work was, which is one of the criteria that is listed in law. After we approve the signing of a contract with a company, then they get the information? I don't understand. They wouldn't have a



basis to protest until they get the information to see whether or not they had been scored appropriately.

*Answer:* Kevin Christensen said leading up to the award it is paramount that we don't want the contractors to know their Technical Proposal scores prior to them submitting their bid because they could obviously adjust their bid to give themselves an advantage. They are all aware of our process, they are all aware of the formula we use to award the project so once the project is awarded, then we open up the books to everybody. They can look at everything. They can look at how we scored each individual proposal and they are allowed to look at the other proposals. So it is an open book. Throughout the history of design-build I believe we've only had one protest because everyone is on the same playing field and they know the rules. If the job is awarded and they protest, that can lead to a change in who we award the project to. Again I will say in the history of this program we've only had one protest and it wasn't really valid.

*Question:* Commissioner Jergeson said well I don't know. I still struggle with it because without having the information as to what their scores were, even just for themselves devoid of what scores were given to the competitors, they wouldn't have a technical basis to argue a protest. It's only after everything is signed, sealed and delivered that they get to see the score sheets. That might be instructive for what they might chose to do on future projects but that doesn't give them the option to question how they've been evaluated and tested. Part of my whole skepticism about this is you can tell in low bid contracts because it is right there in front of your face that this was the low bidder. In this, these companies can't know whether they are being evaluated fairly. I'm skeptical of it. I can see reasons for doing this when you have something that you have to get done immediately like a landslide and time is of the essence. I just struggle with it.

*Answer:* Kevin Christensen said all I can say is the firms always have the opportunity to protest; they are always provided at some point in this process all of the documents, all the score sheets, all the proposals. Transparency is paramount in the design-build process. We debrief all the firms; they all take advantage of it on every project if they don't get the job. For example, Jackson Contracting Group is going to come into Helena and look at the score sheets and how we scored each firm and they will be able to look at the other proposals. I'm not sure how that's unfair.

*Answer:* Jake Goettle said Commissioner Jergeson I understand where you're coming from and I appreciate what you're saying and what you're questioning. When we first started design-build 15 years ago, we had the same skepticism as did our industry, the consulting community and the contracting community especially. Through the years by continually getting proposals and having teams step in and propose on these projects, I think proves the process works for them. Yes we have challenges and we've certainly had some issues in the past but teams continue to propose so I think they believe it is fair. Our RFPs are very clear on what we're going to score and how we're going to score it. If they follow that closely, they know that if we follow that it is going to be fair to them. I've been doing the design-build program for a lot of years, early on we had the same skepticism about whether it was going to work – are teams going to understand the subjectivity of these reviews. But because they continue to propose, this program has grown and has improved through the years. I think they do trust it and I think it is fair. If it wasn't it would have gone away a long time ago.

*Question:* Commissioner Hope said I have a question for the department. What do you feel are the benefits of the design-build to the taxpayer that funds these projects?

*Answer:* Jake Goettle said there are quite a few benefits to the taxpayer. The most glaring benefit it the speed of delivery. We all know the longer it takes to design and get a project out on the ground, the higher inflation goes and the road user costs

increase. Design-build is very fast, we award the project and the money is basically obligated and then the design-build team goes very quickly getting the design complete and the project constructed. Usually we'll see a year to two or three years' faster delivery to the taxpayer depending on the project. So the project is complete that much faster. We see a lot of innovation from our teams much like our CMGC process having the whole team on the project versus just the department or just a consultant designing the project. You've got the contractor and the subs contributing to the design and contributing to give the taxpayer the best project we can for the amount of money. That really comes in the proposal because when we review those proposals we can see their innovation, their collaboration of that team, the expertise in each of those fields that gets to contribute to that design and contribute to that schedule. I truly believe the best value is a huge benefit to the taxpayer with these alternative contracting delivery methods. I know low bid works on the majority of our projects and I'll always believe that, but best value award on the right project gives the taxpayer a better end product and a better project in the end.

*Question:* Commissioner Hope said when you go through design-build, what are some specific areas within that design team that you're able to catch things through that process that you might not catch through the low bid. You talked about the importance of the team working together, for instance, on a building I just built we did everything in that process – we bring the team and put them together, we saved ourselves a lot of mistakes with the HVAC system within that building that we caught because of the design-build process that we wouldn't have caught until we were in the field which would have created a change order which would have been a major cost for us. Commissioner Skelton said this process almost makes it like a check and balance with the team working together like you just said. Would that be correct Jake?

Answer: Jake Goettle said exactly.

Commissioner Fisher said I think the way Jake answered my questions is precisely what I was looking for. That is very helpful and it is helpful for me to see any documents that support the stipend before the meeting or in advance of the meeting so I can look over them and make sure I feel comfortable with where it. The Legislature has said this is a valid process and they support going through with it. I think it does make sense when we don't have an architect on staff and some of the other specialty engineers for those kind of complicated process. I take issue with the way the statutes are written because the department has all of the authority and I don't have a problem with that either but at the end the Commission is just basically supposed to rubber stamp the department's evaluation of everything. Then I think the Commission should be out of it because we're not looking at the proposals, the department is and they are making those decisions and that is what the statute requires. So it comes to us just based on the written recommendation of MDT, so we're not really even evaluating the materials or the project. I just have a problem with the way the statute is written.

I don't have any problem with this project; I think it complies with all of the terms of the statute with respect to how it is supposed to be reviewed by the department and that is the department's role and authority through the statute but then it comes to the Commission after the department has made all of the determinations and we're not a part of that. That's okay, it's just I don't think that should be what we do because then we're just rubber stamping it and that is not true oversight. Then when the statute says that we determine the amount of the stipend, I think that's weird. So my objection to all of it is just how the statute is written because I think it's goofy to have us not involved in selecting the projects for design-build and have us not involved in any of the stuff up front and then say at the end that the Commission determines what the stipend should be when I don't know how much it actually costs the contractor and then we're supposed to say it should be \$100,000 and that's reasonable based on what MDT has worked up the project as. I think it's unfair to

MDT and it's unfair to the Commission. That is not the fault of MDT or the Commission, it's just how the statute is written.

Commissioner Sansaver said this whole thing has kind of befuddling to me. We have approved design-build, we've gone through somewhat of a training last year on the difference between design-build and the standard bidding system. Is this something that we're aware of – that we're doing a design build when we do the TPC or is it just something that the department plans? Are you just flashing this on us at the last second that we're doing a design-build? I can see where Commissioner Fisher is coming from with the statutes and I can also see where Commissioner Jergeson is coming from. I think we've been through this before. We've done some design-builds. Why are we just suddenly asking all these technical questions on this particular project? I certainly see the absolute positive side of doing design-build because I've done them as well as Commissioner Hope has done them. It is the checks and balances and you're capable of saving money before problems occur. I'm just not understanding why we're talking about it. Are we just talking about the technical scores and how we balance this out? Is that the issue here? Is the \$100,000 the issue here? So what is it – the technical scoring of it, is that our problem or is the \$100,000 or is it both?

Commissioner Fisher said I think it is a different issue for different Commissioners. For me I have to tell you I hadn't looked at the statutes before two months ago. I created a compendium of all the statutes and rules and policies of MDT that I could find in Montana law. I should have done that long ago and I just hadn't done it. When I started looking at the statutes and what is required of the Commission, I just want to make sure we're complying with the statutes as written. That's why there were a series of questions from me with respect to this particular project because I want to make sure all of the components of the statute are complied with and that we're meeting our obligation as a Commission that is set forth in the statutes no more/no less. Commissioner Jergeson might have a different reason why this is a topic of discussion.

Commissioner Skelton asked if the Commissioners were comfortable that all of our obligations to the statutes have been met. Commissioner Fisher said yes. Commissioner Jergeson said we've approved design-build project in the past that the department has brought to us with a recommendation. When the law says they are making a recommendation that means the Commission in my opinion, has the authority to either accept the recommendation or deny the recommendation. Unlike the CMGC where once we've approved a project that might be 20 years out there because the department decides when it's going to be one of those. Apparently the department when these kind of projects are going to be designated and we're not asked to say okay this is the nature of this kind of project and why it really needs to be done as design-build as compared to the old tried and true method by which we've operated pretty well for a lot of years. Commissioner Shultz and I, at our orientation raised questions about design-build and how we could be assured the integrity of the process is maintained in that subjective part of the process. Quite frankly neither one of us were terribly assured by what we heard and interestingly apparently now the Commission doesn't have any say in approving that contract, it's done simply because the department took a project that we decided years ago and they are going to set it up and we don't get that say. I'm an enormous skeptic of this and I don't mean that as an insult to anybody's integrity or good faith, it's just that I'm a skeptic of how we as a Commission can assure the Legislature and the public that everything was absolutely correct and as a consequence I will not vote for this project because the scoring on the subjective part and the scores on the price bid are at odds.

Duane Kailey said first off Commissioner Fisher made great points. My apologies because we get so busy at times we don't always get time to look at the statutes. To be totally honest, I like it when you ask those questions because it does force us to go back and look at the statutes. Based on that, we are going to make a change. The

statute does say that the Commission will approve the stipend, so we are changing our process. We will be bringing the stipend to you ahead of the bidding so that you can approve it in accordance with the statute. So thank you. Commissioner Fisher said that was very helpful.

Duane Kailey said we have a fairly significant committee that looks at these and they do have very robust discussions on them plus there's an oversight committee as well which Jake and I and the District Administrator are on. I will tell you that we quiz the heck out of the committee members on their scores and their values. By no means is it just rubber stamped. We question the heck out of them and they question themselves. Many times those committees have gone late because they are discussing quite vehemently their scores and the values. So it is a very robust discussion and it is a very tough discussion many times. Lastly, I heard a couple of the Commissioners bring up that you don't know that these are design-build or CMGC. I believe we were tagging them in the TCP as design-build or CMGC but I looked back and I don't see that. If the Commission would like we would be more than happy to designate these so that either through the TCP process or through some other process, you're aware that these projects are an alternative contracting project. Commissioner Skelton said that would be helpful.

Lucia Olivera from FHWA said the Federal Highway Administration has really been promoting this alternative contracting process because it is proven to yield better results and better projects. More and more states are finding this out as the time goes by and we provide a lot of technical assistance and support to the states when they want to implement them. I think the key is to set the needs, the expectations, and have those conversations early in the process and in advance with all involved players. Yesterday I participated in a workshop that MDT put on for contractors on CMGC where they clearly outlined the expectations and they are really interested in getting improved bids for these projects. They really do work and it's not something that we take lightly when we promote these kinds of innovations.

Commissioner Sansaver said it would be very helpful and I totally understand Commissioner Jergeson's point. First, it would be very helpful if we did know in advance that it was going to be a design-build and secondly for the Commission to better understand the technical aspects of the point system. That seems to be an issue where a contractor who has the low bid but he doesn't rank as high as the contractor who was awarded the bid. From my perspective, it would be interesting to see on the technical aspects how the points are awarded. The bid price obviously speaks for itself but the technical side of it is a little bit muddled as far as what I understand. Maybe at some point in time in the near future when we're able to get together face-to-face we can go through that process with the engineers. Commissioner Skelton asked if Duane or Kevin would put together a presentation for the February meeting. Kevin Christensen said we are prepared to do that in February.

Jake Goettle said I can answer one of Commissioner Sansaver's questions. The TCP at one point did have an indication of design-build or CMGC on the project and most of the time we can do that. Sometimes the speed of delivery doesn't allow us to do that because the TCP may be set and something happens and the project goes to design-build for speed of delivery in an emergency. To add to Duane's change in the process to meet the statute on the stipend, we do a project delivery selection process on all of the alternative contracting projects and I think we can certainly present that at the same time we present the stipend. That would show the Commission why we selected that alternative contracting method. It's a fairly involved process and goes through with the entire design team and we go through the selection tool to make sure we're picking the right delivery tool for the project. We can certainly add that to the presentation on the stipend. Commissioner Skelton said that would be helpful. Commissioner Jergeson said I think there ought to be a discussion with the Commission about deciding that a project will go through this particular process for

award in a timely manner. The UPN number on this project is 6875, so it's not a brand new suddenly emergency project. This has been hanging out there and now the decision is that we should do design-build on rest areas because of the peculiarity of that, then let's have a discussion with the Commission as soon as possible well before the year in which this thing is going out to the proposals to the contractors. You would eliminate a lot of my skepticism if we were included in the discussion about how a decision is made that this project is suited for design-build versus the other alternative or the old fashioned way which we're going to keep doing on most projects.

Commissioner Sansaver moved to approve the Design Build – Quartz Flats Area. Commissioners Hope seconded the motion. Commissioners Sansaver, Hope, Fisher and Skelton voted aye. Commissioner Jergeson voted nay.

The motion passed.

Commissioner Hope moved to approve the stipend. Commissioner Sansaver seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### *Election Changes in Washington*

Obviously we're going to have a change in Washington as far as Transportation goes with the new Secretary Select Pete Buttigieg. It will be interesting to watch national policy evolve around that. There are still two competing long-term bills in the House and the Senate. It looked like the one in the Senate was going to be the one to carry the day but with the emphasis that will probably come from the Biden Administration, the House bill may become more favored. What you may see as a result is more of an investment in transit and alternative fuel vehicles than currently exists. In the more immediate future, we're hoping to see a stop-gap spending measure signed that will allow the department and Federal Highways to continue their work until that long-term bill is passed. We don't expect there will be a lot of money added for surface transportation. I don't think we're making the case that surface transportation needs any particular corona virus relief but transit and air and rail have done a good job at that and they continue to receive additional funding as a result.

For us on the State side, if Larry Flynn were here he would tell you that Montana has basically recovered from the pandemic as far as gas fuel tax collections go. We're in pretty good shape and not many states are in the position we are, but it would be hard for us to say that we've been harmed by the pandemic and therefore the national government is probably reacting that way when it comes to investment in infrastructure for this particular purpose.

### *Farewell and Thank You to the Commission*

Finally I want to say thank you to the Commission. I've worked with you Madam Chair for the past eight years although I've known Tammi Fisher for many years as well. I moved to Stanford in July 1985 and you were one of my very first customers as a Trooper. So we've known each other and worked together for 35 years. This will be my last Commission meeting and I want to say thank you for the work that you've done to invest literally billions of dollars of taxpayer money in a very effective way. You've definitely left the transportation system better than we found it eight years ago. Those of you who remain on the Commission, I wish you the best of luck and I thank you for the support you've given to the department over the years.

Commissioner Skelton said you've done a very fine job as Director. Your Vision Zero and your absolute caring and compassion for the people of the State of

Montana is unsurpassed. Thank you for a job very well done. Director Tooley said thank you.

### **Public Comment**

No public comment.

### **Agenda Item 7: Change Orders September & October, 2020**

Dwane Kailey presented the Change Orders for September & October, 2020, to the Commission. These are informational only. If you have any questions, please feel free to ask.

### **Agenda Item 8: Letting List November 2020 – April 2021**

Dwane Kailey presented the Letting List for November 2020 – April 2021 to the Commission. These are informational only. If you have any questions, please feel free to ask. Commissioner Jergeson asked about the acronym on Project 9361, Rodney Street and Eleventh Avenue in Helena, Project ID CMDP. What does CMDP stand for? Duane Kailey said it denotes CMAC funding. Lynn Zanto said the CM stands for congestion mitigation. Congestion Mitigation is the name of the federal program for projects that help air quality related issues and the DP stands for discretionary program. A certain amount of our CMAC funds has to be used in Missoula because of the state of their air quality. We're a minimum allocation state so we were guaranteed a certain level of funding in the CMAC program. We have worked with the Commission and the Department of Environmental Quality through the years to be proactive with our air quality, by an action of the Commission some years back to put that money toward projects that improve traffic flow because that helps the carbon monoxide issue and to projects that help dust particles in the air.

Commissioner Fisher said I just did some quick research so that Duane doesn't have to go back and do a bunch of research. Our acceptance of all the work specified in the contract and our authority to do that. It is actually in Statute 62.113(2) which says "each contractor awarded a contract by the Commission shall meet all the requirements. A contract is not considered to be completed until the Commission, while formally convened, affirmatively accepts all of the work specific in the contract." Duane thanked Commissioner Fisher.

### **Agenda Item 9: Liquidated Damages**

Dwane Kailey presented the Liquidated Damages to the Commission. As they are not disputed we are presenting them as informational only. There are two projects that had Liquidated Damages:

Slope Flattening Belgrade, a safety project. The contractor was Riverside Contracting, Inc. They had seven days of liquidated damages for a total value of \$17,150. They are not disputing the liquidated damages.

Cottonwood & Stucky, a safety project. The contractor was Knife River Corporation out of Belgrade. They had four days of liquidated damages for a total value of \$8,272. They are not disputing the liquidated damages.

If you have any questions, please feel free to ask but again they are informational purposes only.

## Next Commission Meeting

The next Commission Conference Call was scheduled for December 29, 2020. The next Commission Meeting was scheduled for February 18, 2021.

Commissioner Skelton said the December 29, 2020 conference call may be my last time to visit with all of you. I wish you the very best of holidays and Merry Christmas to you. Please stay safe and stay well. Commissioner Sansaver thanked Director Tooley for all the hard work he's done and also thanked Commissioner Skelton for all the leadership and guidance given to the Commission. I don't know what your status will be at the end of the year but I certainly hope you're coming back to join us; you're a terrific leader and I look forward to working with you. Commissioner Skelton said thank you, I appreciate those kind words.

### *Tribes and MOU's*

Commissioner Sansaver said to Director Tooley concerning the issues of the MOUs with the Tribes, I did meet with one of the Tribal leaders yesterday and I'm scheduled to meet with the Committee next Tuesday, so if you have those MOUs or if the attorney has them set aside, could they please send them directly to my email so I can present them to the Committee next week. Director Tooley said that will help get a lot of work in northeast Montana. I appreciate that.

### *Thank you to Lynn Zanto*

Director Tooley said for the eight years that we've been together there has been one person that pretty much handles the whole agenda for us and that is Lynn Zanto. Lynn is going to move to a federal job at the end of the year and I want to say thank you to Lynn for all the work she has done to keep us on track. All the projects start with you and you present them and get them into the program here with the Commission and I didn't want this time to pass without them knowing that you are leaving and you are appreciated. Commissioner Skelton said I've worked with Lynn for the entire time I've been on the Commission which has been quite a long time and Lynn has been fabulous; so forthright, so quick to get us information, and so transparent in all that she's done. I just can't say thank you enough Lynn for what you've done and good for you going to a federal job.

Commissioner Jergeson said I would like to commend and congratulate Lynn as well. I've had nothing but a good relationship with her in my four years. I would announce that I did apply to be re-appointed as well but I don't know what choices the Governor will make. If I'm not re-appointed you can expect me to be one of those super public kind of people and keep an eye on what is going on. Commissioner Sansaver said I've certainly enjoyed working with Lynn and I wish you the best of luck moving forward to the federal level. Commissioner Fisher said I agree and the whole Simms cheering squad is cheering for you. Good luck! Commissioner Hope said I really do appreciate your responsiveness and your availability. My voice message says it might take days to get back to me but you've always gotten back to me immediately. I truly appreciate it. It looks like you've got the shelves behind you cleaned off so you're on your way, congratulations we will miss you. Lynn Zanto thanked everyone. The Commission has been one of the parts of my work I really love. I have a lot of respect for all of you and what you do. Every time a new Commissioner came on and Duane and I would do our training, I was asked by several if this was a "rubber stamp" Commission and I think this Commission is living proof it isn't. Your questions and your interest in making sure we do a good job has only made us better. Lucia Olivera said welcome to the dark side; I'd love to have her with Federal Highways. Lynn said I'll be working with the National Highway Traffic Safety Administration Regional Office. Lucia said congratulations.

**Adjourned**  
Meeting Adjourned