

Montana Transportation Commission

**February 22, 2024 Meeting
Commission Room
2701 Prospect Avenue
Helena, Montana**

IN ATTENDANCE

Loren Frazier, Transportation Commission Chair (District 3)
Kody Swartz, Transportation Commissioner (District 1) Absent
Shane Sanders, Transportation Commissioner (District 2)
Noel Sansaver, Transportation Commissioner (District 4)
Scott Aspenlieder, Transportation Commissioner (District 5)
Malcolm “Mack” Long, Director, MDT
Larry Flynn, Deputy Director, MDT
Dwane Kailey, Chief Operations Officer, MDT
Kelsie Watkins, Commission Secretary
Bob Vosen, District Administrator, MDT District 1
Jim Wingerter, District Administrator MDT District 3
Shane Mintz, District Administrator District 4
Dustin Rouse, Chief Engineer MDT
Chris Nygren, MDT
Rob Stapley, MDT
Ryan Dahlke, MDT
Lauren Eichenfels, MDT
Brad Burns, MDT
Darren Reynolds, MDT
Paul Johnson, MDT
Tammy Ross, MDT
Carol Strizich, MDT
Maghan Strachan, MDT
Brenden Borges, MDT
Lucia Olivera, FHWA
Chris Hertz, City of Billings

Please note: Minutes are available for review on the commission’s website at https://www.mdt.mt.gov/pubinvolve/trans_comm/meetings.aspx. Alternative accessible formats of this document will be provided upon request. For additional information, please contact transportation secretary Kelsie Watkins at (406) 444-6201, kwatkins@mt.gov or visit the commission’s website at http://www.mdt.mt.gov/pubinvolve/trans_comm/meetings.aspx. For the hearing impaired, the TTY number is (406) 444-7696 or 1-800-335-7592 or call the Montana Relay at 711. Alternative accessible formats of this document will be provided upon request.

OPENING – Commissioner Loran Frazier

Commissioner Frazier called the meeting to order with the Pledge of Allegiance. Commissioner Sansaver offered the Invocation. Commissioner Frazier asked for introductions.

Approval of Minutes

The minutes for the Commission Meetings of November 28, 2023, December 14, 2023, and December 19, 2023 were presented for approval.

Commissioner Aspenlieder moved to approve the minutes for the Commission Meetings of November 28, 2023, December 14, 2023, and December 19, 2023. Commissioner Sanders seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 1: Administrative Rulemaking – Amend ARM 18.6.246 Pertaining to Political Signs

Chris Nygren, MDT Legal presented Administrative Rulemaking – Amend ARM 18.6.246 Pertaining to Political Signs to the Commission. The background is we go through reviews on administrative rules and there was one that we ask the Commission to look at the pre-changes we’re proposing. ARM 18.6.246 was amended in 2008, 2012 and 2016. This administrative rule was an attempt to give direction to the public during election campaigns regarding what type of signs are permissible. Obviously this is 2024 so we’re doing this now because of the upcoming elections. The proposed amendment to the existing rule delineates the department’s authority to ensure that political signs are not placed in locations that adversely impact the safety of the traveling public or are in public right of way while recognizing the Commissioner of Political Practices is charged with regulating electioneering activities. The United States Supreme Court has now ruled, since 2016 “that includes time limits for removing signs or political signs could be displayed are not within the scope of MDT’s authority.”

There is nothing added to the rule but some things are deleted. Things deleted are the interpretations of what is a political sign – it is content based interpretation which is now outside of what MDT can do. The courts are involved in that. The only part that remains on the political signs is that they still cannot be placed on any portion of the public right of way or on public property. Basically they don’t have a time limit now if they are outside the right of way and that we don’t have authority to remove those political signs.

We’re asking the Commission to approve our proposed changes which deletes three lines in the ARM and then this will go out for public comment for 30 days through April 5th which is the ending date for public comment. Depending on what we receive, we analyze and come back to the Commission on April 25th. At that time we would present any comments. At this time we’re asking the Commission to approve our amended changes to the ARM for public comment.

Commissioner Aspenlieder said if I understand correctly we’re basically saying if it doesn’t impact safety, we have no play in the decisions. Chris Nygren said correct. We’re not making content based decisions. Commissioner Aspenlieder asked if he was familiar with Dillon and does this impact that at all. Chris Nygren said if you remember that was in our right of way and now he is off our right of way and on his own property so it does not impact that. We are removed from that.

Commissioner Frazier asked if this will change MDT’s operations or enforcement of keeping signs off our right of way. Chris Nygren said no it does not change anything. As far as all other signs as well as political signs, we’re just involved in the safety aspect of it. Commissioner Frazier said then our maintenance people get less duty regarding these political signs but if one pops up near intersections or signs like “stop and vote for this guy” and it contains a stop sign then we can say please don’t put a stop sign up near our right of way or they stick them in a roundabout, our guys are still going to go pull those? Chris Nygren said yes the local maintenance people will be the ones who catch that and then notify us. We would investigate and determine whether it is a safety hazard and if so we would take the appropriate action. Commissioner Frazer said I want to make sure we still have that ability. Chris Nygren said we are not involved in content regulation.

Commissioner Swartz moved to approve Administrative Rulemaking – Amend ARM 18.6.246 Pertaining to Political Signs. Commissioner Sanders seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 1: Approach Variance Request City of Billings – Shiloh Road Corridor Variance

Commissioner Aspenlieder recused himself from this agenda item. Rob Stapley said officials from the City of Billings would like to present this item. Since they are not on line at this time I ask we move this Agenda Item to be taken up later in this meeting when they are available.

Commissioner Sanders moved to approve the request to delay Agenda Item No 1 until the City of Billings officials were present. Commissioner Swartz seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 2: TranPlanMT Public Involvement & Stakeholder Survey Results Informational Item

Rob Stapley asked Lauren Eichenfels, Multi-Model Planning Bureau, to present TranPlanMT Public Involvement & Stakeholder Survey Results to the Commission. This was an informational Item. This is meant to be an introduction to TranPlanMT which is MDT's long-range transportation plan as well as the summary of the results from our bi-annual surveys for this period being 2023. We will be providing a full copy of this presentation to the Commission.

TranPlanMT is Montana's federally mandated long-range statewide transportation plan. This plan establishes policies in the following six areas for the 20-year planning horizon.

- Safety
- System Preservation and Maintenance
- Mobility and Economic Vitality
- Accessibility and Connectivity
- Environmental Stewardship
- Business Operations and Management

These policies reflect input from the public and other transportation stakeholders.

The purpose of the TranPlanMT Public Involvement and Stakeholder biennial surveys is to examine the Montanan's perception of the current condition of the transportation systems, views about possible actions that could improve the transportation system in Montana, and opinions about MDT quality of service to its customers. It should be noted that the public involvement survey results are statistically valid which means they are a random, weighted sample of adults in Montana geographically located across MDT's five districts.

These surveys support this continuous and ongoing planning process.

Lauren Eichenfels gave a slide presentation of the results of the 2023 TranPlanMT Public Involvement and Stakeholder Survey.

Commissioner Aspenlieder said regarding the responses to the survey, do you have that broken down by the sectors or stakeholders, council people, city administrators or city engineers. It would be informative to know who thinks we're not measuring up and why. It is something we need to understand better. Just saying we got a nineteen and that is terrible across the board. I'm not picking on Jim because I'm

sure our district is equally in that condition but we need to know what section of the stakeholders think we're terrible and then figure out how to work on a solution.

Lauren Eichenfels said this information focuses on public input but certainly we have the data on the stakeholders input if that is what you're interested in taking a look at. Commissioner Aspenlieder said if this is public input, do you have the public input broken down? Are these folks associated with pedestrians, folks interested in rail and transit? Have you broken it down? I want to see that level if that's possible. Lauren Eichenfels said the slides for this presentation are focused on the public. We don't have the level of detail for the public for particular interests like bike/ped or passenger rail. We have that for the stakeholders; that is where we can really get granular by County Commissioners and how they are ranking those service elements. Certainly we can very easily put together. Commissioner Aspenlieder said I would certainly be interested in that level of detail. Lauren Eichenfels said if we're doing it for District 5 we can probably do it for all the other districts as well.

Commissioner Frazier said I echo that. Can you break it down by geographic location and where the public isn't happy? Is this the highline folks on four-for-two, is this the people in Wolf Creek Canyon who are tired of construction for the last ten years? Lauren Eichenfels said we do have the ability to look at people by district location but for the public we don't because it is a statistically random sample and we don't get that level of detail. If we were to look at the stakeholders by district, you can get a little more detail. We know who they are and there is more input behind that survey.

Chris Nygren said if you look at the numbers they are better from 23 to 21 across the board. You still see some red up there but they are improving. We see improvement. From Director Long on down there has been a lot of attempts at communication and I personally see some results from that.

Commissioner Sansaver said if you look back at 2019 we just had five people respond. Then you go to 2021 and 2023 we have a thousand people respond to this and nobody is satisfied or we're below grade. What was the difference between 2019 and 2021 in numbers? How many people responded to this particular graph? Lauren Eichenfels that is a great question. There really were no notable methodology changes or approaches to how we did the survey between 2019 and 2023. There also has been a consistent striving for a similar sample of the public so we've remained in the ballpark of 1,100-1,300 public respondents. That has remained consistent. I do agree it is a notable shift and I don't know why that would be other than the people we surveyed in 2019 in this area had a much more positive perception of MDT.

Commissioner Sansaver said it appears as though we just went from a horse and buggy in 2019 to paved roads at that point in time and then all of a sudden it went south when we got motorized vehicles in 2021.

Lauren Eichenfels said we will get additional details for the stakeholder groups. I will send you a full copy of the presentation and the additional information you requested. The survey results are attached as Appendix A.

Elected Official / Public Comment

No public comment given.

Agenda Item 1: Approach Variance Request City of Billings – Shiloh Road Corridor Variance

Rob Stapley presented the Approach Variance Request: City of Billings – Shiloh Road Corridor Variance to the Commission. Rob turned this item over to Chris Hertz, PBE Staff Engineer with the City of Billings, Public Works.

My name is Chris Hertz, I'm an Engineer with Public Works for the City of Billings. I didn't prepare a formal presentation and I apologize for that. Before you today is a development along Shiloh Road called Shiloh Farm. They currently have an access which is an existing farm approach to the property. We're proposing to allow them to have two accesses to this. You should have a copy of the exhibit in front of you. Commissioner Frazier said we do have that. Chris Hertz we are proposing to allow two Right In/Right Outs onto Shiloh Road. There was an Access Management Plan that was recorded and approved for Shiloh Road and this goes against it a little bit but we believe this will work. This particular property needs two accesses in order to develop in accordance with the city's fire department. We are proposing to allow these two Right In/Right Outs with the southern approach to be removed in the future. There is a property south of here that does access the roundabout at Zoo Drive and we will force that property when it develops to connect to Shiloh Farms in the future and then have Shiloh Farms remove that southern approach.

Commissioner Frazier said which approach would be abandoned in the future? Chris Hertz said it is the most southern approach; the one next to Zoo Drive closest to the roundabout. It is proposed to be 360 feet from the Zoo Drive intersection right now. Then the proposed approach to the north would be about 350 feet from that. Commissioner Frazier said 350 feet from the roundabout, I'm guessing the Traffic Engineers have looked at that and that will not hinder the safety and operation of the roundabout. Chris Hertz said that is correct; our Traffic Engineer looked at that and has approved the approach. Dustin Rouse said MDT is in agreement.

Commissioner Sansaver asked the timeline on property B, are we looking at four or five years or ten years. Chris Hertz said I don't know the timeline but I can tell you this Shiloh Farm development is extending water and sewer and that's going to go right past that property. So I think that property will become more desirable to develop and also there is a brand new Costco right across the street on Shiloh so I think that property is going to become extremely desirable and probably develop in the next five years. Of course, I'm estimating on that.

City of Billings Public Works staff is agreeable to the proposed locations of the two Right In/Right Out only approaches on Shiloh Road with the condition that the southern Shiloh Farms approach to Shiloh Road shall be eliminated once the Shiloh Farms development can access the Zoo Drive roundabout. For the City to allow the approaches, it is necessary for the Transportation Commission to approve a variance.

Staff recommendation:

MDT transferred access control responsibilities to the City via agreement and therefore no MDT staff recommendation is necessary.

Commissioner Sansaver moved to approve the Approach Variance Request: City of Billings – Shiloh Road Corridor Variance. Commissioner Sanders seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 3: Local Construction Projects on State Highway System, Local Forces – City of Great Falls and City of Sidney

Rob Stapley presented the Local Construction Projects on State Highway System, Local Forces – City of Great Falls and City of Sidney to the Commission. Under MCA 60-2-110 “Setting priorities and selecting projects,” the Commission shall establish priorities and select and designate segments for construction and reconstruction on the national highway system, the primary highway system, the secondary highway system, the urban highway system, and state highways. This statute exists to ensure the safety of our system, protect transportation investments, and encourage better coordination between state and local infrastructure improvements.

The City of Great Falls and the City of Sidney are planning to design and build transportation improvement projects on the state highway system. The projects will be funded locally and will utilize local forces for construction. The projects will be designed with input and concurrence from MDT staff to the extent practicable. When complete, the City of Great Falls and the City of Sidney will assume all maintenance responsibilities associated with new project elements. Thus, MDT will not incur additional liability or maintenance costs as a result of the proposed projects.

On behalf of the local governments, as required by MCA 60-2-110, staff requests that the Transportation Commission approve the local projects listed below. The projects are also illustrated on the maps in your packet:

Location	Type of Work	Cost (estimate)	Fiscal Year	Type of Labor
Sun River Road (U-5225), from 1-15 to 4 th West Hill Drive, in Great Falls	Mill & Overlay	\$200,000	2024	Local
Lincoln Avenue (U-10405), from 4 th Street SW to Central Avenue, in Sidney	Mill & Overlay	\$300,000	2024	Local

Staff Recommendation:

Staff recommends that the Commission approve these improvements to the state highway system – pending completion of applicable state and local design review and approval processes

Commissioner Swartz moved to approve the Local Construction Projects on State Highway System, Local Forces – City of Great Falls and City of Sidney. Commissioner Aspenlieder seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 4: Local Construction Projects on State Highway System, Contract Labor – Cities of Belgrade, Billings, Bozeman, Butte, Havre, and Helena

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

staff reaches out to local governments to solicit local projects on state systems to ensure compliance with this statute.

The Cities of Belgrade, Billings, Bozeman, Butte, Havre and Helena are planning to design and build transportation improvement projects on the state highway system. The projects will be funded locally and will utilize contract labor. The projects will be designed with input and concurrence from MDT staff to the extent practicable.

When complete, the Cities will assume all maintenance responsibilities associated with new project elements. Thus, MDT will not incur additional liability or maintenance costs as a result of the proposed projects.

On behalf of the local governments, as required by MCA 60-2-111, staff requests that the Transportation Commission delegate authority to the Cities to let and award contracts for the projects listed below. The projects are also illustrated on the maps in your packet: City of Belgrade, City of Billings, City of Bozeman, City of Butte, City of Havre and City of Helena.

Location	Type of Work	Cost (estimate)	Fiscal Year	Type of Labor
Jackrabbit Lane (U-606), from 8 th Street to Triple Crown Road, in Belgrade	Reconstruction	\$1,500,000	2024	Contract
Rimrock Road (U-1002), at the Arvin Road intersection, in Billings	Ped Crossing	\$50,000	2024	Contract
Broadwater Avenue (U-1006), at the 5th Street West intersection, in Billings	Ped Crossing	\$50,000	2024	Contract
Jackson Street (U-1019), from Frances Avenue to Roosevelt Avenue, in Billings	Ped Crossings	\$50,000	2024	Contract
State Avenue (U-1024), from South 27 th Street to 1st Avenue South, in Billings	Ped Crossings	\$50,000	2024	Contract
Governor’s Boulevard (U-1027), at the Constitution Ave. intersection, in Billings	Ped Crossing	\$50,000	2024	Contract
Rimrock Road (U-1034), at the 46 th Street West intersection, in Billings	Ped Crossing	\$50,000	2024	Contract
South 19th Avenue (U-1201), at the Stucky Road intersection, in Bozeman	Intersection Improvements	\$300,000	2024	Contract
Excelsior Ave (U-1801), from Waukesha Street to Missoula Avenue, in Butte	Reconstruction	\$2,500,000	2024	Contract
13th Street West (U-5709), from Monroe Avenue to Boulevard Avenue, in Havre	Mill & Overlay	\$200,000	2024	Contract
6th Avenue (U-5814), from Montana Avenue to Beattie Street, in Helena	Mill & Overlay	\$300,000	2024	Contract

Staff Recommendation:

Staff recommends that the Commission approve these modifications to the state highway system and requests that the Commission delegate its authority to let, award, and administer the contracts for these projects to the Cities of Belgrade, Billings, Bozeman, Butte, Havre and Helena - pending completion of applicable state and local design review and approval processes.

Commissioner Frazier said I welcome the help from the cities to step up and take care of items on our system.

Commissioner Sanders moved to approve the Construction Projects on State Highway System, Contract Labor – Cities of Belgrade, Billings, Bozeman, Butte, Havre, and Helena. Commissioner Swartz seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 5: Primary System Program – Additions to STPP Program (2 New Projects)

Rob Stapley presented the Primary System Program – Additions to STPP Program (2 New Projects) to the Commission. The Surface Transportation Program – Primary (STPP) finances highway projects to rehabilitate, restore, resurface, and reconstruct routes on the state's Primary Highway System. Montana's Transportation Commission allocates STPP funds to MDT Districts based on system performance.

At this time, MDT is proposing to add two new projects to the STPP program in the Missoula District. The projects meet the criteria set forth for STPP-funded projects. If approved, it would be MDT's intention to let these projects individually.

The estimated total cost for all project phases is \$55,499,955 (\$48,051,865 federal + \$7,448,090 state match) – with the entirety of the federal funding originating from the Surface Transportation Program – Primary (STPP).

Staff recommendation:

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

Commissioner Aspenlieder said does the Reserve Drive reconstruction project include significant structures. What is going on in that project? Bob Vosen said Reserve Drive is about a mile and half long project that includes reconstruction of two major intersections and the structure over the river. Of the major intersections it will be concrete, so it is converting a narrow existing road into a five-lane road with significant utility involvement as well. A portion of that is being covered by a Raise Grant by the City of Kalispell for \$25 million. Director Long said this is also being covered with a Safe Grant by the Montana Legislature set aside from budget surplus. We've got a Raise Grant and Safe Match so a lot of it is being covered.

Commissioner Swartz moved to approve the Primary System Program – Additions to STPP Program (2 New Projects). Commissioner Sanders seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 6: Highway Safety Improvement Program Additions to HSIP (2 New Projects)

Rob Stapley presented the Highway Safety Improvement Program – Additions to HSIP (2 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 two new projects to the HSIP program – one in District 1 and one in District 4. The projects 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 project phases is \$4,521,831 (\$4,069,648 federal + \$452,183 state match) – with the entirety of the federal funding originating from the

Highway Safety Improvement Program.

Staff recommendation:

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

Commissioner Aspenlieder said can you tell me why signs cost \$68,000. I'm not in the sign business but that seems expensive. Rob Stapley said note the length of that project is 49 miles of current signing along that corridor. It is the sheer number of signs included. Commissioner Sanders said I see quite a bit of difference in the benefit to cost ratio and I assume that is tied to the amount of money we're spending on it, so we're getting a lot more bang for the buck for the signs. Rob Stapley said that is correct. Commissioner Frazier said when we looked at the benefit to cost ratio, anything above a 1:1 we consider a benefit. Dustin Rouse said that is correct.

Commissioner Sansaver moved to approve the Highway Safety Improvement Program – Additions to HSIP (2 New Projects). Commissioner Aspenlieder seconded the motion. All Commissioners aye.

The motion passed unanimously.

Agenda Item 7: Montana Rest Area Plan

Rob Stapley presented the Montana Rest Area Plan to the Commission. Montana's Rest Area Plan, which provides the statewide vision for MDT's Rest Area Program, was formally adopted by the Transportation Commission on January 29, 2015. The Rest Area Plan offers comprehensive guidance for addressing needs associated with Montana's full-time rest areas, seasonal rest areas and truck parking facilities.

Beginning in 2009, MDT initiated changes to the Rest Area Program in order to facilitate more efficient delivery of Rest Area projects. First, a dedicated annual funding source was reserved solely for Rest Area projects. Second, the Statewide Rest Area Prioritization Committee was formed to assist with implementing asset management strategies and establishing project priorities. Lastly, research was conducted to support the various aspects of Rest Area planning and design.

Though still evolving, MDT's Rest Area Planning efforts have demonstrated effectiveness in meeting public expectations for rest areas in the most efficient manner possible. MDT annually updates technical changes to the Rest Area Planning Map (Attachment A) that are necessary to reflect developments since the last review. These changes are consistent with the guidance of the Commission-approved Rest Area Plan.

As part of the Rest Area Plan, MDT is providing a map noting the location and status of Rest Areas and Parking Areas statewide. Per the Rest Area Plan, this map is updated annually to provide a Rest Area status report to the Transportation Commission.

The proposed update to the Rest Area Planning Map is consistent with the goals and objectives identified in the Performance Programming Process (PX3) as well as the policy direction established in TranPlanMT.

Additionally, the Rest Area Plan Map aligns with the State of Montana's Vision Zero safety initiative as well as MDT's ADA Transition Plan. Lastly, the plan is consistent with key elements of national highway legislation emphasizing the safe operation of passenger vehicles and trucks hauling freight.

Staff recommendation:

Staff recommends that the Commission approve the updates to the Montana Rest Area Planning Map.

Commissioner Sansaver said in District Four you've got about a 140 mile stretch from Vandalia to Culbertson on Hwy 2, is there any reason why we don't have a rest area near somewhere. Has there not been a public request? Rob Stapley said I can get back to you with that information. Commissioner Sansaver said people up here need to go to the bathroom too, so I'm just checking on this. Commissioner Frazier said I would also note that between Broadus and Hardin there seems to be a long stretch in there also, also between Roundup and Malta there is a long stretch. Commissioner Sansaver asked if that goes out for public request or is it defined by state needs. Is there public involvement in the Rest Areas? Rob Stapley said we have a Committee that works on locations and I believe there is public involvement through that process that is taken into consideration.

Commissioner Sanders moved to approve the Montana Rest Area Plan.
Commissioner Swartz seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 8: Speed Limit Recommendation US 2 (N-1) Happy's Inn

Dustin Rouse presented the Speed Limit Recommendation, US 2 (N-1) Happy's Inn to the Commission. This item was previously stayed by the Commission in order to visit the site and do some additional research. Lincoln County submitted a request for a speed limit study for the purpose of reducing the existing 70-mph speed limit through the community of Happy's Inn preferably to 45-mph. After reviewing the study area, it was determined the study would extend approximately two miles east and west of the community beginning at milepost 70 and continue to milepost 74.

The speed profile based on the 85th percentile and upper limit of the pace shows drivers for the most part travel within ± 3 -mph of the 70-mph statutory speed limit. Roadway context indicates the speed limit is appropriately set and should be based on the 85th percentile. There is little development in this rural area to indicate a reduce speed would be necessary. MDT did notice that use of the rounded down 85th percentile could be considered around the community of Happy's Inn because of the increased approach density. However, this still results in a speed limit of 70-mph.

Lincoln County does not agree with the recommendation of no change. They request that the speed limit be reduced to 45-mph with appropriate transitions from Crystal Lake Road to East of West Camp Road. The request is based on the "rapid increase in growth and area use", the approval of "several large subdivisions", "potential commercial highway frontage lots", "a developing RV park", the "substantial increase in business" for Happy's Inn, "several fatal accidents", "numerous non-fatal accidents", and access to US 2 for the Fisher River Volunteer Fire Department and Solid Waste Transfer Station. Their letter is attached.

Local residents provided extensive comments with the majority appearing to not support MDT's recommendation. Some comments were received indicating support for not changing the speed limit. The majority of their concerns involve entering and exiting the highway, congestion, the number of fatalities and the number of crashes, people exceeding the speed limit, illegal passing, Happy's Inn, pedestrians, bicycles, different types of recreational vehicles, the fire department, and population growth. Other comments referenced concerns regarding wildlife, a school bus stop, children,

pets, and lack of enforcement. All public comments received from Lincoln County have been attached.

After reviewing the comments MDT went back and reviewed the data collected along with the photographs provided. A further review of the crashes in the most recent 10-years (2012-2021) was also completed. There was a total of 34 crashes over the past 10-years with 13 being injury related. None of the crashes resulted in a fatality. When reviewing the traffic volumes and the study area it was determined that there was not an elevated crash rate. However, focusing directly on the 0.75-miles directly in front of Happy's Inn there was an elevated crash rate for injury crashes. Based on this new information a 5-mph reduction to match the 50th percentile speeds could be considered through the community of Happy's Inn. Outside of Happy's Inn the 50th percentile was just below 70-mph. However, the 65-mph speed limit would be shorter than national recommendations and a permitted reduced event speed limit would be more effective.

In regard to the other concerns voiced, MDT did review the growth in the area, Happy's Inn events, congestion, sight obstructions, and other road users. The 2020 census does show that the community has grown about nine percent over the past ten years. Further growth is planned for and as shown by the census likely to occur over the next ten years. From what has been gathered and provided the planned growth being discussed has no date associated with it and could occur this year or never. Most of the concerns associated with pedestrians, congestion, and sight obstructions likely occur during the events that Happy's Inn has primarily during the summer months. MDT personnel did not observe any pedestrians or other vulnerable road users but does recognize that there is a worn path off the roadway and pictures showing pedestrians crossing the road during an event at Happy's Inn. Currently the roadway is functioning at about four-percent capacity. Pictures show that during an event congestion occurs and drastically reduced capacity with US 2 being used as an extension to the parking. Happy's Inn has plans to construct a larger parking lot to prevent US 2 from being used for parking which restricts sight distance and capacity. Although not directly measured in the aerial measurements show sight distances adequate for speeds well above the posted speed limit.

MDT would like to stress the following facts: speed limits are based on the average day not event traffic and current conditions do not support a reduction in the speed limit.

Moving forward Happy's Inn should contact MDT and acquire permitting to temporarily reduce the speed limit for their large events. Responding to an emergency is considered an event and MCA law allows the fire department to disregard some traffic laws if the action can be done safely. Future development can be considered but only affects the speed limit when it is occurring in the immediate future along the roadway. Furthermore, speed data collected shows that the prevailing speeds are 25-mph and 15-mph above the requested 45-mph and 55-mph speed limits respectively. The requested speed limits are associated with below the 1st to 15th percentile and on average the 5th percentile. MDT does not recommend setting speed limits below the speeds of on average over 95-percent of existing drivers. MDT does acknowledge the fact that speed increases the severity of the crashes but speed differentials increase the crash rates.

Research conducted by MDT shows that speed limits posted 10-mph below the engineering recommendations result in fewer overall crashes but elevated number of fatal and injury crashes. There have been concerns voiced on the amount of enforcement available for the area.

Staff recommendation:

MDT recommends “No Change” to the existing speed limit at this time and the Missoula District work with Happy’s Inn to permit temporary speed reductions for large events.

Commissioner Sansaver asked about the steps MDT takes when Happy’s Inn is going to have an event. Who do they contact? Do they contact someone and tell them about an event and then MDT goes out and puts up signage? Dustin Rouse said if there is an event, the entity hosting that event contacts our District maintenance staff, in this case Justin Julips. Bob Vosen said we do have regular events with Happy’s Inn to the point where we actually have permitted a permanent flip-up sign on either side of Hwy 2 for both east and west-bound traffic in the area. So when they have an event they don’t have to install a temporary sign, they go out and flip up the “special event ahead” sign to increase the awareness. They are also allowed to put in additional signing for pedestrian congested area. They’ve been growing the number of events at Happy’s Inn every year but they are typically from Memorial Day to Labor Day and it’s not every week. So it’s definitely on a case-by-case basis.

Commissioner Sansaver said I see in our speed studies where if you reduce the speed, you go from little fender benders to human casualties. What is the reason behind that? Dustin Rouse said your question is why we see an increase in severity of crashes by reducing the speed. One of the reasons is driver expectancy. It is wide open; you can see long distances, then all of sudden they encounter vehicles that have dropped their speed. A lot of folks drive according to the conditions and what they are comfortable driving, that is human nature. When you get a differential in the speeds people are traveling you can end up with rear-end crashes that can be severe or last minute reactions where they swerve out and that results in head-on crashes. Commissioner Sansaver asked the percentage of fatalities compared to casual accidents. Are we talking about one percent more casualties or higher? I understand your studies but what I don’t understand is the numbers don’t reflect how many fatalities we have based on reducing the speed limit. Dustin Rouse said I don’t have those numbers but I can get that information to you. There is an increase.

Commissioner Sansaver said the only reason I asked is that if you’re talking to the general public and trying to make sense of the statement that if you decrease the speed we’re going to have more fatalities, that’s kind of a hard pill to swallow for the local people. I asked for the numbers to justify the state’s response.

Commissioner Frazier said I’ve been wrestling with this so I went up and looked at the project. If you take their event, take the number of hours in a week, the number of hours the event happens which is once a week and not even every week. But if you take one week, you’re going to have inebriated people or otherwise distracted people on the road two percent of the time. You’ve got about 1,400 people per day traveling the road, so do we put in a permanent speed reduction in an area that 98% of the time there is nothing there. It’s an open highway and if there’s not an event there, people are going to start ignoring that permanent sign anyway because 98% of the time there is no activity on the road. I think the approach for an event, like the state fair in Great Falls where we do a temporary speed reduction and put up a temporary pedestrian crossing on the road during the week. It is one week out of the year, we don’t lower that speed limit every day for everybody else. I look at it as why do we do something punitive to 9,800 cars during the week for something that 98% of the time is not happening when you drive through. So when the event is there, flip up the sign and put in a temporary speed reduction sign and temporary pedestrian crossing sign which lets the driver know there is something different. The other 98% of the time there is nothing there and no activity so that speed limit sign isn’t going to be there. The event sign is how we handle the state fair and on Hwy 200 by Bonner when they have concerts at the Kettle House. We have them put up temporary speed reduction sign when they’re trying to empty their parking lot after

an event. I support the staff reductions and I think it is the safest thing for people there to put up the signs. I realize it may be a pain to walk down the road to flip up a temporary sign but I think it is far more effective. It is the same when we have the maintenance workers out there patching potholes, we don't put 35 mph speed signs up on our highways, we only do it for where they are working and when they are on the road and when it's happening. If this was something they were doing 12 hours a day, 7 days a week, I can see it but the two visits I made through the area were very quiet. I just can't support a permanent speed zone here. I think during the events is appropriate.

Commissioner Sanders said the other thing I was concerned about was the first responders. I talked to Mr. Vosen and they've got some mitigating actions they can take to help with that as well. To me that was a significant issue.

Commissioner Aspenlieder said the only thing I'll say regarding this is we see these other places too. They are not the only one. A lot of times private individuals create their own problem. Building a parking lot across the highway from your business and then wanting the state to take care of pedestrians crossing that highway for a situation you created is not responsible. There is some responsibility to the business owner in making sure he is taking care of his pedestrians. The same could be said about Quinn's Hot Springs who conveniently fell off the map after we gave them what they wanted and didn't follow through. I just don't have a lot of sympathy for private businesses that are claiming they are impacted when they are ones who created the problem.

Commissioner Swartz moved to approve the Speed Limit Recommendation, US 2 (N-1) Happy's Inn of no change. Commissioner Aspenlieder seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 9: Certificates of Completion November and December 2023

Dustin Rouse presented the Certificates of Completion for November and December 2023 to the Commission. We recommend the approval of the Certificates of Completion for November and December 2023.

Commissioner Aspenlieder moved to approve the Certificates of Completion for November and December 2023. Commissioner Sanders seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 10: Liquidated Damages

Dustin Rouse presented the Liquidated Damages to the Commission. The Commissioner can take action on this. This is a bit unique in that this is an old project. At the time we had a different specification where liquidated damages could be brought in front of the Commission and if the contractor contested the number of days of liquidated damages, they could make their case to the Commission and the Commission could take action on it. Rockvale-Laurel fell under this spec, so we're bringing this one to the Commission for your consideration.

We had one project with liquidated damages: NHIP-HSIP 4-1(61)44 Rockvale-Laurel, the Contractor is Nelcon, Inc. for a total of 85 days liquidated damages. They are disputing 31 days out of a total of 85 days. The total liquidated damages amount is

\$368,730. Their letter is attached and they provided a financial statement as well. MDT's response letters are included in your packet.

Our recommendation is to assess the liquidated damages as specified. The 31 days that Nelcon is disputing started in June of 2022 when we requested the contractor to provide their primary Buy America material certifications which is typical as part of the close-out of a contract. We did not get a response from Nelcon and this continued into July, August, September, and October 2022. Finally in October, after repeated attempts to contact them to get this information, we notified Nelcon we were going to start assessing days again so they would be subject to liquidated damages again. It became effective in early November 2022. Then immediately we started getting some of the certifications until we finally received all the certifications 31 working days later. Those are the days that are in question. Once we received the certifications, we shut the days down. At that time they knew the days were being assessed so our recommendation is to assess the full amount of damages.

If you have any questions, please feel free to ask.

Commissioner Sanders said that Nelcon says this amount was assessed years after the project construction was complete. When was the project actually completed? Are we coming in years after the fact? Dustin Rouse said the last on-the-ground work was completed in 2021. This was assessed in 2022. It is typical on any project and especially a large contract of this size, we close everything out and complete the documentation. What I described is the process. Yes, it's a couple of years after the project was completed but we go through a process to get all the certifications that we have to document for federal contracts. The contractor has to provide that information to be certified. Commissioner Sanders said so MDT as an organization did not do anything to delay the process; there was no responsibility on our part or delay in the process. Dustin Rouse said no there is not.

Commissioner Frazier said as my memory serves me regarding certification, we didn't used to have that spec and especially "Buy America" – the work got done and we're trying to close out and come into federal reimbursement. It's kind of a pay as you go, it's a receipt reimbursable, so as the State does work we pay the contractor and Federal Highways says we're going to reimburse you but show me the receipts, show me the documentation that this stuff meets all the requirements in finalizing and closing out. So to us, having that documentation is part of the process and we need it so we can claim reimbursement because subject materials can get a "non-participation" or something like that.

Commissioner Frazier said 20 some years ago because we were having difficulty, we added this specification with the contractor basically suppling those certifications to MDT as part of the contract. Our contractor at that time was probably one of the ones that caused us to put in this spec in the first place. He wasn't the only one. The attitude was it was just paperwork – the work is done and people are driving on the road. So we added this spec for the certifications to show that we were compliant with the Congress of the United States "Buy American" requirement. The only way you could get them to do something they really didn't want to do was to charge them time and implement liquidated damages. We had to put something as an incentive for them to get us the stuff they normally didn't do. That's when it started. So here we are, the job was completed in 2021 or 2022 and now it's 2023 and we started up time again.

Commissioner Swartz asked Commissioner Frazier as you read through his justifications, is there anything that gives you pause and makes you want to take this into further consideration including that fact that they are not a going concern anymore and he had difficulty getting his subcontractors to supply him the certifications. Does that give you pause as someone who is familiar with this process. Commissioner Frazier said no, this contractor is well experienced, has many, many

years of experience; he knew the rules. Commissioner Swartz said even when he was not a going concern any more. Commissioner Frazier said I feel for him; he has had a lot of personal things he brings up but he's still contractor who knew the rules, he's got 35 years in this business. He knew the business, he knew the contract and he knew the rules. There is nothing that gives me pause.

Commissioner Aspenlieder said he echoes the same sentiment as you. These types of clauses, whether MDT or a municipality or a county, when you have these tools in place and when you start to cut the penalties in half or decided he's a nice guy and just down on his luck, the teeth start to get worn down on these tools. Then you start to see more and more people say you've set a precedent now and you didn't charge this guy that amount so we're going to test the waters. You start a cascading effect of people seeing that MDT say it but they are not serious about it; their bite is not as big as their bark. That to me is the important part. I can sympathize with the personal side of this thing as a business owner but we all know the risk when we play these games. The risk for us in trying to negotiate this down is we start to set a precedent that takes our tool away from our contract administrators to hold these guys accountable. It feels like paperwork is a hard thing to charge somebody \$4,000/day for but it's not just the paperwork it is the respect of the process, it's the respect of the contract, and the respect of the team to actually follow through and do their job. They are paid a lot to work for the State of Montana and it is something we have to follow through on as uncomfortable as it is.

Commissioner Swartz said I understand what you're saying about the process but it feels like we're trying to get blood out of a turnip. He's is not a contractor anymore and won't be bidding on projects anymore. I didn't know if that put a different light on it. Commissioner Aspenlieder said whether we actually get the money or not, I think taking steps to assess the penalty is important. Whether we receive it from him or if he files bankruptcy is not the issue, it's saying if you're going to work with us you're going to have to play by the rules and everybody is going to play by those same rules.

Commissioner Sansaver said even though I agree with Commissioner Aspenlieder with this, I look back to page 10 on this document where it says "there is substantial doubt about this company's ability to continue as a going concern" – (1) what's the reality of getting this money, and (2) when we don't get the money, as I'm hearing this it sounds like the company has gone under, their ability to contract again with the State of Montana is that on the line where we don't allow them to contract with us if this money is not paid? Dustin Rouse said if he filed bankruptcy we would have the ability to collect assets to help pay for this. That is the process we would follow as a creditor. No there has not been any requirement where he would be barred from working with us. Commissioner Aspenlieder said so he could still submit bids for work with MDT or other public entities. Director Long said if you look, this is a consolidated balance sheet, he has another business White Rock Resources which is a gravel pit plant that is an on-going concern up in the Flathead Valley. Nelcon Inc. has the ability to take care of this some other way.

Dustin Rouse said one other item within that spec is that the contractor is afforded the opportunity to present their case in front of the Commission. So I want to verify if there is anyone on line from Nelcon that wants to speak to this. We've reached out to them multiple times to find out if they were actually going to show up here but we never heard back from them. I want to afford them that opportunity. No response.

Commissioner Sansaver said the recourse for the State of Montana is not to debar them and they still have the ability to bid further projects, is that ability afforded them if they pay this off first? Commissioner Frazier said our requested action is any debarment – that is further down the road. Today we are looking at whether we take his written plea asking that we wipe off part of his liquidated damages assessment or we let it stand. We can speculate about what happens in the future and what his

bonding company may or may not do, I would like to keep the discussion on whether we let this stand or not.

Commissioner Aspenlieder said what I'm hearing in the discussion is with this outstanding debt, assuming he can get bonding he can still bid on our projects. His bids are not conditioned upon whether he pays this fine or not. He can still bid our work so long as he can meet the bonding requirements. Justin Rouse said yes. Director Long said for example, Riverside Construction is still in good standing with MDT, still bids with us, and every now and then there's a project that hits a little behind, you might see that they have two or three of liquidated damages but they still keep bidding. So technically Nelcon Inc. if they can get bonding can still bid with us.

Commissioner Frazier said getting back to the discussion today, do we back up our staff who have tried to work with Nelcon Inc. to get things done. We could have been charging them through the whole period. Do we back our staff or do we wish to use our authority to lower them?

Commissioner Aspenlieder moved to approve the Liquidated Damages.
Commissioner Sansaver seconded the motion. All Commissioners voted aye.

Liquidated damages stand.

Agenda Item 11: Director's Discussion and Follow-up

Director Malcolm "Mack" Long

Operations Review

I appreciate this opportunity. I will start with our Director's Discussion Agenda. I present this to the Governor every month in our Operation's Review and I want to share this with the Commission. It is the highlights that each district turns in. We're appreciative of the whole team and this is the highlights of some of the great work we're doing. I want to make sure the Commissioner received a copy.

Load Posted Bridges and Bridges in General

We have been looking at this many, many years. We have worked hard with the Strike Force and Montana Association of Counties, and our Consultant HDR Engineering at trying to prioritize bridges. Working with the Counties, working with our own staff and working with County Road and Bridge people to come up with a hit list of priorities. It is interesting, what tends to bubble to the top is the things where stuff happens, things where you know there is corrosion on the Bridge Street Bridge or McClain Bridge but you don't know how fast it will effect it. Again in Chinook that's a good concrete bridge but all it takes is one too-heavy load and it cracks the concrete. I come to it as a recovering Contractor. I've asked my Chief Engineer and my Chief Operating Officer is we could put a little flex seal on it. Though they laugh at me, The Strike Force, the Pre Construction Engineer, Bridge Department are constantly looking at these and we're working with the community and the county on how to get pedestrians across Bridge Street bridge because in Big Fork summertime is critical for them. We were looking at letting this bridge in 2026 but we pushed it up to the fall of 2025. We thought we had time but we don't so we adjust, work hard and Team MDT comes together and says we like to fix the problems, we're working with outside contractors and working with utilities to fix it. We are always looking at bridges.

The Governor wants to know every month what we're doing and looking at and what we're prioritizing. So you see a lot of detail in the fine print. Things change month-to-month. When I gave this back in January we only had one off-system closure in

Chinook. In the meantime we now have two other bridges on the list. We are looking at all these; we're reacting to them and we're reprioritizing. It is interesting what you get to do as a Commission and what we get to do as a department. There is a bridge closed at Terry but it only effects a few farmers but that doesn't make headlines. A bridge closure at Big Fork, which they have another way around, tends to get more headlines. We didn't prioritize that one because they could get around but the Terry Bridge, they have to go 72 miles all the way around it. When we look at it, we tend to prioritize things. Do we do it perfectly, I think we do but we're doing the best we can. Yes bridges are still our priority.

We will also be giving this to the Legislature. We're still meeting with the Legislators. They are coming up for reelection and we're making sure they are seeing this so they know what are priorities are. If there is any extra surplus money, we're not trying to go with our hand out but we're trying to give them data so they can use. I don't want to talk about the tax policies, I don't care about the taxes I just want to us to fix it. Give me the money and I'll put it to work.

Fish Wildlife and Parks Update

We are still working every couple of months with Fish, Wildlife and Parks keeping that relationship going. We're also trying to meet with DEQ and DNRC because when it comes to bridges we are pushing to get a state-wide problematic approach to them. As we've been bundling bridges across the state, what we're running into is our own federal agency who says if you want to bundle 12 bridges, you have to get a permit for all those. So we're reaching out to other agencies for help. Let's get one permit and let this go and streamline this process. FWP and DEQ are both working with us; we're still reaching out to DNRC.

High Tension Median Cable

FWP has worked with us on a high-tension cable median barrier. We're in process, we have formally requested that with Fish and Wildlife Service. Dwane Kailey can give us the update on that. Dwane Kailey said the latest update is we have handed off our Biological Assessment to FHWA. I believe it has been sent over to USFWS and we have since entered into formal consultations with them. We've asked for expediency with the process but we'll see how that goes. Lucia Olivera said we have received it and my staff is working on it as a priority.

Headwaters Rest Area

We have met often and repeatedly. We have looked at all the issues often. We have basically bent over backwards and done everything we can to the extreme but it is still an on-going process. The developer has started throwing in other things. We have basically given the developer everything he's asked for but as Commissioner Aspenlieder alluded to, once you start down that slope where does it stop? Commissioner Frazier asked if there was an agreement in place where things were clearly spelled out. Director Long said yes.

Commissioner Frazier said didn't we have an agreement where things were fairly spelled out? What is the issue? Dwane Kailey said there is an agreement which requires both parties to sign and right now we're not getting signing from the other side because every other little issue gets thrown on top which is not related such as the development across Hwy 287. That's a problem, it requires two people to sign.

Commissioner Frazier said I understand that but when we entered the contract for the trade, we had an agreement and that should be the one that rules. Is he amending this agreement with other things? You said he is bringing up other items? When we awarded this special contract, it was one that both parties signed that this is the

outcome. That is my understanding. Director Long said that is completely done and finished but you can't push a rope; you can't force him to sign.

Commissioner Aspenlieder asked if it was the title transfer that we're talking about signing or the contract. Dwane Kailey said it is mainly the title transfer. As far as the contract itself, it is technically an RFP, there is not a contract. There are issues there with what happened but what is happening now is the title transfer and trying to get that. The Title Company will not transfer unless both parties sign and agree. Commissioner Frazier so I recommend we never do another contract like this one.

Commissioner Aspenlieder said why don't we just reopen the Rest Area in Bozeman and walk away from this deal. At what point do we just say we're going to open the Rest Area in Bozeman back up and the contract is null and void because you haven't performed and away we go. I know that sounds a lot easier. At what point do we just open this back up? Commissioner Frazier said then he'd has a nice building. Director Long said that has been discussed. Mr. Nygren discussed this with his lawyers and that helped move things along. We can do the title transfer on our side, everything is good.

Larry Flynn said there have been a lot of lessons learned through this process. I think this is a good innovation for us but we had a very steep learning curve on both sides. Obviously we've learned a lot. I'm hopeful after our meetings last week that we are very near to getting that across the finish line. There is other conversation happening with other developments that are happening simultaneously. I think we're being successful in getting those separated now and concentrating on getting this transaction closed and I expect that to happen soon. I say that with a little tongue in cheek because I know this has been a rocky road and every time we think we're there we run into another issue. Again, it's not the cleanest process and it's not one we've walked through before so we're continuing to learn but we're hopeful we're very close to getting that transaction done.

Commissioner Frazier said this reminds me of conversations I had when I was a District Administrator with right-of-way parcels. Trying to close parcels on a right-of-way deal, at some point we had to turn it over to legal and do a condemnation. With this thing, maybe it's time to walk away and open the rest area back up. Commissioner Aspenlieder said but then we still have the same issues we started with. I hear you when you say it is time to fish or cut bait. Maybe at our next meeting in April if we're still in this discussion that would be appropriate at that time but maybe not quite yet.

Federal Bills

Director Long said the federal bill is still being negotiated and we are still operating under a Continuing Resolution. There may be a chance it will pass March 1st. The issue we have, myself, Larry Flynn, Dwane Kailey and Rob Stapley went back to D.C. and talked to our Delegates. The Senate had still included the separate bridge funding; the House dropped it out. We talked to both Representative Zinke and Representative Rosendale and suggested that it really helps us because bridges are a big deal. Our Representatives know about it.

DBE Update

Maghan Strachan said our DBE goal is 6.3%. It was conditionally approved for one year as being race neutral. Right now we're sitting at 4.2% but we are doing everything we can think of as far as race neutral measures to make sure that we meet our goal this year. We're in the process of setting small business goals on some of our larger projects. DBE's would be counted toward those small business goals but we also have a Small Business Program so those other companies would be counted

toward those goals. That hopefully will increase our participation and it has less scrutiny than the DBE Program with the race and gender components of it.

We also have a new provision to give an incentive to contractors who hire a DBE or SBE firm that hasn't been used in the last three years on one of our projects. The reasoning behind that is we realize it takes time to train new people and it's a risk to hire a business you haven't worked with before but it's in our best interest to get some new businesses on these projects. That will go out in our April 4th letting.

We have been hosting Pre-Bid Networking events in every district. We've hosted Missoula, Glendive and Bozeman so far this year and we have Great Falls and Billings coming up in March. These events have been well attended and really successful. We bring in city and county officials, airports, transit providers, as well MDT staff to talk about upcoming projects and opportunities. Prime contractors, subcontractors, DBEs and SBEs come so everybody can meet each other face-to-face and shake hands. We've been incentivizing prime contractors to come. On certain projects we're giving them an extra ten contract days and we've seen a lot of success with that. On every project where we've allowed 10 extra days, the prime contractor came and got those extra days.

We also just started, "You've Got the Job Now What" training for businesses new to working with MDT. We hosted our first event in Missoula. Missoula District staff was incredibly helpful and we couldn't have done it without them. We are great at putting up new ideas and putting together an agenda of what we think people should know but it's really the people in the field that provided the training. We had 31 people attend and got a lot of great feedback on that. The next networking event is in Great Falls and Billings will also be tied to this training. We will do the training from 9 am to 2:45 pm then start networking at 3 pm to 6 pm.

We still see poor participation on Alternative Delivery Contracts in particular so we added a piece to ask firms to describe their approach to notifying DBEs and SBEs of opportunities on Alternative Delivery Contracts in hopes that the firms proposing on these projects are at least thinking about DBEs and SBEs and what they can do to include them in those projects.

Commissioner Aspenlieder asked about the threshold for an SBE which is usually financial. Maghan said the DBE Program requires all states to have some sort of Small Business Program but unlike the DBE Program that really spells out those thresholds, the SBE Program has a lot more flexibility so it varies from state-to-state. In Montana we just decided to follow the same DBE financial thresholds which is a personal net worth of under \$1.32 million for the majority owner. That excludes primary residence and equity in their business. Then they have to meet the Small Business Administration's size standards for the type of work they do. Then there is a gross receipts limit of right around \$30 million; it will go up March 1st in gross receipts averaged over the last three years. To summarize, most of the time it is the personal net worth limit which is the lowest limit that is exceeded. That is the one we see people failing to meet most often.

Commissioner Sanders said when you talk about bridges, it seems like it's the long pole in the tent. Besides getting the money, obviously they can give us the money and we will build it, but it seems the issue is expertise as far as contractors, consultants, and our own staff. What are we doing to address that? This is a barrier to accelerating, so what are we doing to address that? Director Long said we as a department through Alternative Contracting have two other bridge contracts, but we can't do them all that way. One of the contractors was Battle Bridge Builders out of Livingston but they can only do one bridge at a time. So we still have to do onesies-twosies as well as bundles. So we're trying to make sure we don't just put out huge projects. We make sure we're putting out appropriate sized projects. On the engineering side, some firms are building up – HDR is adding to their bridge

department. Other engineering firms like Dowl said that is not their priority and made a corporate decision to shrink it. So on the consultant side, we're still seeing a lot of state-wide interest in working with us. That's good.

Contractors are like contractors everywhere. "Are you full? Oh no, we're not full, we can do one." It is interesting what we're seeing so far this year, the bridge contractors are still fairly hungry. Wadsworth Brothers out of Salt Lake is fairly aggressive on the bridge in Billings. Sletten Construction has given us three bids for a couple of bridges. So we're seeing good results with contractors and consultants. They are starting to get interested in the bigger projects.

Commissioner Sanders said if we have the money the demand will generate an increase in the expertise. Director Long said yes. We, as a department, are also talking to both our state Legislators and our Congressional delegation and asking for more consistency. Don't all of a sudden drop \$500 million in our lap as a one-time gift. What we've seen over time is if you get too much, inflation takes away a lot of the spending power. We asked them to give us 5-8-10 years. We would rather have \$100 million for five years than \$500 million all in one shot because it allows everyone to ramp up and give the consultants more of a consistent approach. Wyoming has gone through this and had so many ups and downs that they're down to two bridge contractors. They are seeing that on their bids if there are significant bridges on it. That is actually what is driving general contractors, you only have S&L and Reinhardt. Those are the only two bridge builders bidding and it's starting to affect how they bid and how they can even put things out for bid because once they get full there is nothing else as back up. We are trying to learn from the footsteps of others and make sure we don't repeat those mistakes.

I-15 Culvert Failure at Rocker

Dustin Rouse said I want to provide an update on the near failure that we had south of Rocker. We have some awesome people who are creative and find solutions. We're seeing daily movement on that culvert. The fix our team came up with was, we had to maintain drainage but we needed to somehow secure that structure. We put in two 24" pipes in the bottom to take care of overflow. This is under an active construction project, so the cross-over is in the process of being built. This culvert replacement was part of that project but it started to fail before the contractor got there. Once the concrete had set, we had staff out there monitoring as we released some heavy loads and wind turbines that were making their way through the state to make sure that our structure was safe as they crossed it. We're now comfortable enough to back off to daily inspections until the contractor replaces that. It was a very coordinated effort with MCS who did a great job getting a huge train of getting equipment through the state. Our staff did a great job in making that a success.

Siphon near Harrison

Dustin Rouse said there is a time sensitive siphon near Harrison, a fairly small pipe on 287 that started leaking. We started seeing water coming up into the roadway. We needed to get in and get a contractor out there to replace that siphon before irrigation season starts up again. We're treating it as an exigency projects to get a contractor in their now. It will be state funded but I wanted to let you know because it is on one of the highways the Commission is responsible for.

Agenda Item 12: Change Orders November & December 2023

Dustin Rouse presented the Change Orders for November and December 2023 to the Commission. This is informational only.

Commissioner Sanders said it peaked my interest on page 2 the change order for Salmon Lake, it says MDT is taking over the retaining wall. Why did we take that over? Dustin Rouse said what we're taking over as part of that project is the large retaining wall blocks. That is a design-build project and in the interest of keeping the project moving in a timely fashion we were building blocks as the design was being completed. So we authorized the manufacture of additional blocks. It appears we're going to have more blocks than needed to build the wall so we've got them on stand-by so when somebody drives into one of them, we'll have them for potential maintenance repairs. There was potential cost savings in the form of the very expensive traffic control required on that project. We were using the intelligent traffic control system which was a change order to the project based on the traffic back up we were experiencing. It was a benefit to the project to create additional blocks before we had a final design.

Commissioner Frazier said on page 5-6, District Four Glendive, there is \$3 million in change orders for a \$7 million project. That's a large amount. What's going on there? Did we miss something? Dustin Rouse said I'm not aware of that. Shane Mintz said on the Fallon SW project we had a structure on the opposite side that had deteriorated to the point we decided it would be timely to include that work in that project. It was a structure we needed to address and probably should have been put in the original project in retrospect. The other driver of cost was the traffic control necessary. Commissioner Frazier said so it was an item missed in the original scoping. Shane Mintz said yes.

Commissioner Frazier said the other one Underpass Avenue in Billings was a \$10 million contract and we have \$2,400,000 in change orders. What is the reason for that? Did we find something unexpected that nobody knew about? Director Long said this was a major project in District Five in Billings. When we let this, we received no bids for it, so we changed the contract scheduling to allow more flex days. The contractor had traffic control for six different roads coming in there. We have made quite a few changes – we changed some of the retention areas because we had flooding that spring. We also changed the scope of work to allow the contractor – this was all concrete paving and we were trying to do it in sections and it became apparent that was not feasible; the constructability was not there. So we allowed more cost and more time and more traffic control to shut everything down for an extended period to pour the main section. That changed the scope quite a bit but the biggest driver was traffic control.

Commissioner Frazier said when they start hitting 20% of the bid, I get a little concerned. As a former designer it used to be one of the performance goals I had, they would track that and look at the number of change orders, the amount of the change order versus my plans and judge me on whether I was doing a good job as a designer. I realize stuff comes up but I want to emphasize that we should be designing and planning ahead for all the things and not throwing plans together just to spend money.

Red Lodge Project

Dustin Rouse said you asked about the Red Lodge area when we met last time. I went back and looked at my notes, we estimated the project would cost about \$30 million and we're currently sitting at \$20 million. So this latest change order is for PD, and there will be more construction. We knew it was going to be a costly project.

Agenda Item 13: Letting Lists

Jake Goettle said we just presented the upcoming Letting List for your information. I handed out the letting list packet which extends from February through July, 2024.

Next Commission Meetings

The next Commission Conference Calls were scheduled for March 5, 2024, March 19, 2024, and April 16, 2024.

The next Commission Meeting was scheduled for April 25, 2024.

Meeting Adjourned

Commissioner Loren Frazier, Chairman
Montana Transportation Commission

Malcolm “Mack” Long, Director
Montana Department of Transportation

Kelsie Watkins, Secretary
Montana Transportation Commission