

Montana Transportation Commission

December 14, 2017 Meeting
Commission Room
2701 Prospect Avenue
Helena, Montana

IN ATTENDANCE

Barb Skelton, Transportation Commission Chair
Greg Jergeson, Transportation Commissioner
Carol Lambert, Transportation Commissioner (excused)
Dave Schulz, Transportation Commissioner (phone)
Dan Belcourt, Transportation Commissioner
Mike Tooley, Director MDT
Pat Wise, Deputy Director MDT
Dwane Kailey, MDT Engineering
Lori Ryan, Commission Secretary
Dustin Rouse, MDT
Dave Ohler, MDT
Lynn Zanto, MDT
Kevin Christensen, MDT
Jake Goettle, MDT
Kevin McLaury, FHWA
Carl Seilstad, Fergus County Commissioner
Ross Butcher, Fergus County Commissioner
Mike Lang, Senate District 17
John Carnahan, Phillips County Commissioner
Dan Bartel, Lewistown, District 29

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

OPENING – Commissioner Barb Skelton

Commissioner Skelton called the meeting to order with the Pledge of Allegiance. After the Pledge of Allegiance, Commissioner Skelton offered the invocation.

Approval of Minutes

The minutes for the Commission Meeting of October 25, 2017 and Conference Call of November 7, 2017 were presented for approval.

Commissioner Jergeson moved to approve the minutes for the Commission Meeting of October 25, 2017 and Conference Call of November 7, 2017. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 1: Local Construction Project on State Highway System – Sage Lodge Access Tunnel – Park County

Lynn Zanto presented the Local Construction Project on State Highway System – Sage Lodge Access Tunnel – Park County to the Commission. Under MCA 60-2-110 “Setting priorities and selecting projects,” the commission shall establish priorities and select and designate segments for construction and reconstruction on the national highway system, the primary highway system, the secondary highway system, the urban highway system, and state highways. This statute exists to ensure the safety

of our system, protect transportation investments, and encourage coordination on public and private infrastructure improvement projects that impact MDT routes.

Sage Lodge Access Tunnel – Park County

Sage Lodge on the Yellowstone is proposing to construct an access tunnel under East River Road (S-540) in Park County. The access tunnel would serve as a passageway for guests to access resort property on both sides of the roadway. Sage Lodge is also proposing culvert and guardrail upgrades near the tunnel to improve drainage and safety features in the area.

MDT headquarters and Butte District staff have reviewed and concur with the recommended improvements. Sage Lodge will provide 100 percent of project funding and will be required to complete MDT’s design review and approval process (to ensure that all work complies with MDT design standards).

When complete, Sage Lodge will assume all maintenance responsibilities associated with the new access tunnel and MDT will maintain the culverts and guardrail.

Summary: Sage Lodge on the Yellowstone is proposing modifications to the Secondary Highway System near their resort in Park County. Specifically, Sage Lodge is proposing to construct an access tunnel under East River Road (S-540) to provide a passageway for guests to access resort property on both sides of the roadway. Sage Lodge is also proposing culvert and guardrail upgrades near the tunnel to improve drainage and safety features in the area.

Staff recommends that the Commission approve these modifications to Secondary 540, pending concurrence of MDT’s Chief Engineer.

Commissioner Jergeson moved to approve the Local Construction Project on State Highway System – Sage Lodge Access Tunnel – Park County. Commissioner Belcourt seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 2: Local Construction Project on State Highway System – Town Pump Sidewalk Improvements, Ennis

Lynn Zanto presented the Local Construction Project on State Highway System, Town Pump Sidewalk Improvements in Ennis to the Commission. Under MCA 60-2-110 “Setting priorities and selecting projects,” the commission shall establish priorities and select and designate segments for construction and reconstruction on the national highway system, the primary highway system, the secondary highway system, the urban highway system, and state highways. This statute exists to ensure the safety of our system, protect transportation investments, and encourage coordination on public and private infrastructure improvement projects that impact MDT routes.

Town Pump Sidewalk Improvements – Ennis

Town Pump, in coordination with the City of Ennis, is proposing to install new sidewalk along US-287 (P-13) in Ennis. The new sidewalk will help improve pedestrian access near the Town Pump convenience store located at the intersection of US-287 (P-13) and MT-287 (P-29).

MDT headquarters and Butte District staff have reviewed and concur with the recommended improvements. Town Pump will provide 100 percent of project funding and will be required to complete MDT’s design review and approval process (to ensure that all work complies with MDT design standards).

When complete, the City of Ennis will assume all maintenance responsibilities associated with the new sidewalk and MDT will maintain the new curb.

Summary: Town Pump is proposing modifications to the Primary Highway System in Ennis. Specifically, Town Pump is proposing to install new sidewalk along US-287 (P-13) to promote pedestrian access near their convenience store located at the intersection of US-287 (P-13) and MT-287 (P-29).

Staff recommends that the Commission approve this modification to US-287, pending concurrence of MDT's Chief Engineer.

Commissioner Schulz said he is quite familiar with this project. Town Pump is doing a significant improvement to their store facilities and this sidewalk section ties into a pretty significant newly installed sidewalk in that area. It's a good project and brings their walking paths together once it is installed.

Commissioner Skelton asked if it was ADA. Lynn Zanto said yes, it is part of our requirements to be ADA accessible.

Commissioner Schulz moved to approve the Local Construction Project on State Highway System, Town Pump Sidewalk Improvements, Ennis. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 3: Missoula District Projects **St. Regis – West** **Columbia Falls – Detention Pond**

Lynn Zanto presented the Missoula District Projects – St. Regis, West and Columbia Falls, Detention Pond to the Commission. The Interstate Maintenance (IM) Program finances highway projects to rehabilitate, restore, resurface, and reconstruct routes on the Interstate System. Montana's Transportation Commission allocates IM funds to MDT Districts based on system performance.

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, safety and pavement needs in the Missoula District, MDT is advancing minor rehabilitation projects on Interstate 90 (I-90) and US-2 (N-1). The first project (*St Regis - West*) will rehabilitate 6.8 miles of Interstate 90 near Saint Regis. The estimated total cost for all phases is \$7,362,000 (\$6,734,000 federal + \$628,000 state) – with the entirety of the federal funding originating from the Missoula District Interstate Maintenance (IM) Program.

The second project (*Columbia Falls – Detention Pond*) will improve storm water drainage features on US-2 near Columbia Falls. The estimated total cost for all phases is \$559,000 (\$484,000 federal + \$75,000 state) – with the entirety of the federal funding originating from the Missoula District NHS Program.

Summary: The Missoula District is requesting approval to add two minor rehabilitation projects to the highway program. The first project (*St Regis - West*) will rehabilitate 6.8 miles of Interstate 90 near Saint Regis. The estimated total cost for all phases is \$7,362,000 (\$6,734,000 federal + \$628,000 state) – with the entirety of the federal funding originating from the Missoula District Interstate Maintenance (IM) Program.

The second project (*Columbia Falls – Detention Pond*) will improve storm water drainage features on US-2 near Columbia Falls. The estimated total cost for all phases is \$559,000 (\$484,000 federal + \$75,000 state) – with the entirety of the federal funding originating from the Missoula District NHS Program.

The proposed projects are consistent with the goals and objectives identified in the Performance Programming Process (P3) as well as the policy direction established in *TranPlanMT*. Specifically, roadway system performance and traveler safety will be enhanced with the addition of these projects to the program.

Staff recommends that the Commission approve the addition of these Missoula District projects to the program.

Commissioner Jergeson asked if they were approving projects going into pre-engineering but not close to being in the five-year time line. Lynn Zanto said correct. What happens next is we put the projects into our Statewide Transportation Improvement Program which is the federal program of projects. We put it in an amendment and Federal Highways approves it. Once it is approved, we request approval to start the preliminary engineering. These two projects will go directly to preliminary engineering because they are lower impact projects. Next year when we get to the TCP, you will see these two projects in there and they will start to populate once we get a schedule and ready dates. We are a long way from actual construction.

Commissioner Jergeson said, based on our experience with a couple of other projects that have had “late blooming” opposition, what does the public know, particularly the holding ponds in Columbia Falls, about these projects being in the works to determine whether they want to comment on them. Once you’ve spent a few hundred thousand dollars of engineering money that is mostly Federal Highway, what are the consequences of a decision to cancel a program due to public opposition if the opposition doesn’t happen until later. Can the public express their opposition in a timely manner, so the money hasn’t already been spent? Lynn Zanto said in terms of public involvement so far, before a project even comes to this meeting, we put it on our website and notice it on the Commission page regarding upcoming projects. The other thing we’ve done since the Legislative Session and Senate Bill 22, as those projects come in to get nominated from the District, we look at the work and compare it to the law to see if it raises to the “substantial project” level. These two would not raise to that level because of being in the right-of-way and being minor rehabs, however, you have the prerogative to say you think otherwise. Then it would be handled through a much more enhanced public involvement, but public involvement will still occur through the process even if it not designated as a “substantial” project. The District will put notices in the paper and there will be conversations with the communities.

Dwane Kailey said, once it gets into the Federal Aid Program, it gets handed off to the Engineering staff and the first thing they do is to go out and have a Preliminary Field Review. We bring in the Design Team and they look at the project on site and identify any issues they see for design. At the same point in time, in the intent of 182, what we are now tasking that team to do is also identify the communication plan. They will sit down and figure out if it has a substantial impact, a moderate impact, or a minimal impact. They identify the level of impact and then develop a communication plan accordingly. That happens early in the project. Our expenditure will be minimal at that point. Then we’ll reach out to the local government, any impacted individuals, and any kind of recreational or commerce activities going on in the area. We’ll start notifying them of the project that we are planning; we want that input so we can identify if there is going to be any opposition, controversy, or something we don’t know. We want that input early on with very minimal expenditure, so we can start to adapt to it, mitigate it, avoid it, or whatever the issues might be.

Commissioner Schulz said he appreciated Commissioner Jergeson's question. In the introduction it says "advancing minor rehabilitation projects" but it's nearly eight million dollars and I don't consider that minor. Dwayne Kailey said that section of Interstate is concrete and we're looking at staying within the roadway footprint. We're looking at what we call a "dowel bar retrofit"; when we built concrete interstates in the past, the slabs were not interconnected. What's happened is what we call "faulting" – water gets in those joints and rolled some of the gravel away and the slabs actually tilt a little. We bring in a dowel bar and cut a slot between the two slabs, drop that in, and epoxy it. That ties the two slabs together. It's expensive, hence the price, but it minimizes the faulting and the bump-bump-bump you feel when you go over a concrete section of roadway. Yes, it's expensive, but it's also seven miles worth of roadway and it's all within the existing roadway. Commissioner Schulz asked if the surface was altered or replaced; it's just at the breaks. Dwayne said it will stay concrete, but we will come in and diamond grind the concrete, so we take the faulting out of it and smooth it out again. With the dowel bars in place we should have to do that in the future.

Commissioner Schulz moved to approve the Missoula District Projects – St. Regis, West and Columbia Falls, Detention Pond. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 4: Interim Speed Limit Recommendations MT-41 – Big Hole Valley

Duane Kailey presented the Interim Speed Limit Recommendations for MT41 – Big Hole Valley to the Commission. This is an interim speed study. We've been requested by Beaverhead County to look at a speed study for MT41. We went down and met with them in September of this year. Due to the timing, we weren't able to go out and conduct the study due to the weather, so we're recommending, based on our discussion with them, an interim speed which requires your approval. Based on the statute and riding the corridor with local officials, we are recommending the following:

Wise River West

A 60-mph speed limit beginning at milepost 64.250 west of Wise River (as approved in February 2002) and continuing east to the beginning of the posted 50 mph speed zone leading into Wise River.

Wise River to Dewey

An interim 60 mph speed limit beginning at milepost 65.625 on the east side of Wise River and continuing east to milepost 70.5 west of Dewey.

Dewey to Divide

An interim 60 mph speed limit beginning at milepost 70.9 east of Dewey and continuing east to milepost 76.380 west of Divide.

Divide to Interstate 15

An interim 60 mph speed limit beginning at milepost 77.233 east of Divide and continuing east to Interstate 15, an approximate distance of 0.650-miles.

The gaps in there are already special speed zones approved by the Commission and the mileposts, while they seem very accurate, we're asking for a little flexibility based on what we find out. Staff recommends approval. We have a letter from Beaverhead County Commissioners supporting this.

Commissioner Skelton asked if that was where there is trouble with sheep. Dwayne said the majority of sheep issues are on MT1 just outside of Anaconda; I'm not aware of any issues on MT41. Commissioner Schulz said he had communicated with the Commissioners. I was at an early meeting where about 30 people came to speak to this issue. Having driven that road many times and I concur with the adjustment.

Commissioner Schulz moved to approve the Interim Speed Limit Recommendation MT41 – Big Hole Valley. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Elected Officials/Public Comment

Dan Bartel, HD 29 Representative, Grass Range Roundabout Project

I would like to build a timeline for the Grass Range Roundabout project. When I first got involved, I read a statement from the MDT Public Process Involvement Plan Engagement Program which stated: "MDT's mission with the public is a meaningful public involvement effort to build trust and credibility for the department and enhance awareness and understanding of MDT actions." When I read that it was regarding community involvement in two projects in the communities we live in. I thought okay, as a Freshman Legislator and being in office, I'll get involved and see what I can do. Folks had asked me to look into the Grass Range situation and the roundabout because they weren't in favor of it. I started looking into it and when the community first got involved it was in August 2013. It wasn't a knee-jerk for me to just start six months ago on this, but the public has been involved for quite a while. We have a letter that the Fergus County Commissioners had written in August 2013 stating opposition to the roundabout. So, the community was involved a long time ago on whether that would be the right answer for that intersection. It states they were in opposition to the roundabout in 2013.

In January 2014 there was a small article in the Lewistown News Argus about the roundabout. To be honest with you, most people didn't think the roundabout would ever materialize so there wasn't a lot of opposition but there was discussion with the County Commissioners that they were not in favor of the roundabout and, at that time, neither was I. There was a little bit of information given out about the different meetings that MDT did trying to explain why they wanted to do what they did.

Then I was elected to HD 29 in the Fall of 2016 and citizens started asking me about this roundabout and what I could do about it because they weren't in favor of it. As I was campaigning, it seemed to be the number one question that came up, so I said, "let me see what I can do about it." After I was elected, I looked into it and asked Director Tooley for a public meeting which he gave us in January 2017. We had a public meeting with a couple hundred people and I have 400-500 correspondence from emails and other issues that say people are not in favor of this roundabout. It was a pretty good response, so I decided to push the issue because citizens don't want it. That's what I've done along with other Representatives and Senators. The folks just didn't want it; they wanted some other avenue of addressing that intersection. As a Representative, I kept asking MDT to figure out some other way and we had lots and lots of discussions and talks about it. Finally, the Session ended, and MDT decided to put in a four-way stop which we didn't know about, but that's what they did and that's where it's at.

Then, believe it or not, I figured they were going to put in a four-way stop when they started talking about a four-way stop. In September of 2017, and how I got involved again, was multiple Veteran's organizations got ahold of me. They said they didn't want the Grass Range roundabout being called a Veteran's Memorial Roundabout. I

didn't know anything about that. That created another uproar in the community. I ended up getting another petition put together because the Veterans were so upset about this roundabout – they don't want it and they don't want it to be named that. We ended up getting about 2,000 signatures of people who didn't want the roundabout. Only nine people thought the roundabout was a good idea.

I kept pursuing it and we got ahold of the Highway Commission to come visit with you. Some other things arose – we ended up getting a letter from Director Tooley that said the roundabout would be cancelled and the bid letting would go away. I think that is a good thing. I think there are other solutions to that intersections besides a roundabout and the community just didn't want it. With that much opposition, where we decided to stand up and push back. I'm glad MDT decided to not put the roundabout in; that is what the people's wishes are and I'm going to stand by that. I think when you have as much opposition to a project, we need to listen, and MDT did. I would hope that when we move forward, whatever is going to be done with that intersection, that the elected officials would be involved in a solution to help heal up our community because it has been a pretty controversial intersection.

I just want to thank everybody who got involved in it. It helped bring the community together and we got some other issues taken care of. I worked with Senator Lang and the County Commissioners and I've had opportunity to work with a few others about this roundabout and the citizens just did not want it. We would like to be involved in a solution. It was pretty contentious and the bid letting was cancelled and we appreciate that. We feel the citizens were heard. Thank you.

Ross Butcher, Fergus County Commissioner

He said Dan did an excellent job of how this proceeded. We do appreciate that the concerns of the citizens and the local officials were heard. Director, I appreciate you took some action with that. I think we struggle with the communication part; we do not want to have an adversarial relationship with MDT because we work with them a lot. Counties are definitely in transportation. We generally have good relationships with them and we don't want this to grow into something that it shouldn't be. I'm glad to hear that it sounds like there is a very specific plan. If there's a project that is obviously going to have some controversy, this is one of them.

I was elected and took office in 2015, so I'm the new Commissioner but I'm fairly involved in the community. I own a Main Street business, I was on the Community Council and the first I heard about the roundabout was when I became a Commissioner and here come the plans. I thought "what is this?". So obviously there is a breakdown in communications; maybe it's my fault for not reading the blurb in the newspaper but I do think that is something that needs to be pursued. It sounds like it is in the works, but I would hope that is definitely a culture and a move within MDT to try and make sure that everybody who has a concern, has an opportunity to be heard. I think, through the timeline, you got the idea that once the community heard about it, there was a lot of discussion about mitigation that might work – some talked about a four-way stop, there was discussion about a speed zone. The Fergus County Commissioners have asked for another speed zone study and I understand that is in the works. The folks who live in Grass Range have been asking for that for quite some time. We need a speed zone put in on that north-south route and I think that would be another factor that needs to be looked at.

With that, I want to say thank you that we were heard and had an opportunity to come in here. We look forward to a good relationship with MDT moving forward and that we have opportunity to have input at the local level. Thank you.

John Carnahan, Phillips County Commissioner, Malta

Thank you for asking us to come; we greatly appreciate it. I was at the meeting that you allowed us to have. I'm the new kid on the block as of January a year ago; I'm still getting my feet wet.

Number one to Director Tooley, "thank you for listening to the people and listening to us, we greatly appreciate it". I agree one hundred percent that we need to work with you guys in whatever way we need to because you do a remarkable job. To your safety man, "thank you, you do an excellent job". This whole scenario of a roundabout in that location, in Phillips County we have the same issue – people saying we don't want it. You listened, that's great.

I'm a little bit different than a lot of the guys. I got out of the Airforce and crawled into a semi-truck. I've got time in a truck with cattle, grain, and heavy equipment. Then I went into heavy equipment operating and eventually opened a shop for 25 years. I also ran a wrecking service and that's what I do now. I sold my shop to one of my boys and now I run a wrecking service. So, I'm on the highway. The Highway Patrol, MDT – I see everything that you guys are doing, and it's always been about safety. I understand that none of us want any more accidents at this intersection. I lost a sister in a head-on collision when a defibrillator on a man's heart quit working and he crossed the center-line. I lost a son because of alcohol and driving. So, I understand safety and understand human life, and I want you all to know that the Department of Transportation, with their idea of a roundabout, I'm not going to criticize it, but the people did not want it and you listened. So, now we need to come up with a plan that's going to make that intersection safe.

I was going to come up early yesterday to visit with everyone, but I got a wrecker call and had to go to Grass Range. I went through the four-way stop and have been through it many times since it was put in, whether it's a good thing or a bad thing, I'm not sure. It's not hard for me to put the clutch in on my truck and put my foot on the brake. Going back to my truck-driving days, if we're going to stay with that, the only suggestion I can make is we need a little bit more signage ahead of time because at 120,000 pounds when you're pulling a grain trailer and a pup, I don't know if we can get everything gathered up quick enough to get slowed down especially if we have a little bit of ice and snow.

Another thing I looked at was there was about six different cars in both directions and everybody stopped. I'm proud they are obeying the rules. Something I've noticed when I get out of state, when you come into an intersection like that at night time there are lots of power poles with lights on them. As you're coming down the highway you're thinking there must be an intersection coming up. There's a flashing light too so you tend to decelerate. That's another suggestion.

I'm here to say thank you very much for listening to the people. The Phillips County Commissioners will work with you in any way, shape or form. Thank you for listening.

Senator Mike Lang, SD 17

Thank you for having us here this morning. It's a great part of our country and nation that people can speak out. I also want to reiterate what everybody else has said and I'm fully supportive of what they commented on. We the people – you guys are doing the same thing as I do as a Legislator, you are coming together and don't get a lot of pay to make a lot of decisions. Commissioner Jergeson at the ARTIC said that he spent a lot of time in the Legislature and I'm sure he knows more about the procedure of the Legislature than I do; I've only been there three terms. Those are the things we learn. At that meeting, Director Tooley mentioned a publication on safety that was put out in May and was on the website. I spent an hour and a half

trying to find it yesterday and can't find it. That's the problems we're having with websites. The other thing is Acronyms. When you sit on a Committee, most of the people in Montana don't even know what DPHS or MDT stands for. Acronyms are on your website and it's on the Legislative website and it's in the Committee hearings and the constituents don't know what the hell we're talking about. We get so focused on things. That goes back to the safety of Grass Range. We had the highest number of safety problems at that intersection, but the comment was we were going to look at that or go to a roundabout. The suggestion was to look at some stuff in the middle and give us the safety rating on that but that was never done. Commissioners, we have responsibility. I told Commissioner Jergeson I was happy he was on this board that because of his past experience, he will dig through this stuff. I miss stuff as a Legislator, sometimes you don't think of things out of the box and we must. We must be responsible to the citizens and that's what we're trying to do. I know Greg Jergeson will do that; he will dig and find out the right thing and make the best decision he can like all of us do.

I think the website, that's where SB 182 came in, how can we fix this thing? How can the people be more informed? You go home, and people hound you about something. They don't know the facts, I'm sorry they read the Great Falls Tribune or the Billings Gazette, and that's the facts. You sit down and explain it to them, and a lot of times they begin to see where you're coming from. Everybody is trying to find out from your website, what is MDT doing and it has not been very apparent. To this day, I can't tell you what an STIP is. I got told yesterday that if I want to know what's going on in my district to go to the website. Now I thought it would be cool if somebody knows where my district is and be able to look at all the projects going on in District 5. That would have been the simple way, but it wasn't handled that way.

I got involved with this project because of the Highland. That's what SB182 is trying to address – it's directing the Commission and MDT, when they have a project, to analyze what it's affecting. That corridor is a north-south corridor to Billings, Montana. The goofy part in looking at the website last night, we shouldn't even be having this argument because you don't have it loaded on the website. The highway goes to Lewistown and back to Grass Range; you don't have that connection. That's a pet peeve of mine. There is no direct route from Billings to Malta because we're supposed to go to Lewistown first according to the highways. This thing has to be rectified.

We talked about assets. I want to personally thank Commissioner Skelton because she is the only Commissioner on this Commission that responded to me at any time during this process. That put my hackles up when I send an email to every Commissioner on this Commission, and she was the only one who responded. I got accused for not staying in my own territory; you don't belong south of the river. I represent my district, but I also represent Montanan's. Because that is a corridor, and that's what 182 is supposed to do, and hopefully we'll get it done.

What does this effect? Last night I was in a fog going out to Fox Ridge and that roundabout scared the heck out of me because I didn't know it was there. I'd never driven it and it was so thick you couldn't see near that wall. Do all the towns around me need to know about that roundabout? No, that's a specific roundabout, five miles away from anywhere and not on a major highway.

One of the definitions I found on roundabouts, was, "in congested areas they slow traffic". Hwy 87 is not congested, if anything, when you have a flat tire, you pray somebody will come along to help you get there and hope you don't have to wait for two or three hours. At that time Commissioner Cobb emailed me back – I was wrong, Commissioner Cobb did answer an email – "When it was approved by the Commission it was a \$2 million project, what the hell is going on now that it's \$3.2 million". That's all he said. I decided to proceed and check in from there. Through

all this, we must learn, and we will learn about how to get along and how we can communicate better. My wife and I are building a house right now and I'm communicating very good with my wife. If I don't, things will be wrong.

We all want safe intersections. The asset of that roundabout for that area, yes, we spent some money. Any of you who have been in business probably had a project you were going to do and said, "woops, I don't think I'd better do that." I'll give you a case in point. I was in the Agriculture business and had a Conservation Reserve Project (CRP) another acronym, that's where farmers get paid for not cropping their land and plant permanent cover. Part of that cover was to maintain that every third year. That means they couldn't raise cows, but they had to go in and mow it. I invested \$200,000 in mowing equipment and was going to make money renting this out. That was \$200,000 I didn't know if I had. What happened? The U.S. Government decided they were going to let them graze it or hay it. So, all of a sudden, I had to dump that equipment. I still had the asset, but I didn't need it. The bigger asset was the \$200,000. The asset we've created at the Grass Range intersection is an asset for every citizen of Montana and it's up to this Commission and MDT to figure out what we're going to use it for. Personally, I would prefer through traffic through Hwy 87 and that's been my stance from the start. That will be left up to you people and the Commission.

We need to be cognizant of acronyms and how we explain and talk about acronyms. I was an Agronomist and a Consultant for 40 years and I can blow you guys away with soils and seeds and plants and fertilizer and textures, but you wouldn't understand it. So, you have to make it so we can understand. We are the ears of the people out there; we want them to come to us, so we can talk to our agencies and make things work. We all have jobs, we all have things to do and I think this Commission will hopefully have a lot of involvement with things going on. I look forward to Dwane and Director Tooley handling 182; it's needed. Both these gentlemen have expressed that – we need this, we want this within our system. Like all of us, you must have employees follow along with your management plan or it doesn't work.

I support what we're doing at MDT. I have a lot of things I want to see. I want better highways in this state. I want safer highways. I challenge this Commission – what are we talking about, we're talking about intersection safety money. We aren't talking about safety money on highways. When this first came out, we had four deaths at that intersection in a given time period studied by MDT. In the same time period, six people died from that intersection to the Missouri River but that doesn't count. That's what I was told – that doesn't count in this project. It does count! That's six people who died. So, if we as Montanans, can talk to Federal Highways, how can we direct safety money? Fergus County has what they call the Divide Road that's the biggest area in our county where people die on the highways. Is that not safety? In our country when we go home, the River hill, that's got to be what it is. That's mother nature. The only thing that's for sure in Missouri River country, when you build a road is it will change. The ground will move at some point. So, could we have other safety issues? Do we need to ask Federal Highways to divert dollars away from what could be the safety of a roundabout into actual safety of the highway? Out of 177 deaths this year, how many are caused because of intersections? As brought up through all these conversations and we don't need to be crude here, but we can't stop stupidity. I watch as I come to Helena, from Ft. Benton to Great Falls there are lots of roads that hit the highway. The last trip I saw five cars that didn't stop at the stop signs. They live there, they just pull out and jump on the highway and go. That's not the right way and we will suffer consequences when those things happen.

Thank you for your time. Please continue to do good work. The doors always open and my phone is always there.

Commissioner Seilstad, Fergus County Commissioner

I'd like to thank you for the opportunity to speak to you today and thank the department for the services they do for Montana. I'm not going to belabor the roundabout. Our goal today is to relay the message that anything we can do to enhance the safety of the traffic control we have in place at the intersection of 87 and 219 is in all our best interest.

In the past, we've always had a good working relationship with the department. We've done corridor studies, milling projects, secondary road programs, flat programs to name a few. We've always had a good relationship. We hit a bump in the road this time and I hope that doesn't affect the working relationship we've had with the department. The reason I bring this up is there are individuals outside our area who have been very outspoken that have criticized the department and downgraded them. We do not have that vendetta. Our group does not have a vendetta against the department. I want to relay that message. We respect you guys even though we might have differences of opinions. Those individuals out there doing that are not speaking on our behalf and I want you to know that.

You've heard some of the comments. I know that we've been asked to come up with solutions and you've heard a couple of them. Whether or not the department decides to do them – the lighting of the intersection, etc. Is there anybody on the Commission who hasn't been through that intersection? I have pictures of that intersection and what we're talking about. When you're coming from Winnett, there is the stop ahead by the intersection and back quite a way there is another one, and that's the only sign the two lights are on. If there is a possibility of additional signage that might be a solution. We have submitted a request for a speed zone study by the town of Grass Range and continue that on to the intersection. We've been told repeatedly that speed zones don't help, but for the few people it does slow down, maybe that would be a possibility of preventing further accidents.

I did check with the Sheriff's Department and since June there have been no accidents at that intersection since we put up the four-way stop. I know there was in the beginning. Lots of people were still blowing through it. When I talked to the County Attorney's office, there were multiple violations written. I checked with them before this meeting and now it is few and far between. I think people are getting used to it. Anything we can do to enhance the safety of that intersection, is in our best interest.

Other safety projects in Fergus County, we've talked to the department about two or three others. I think the Divide is being worked on. There is also the 90-degree corner when you leave that intersection going towards Winnett and there's a bridge on it. That might be another possibility for a safety project. The intersection of Hwy 81 which goes to Denton, when you leave Lewistown you drop over a hill and poof there's an intersection there. If you've got haying equipment on the road, it backs things up. I'm just throwing these out in case there's interest in possibly other safety projects in Fergus County.

I just want to say thank you. We have a good working relationship with the department and we're not holding any vendetta against the department for what I consider a bump in the road from all the good things that we've done together. Thank you very much.

Commissioner Jergeson asked Commissioner Seilstad a question. When I talked about driving through that intersection I stopped but I witnessed someone who didn't stop, and the Highway Patrol had that person pulled over. How often is a Highway Patrolman assigned out there? Commissioner Seilstad said he didn't have that information, however, I've talked to the Sheriff and he has occasionally stopped at the intersection but I'm not sure about the Highway Patrol. Director Tooley said

he was stationed in Stanford for eight years. It's 75 miles from our old house to the Grass Range intersection so obviously I've been there quite a bit. There were three people stationed in Lewistown. They were responsible for about a five-county area. The fact is you're not going to have a Highway Patrol Trooper there hardly ever unless they are there for something else, i.e., on their way to a call or on their way back from a call, and maybe on the occasional slow day they will go there. But even with the crash activity, Grass Range isn't the hot spot. It would be out towards Eddie's Corner, working traffic from Great Falls to Billings because that is where most of the events will occur in that district and that's where the Troopers probably go. They aren't assigned anywhere, they are pretty much put in the call queue and then they react to what comes in. There just aren't enough Troopers to really assign beats. I'm not sure what the Sheriff's office does, they have about seven deputies. Commissioner Seilstad said we've got 4,242 square miles for our Sheriff's Department to cover. If they are in the area, they don't sit there all day. Director Tooley said they can't and that's the point. Enforcement of speed zones and even a four-way is a major concern.

Senator Jergeson asked how to work through the dilemma. As early as 2012 the previous Commission started this. I come in and hear the controversy about it, but I found out my responsibilities as a Commissioner is to try and make sure we manage our projects and the use of the state dollars to match. At what point is it wise for second guessing to cause cancellation of a project? At what point has federal money been spent that must be repaid if a project is cancelled? So, the extra dollars you voted for in the gas tax, so we can match all the federal money that was available, but the effect of cancelling a project that is unpopular. If there's money spent on it, then that's money that can't be used to match because we must pay that back. Where do I as a Commissioner draw the line on any project? What justifies us setting ourselves up to not being able to match \$8-9 million of federal money on other projects because we will pay back \$700,000 to the federal government?

Mike Lang said that is what I was trying to explain about the assets. We have the asset there – we've bought the right-of-way. To go back a little bit in history, in August of 2016, Montana Motor Carriers, Director Tooley and I met in Billings. At that time the right-of-way had not been purchased. That right-of-way was purchased shortly after that. There may have been a stay put in it at that time, so let's figure this thing out. The other thing we have in a Resolution of 2005 says whatever we do as a Commission, we will look at the economic viability of how we affect motor carriers in the state. To be direct, at this point there are a few punches in the nose – tell that Senator north of the river to not talk about us and mind his own business. Those are emails. At that point, why did you buy the right-of-way? That money was spent – when we started this project \$90,000 was spent on that project. The right-of-way took us to \$700,000. We want to create efficiencies; the multiplier of safety money cannot be denied. Why do we support MDT on financing claims? I'm getting a 90% match for 10% - that's a good move. So, we do that as Legislators. I think we must listen to the people and to MDT's own purview, we haven't done things totally right.

We talked about a comment on the PSC – how do I inform the people that this rate increase is going to go. So, somehow, we must get this out there, so they can't come back say "you should have known." I have \$845 to bring gas into my lot for the house I'm building in Malta. I went to the MDU website and it says that if the gas is located in the alley or on that property, the constituent does not have to pay to hook up. Now I think MDU is going to repay the money I've already given them because they implemented a new law that says they can charge me for that but there was nothing sent out to the constituents saying that was going to happen and their website still said that gas was free. These are the problems we have. In the medical field DPHS tells people to go to the website and see what's on there; they do not understand these websites. Somehow, we're not getting the communication out there. That's what we must do. To be more direct, sometimes you chalk it up to learning and hopefully the gas tax will bring us more money to do the safety projects.

I'd like to see your math because I question the \$700,000. There could have been hold ups and not spent that much too.

Commissioner Jergeson asked Senator Lang – there is a rule of thumb that no Legislature can bind any future Legislature unless it's been in the form of a Constitutional Amendment. Conversely, the Legislature passes a law or approves a project to be done building a Forensic Science building someplace, and a few sessions latter, it would take an affirmative act of the Legislature to either change the law to cancel it at that point. One thing I'm struggling with right now is the process by which ... clearly the old Commission that approved this project in the first place can't bind a future Commission from making a different decision but conversely like in the Legislature, nobody but a subsequent Legislature can change a project that the Legislature has approved. There is nothing in the process that happened during the Special Session that involved the current Commission in making a change different from the original approval of a previous Commission. So, they couldn't bind us but on the other hand, we weren't accorded the authority as the current Commission to decide a different choice. That was decided somewhere else and apparently some negotiations in a Special Session and I'm trying to understand that. As a long-time Legislator, I think something went awry from the way the Legislature is supposed to operate. Senator Lang said you're correct and your experience far outweighs mine, and I don't know of any special back door thing that went on. I was handed a piece of paper the last hours of the Special Session; I'd not talked to anybody in the government other than my peers about the roundabout that Director Tooley was pulling the project. In the organizational chart we have a three-tier system – Legislative, Executive and Judicial. In the organization like this it is the Governor, Director, and the Commission goes between those two. The organizational chart to me says the Director and the Governor have charge of the Commission. That's all I know. We thought when we left the Regular Session that the roundabout was gone. We were very thankful it did not happen and just accepted what was there. One of the ironies of it all, when we left the Session, by the time I got home I had a letter from MDT saying we're going to do Phase I of that project which is a four-way stop and the potential Phase II was a roundabout. That letter was written before I even left the Session. That's neither here nor there; that's the way the process went. The water is under the bridge. If you have to pursue, you can. In the organizational chart, I think it is the Governor and the Director and I'm presuming the Director made the decision. That's all I know.

Commissioner Schulz said having heard all the presentations, I want to thank everyone for coming to Helena and stating their case. I think in accordance with 182, it's very appropriate and important that those messages are heard both by the department and the Commission. Certainly, some of the things that have been brought up today in process in what happened in the Legislature, etc., are things I'm not familiar with. I visited with Commissioner Seilstad a few days ago about some of this. I watched the camera in the traffic movement through the interchange and it is very apparent to me that something needs to be done. At the same time, I do respect the comments today that there are some alternatives that could be considered that do have a lesser cost than the development of a roundabout and yet we've gone through the step of supporting and approving the roundabout. For today I'm just going to weigh what I heard. I appreciate everybody's comments today and your commitment to work with the department to make that intersection better. We'll be taking it under advisement.

Director Tooley said we still have an intersection at Grass Range, and I was wondering if we could take advantage of this opportunity to talk about this a little bit and maybe show what is going on there. Also, to direct people to the Sanderson Stewart Report which is on the RTIC website. RTIC stands for Revenue and Transportation Interim Committee. It is the Legislative Committee that has Legislative oversight of the Department of Transportation and Revenue during the Legislative interim. It's unusual so I'd like to ask for your indulgence on this. This

really is government at work – there is democracy, separation of powers, and it’s messy. I think the founding fathers didn’t want it to be efficient because that’s not democracy. The fact of the matter is we have problems at the intersection at Grass Range. The state of Montana, that’s all of us, own that problem but as the Executive Branch Agency with oversight of the transportation system, MDT is the one responsible for solving this issue. So, we’ll look at what is happening at that intersection in June, after two crashes in May, and what caused us to elevate the roundabout again. The video you’ll see is after the interim four-way stop was placed and how well it didn’t work. We can watch a little bit and then I’d like to comment on the four-way and what is in the Sanderson Stewart Report.

(Showing Video) These are snippets from an 88-hour view of the Grass Range Intersection. These are north-south vehicles. This is obviously new to them. You have some that run it full speed and a lot that kind of coast through. The whole point of any fix, safety-wise, is to do two things: (1) reduce the number of crashes at the intersection, and (2) reduce the severity of the crashes that occur at the intersection because there will be crashes at an intersection. As bad as this looks, a four-way stop is, and I encourage you to read the Sanderson Stewart Report, up to 80% effective in stopping the total number of crashes. So, the total number will go down and it has. The Commission recognizes that. The severity is what drove the decision to reinstate the roundabout project. You can see that when something does happen, the likelihood of it being severe is very high. There is a cost-benefit analysis that goes with that and I know the Senator disagrees with our math, but it does exist. So, a four-way is up to 80% effective. Any potential fix – we’ve talked about main line speed reduction and I’m glad to hear from the Commission and the Senator that you want us to evaluate the effectiveness of that. Main line speed reduction is judged to be about 25% effective. So, we’ve got 85% versus 25%, so it would be hard for the department to back away from a four-way in favor of a main line speed reduction at this point. I hope you understand that because I don’t want to ... we have the responsibility, but we own the problem and we need to reduce that as much as possible. So, I’m glad you came down today and I appreciate your comments. I think we all understand that we slugged it out over a roundabout and I’m not sure what the Commission is eventually going to do but we do need to work together to fix this.

Senator Lang said I’m assuming this was the camera that was set up approximately two weeks after the four-way stop was put in. I go through there all the time and I noticed there was another camera placed there about a month ago looking toward the Lewistown side. Are you still seeing the same numbers, or have you evaluated that? Director Tooley said we haven’t evaluated that yet. We’re evaluate things every six months to see how things are going and that time has come. We have the video, but its 118 hours and it takes a person to watch that; so, we don’t have a report on that, but we’ll definitely share that with you. Your sense is that it’s improved, and I hope it has. As we move forward we will keep you informed of any further things we might do to enhance the safety.

Senator Lang asked if you do any other majors enhancements, then would you video that also to see if those worked as well? Dwane Kailey said preliminary we have scanned the video. We do see a little more compliance but there is still a multitude of individuals choosing to run the four-way stop which is concerning. As the Director said, yes, a four-way stop does reduce the number of crashes, but it is not a benefit when it comes to severe crashes. I want to go back and use this opportunity to address a few things. There was a comment about “stop being stupid”. There is only one intersection control out that will actually stop “stupid” and that’s a roundabout. I’m sorry, but that is reality. That is the only thing that channelizes the driving public, forces them to slow down, and makes them operate appropriately through an intersection. There is one opportunity to stop “stupid” and that’s it. We will watch the video, depending on what we’re seeing for crashes and depending on what we’re hearing out there, we may set up a new camera to video it, but at a minimum we

won't be back for three years to analyze whatever implementation we do and make sure it is effective. If we see a major crash, a severe crash, a fatal crash, it's going to expedite that review quite a bit.

Director Tooley said to refresh your memory, this is the fifth thing we've tried at this intersection. The roundabout would have been the very last thing; that was at the top of the list although we disagree. Senator Lang said that is a perfect reason if we stay with this to light it up. If you go in there in the night time, it's just dark. Director Tooley said that's right; that's an interim fix. Those are the kind of suggestions I like. What I hope you all understand if you insist on rolling back, we should be looking to improve not necessarily roll things back. I know there's been a push to do just that and we have to resist that because we all will ultimately pay the bill for that when it goes bad. Commissioner Jergeson said as one of the Commissioners that was in support of the roundabout as the solution because we've tried everything else. I see from the video, and being a Montana driver like everybody else here, we like to drive fast, long stretches and we don't like to stop. It wasn't that long ago that "reasonable and prudent" was our speed limit. We don't like to stop. In the video was essentially a roundabout with stop signs. So, I'm not here to convince you guys for a roundabout because you obviously don't want it, but what can we have. We like to drive fast, and we don't like to stop, then what solution is there? I'm hearing some great suggestions, but will they work?

County Commissioner Butcher said on that point, I think since I've been involved, I've made points many times and I know we've heard that this is the fourth or fifth thing we've tried, but I'm not sure what you're counting. I've been going through that intersection my whole life and there's been minor changes but certainly not the level we brought up when we said we need to do something. A speed zone, lighted, more distance for notice of a stop are the things I thought we should do. There was even comment in one of the letters about oversized stop signs. A standard stop sign is 36 inches and that is what those stop signs are. So, that's not been entirely accurate. That's my question – why haven't we done these other mitigating factors sooner because that's what I asked for two years ago? The other thing is this video was 10 days after for four days. You have people who have driven through that intersection for 30 years, but they only do it once a month, so it takes a little bit for some people know that something has changed. That is where it would be interesting to see what this next one looks like. My understanding is that if people are running it at this point, they are running on purpose. That's my take; we can add some more mitigating factors. I'm not necessarily rolling back but let's do this first.

Director Tooley said one thing you don't see in the video because I asked the maintenance folks in Lewistown when they sent me the video and some pictures of the intersection if this was representative of what was going on when the video was taken. He said no, which surprised me. He said one thing that isn't shown on there is the reader boards on the north-south lane. Folks had to pass reader boards that said "traffic change ahead" to get to where they're running that. That's not there now. Yes, it was early, and people weren't used to it, but they missed everything to get there. That's part of working with people; they are easily distracted, they're focused, they're zoned out and they miss all this stuff. So, we must work together to improve that and hopefully draw some attention to that intersection.

State Representative Bartel said I visited with the people; I live right on Main Street in Lewistown so I'm pretty well exposed to the people and they talk to me about it all the time. They said it is 70 mph and suddenly there is a stop sign. Try to put the speed limits down. If it catches ten people, that's ten more people that will slow down. A lot of those deaths, one death was because the guy died of a heart attack before he got to the intersection and rolled through the intersection. So, we can bust a lot of statistics and a lot of things are going on, and I'm not saying they collected them wrong, I'm just saying I live there. I think if we were to have more modern flashing lights ahead that might help those folks who are just used to bustling through

there; I truly believe it would. In visiting with a lot of people, that was their suggestion. As a Legislator, I can't tell you why there is such a huge opposition to this thing, but it is not a few hundred people. I asked MDT to work with the people and let's see what we can do. Are we risking things? Yes. There could be death, but I think we need to go through the process and put up some more warning lights with today's technology, LED, and stop lights in all directions. I think a lot of this can go away. I live right next door to the Sheriff's office and I asked the Sheriff if he has a little more patrol out there and he said, yes, we've seen our patrolman out there a little more often and it is getting better. That's why I mentioned that I'd love to have the elected officials get involved in trying something before we go to a roundabout because the community has spoken hard on that.

Director Tooley said this is a case in point, when you talk about separation of powers and what people's jobs are. Commissioner Bartel is doing his job; he's representing the people. We take a lot of that, and that's one major factor but we also have data and issues we have to address. Your job is to represent the people and make sure that point of view comes here, and you've done that. My job is to make sure that doesn't go on. There will always be a little bit of conflict there. I understand what you're saying, and I think you understand what I'm saying. I can't allow that to continue. I must take the most effective fix which would have been a roundabout, but now what's next? I hear what you're saying but mainline speed reduction, if you read the Sanderson Stewart Report and I encourage you to do that, rests on enforcement and there is some but it's sporadic and getting people to actually behave is part of the issue. The speed limit through a stop sign is zero and some of them are exceeding that by 70 mph. You've done your job and I need to do mine and make sure we have the best remaining fix for that intersection. I hear what you're saying. Senator Bartel asked where he could find the Anderson Stewart Report. Director Tooley said it is on the RTIC website – Revenue Transportation Interim Committee. It's right there on top of the MDT Report.

Dwane Kailey said I thought very long and hard last night about what I would say. We've all talked the facts and figures; they are national facts and national figures. I googled "roundabout research" and came up with over a million hits of research on roundabouts. The one thing that is overwhelming in my mind, and one of the things I base my decisions on and recommendations to the Director is whose looked at this, what's their area and expertise. I look at Roy Peterson sitting over there who has two staff on his Bureau, Ivan Ulberg and Danielle Bolan, combined those three individuals have over 60 years of experience in Traffic and Safety Design. We didn't stop there, we worked with the District, including Steffen Streeter, Rod Nelson, Gary Neville, and I had other staff looking at it including my Pre-Construction Engineer, my Consultant Design Engineer. Just in MDT alone, we're well over 150 years of Engineering experience looking at this project. We didn't stop there, we contracted with Sanderson Stewart, a very reputable, well-known Consulting Firm in the state of Montana and they have one of the best Engineers on board who has over 20 years of experience in Engineering Design and Traffic and Safety. We didn't stop there, we hired Jake Konovaugh who is a retired Traffic Engineer from Colorado, 30 years of experience with Colorado and 10+ years of experience in his own company. He is nationally known and recognized for his traffic and safety expertise. We've hired his company to come in and do a Roadway Departure Study and our Traffic Safety Plan. These are well known, well respected Engineers with over a quarter century of experience. Every one of them have come back and said this is the fix; if you really want to save people's lives, this the fix. I respect what you're saying, listen to the public and I get that, but as a Licensed Professional Engineers we take an oath to do no harm. I know, based on what these people have recommended to me and what I see in all the research is that if we don't go to this next level, we're going to do harm. It may not be tomorrow or the next week, but sooner or later, somebody is going to run that intersection, and somebody is going to die. I'm the one who reads that accident report. I read every one of them and numerous accident reports bring me to tears because that is somebody we could have saved. That's somebody that's not

going to make it home to Christmas dinner; a family member that we lost, and I struggle with that.

Bob Sievertson asked if he would be out of order to get in the discussion. I didn't testify because I didn't know where this discussion was going to go. I thought the roundabout in Grass Range had been scrapped. I thought that now we were going to talk about looking at alternatives. I think it is important that we have the public involved in these discussions. We have submitted to Director Tooley a request for a public meeting at Lewistown and I can tell you coming from Havre, I've been listening to people now for about a year on this subject. People were really worked up over it. We initiated a petition drive and I have hundreds of names on petitions and I'm still collecting them, and we can double them without any effort whatsoever. The people said this it is ridiculous to have a roundabout out on the bald-headed prairie when there are alternatives. We have alternatives that we would like to discuss at a public meeting. I think we need to involve the public! I'm pretty direct and in a cowboy world we call it "plain speak". What I heard on the road is that this is a waste of money when we could do it for a lot less and solve that problem. Let's take the balance of that \$4 million and use it on other safety issues on Hwy 200. The other thing that rankles people is they don't think MDT listens to them. Commissioner Skelton said the issue of communication has been brought up several times today and we both have come into agreement that we are all going to try and communicate better. Let's run those issues forward. We're looking at alternative measures. Thank you for your comments.

Commissioner Skelton thanked them for coming and Senator Lang for his diligence, Representative Bartel and Commissioners for their diligence. I was a County Commissioner when you guys were just babies and I know where you stand. I know in rural Montana, as a County Commissioner, your constituents know where to find you. If they want to talk to you, they'll find you. I think it behooves us to use the County Commissioners better and to communicate better with you. My email and my door are always open, and my phone is always on. Thank you for your input and please do stay in touch over this issue. Our main concern, for the state of Montana, is the safety of people. That must be the focus and the how we deal with this issue today. Thank you again for coming and thank you for your input.

Design Build Presentation – Jake Goettle, MDT Design Build Engineer

Duane Kailey said before we get into the Design Build Projects, I'd like to show you the process we go through. I want to introduce Jake Goettle, our Design Build Engineer. Jake said thank you for the opportunity to present our Design Build Program, I've been the Design Build Engineer for MDT for a little over 10 years.

Design Build is just an innovative project delivery method in which a Design Build Team, which is usually a consultant and a contractor, work under one single contract with MDT to do the design and construction of a project. This is a quick model that shows the delivery of Design Build is a little different than normal. In a normal Design-Bid-Build, the design package is complete, the contractor bids on it, and then they construct it. In Design Build that time is shortened, and the design and the contractor develop a proposal and a bid and then go to construction in a shorter amount of time.

Why does MDT use Design Build? It is important to keep in mind that Design Build isn't for every project and most of our projects, the vast majority of our projects will still be delivered using Design Bid Build. We've only done 32 projects in our history with Design Build, so there aren't a lot. The main reason we use Design Build is for fast-track project delivery. A good example is the Madison Street Bridge Rehab. If you remember that was the project that was failing and falling on the pedestrian path below. The Governor and the Director got involved. That failure occurred in January 2016 and we had a Design Build contract awarded in May of 2016. They

immediately protected the sidewalk and the pedestrian path and reopened, then they designed and constructed the project in one year to open that and finish the project up. It is also used for large complex projects. The I-90 Bridges Project that hopefully you'll award here soon is probably a good example of a large complex project.

It's good when MDT doesn't have the expertise. Rest Areas are a good example. We don't design buildings or build buildings, so we rely on the Design Build expertise for those projects.

A very good use of Design Build is when a project could be improved by innovation or added value from a Design Build firm. The slope stability projects that we've done is a good example of some innovation, the soil nail technology is new as of those first few projects that we did.

To step back a little bit on our program history. A panel of MDT, FHWA, and external experts developed our Design Build Guidelines in 2004. They were overseen by an Advisory Council of 13 members. I'll show you the list of those Council members. At the 2005 Legislature, they approved MDT to use Design Build on three pilot projects. Those projects were designed and constructed in 2005 and 2006. Then at the 2007 Legislature, MDT presented a summary of those pilot projects, some lessons learned from those projects, a comparison between Design Build and Design Bid Build and the 2007 Legislature approved us to use Design Build at our discretion. Immediately following that approval, we awarded our first non-pilot Design Build project, which was the Hwy 200 Blackfoot River Bridge which is just upstream from the I-90 bridges that we'll be presenting here as soon as I'm done for award. That project was part of the Mill Town Superfund Site and needed to have fast-track design and construction to meet the dam removal schedule and that was the reason for Design Build on that project. This is a picture of that project. This was designed and constructed in a single season to meet that draw-down schedule.

I mentioned the Advisory Council earlier. This Council oversaw the development of our Design Build Guidelines and reviewed and commented on those guidelines as they were being developed. This is a good representation of our industry. I won't read all those for you.

To get into a little more specifics on our Design Build process for MDT. It is a two-step process which is mandated by statute. The first step is the Request of Qualifications (RFQ). This outlines the qualifications that are necessary for a firm to complete a project. It lets the firms know what we're looking for in qualifications to do the project for us. The second step is the Request for Proposals (RFP). This outlines the design and construction details the firm must follow to complete the projects.

There are two committees that lead every one of our Design Build projects. The Technical Review Committee is made up of experts that are specific to the type of project. There are usually six-to-ten members on this Committee. They develop those first two documents, the RFQ and RFP, and then they review and score any of the submittals that are received from Design Build firms.

The Selection Committee is the decision makers that oversee the process. They review everything that the Technical Review Committee does and makes sure we're following our process. That Committee is always made up of our Construction Engineer as the Chair, the District Administrator where the project is located, and the District Construction Engineer where the project is located, then a Bureau Chief from Headquarters that is specific to the project type. We also have a non-voting member from the Contract Planning Bureau and the Federal Highway Administration on that Committee. They review what the Technical Review Committee does. They

also review the bid prices when they come in and then that Committee makes the recommendation to you folks on the Commission.

From the Request for Proposal document, the Design Build firms that are short listed develop two things for us: The Technical Proposal and the Bid Price Proposal. The Technical Proposal includes their Quality Management Plan for the project for design and construction, their schedule for the project, their personnel that are going to be on it and then their preliminary design and their approach to completing the design and construction. That's received first and sometime after that the bid prices come in. The bid price is a one lump sum dollar amount to complete the entire project.

We do award on a best value selection. The best value calculation is in the recommendation for award letter. That's just a calculation based on the technical piece and the bid price together. We do issue a stipend payment to the responsive firms. The intent of the stipend is to partially compensate the firms for the Technical Proposal they submit. I brought an example of a Technical Proposal. It is a substantial amount of effort that the firms put together this proposal. This proposal, the firm told me took about 1,300 hours of time to put together for us. So, it's a very substantial amount of effort and the stipend just covers a portion of that amount of effort. MDT owns this after they submit it and we provide this to the winning firm, so they can glean any ideas out of the other firm's proposal for their proposal. The amount of the stipend is set based on a percentage of the contract amount and it's always less than one percent of the Engineer's Estimate.

Design Bid Build will always be our normal standard delivery. To give you a comparison between the two. In Design Build, the design and construction are in one single contract versus Design Bid Build which is a general design contract if it's a consultant and a construction project when the contractor bids it.

MDT completes anywhere from zero to about 30 percent design prior to advertising a Design Build project versus Design Bid Build where we complete a final design package. Best value selection versus low bid on Design Bid Build projects.

One of the biggest benefits to Design Build that we see is the contractor innovation that we get during the design phase of a Design Build project. As I said already it's a lump sum bid on Design Build projects and there should be fewer change orders on Design Build because design errors are the firm's responsibility since they are developing the design. Again, innovation is a big part of our Design Build projects. The Rest Area Safety Enhancements that we've seen from Design Build firms have become the new standard for our projects. We consistently receive comments from the traveling public that our rest areas are the nicest, safest rest areas in the country. When we score these proposals, the safety aspect for Rest Areas is the number one thing we look for.

The Madison Street Bridge project that was a tremendous success, part of that success was they had a very robust public involvement program during the design and construction of that project. On one of the slope stability projects that we awarded last year, the firm offered us a seven-year warranty. We've never seen that before. So as those slides are complete, it's a seven-year warranty on those slides. That's an innovation we got from a firm. That soil-nail technology when it first started was a very new and innovative technology.

Scheduling – when the contractor is involved in the design, they can bring a very accelerated schedule to a project for innovation. The first ADA project we did, the as-built plans the firm proposed was a great innovation and a great way to document and certify that the project met the ADA Guidelines.

Here are a few pictures of the finished products:

Rest Areas - We've done 10 new rest areas with our Design Build Program, one Rehab. The open design of these rest areas allows you to see in from the parking lot which is a huge safety factor. We've heard a lot of good public comment for the safety of the private stalls. The high-level waste water treatment systems we're putting in are exceeding DEQ requirements on these projects.

Bridges – We've done five bridge projects with Design Build. This is a picture of the railroad trestle at Judith that was damaged in the 2011 flood. An interesting note: when they tipped over these towers, you can see the tower that is tipping now, when it hit the ground, it actually registered on the Richter scale at Montana Tech.

This was a very innovative fix. This was a bearing replacement project. The contractor means and methods used this new equipment to fix the bearings underneath this bridge without having to build support from the bottom up.

This is the pedestrian bridge right outside the department here across I-15. A very badly needed pedestrian facility at the time.

Slope Stability - Our slope stability projects, you can see the failing slide. This is the finished product. This is the soil-nail wall and what it looks like when it's complete.

Number of projects to date – we've done 32 total Design Build projects. In thirteen of those 32, the award amount was below the Engineer's Estimate. In twenty-six of the 32, the awarded bid was the low bid. So even though we're best value, 80% of our projects have come in as low bid. Of the 32 projects, the average difference between the Engineer's Estimate and the awarded bid was less than one percent. Thank you.

Commissioner Jergeson asked if Design Build was the new standard. Jake Goettle said no, it is a great delivery tool for the right projects but it's not for every project.

Agenda Item No. 5: Design Build
I-90 Bridges – Bonner
IMIP 90-2(149)110 – UPN 816400

Kevin Christensen presented the Design Build project to the Commission. We have two Design Build projects for your consideration today. The first one is the I-90 Bridges at Bonner that Jake talked about in his presentation.

The Request for Qualifications (RFQ) package was advertised on June 30, 2017. Statement of Qualification (SOQ) responses were received from four design-build teams (Firms) on August 3, 2017. A Technical Review Committee (TRC) consisting of ten MDT staff members from various project-related disciplines independently evaluated and scored the SOQ of the four Firms based on established Evaluation Criteria and Scoring Guide. The TRC produced a ranked short list of three Firms that were invited to submit Proposals. Request for Proposal (RFP) packages were issued to the three short-listed Firms on August 18, 2017 with Technical Proposal responses due on October 10, 2017 and Bid Price Proposal responses due on November 14, 2017.

The following is a summary of the proposal evaluation process.

Three sealed Technical Proposals were received on October 10th and three sealed Bid Price Proposal packages were received and publicly opened at 11:00 AM on November 14th. Proposals were received from the following Firms:

FIRM	LUMP SUM BID PRICE PROPOSAL AMOUNT
Kiewit Infrastructure West Co./WGM Group/ Shannon & Wilson	\$ 16,747,538.00
Frontier West, LLC/Morrison Maierle, Inc.	\$ 14,997,000.00
Sletten Construction Co./HDR Engineering, Inc.	Non-responsive*
MDT Engineer’s Estimate (without ICAP)	\$ 20,215,227.00

* - The Sletten/HDR team submitted the incorrect Bid Bond Form.

The TRC evaluated and scored the written Technical Proposals submitted by each Firm prior to opening of the Bid Price Proposals. This score was based on evaluation criteria and scoring guidelines provided in the RFP package. All Technical Proposals were independently scored and tabulated before the Bid Price Proposals were opened. Contract Plans Bureau publicly opened the sealed Bid Price Proposals at 11:00 AM, November 14th.

The Technical Proposal Score provided 75% of the maximum score available and the Bid Price Proposal provided 25% of the maximum score available. The following formulas will be used to calculate the Best Value. The Firm with the highest Total Points is considered the Best Value.

1. 75 points – Technical Proposal

$$\frac{\text{Firms Technical Proposal Score}}{\text{Total Points Available}} * 75 = \text{Technical Proposal Awarded Points}$$
2. 25 points – Bid Price Proposal

$$\frac{\text{Lowest Responsive Total Cost}}{\text{Firms Total Cost}} * 25 = \text{Cost Proposal Awarded Points}$$
3. Technical Proposal Awarded Points + Cost Proposal Awarded Points = Total Points

The Selection Committee reviewed the Bid Price Proposals and Technical Proposal evaluation and scoring information provided by the TRC. The highest Total Points is considered the Best Value. The following is a summary of the proposal results:

FIRM	BID PRICE PROPOSAL AMOUNT	TECHNICAL PROPOSAL TOTAL SCORE	TOTAL POINTS
Kiewit Infrastructure West Co./ WGM Group/Shannon & Wilson	\$ 16,747,538	74,570	78.31
Frontier West, LLC/Morrison Maierle, Inc.	\$ 14,997,000	91,600	93.70
Sletten Construction Co./HDR Engineering, Inc.	Non-responsive	78,730	n/a

After reviewing the Technical Proposal Evaluation and Scoring information provided by the TRC and the Bid Price Proposals, the Selection Committee recommends the following:

- All three Firms are considered responsive and receive the stipend payment.
- Award the contract to the Frontier West/Morrison Maierle DB Team, with the highest Total Points, considered the Best Value for MDT, in the amount of \$14,997,000.00.

Commissioner Jergeson said to me it is not obvious how to explain in the two tables that the proposal from Sletten Construction was described as non-responsive and yet in recommending that the firms receive the stipend payment, all three are considered responsive. Are there other terms that should be inserted here? It certainly looks like this is nonsense. Kevin Christensen said I meant to talk about that. The Technical Proposal submitted by Sletten Construction was responsive. It was a very good proposal; as a matter of fact, MDT intends to use some of the concepts from their proposal in the actual construction of the project. What happened with Sletten, is they submitted a non-responsive Bid Price Proposal. It boils down to making a clerical error when they submitted their Bid Price Proposal, they used the wrong bid bond form. I don't know why they did, but they did and there are legal reasons why they must have the correct bid bond form. So essentially, this was just a clerical error in their Bid Price Proposal. Their Technical Proposal was responsive, it was a very good proposal, and we own it and we intend to use it. The intent of the stipend is to partially compensate the firms for the effort they put into the Technical Proposal. I hope that explains it.

Commissioner Jergeson said I can understand them not using the correct form but I don't know how much sense it makes to say they are non-responsive in one block and responsive in another. There must be some other way to describe it. I can see they put a lot of work into their Bid Price Proposal and should get the stipend, but I'm just trying to square the use of two absolutely contradictory terms in the same report to the extent that other people might want to question decisions of the Commission and the department when you have the obvious use of those two terms. Multiply me by a 150 Legislators who are going to ask what is going on there. Somewhere along the line we need to figure out a different way to clearly describe what is going on and why certain things happen.

Kevin Christensen said our federal partner Kevin McLaury brought up that very thing. Based on the conversations we've had with Federal Highway, we're looking at changing this form, so it will clarify what's going on. Unidentified – I was also involved in that back and forth and responded to Kevin's questions which mirrored yours, and we will include it in our process moving forward. This was printed before we had that interaction, and we certainly can provide you with the information we provided to Kevin and give you the background on this.

Commissioner Belcourt asked if the firms were receiving partial stipend or no stipend. Kevin Christensen said the recommendation of staff is that they do receive the stipend. Again, Jake showed you the 1,300 hours it took to put that thing together, we own it, there is a lot of value in that proposal, the winning firm can use it, and we intend to use parts of that proposal in the construction of this project. Their non-response was simply because they made a clerical error in their Bid Price Proposal. Commissioner Belcourt asked if they pulled their proposal or did MDT axe it? Who made the decision it was non-responsive? Kevin Christensen said it is important in this process to understand that we received the Technical Proposals and we score them, and those scores are approved before we get the Bid Price Proposals. They are two separate processes. So, we short-list the firms, get the Technical Proposals which are scored by the Technical Review Committee, then the Selection Committee reviews those scores to make sure that they are consistent across the members that are scoring them, and they approve them. Once that process is complete, then the firms submit their Bid Price Proposals. When they submit those Bid Price Proposals, we have a check a list of everything they must include: The Bid Bond Form, Performance Bond, Insurance, Surety, etc. All that must be included in their Bid Price Proposal. As those are opened, we go down our check list and, in this case, we got to the Bid Bond Form and they used the wrong form, they didn't have the correct language on it, so we couldn't accept their Bid Price Proposal. So, in that portion they were non-responsive. Obviously, it is not clarified in this form and Jake and I are going to work on this to better explain when we say it is non-responsive.

Commissioner Belcourt said you make a cut before the firms are selected. Not every firm gets to submit a bid. It just doesn't settle well that you take ownership and use somebody's work and they are eliminated from consideration. Kevin Christensen said they can refuse to accept the stipend and keep their proposal. Commissioner Skelton said if they don't accept the stipend then we return their proposal and we don't own it and can't use it and the winning firm can't use it. The department and the other winning firm is getting some value from this bid even though it comes in as non-responsive. Kevin Christensen said that was correct. If the Technical Proposal is non-responsive, they would not get the stipend. We have had one in the past that was non-responsive. Really, the idea behind the whole stipend idea is we don't want to have it set up to where firms can make a living just submitting proposals. We do get complaints from firms that it doesn't cover their entire cost, only partial.

Commissioner Belcourt moved to approve the Design Build, I-90 Bridges – Bonner, IMIP 90-2(149)110 – UPN 8164000 and stipends. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item No. 6: Design Build – Missoula ADA Upgrades
CMDO 8199 (141) – a CN 9213000**

Kevin Christensen presented the Design Build - Missoula ADA Upgrades – CMDO 8199 (141) – CN 9213000 to the Commission. The Request for Qualifications (RFQ) package was advertised on August 28, 2017. Statement of Qualification (SOQ) responses were received from two design-build teams (Firms) on September 22, 2017. A Technical Review Committee (TRC) consisting of eight MDT staff members from various project-related disciplines, and one City of Missoula employee, independently evaluated and scored the SOQ from the two Firms, based on established Evaluation Criteria and Scoring Guide. The TRC produced a ranked short list of both Firms that were invited to submit Proposals. Request for Proposal (RFP) packages were issued to the two short-listed Firms on October 3, 2017 with Technical Proposal responses due on November 8, 2017 and Bid Price Proposal responses due on November 29, 2017.

The following is a summary of the proposal evaluation process. Two sealed Technical Proposals were received on November 8th and two sealed Bid Price Proposal packages were received and publicly opened at 11:00 AM on November 29th. Proposals were received from the following Firms:

FIRM	LUMP SUM BID PRICE PROPOSAL AMOUNT
CMG Construction, LLC/DOWL, LLC	\$ 4,525,100.00
Knife River/WGM Group, Inc./Lorenzen Soil Mechanics, Inc.	\$ 2,998,899.00
MDT Engineer's Estimate (without ICAP)	\$ 4,247,500.00

The TRC evaluated and scored the written Technical Proposals submitted by each Firm prior to opening of the Bid Price Proposals. This score was based on evaluation criteria and scoring guidelines provided in the RFP package. All Technical Proposals were independently scored and tabulated prior to reviewing the Bid Price Proposals.

The Technical Proposal Score provided 60% of the maximum score available and the Bid Price Proposal provided 40% of the maximum score available. The following formulas will be used to calculate the Best Value. The Firm with the highest Total Points is considered the Best Value.

1. 60 points – Technical Proposal

$$\frac{\text{Firms Technical Proposal Score}}{\text{Total Points Available}} * 60 = \text{Technical Proposal Awarded Points}$$
2. 40 points – Bid Price Proposal

$$\frac{\text{Lowest Responsive Total Cost}}{\text{Firms Total Cost}} * 40 = \text{Cost Proposal Awarded Points}$$
3. Technical Proposal Awarded Points + Cost Proposal Awarded Points = Total Points

The Selection Committee reviewed the Bid Price Proposals and Technical Proposal evaluation and scoring information provided by the TRC. The highest Total Points is considered the Best Value. The following is a summary of the proposal results:

FIRM	BID PRICE PROPOSAL AMOUNT	TECHNICAL PROPOSAL TOTAL SCORE	TOTAL POINTS
CMG Construction, LLC/DOWL, LLC	\$ 4,525,100	62,650	68.28
Knife River/WGM Group, Inc./Lorenzen Soil Mechanics, Inc.	\$ 2,998,899	71,540	87.69

After reviewing the Technical Proposal Evaluation and Scoring information provided by the TRC and the Bid Price Proposals, the Selection Committee recommends the following:

Recommend that both Firms are considered responsive and receive the stipend payment.

Award the contract to the DB Firm Knife River/WGM Group, Inc./Lorenzen Soil Mechanics, Inc., with the highest Total Points, considered the Best Value for MDT, in the amount of \$ 2,998,899.00.

Commissioner Belcourt moved to approve the Design Build – Missoula ADA Upgrades CMDO 8199 (141) – CN 9213000 and stipends. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item No. 7: Certificates of Completion
September & October 2017**

Duane Kailey presented the Certificates of Completion for September & October 2017 to the Commission. They are presented for your review and approval. If you have any question, please feel free to ask otherwise staff recommends approval.

Commissioner Schulz moved to approve the Certificates of Completion for September & October 2017. Commissioner Belcourt seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item No. 8: Project Change Orders

September & October 2017

Dwane Kailey presented the Project Change Orders for September & October 2017 to the Commission. They are submitted for your review and approval. If you have any questions, please feel free to ask. Staff recommends approval.

Commissioner Jergeson moved to approve the Project Change Orders for September & October 2017. Commissioner Belcourt seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item No. 9: Liquidated Damages

Dwane Kailey presented the Liquidated Damages to the Commission. They are presented for your review and approval. We have two projects:

The first one is Blain Spring Creek, eight miles south of Ennis. The contractor was Knife River. They had six days of liquidated damages for a total value of \$14,280.00. They are not disputing the liquidated damages.

The second project is Moose Creek Road, North and South. The contractor is Nell Con Inc. They had 16 days of liquidated damages for a total value of \$67,872.00. They are not disputing the liquidated damages.

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

Commissioner Jergeson said I know where Ennis is. Every county has a Beaver Creek and every county might also have a Moose Creek Road. Where is this? Dwane Kailey said I believe this the road between Anaconda and the recreation area. It connects with the highway that enters Anaconda maybe two miles to the east of Anaconda. Then it goes over a pass and drops into a valley. It's the scenic route. Dwane Kailey said Commissioner Griffith took the Commission down this road a few years ago. That's where we saw the Moose.

STAND.

Agenda Item No. 10: Letting Lists

Dwane Kailey presented the Letting Lists to the Commission. They are presented for your review and approval. If you have any comments or questions, please feel free to ask. Commissioner Skelton asked about Chevrons. Dwane Kailey said Chevrons are signs on curbs.

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

The motion passed unanimously.

Guidelines for Nomination of Pavement Preservation Projects

Dwane Kailey said at a previous meeting you approved the guidelines for nomination of pavement preservations projects. I believe we had to update some of them. Dave Ohler said it's my understanding that you were provided an electronic copy of this. I wanted to allow you time to review all of it since there is quite a bit. I bought the

official document for your signature today provided there are no comments or concerns with the Guidelines for Nomination of Pavement Preservation Projects.

Commissioner Jergeson said that compressed file was not nearly as much fun to look at as the video of the traffic. It seemed kind of obscure on what I was supposed to look at and what conclusion we are supposed to draw. I assume the Engineers know how to make the ADA compliant entrances to the various spots on a street curb – whether it's a corner or in the middle of the block. I scanned through it very rapidly and didn't see anything to ask a question on or anything to suggest that the Chairman not sign the agreement.

Dave Ohler said he was not asking for an action, it was that Senator Jergeson had asked if the attachments were part of the document and they are. I wanted to make sure you received them and had a chance to review them.

Agenda Item No. 11: Discussion and Follow-up

Legal Discussion on Commission Decisions

Commissioner Jergeson said my question on the Legislature being an approving authority on some decision that only the Legislature can change. I appreciate the politics of what may have gone on in the Special Session, but at some future meeting we should have a discussion about when the Commission has approved, in the various processes, then can somebody else make a decision to disapprove or cancel a project. Maybe you have a citation in the statutes or in the Commission rules that permit that. It's a great irony that the topic is about public knowledge and involvement of what's going on and in the context of a Special Session, all sorts of decisions where a key decision got made which the public didn't know about. Somehow this Commission was clearly not involved in it logistically and during a two-day Special Session, it would be hard to convene us at 10:00 at night as scattered as we are. I really have a question as whether the department could have committed to anything but bringing it up at a future Commission meeting with a recommendation to cancel a project. Seriously, I think we need to have a discussion at some point about the legal process of all these decisions and whether they can be reversed and by whom.

Director Tooley said I can start to take that on. You asked a very good question. If you back up a little bit to the Special Session, we're talking about a project, but I think the issue is much larger. I agree we need to work through that. We got an eleventh-hour request from the Governor's office to hold this project. We had kind of talked amongst ourselves that this was very controversial for a long time, but no one had done a legal analysis or asked the question that you did until after I was asked to write that memo and pull the project from bidding. That's never happened before from the Governor's office, so when I got the request I knew it was make or break for some kind of deal during the Special Session, and I did. Commissioner Jergeson rightfully was upset about how that occurred. He did some reading and questioned my authority to take that action. I thought that was a good question. It's an unusual position; we share legal staffs. I asked my legal staff for their opinion and the opinion I have agrees with you. I didn't have the authority to undo a decision that the Commission had made. So, put that aside for a minute.

I think in the larger context, we've talked amongst ourselves after that because it had never happened before. For the fact of the matter, there are many projects that you authorize here that never get built and you don't know that. Normally, it is because they are absorbed into another project and turn into something else, or things change on the ground where the project really isn't needed anymore and they just kind of go away. But you don't know any of that. Should you know? What level do you want

to know? We have a lot to talk about after this. I think we've had a great discussion today and I think we need to keep it going.

What do you want to know and when do you want to know it? I think it's important to keep you engaged in that process. I think we need to take a deeper legal look and see exactly where we all stand again. You are an independent Commission and need to be such. There are reasons for that which you pointed out very clearly in RTIC last week; and you were right. We must work together as much as we can but realize things have changed now and how do we react to that and still get the work done.

Commissioner Jergeson said it might end up being a mere formality. We wouldn't want them to come back into Special Session. I think there ought to be an Agenda Item in the next meeting to formalize that cancellation as a Commission both for protection for us and what our authority is and ought to be, for the Department's sake too. I think we can manage the 90-10 match and paying back the money and all that; with the \$700,000 in the whole context of all the money available during the first year because of the new gasoline tax, we can manage that \$700,000. I think we need to formalize that. In the future if there is another Special Session, I think you might be able to tell the Governor, my Commission needs to answer that question. So, then he could tell the Chairman of the Finance Committee that he requested that the Commission drop that project. If we didn't know about it, the public didn't know about it. This decision was made in a Special Session and that's one of the problems with a Special Session. You shouldn't try to get it over in two days. I was in some November-December Special Sessions that lasted until two days before Christmas – just get used to it. I think at our next meeting, we ought to at least, after legal has reviewed it some more, it would be a good idea to clear the record and have a formal acceptance of the decision by the Commission.

Commissioner Schulz said I would assume your precluding that meeting would be in February when we're together rather than on a call. Commissioner Jergeson said yes, I think it should be in February. Commissioner Skelton said if the authority wasn't there to overturn the decision made by the Commission, how then legally can we go back and say we're going to ratify that decision? Are we usurping authority we don't have? Dave Ohler said I'm sure you're ratifying the decision as making the decision – at least how I would view it. Commissioner Skelton said in my mind we're going back and saying the Governor had the authority to tell the Director to do it and it was our decision. So, if we come back with an Agenda Item in February and concur with that decision or not, aren't we using authority we don't really have? Aren't we inserting a law before a law that wasn't a law? Is this getting pretty convoluted?

Dave Ohler said the way he viewed it right now, is that the decision to pull the Grass Range project is the Commission's decision was an agreement made. It wasn't a law, it was an agreement between the Governor's office, MDT, and the Legislature that we would not move ahead with the Grass Range Project. It was an agreement and arrangement but not necessarily a law that was passed. So, I think it is the Commission's authority to make that decision to pull the Grass Range Project because the Commission advanced the project previously, so I think the Commission can then pull the project. Commissioner Skelton said what happens if we say we're not pulling it? Director Tooley said or do nothing. For the sake of safety, that's a bus I'd lay under. That is up to you, as it turns out. So, the question really is, if I didn't have the authority to do what I did when I sent the memo, then did it happen at all? Commissioner Skelton said that's what I'm trying to ask? Director Tooley said now what do you all want to do? If it turns out it was your decision and not mine, so technically this thing is probably still very much alive. Commissioner Belcourt said is it our problem to fix? I just don't see how we can reach back and fix this. I tend to side with you; can we reach and say anything if we didn't initiate this. This is somebody else's problem.

Commissioner Jergeson said set aside what happened in the Special Session. There were people talking to me about it and I tried to explain the financial consequences of it. I think the Commission, at any time, can take any of these projects until we've awarded the contract, and decide to reverse them. Now there would be huge financial consequences to do that. The Commission would have to be very aware of its fiduciary responsibility and it is nonsense to start cancelling things after a lot of money has been spent on it. Maybe what we need to do at our next meeting is formalize it; have the Commission take up the issue of formally cancelling that project. I don't know if the full Commission would agree or not; my position would be if the Commission didn't then the project is still alive. It might be one of those projects that sits out there, delayed and delayed for 20 years and disappears that way. It's a dilemma. If we did that, we need to make it clear that we've taken care of the subtle nuances of whose authority is what for the time being on this particular project because of the situation that confronted us for the first time that we have never faced before and make it clear in the future that cancellation of projects must be made by the Commission in a notice, so the public will know about it.

Commissioner Belcourt said this discussion needs an Agenda item; let's think about some of this because that was a decision I supported. We listened to folks we rely on and as the Director stated, there's a lot of what ifs that could happen until February. I don't want to turn what ifs into lawsuits. Maybe Dave can get into this a little more. Dave Ohler said if you'd like I can put together a legal opinion on this idea of your authority and how that works. Commissioner Belcourt said that is something we'd like to see. Commissioner Jergeson said I think we need to work through this process. I don't mean to make trouble for the Director and his relationship with the Governor and his relationship with the Legislature but going forward somehow correcting the record in respect with this particular project and its cancellation. That will also carry the message that any decision like that in the future requires Commission approval to reverse a prior Commission's decision. That may also help, with respect to the argument down on Hwy 2, for your discussion with the folks there that have been riled up. You need to say, there is one Commission decision in place related to the project and if it's a major change, we'll have to go back to the Commission.

Director Tooley said not all of you know what happened yesterday at Poplar. There is a \$9 million project that the Tribal Council had previously written a Resolution of Support for and now, based on opposition mainly from Mr. Sievertson, who stirred up the community and now they are considering pulling that Resolution of Support. It's more than just roundabouts. So, that's a very interesting question. What about cancelling parts of projects, not necessarily the whole project. So, is that a major change? When should the Commission weigh in? Do we just say you supported it, the roundabouts are in it, and there you go? This is a little different because this is a sovereign government versus a local county government. There are those factors as well. It's a good question and I think we need to sort that out.

Commissioner Schulz said this whole discussion is a very justified topic. When Dave has gotten some further information and certainly we can weigh in on it. There may be a few other issues that crop up in the meantime now that the door has been opened. I really look forward to a discussion specific to this topic.

Director Tooley said one other question to ask Dave is what are the implications of working with a sovereign nation? Do we say it's in the plan, thanks for supporting it and we're going forward? That damages the relationship but what legal ground do I have to do that? Commissioner Belcourt asked if we know the Tribe is pulling their Resolution for sure? Director Tooley said it is still in process but there is a 90% chance they are going to do it. Commissioner Belcourt said the Tribe gave their blessing in a Resolution, is this the same Council? Director Tooley said I don't know. Commissioner Skelton said they donated the land and everything. Commissioner Jergeson asked if there was right-of-way associated with this project? Director

Tooley said there is some right-of-way with both roundabouts, some was donated by the Tribe and some was bought. Commissioner Skelton asked if they donated the right-of-way and we purchased some right-of-way, even if they withdraw their support, we still own the right-of-way? Right?

Director Tooley said thank you for a good discussion. I think we had a good group down from Lewistown and even though I sharply disagree with where they took us on Grass Range, I think they better understand the issue and will allow the department to make the changes that make it a safe intersection and not try to engineer it for us which I appreciate. I'm not so sure about Mr. Sievertson but we know what to do and we'll work with you and the local government in doing that.

Commissioner Skelton asked if there was a statute that says a group of people can call a public meeting and involve a government entity in the public meeting they call? Dave Ohler said not that I'm aware of. They can call a public meeting, but they can't force us to attend that public meeting. Commissioner Skelton said they can bring us a petition but there's no strict legality that goes with that public meeting. Dave Ohler said not to my knowledge. Commissioner Skelton said we don't have to put it on the record as a public meeting, is that correct. Dave Ohler said yes.

Commissioner Belcourt asked about Senate Bill 182. Dwane Kailey said Senator Lang proposed a bill at the last full Legislative Session, not the Special Session. His bill originally was going to require MDT to do public hearings on every project. It was very, very impactful and would not have resulted in a good benefit to the public or the agency. Director Tooley and I worked with Senator Lang and we were able to amend the bill and we got it into a form that we believe is a good thing for the agency. I will tell you in full disclosure, I've been in public involvement within the agency since early 2000 and I've know it was weak. Shame on me I've not done much to improve that. We had numerous reviews on it, we've had recommendations, but we've never taken any action on improving that. Director Tooley and I talked numerous times together with Mr. Lang and we actually used this bill as a mechanism to force the agency to improve our public involvement. After the bill was passed, Engineering, the Director's office, Planning, and the Districts got together to see what we needed to do: (a) to meet the full intent of the bill, and (2) see what we needed to do to better involve the public outside, to go beyond the bill. We've done that now. We can do a presentation for you guys or I've got a couple of write-ups that I've sent internally which I can send to you. I'd be more than happy to update you on compliance with HB 182. Commissioner Skelton asked him to send a summary of 182 – we don't need the whole bill just a summary.

Commissioner Jergeson said you can lead a horse to water ... you can inform and inform and inform but they don't pay any attention to it until it's expensive to do anything else. There are lots of reasons people can find fault with any project – it should be in my community instead of one hundred miles away, it shouldn't be in Ft. Benton, it should be in Chinook, etc. What public do we listen to in that circumstance? People can be unhappy that a project isn't big enough or it's too big, or it goes through this scenic valley and it should go through that scenic valley. All the alternatives agencies get into when they do their EIS's. There are fans of each alternative and contrary people. It's a tough thing to work with. Our biggest emphasis must be early in the projects. We're going to start seeing some improvements in the website so that you don't have to pop through five different steps and never get there to find information about projects. Now that we've approved them, can you pull them up on the website and, where are they? If I can't find it and don't know where they are and what's going on, the public doesn't see it. I know I was an IT expert when I was in the Legislature which meant I was a farmer that played around with a computer. I know it's going to take some time and I believe the department is firmly committed to getting 182 implemented but also, for our own sake, improving the ability of the public to know what's out there and what's going on.

Lynn Zanto said there is another piece of information on public meetings you need to know, and we can give you an overview at one of your future meetings. We conduct a public survey every other year; we just got the last one done. We typically do it in May through August. We survey the public and stakeholder groups and ask them how they want us to communicate with them – what’s effective, what’s useful, what’s not. Public meetings are at the very low end of what the public views as a useful way for us to communicate with them and to give us input. That’s pretty consistent with the general public. It is a statistically valid survey done by the U of M and it is also very consistent with the Stakeholder groups as well. Websites, variable message signs, and maps is how they like to be communicated with. Dwane Kailey said there are instances where we are required to do public meetings and hearings. Lynn Zanto said in the environmental process, public hearings are a requirement if we are in an EIS process. The majority of our projects are in the preservation mode, but we do have reconstructs and other things and most of the time we do Categorical Exclusions which is the less intense environmental disclosure process. Yes, there is a time and place to do formal public hearings. We just didn’t want 182 to make us do it for every single project especially when the public is saying they are not that useful.

Commissioner Skelton said this was a great meeting and great work. Keep it up and have a Happy Holiday and a Merry Christmas.

Next Commission Meeting

The next Commission Conference Calls were scheduled for December 19, 2017 and January 30, 2018. The next Commission Meeting was scheduled for February 15, 2018.

Adjourned

Meeting Adjourned

Commissioner Skelton, Chairman
Montana Transportation Commission

Mike Tooley, Director
Montana Department of Transportation

Lori K. Ryan, Secretary
Montana Transportation Commission