

Montana Transportation Commission

June 22, 2017 Meeting

Holiday Inn Missoula Downtown
200 South Pattee
Missoula, Montana

IN ATTENDANCE

Barb Skelton, Transportation Commission Chair
Greg Jergeson, Transportation Commissioner
Carol Lambert, Transportation Commissioner
Dave Schulz, Transportation Commissioner
Dan Belcourt, Transportation Commissioner
Mike Tooley, Director MDT
Pat Wise, Deputy Director MDT
Dwane Kailey, MDT Engineering
Lori Ryan, Commission Secretary
Carol Grell-Morris, MDT Legal
Rob Stapley, MDT
Dave Ohler, MDT
Lynn Zanto, MDT
Brian Hasselbach, FHWA
Dave Dobbs, Great Falls
Senator Sue Malek, Missoula
Senator Diane Sands, Missoula

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 Meetings of February 23, 2017, April 20, 2017, April 25, 2017, May 9, 2017, May 23, 2017 and June 6, 2017, were presented for approval.

Commissioner Belcourt moved to approve the minutes for the Commission Meetings of February 23, 2017, April 20, 2017, April 25, 2017, May 9, 2017, May 23, 2017 and June 6, 2017. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 1: Local Construction Project on State Highway System – South University District Bozeman

Lynn Zanto presented the Local Construction Project on State Highway System – South University District, Bozeman 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.

The South University District is a development located near the intersection of Kagy Boulevard (U-1212) and South 19th Avenue (U-1201) in Bozeman. The developer for the South University District is proposing improvements to both routes to address traffic generated by the new facility. Improvements would include a new left-turn lane on Kagy Boulevard, a new left-turn lane on South 19th Avenue, and minor upgrades to traffic signals at the intersection of Kagy Boulevard and South 19th Avenue.

The City of Bozeman has given preliminary approval for improvements at this location. Additionally, MDT headquarters and Butte District staff have reviewed and concur with the recommended improvements.

The South University District 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).

Summary: The South University District is proposing improvements to Kagy Boulevard (U-1212) and South 19th Avenue (U-1201) in Bozeman. Improvements would include a new left-turn lane on Kagy Boulevard, a new left-turn lane on South 19th Avenue, and minor upgrades to traffic signals at the intersection of Kagy Boulevard and South 19th Avenue.

Staff recommends that the Commission approve these modifications to Kagy Boulevard and South 19th Avenue, pending concurrence of MDT's Chief Engineer.

Commissioner Lambert moved to approve the Local Construction Project on State Highway System – South University District, Bozeman. Commissioner Schulz seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 2: Local Construction Project on State Highway System – 13th Street South Great Falls

Lynn Zanto presented the Local Construction Project on State Highway System – 13th Street South, Great Falls to the Commission. Under MCA 60-2-111 “letting of contracts on state and federal aid highways,” all projects for construction or reconstruction of highways and streets located on highway systems and state highways, including those portions in cities and towns, must be let by the Transportation Commission. This statute exists to ensure the safety of our system, protect transportation investments, and encourage better coordination between state and local infrastructure improvements. MDT staff reaches out to local governments to solicit local projects on state systems to ensure compliance with this statute.

Summary: The City of Great Falls is planning to design and build a transportation improvement project on the state highway system. The project will be funded locally and will utilize contract labor. The project will be designed with input and concurrence from MDT staff to the extent practicable.

When complete, the City of Great Falls will assume all maintenance responsibilities associated with new project elements. Thus, MDT will not incur additional liability or maintenance costs because of the proposed project.

On behalf of the local government, as required by MCA 60-2-111, staff requests that the Transportation Commission delegate authority to the City of Great Falls to let and award a contract for the project listed below.

Location	Type of Work	Cost (estimate)	Fiscal Year	Type of Labor
13 th Street South (U-5215), from 24 th Ave South to 31 st Ave South, in Great Falls	Reconstruction	\$2,500,000	2017	Contract

Staff recommends that the Commission approve this modification to the state highway system and delegate its authority to let, award, and administer the contract for this project to the City of Great Falls, pending concurrence of MDT’s Chief Engineer.

Dave Dobbs, Great Falls City Engineer said this segment is the last segment in a series of reconstruction projects. With your approval, we will go forward. We hope to award this on July 5th and have it done before the snow flies. The state was great in getting the previous stages of the project done. It’s an incredibly good project in a part of town that is growing and this is the last little piece of it. I’d be glad to answer any questions you might have. Thank you for your consideration.

Commissioner Jergeson moved to approve the Local Construction Project on State Highway System – 13th Street South, Great Falls. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 3: Local Construction Project on State Highway System – Contract Labor Baxter Lane Improvements – Bozeman

Lynn Zanto presented the Local Construction Project on State Highway System, Contract Labor – Baxter Lane Improvements, Bozeman to the Commission. Under MCA 60-2-111 “letting of contracts on state and federal aid highways,” all projects for construction or reconstruction of highways and streets located on highway systems and state highways, including those portions in cities and towns, must be let by the Transportation Commission. This statute exists to ensure the safety of our system, protect transportation investments, and encourage better coordination between state and local infrastructure improvements. MDT staff reaches out to local governments to solicit local projects on state systems to ensure compliance with this statute.

Summary: The City of Bozeman is planning to design and build a transportation improvement project on Baxter Lane (U-1218) in Bozeman. Improvements would include new sidewalk, curbs, gutters and luminaires from North 7th Avenue (N-118) to North 19th Avenue (N-412). Additionally, signal functionality at North 19th Avenue and Baxter Lane would be enhanced with the project.

The intent of the project is to address infrastructure gaps along this corridor. Therefore, no existing roadway elements will be modified with the project. The City of Bozeman will provide 100 percent of project funding and will be required to complete MDT’s design review and approval process (to ensure all work complies with MDT design standards).

When complete, the City of Bozeman will assume all maintenance responsibilities associated with new project elements. Thus, MDT will not incur additional liability or maintenance costs because of the proposed improvements.

On behalf of the local governments, as required by MCA 60-2-111, staff requests that the Transportation Commission delegate authority to the City of Bozeman to let and award a contract for the project listed below.

Location	Type of Work	Cost (estimate)	Fiscal Year	Type of Labor
Baxter Lane (U-1218), from N 7 th Ave to N 19 th Ave, in Bozeman	Sidewalks, Curbs, Gutters, Lighting	\$1,200,000	2017	Contract

Staff recommends that the Commission delegate its authority to let, award, and administer the contract for this project to the City of Bozeman, pending concurrence of MDT’s Chief Engineer.

Commissioner Schulz moved to approve the Local Construction Project on State Highway System, Contract Labor – Baxter Lane Improvements, Bozeman. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 4: 2017-2021 Statewide Transportation Improvement Program

Lynn Zanto presented the 2017-2021 Statewide Transportation Improvement Program to the Commission. In order to spend funds on federally supported surface transportation projects, federal law requires Montana to submit a Statewide Transportation Improvement Program (STIP) to the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) for approval. The STIP includes projects that MDT plans to program for preliminary engineering in the current federal fiscal year as well as other phases necessary to move projects forward during the next five federal fiscal years. The following is a list of most of the federal funding programs included in the STIP:

- Federal-aid highway programs such as the National Highway Performance Program (NHPP), Surface Transportation Block Grant Program (STP), Highway Safety Improvement Program (HSIP), Congestion Mitigation and Air Quality Improvement Program (CMAQ), National Highway Freight Program (NHFP), and the Transportation Alternatives Program (TA).
- Federal Lands Transportation Program
- Federal Lands Access Program
- Tribal Transportation Program
- Federal Transit Programs
- Discretionary Programs
- Aeronautics Program
- Earmark Projects

The STIP provides an opportunity for the public to comment on new projects. It also demonstrates that funding is reasonably expected to be available for the various project phases that will move forward in the next five federal fiscal years. If a project has already entered a phase and funds have been obligated, that project phase will not be shown again in the STIP.

FHWA and FTA approval is based on their finding that the STIP was developed through a process consistent with federal statute. Montana's STIP has been developed according to federal planning requirements. The STIP meets the policy goals and objectives of MDT's long-range transportation plan, TranPlanMT; the Performance Programming Process (P3); and the metropolitan transportation plans developed in Billings, Missoula, and Great Falls.

Prior to submitting the STIP to the Commission for approval, the state is required to conduct a formal public involvement process. This process began on April 18, 2017 when the Draft STIP was posted on MDT's Web page and the public was notified that it was available for viewing and comment. On April 18, 2017, MDT distributed the STIP edition of the *Newsline* newsletter (construction projects only) and invited public comment. The public involvement process ran through May 19th and was carried out according to all pertinent federal laws including the following:

- 23 CFR 450, Subpart B
- 23 CFR 450.218
- 49 CFR 613.200
- Title VI of the Civil Rights Act of 1964
- Title VI assurance executed under 23 USC 324 & 29 USC 79
- Americans with Disabilities Act of 1990
- 49 CFR 20—restriction on influencing federal activities
- 40 CFR Subpart A of CAAA

MDT mailed the 2017-2021 STIP document to the Transportation Commission on June 5, 2017. Any comments it receives during the public involvement period will be addressed at the June 22, 2017, Commission meeting.

The STIP includes proposed highway projects for each of the five financial districts as well as statewide programs. The proposed highway projects include nominated projects that will enter the preliminary engineering phase of project development upon Commission approval. These project lists are attached to this agenda item.

Once the Commission approves the 2017-2021 STIP, MDT will submit it to FHWA and FTA for their review and joint finding that the STIP is based on a statewide planning process that meets the requirements of federal law (23 USC 134 and 135, 49 USC 5304 and 5305). Following the federal finding, MDT will program new projects entering the preliminary engineering phase using FFY 2017 funds.

Summary: MDT is presenting the federally required 2017-2021 STIP to the Transportation Commission for approval.

MDT staff recommends that the Commission approve the 2017-2021 STIP and add the projects listed in the 2017-2021 STIP (that will be entering the preliminary engineering phase during federal fiscal year 2017) to the program. Following approval, these projects will be submitted for programming.

Commissioner Skelton asked if the Commission received a list of projects that were approved. Lynn Zanto said she would be happy to share the results with the Commission. Commissioner Lambert asked if these were available on the state website. Lynn Zanto said they were on the website but not in this format, however, there is an on-line map that shows the projects. If you click on the project you'll get basic information and see comments.

Commissioner Jergeson said I asked questions before the meeting and hope to get them answered at some point. I'm more confused now than ever. You referenced the list the new projects on page 56. New projects all have a 2017 date on them. Lynn Zanto said a lot of them are preservation projects which could be going this year because preservation projects don't take a lot to develop. Regarding the safety projects, as soon as FHWA approves the document we will be requesting programming of federal funds so they will be obligated for the preliminary engineering this year. It doesn't mean construction of the projects will be done in 2017. Commissioner Jergeson said if they are not on the preliminary list but on the construction list, does that mean the federal funds have already been obligated. Lynn Zanto said no. We must go to federal highways four times for authorization of funds. The first is for preliminary engineering and those are the projects we're asking you to approve because we're adding to the program. Once we get farther along in design, if we need right-of-way, we can't go to right-of-way until we go back to Federal Highways and do a STIP amendment to bring in the right-of-way phase in our STIP document. Incidental construction is the other phase FHWA approves for us. Then we must get approval to go to construction and along with construction we wrap in construction engineering. If you look at your district, the first three pages are construction and the left-hand column shows what years we're going to construction. Then the next page is design we're hoping to advance. Then the next page is the right-of-way we think we'll need. The last page is the incidental construction.

Commissioner Schulz said once the first communication is made, then you go to the right-of-way phase if that's a requirement. So that date would change again to accommodate that. Then at that point you would go to the incidental and then into construction. Is that correct? Lynn said that is correct.

Commissioner Jergeson said the projects that are in construction phase, in some previous year were they in the preliminary engineering phase? Lynn Zanto said yes. Commissioner Jergeson said if a project had a date of 2019 on construction phase, when it showed up on the preliminary engineering phase, what was the date listed for that project, was it 2019? Lynn Zanto said it would have been an earlier date because the date we must reflect is the date we request Federal Highway approval and to obligate federal funds. If it's 2019 and it's a reconstruct, that preliminary engineering date might have been back five years. If it was a minor project, it might have been last year. I can get you dates of anything you're interested in. Commissioner Jergeson said the next time these projects show up in this kind of a document, it will have a new date? Lynn said yes and it will be under a new heading. Federal law state that we must show the projects by phase, type of work and funding source.

Commissioner Jergeson asked about UPN – what is that number? On our tour yesterday, the staff described a couple of projects as having ancient numbers when they first entered the system. When I look at a number like 8784, what is the difference between that number and 9205? Is it date sensitive? Lynn Zanto said it is sequential. That is the number that uniquely identifies the project so that all the staff working on it can charge to the right number and we can track the projects by their unique code. You won't see any old, old projects in your district. If it has an 012 at the start, it will be an old project. Dwane said we still have some 1,000's on the books. Commissioner Jergeson said the Belt project number is 043, so how old is that project? Has it been lingering out there for a long time? Lynn said it is getting pretty old. Commissioner Jergeson said it shows a construction date of 2021. Dwane Kailey said 4,000 would have put it into the early 2000's for initiation. Lynn Zanto said that project is in phase three, so that tells me it is a bigger corridor that we're taking in pieces as we can afford it.

Commissioner Jergeson said this related to the cover letter and the admonition not to reveal the estimated engineer's cost because it protects the integrity of the competitive bidding process. In the minutes from February, however, on our

approval of the Great Falls District Project Sieben Interchange North and Choteau South, it was presented with what the costs would be. This is a public document available to the public. So, we're publishing something that eventually will go to bid and the numbers are there for some enterprising firm that wants to skirt the integrity of the bidding process. What's our dilemma here? Lynn Zanto said we absolutely want to encourage competitive bidding but we must show fiscal restraint so we want you to have a scale of what we think the project is going to cost. Dave Ohler said if you have a concern about that perhaps we could delete or redact that information.

Dwane Kailey said what you're seeing in here is a very preliminary estimate. When we bring this to you, we have a very loose scope. We need to go out and review the project and then define the scope. As we work on that project, we hone that estimate closer and closer. Our concern is when we get ready to go to contract, we've honed the scope and the estimate down fairly close and that is the information we don't want published. We don't want to sway the contractor's bid. What you're seeing here is a very preliminary estimate and will have no impact whatsoever on the bidding of that project. That estimate is preliminary and will change over the life of that project. When we get ready to initiate construction, we hone that estimate a fair amount; we know roughly what it's going to be. That's when we take the stance of protecting that estimate a little more and not disclose it.

Commissioner Lambert said you guys haven't had the privilege of going through Red Book yet. Once you do, a lot of this will make more sense to you. These projects take years and years and change all the time. Director Tooley said one of the things I find interesting and maybe a little bit complex is the fact that when you enter a project into the STIP, it starts costing because whatever phase you're in you are charging time, hours, dollars, expenses against that project throughout the various phases and years of development. When a project goes to bid and you're looking at the bid cost, the engineer's estimate will be one thing and the actual accepted bid may be close to that estimate but the costs of developing the project over the years don't really come back together. If you have a two-million dollar bid and you have a million dollars into development, we don't see the three-million-dollar cost, we see the two-million-dollar cost but that doesn't tell the whole story of the actual costs it took to put that project together.

Lynn Zanto said we have started adding the total project cost into the STIP. If you look at the document, on the right side we have the estimated phase cost and then we have the total project cost. You're right, I don't know that we bring back the final cost. Dwane Kailey said later today you'll approve the Certificates of Completion and that is only the construction cost; it doesn't include CE, administrative fees, or preliminary engineering costs. Commissioner Schulz thanked them for the information. I've been looking at the STIP for years as a County Commissioner and this helps explain it.

Commissioner Jergeson asked about the planning document – we have a bunch of projects in process but they don't show up in the planning document? If the planning document isn't complete when all the things in process that have been approved are nowhere to be found in here, then what utility does this necessarily have as a planning document? When there is a bunch of stuff out there that potentially can cost millions and millions of dollars that are nowhere to be found in here, I don't know how I can vote for this as a planning document when in fact it is incomplete. Lynn Zanto said I would be happy to sit down and go through the entire process with you. This is part of a year-long cycle and there's other things going on through the year. This starts the process for us to load the Tentative Construction Program which is in October. So, the mix of this with our TCP, you'll see the projects because if we're not putting them in a year for construction, a good chunk of them are going to show in our out year because they're waiting in line to be moved into a construction area. I think that document will help bring it all together. We know we can do better on public involvement with more comprehensive project

information and we are working on that. The system this document is produced from is a couple of decades old and was a custom-built system and it has issues all over the place. We did get approval by the prior Legislature to upgrade the system but, with our funding issues, that got put on hold. Now we're back on track and hope to have an RFP out by the end of the year to make this a much better document. This document serves a very specific federal purpose.

Commissioner Lambert asked if Federal Highways has funding. Brian Hasselbach said part of this is recognizing that we have very specific requirements in terms of authorized federal aid. One requirement is putting together this document that provides an outline of what the proposed projects, by phase, might be. Lynn went over the authorization of phases, one of the key fundamental pieces to authorizing phases is that it must be in the STIP document. Either in the document you're considering today or through a subsequent amendment. So again, there is a purpose for this document. It may not fully address the desires of the full scope of what might be coming down the pike but, from a federal agency perspective, we have constraints in terms of what we can authorize by phase and we must have assurances that whatever program is being advanced is fiscally constrained. That's essentially in a nutshell what this document is attempting to do. There are certainly opportunities to look at improving the process and those have been ongoing conversations. This document is to give a snapshot in time of what the department is proposing to do and then provide reassurance to Federal Highways that what is being proposed to spend is within our guidelines. Then we can move forward as phase authorizations for projects come in to be able to approve those phase authorizations.

Commissioner Jergeson said he would vote to approve this but I'm going to be pretty dogged in trying to come up with some sort of document that I, as a Commissioner, can refer to when I'm talking to any constituent in my District when they have questions about projects and how priorities are arrived at and how people can depend on what they see in this document as something they can rely on going forward. I need to explain to a whole bunch of constituents why they can't have a project that costs 60% more than what's estimated in here. I can't do that if I can't explain to them all the myriad of projects that are out there that would have to be eliminated to come up with that money. Lynn Zanto said we have an opportunity to upgrade our project nomination system which was developed in about 2000 to meet federal requirements. That system produces this document and we're moving toward upgrading that today.

Commissioner Jergeson said he received a call from a constituent from Chester asking about a road project near Chester. He wanted to know when we were going to fix the road from Chester to Great Falls which has narrow shoulders and up and down vertical curves. I couldn't tell him that I had didn't have any idea whether anybody in the department was looking at that. I could assure him it wouldn't happen before 2021. That is the kind of questions we get. Commissioner Lambert said she talks to Shane all the time and if there is anything going on at MDT, Shane will tell me about it. The District Administrator would know if something was in the works.

Commissioner Lambert moved to approve the 2017-2021 Statewide Transportation Improvement Program. Commissioner Belcourt seconded the motion. All Commissionees voted aye.

The motion passed unanimously.

Agenda Item 5: Speed Limit Recommendation US 191 – Malta South

Dwane Kailey presented the Speed Limit Recommendation for US 191 – Malta South to the Commission. We were requested by Phillips County to look at two areas where they wanted a 10-mph reduction in speed. We reviewed the traveling speeds, the accident history, and the citation data. Our initial recommendation was a no change. We presented that to Phillips County, they were not satisfied with that so we went back and had a discussion with them. Based on our discussion with Phillips County and some recent research, we believe it was within engineering judgment and guidance to offer up a five mile per hour reduction in the two speed areas they were concerned with. We presented that to Phillips County and they concurred with that recommendation. We're proposing the following:

A 35-mph speed limit beginning at station 507+40, project FG 333(11) (south of the intersection with 8th Street), and continuing south to station 494+00 (100' south of 12th Street), an approximate distance of 1,340-feet.

A 40-mph speed limit beginning at station 494+00 (100' south of 12th Street), and continuing south to station 480+00, an approximate distance of 1,400-feet.

A 50-mph speed limit beginning at station 480+00 (1,000' south of Short Oil Rd.), and continuing south to station 454+00, an approximate distance of 2,600-feet.

A 60-mph speed limit beginning at station 454+00 (900' south of Dolan Lane), and continuing south to station 425+50 (600' south of S-363), an approximate distance of 2,850-feet.

A "Reduced Speed 60mph Ahead" sign will be included for northbound traffic approaching the 60-mph speed zone. Speed limit sign panel size will be upgraded to make each zone more conspicuous to motorists.

I would request approval of the recommendation by staff.

Commissioner Lambert moved to approve the Speed Limit Recommendation for US 191 – Malta South. Commissioner Schulz seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item No. 6: Speed Limit Recommendation MT-78 Red Lodge

Dwane Kailey presented the Speed Limit Recommendation for MT-78 Red Lodge to the Commission. They requested that we evaluate the speed limit on Brewery Hill which is posted at 25 mph and has recently been reconstructed. In our investigation, we looked at traveling speeds, accident history, and citation data. We also found that the posted 25 mph speed limit was not supported by any kind of recommendation or approval by the Commission so we're not sure how that got posted. However, in our investigation, we determined that a 35-mph speed limit in and around Brewery Hill would be most appropriate. We presented that to the Town of Red Lodge and they do concur with that recommendation.

Therefore, we are recommending a 35-mph speed limit beginning at the US 212 round-about and continuing up Brewery Hill to station 38+00, an approximate

distance of 2,600 feet. This also reduces a portion of the 45-mph speed limit that was in place. The City of Red Lodge supports that recommendation.

Commissioner Schulz moved to approve the Speed Limit Recommendation for MT-78 Red Lodge. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item No. 7: OAC Administrative Rule Transit Shelter/Bus Bench Advertising

Carol Grell-Morris, MDT Staff Attorney, presented OAC Administrative Rule – Transit Shelter/Bus Bench Advertising to the Commission. I'm the rule-reviewer for the department. I come to you today to talk about Administrative Rules. She passed around some photos to the Commission. For the benefit of the new members I thought I would start with a very brief background of Outdoor Advertising Control. This a federal program. The federal statute is called the Highway Beautification Act and was initiated in the 1960's by Ladybird Johnson. The intent was to beautify highways and control the proliferation of billboards along those roads. Part of that federal legislation was to require the states to control outdoor advertisement along state and federal routes. By doing so the Montana State Legislature passed the Outdoor Advertising Act. So, we also have state statutes that talk about control of outdoor advertising. In those state statutes, the authority over outdoor advertising was specifically given to the Commission. The authority for all procedures, all permitting, and all rulemaking belongs to the Commission, so you will frequently see outdoor advertising matter come before you. By state statute it falls under your authority to control that program. That is a very brief background of all that goes into outdoor advertising.

What we are looking at today also has a background. The Outdoor Advertising Program is housed within our Right of Way Division. Rob Stapley is the Right of Way Bureau Chief and he is here today. About a year ago, Outdoor Advertising Control Rules from Right of Way were presented to the Commission. They had many different issues; it was a large rule notice and I'm sure the Commissioners who were here at that time recall it was very lengthy to go through. We received a lot of public comment on all various aspects of it. What was interesting to the Right-of-Way folks and to myself as a rule-reviewer was that the bus shelter and the bus bench advertising became quite controversial. We truly did not expect that. It was an interesting round with the various City Commissioners and the County Commissioners and transit agencies and all sorts of people who weighed in who were not in favor of what was being proposed at that time. In July 2016, the Commission voted to withdraw that section of the rule notice. They removed that small section on the bus shelter/bus bench advertising and voted to not move forward with it and not impose any new rules. They asked the department to go back and see if they could come up with a better solution for the people who use the bus bench and bus shelter advertising.

The department put together a working group. This was a great solution because it included FHWA, again it's a federal program and we need their weigh-in on everything the state is doing. It included our Transit Agency folks and they are part of Planning, it included Right-of-Way folks and it included Legal. Those were all effective program people who came together and met many, many times over a series of months to try and propose a solution that might work and meet with some approval amongst the stakeholders and the citizens. We finally got to what you have in front of you today. The group worked diligently to come up with a solution that would address all the concerns and that's the version you see here today. We'll go through this and show you what we came up with and talk a little bit about our outreach efforts. The Right-of-Way folks and Rob Stapley get credit for going out

and meeting with people and discussing what we're proposing so they don't get blindsided and frightened by what we're proposing.

Definitions

Those of you who have any familiarity with rulemaking know you take an existing rule and, through this rulemaking process, add amendments to it. The first section amends Rule 18.6.202 which is the outdoor advertising section of rules. Our proposal is to add three new definitions which you see listed: (1) define bus bench, which is important because street furniture is a new big trendy thing. You see that all over the place; you see benches at random but they have nothing to do with transit. We wanted to be sure to exclude street furniture and confine it to bus benches specifically for transit riders. (2) Define shelter – again with the input of our transit people, apparently shelter has a variety of definitions within the transit world. We're talking about the shelters where the people stand to get out of the weather and not a shelter that might house buses. That's an important distinction and was put in the definitions. (3) Define the transit outdoor permit – this is the heart of what we're proposing to do with this rule. The solution our working group came up with was a special permit for these shelters and benches.

Advertising, by federal and state regulation, is now in the right-of-way and that is why these benches and shelters were more of a problem than other advertising. They are all located in the right-of-way. How are we going to overcome the general prohibition on advertising in the right-of-way and yet allow advertising on these shelters for the reasons the transit agencies all support. We came up with a "transit outdoor advertising permit" which is a special permit, newly created by these rules, to allow benches and shelters to be located, not only within the right-of-way, but to have advertising on them if they meet all the rules. We want to confine advertising to a certain location in the shelter, a certain size, and to follow all the regulations we're proposing. Those types of advertising would get a special new permit and be allowed to exist in the right-of-way. That is what this definition of transit outdoor advertising permit is conveying – that these are brand new and must meet all our regulations. Those are the definitions we propose to add.

Authority and Implementing Sections

Under each rule you see the authority and the implementing sections which are the statutory citations. The authority section is the statute that says the Commission has rulemaking authority and the implementing sections are those sections of state code that gives MDT and the Commission the authority to control outdoor advertising. Those are the statutes we're implementing.

Reason for Amending Rules

In rulemaking, the reason is important. Under the rulemaking process, the agency must give a reason why they are amending rules. This is the reason our working group drafted to explain why we're defining these terms and why the definitions are necessary. By statute, you must explain why your rulemaking is necessary.

New Rule

This new rule is being created right now, doesn't exist, and is going to be called "Advertising on Transit Shelters and Benches." Below are some of the features of the rule and the way it is supposed to work.

Locations

The rule proposes to put these special permits only on transit routes. That is one important control. In Great Falls for example, only certain streets in the city are

transit routes that buses run on. The advertising would be confined to those routes. The routes are chosen by the transit agency itself. That way we don't have a proliferation of shelters and benches in the right-of-way all over the city; only on fixed active transit routes. MDT doesn't determine those, the transit agency does so they can control what's added and what's deleted.

Right-of-Way versus non- Right-of-Way

Most of these shelters are in the right-of-way. That was the problem in the beginning because advertising isn't allowed in the right-of-way. Occasionally, depending on the configuration of the street, there might be a shelter or a bench outside the right-of-way. Up in Kalispell some shelters are in the Walmart parking lot because that is a bus stop. If you're outside the right-of-way, you can still do the advertising and get a regular Outdoor Advertising Permit. We're not cutting off advertising outside the right-of-way but that would be a traditional outdoor advertising permit which has a set of requirements on its own. If you're going to be in the right-of-way along these routes, then you must apply for the new special permit.

Location of Advertising

The rule calls for bus shelters to have the advertisement on one panel only and to allow it farthest from on-coming traffic (referring to photos). You can do both the inside and outside and interior and exterior of that panel. Basically, two signs per shelter.

Size of Advertising

We have a size limitation of the panel size. These shelters are standard so you can easily call the size of the panel and it will meet what's put up for shelters all over the state. That is the panel size the advertising is limited to and that's what it's going to look like (referring to photo). This is the typical way that advertising is placed on these bus shelters. Our rule calls this out. A picture is easier for people to understand. The idea is for people to know what they are supposed to do.

Commissioner Lambert asked if the shelters were furnished by the state or furnished by a transit organization? Is this shelter something they must copy? Carol Grell-Morris said that gets into the question of who's going to build them, who's going to own them, and where they come from. Briefly the shelters are standard. If an outside third party, a contractor, is hired to put these up, this is what they buy. Part of that is for safety reasons because they are in the right-of-way.

Bench Advertising

These are the bus bench photos. The advertising goes on the back and front of the bench. Those are limited in size by the rule. These are very standard.

Ownership

This was part of the people's dissatisfaction with the previous version of the rules – we hadn't delved down deep enough into who's putting them up, who owns them, who's buying the permits, etc. Our working group came up with a system where these shelters and benches first need an Encroachment Permit. MDT issues them for objects that are going to go in the right-of-way. The reason for that is safety because if you're in the right-of-way there is a potential that a car could have a problem and crash. They need a break-away device, the shelters need to have clear panels so they don't restrict sight for drivers, etc. Encroachment Permits are issued by our maintenance section and they have engineers who look at all the safety issues.

So, the applicant will first come to MDT for an Encroachment Permit. The applicant will be either the local government or the local transit agency. This is a quasi-governmental agency. They are not part of the counties or cities but authorized by the counties and cities. They are non-profits and run the systems in several of our communities. They can apply for an advertising permit. Secondly some of our cities do not use a transit agency because the city runs the transit system so the city itself can apply for these advertising permits. The reason it was important to have either the agency or the local government apply was the FHWA requirement that it must be for the public good. If the local agency or government holds the permit is for the transit ridership, thus the connection to the public good. Previously we had outside private advertisers trying to apply for permits and we don't have any public good connection that way.

So, the system we're proposing is the local agency would have to get an Encroachment Permit for the shelter or bench and then apply for an Advertising Permit. The Encroachment Permit, the third important part, the agencies can contract with someone else to build the shelters and benches. That's the scheme currently in place in Great Falls, Kalispell and Billings. They have an outside contractor who buys the shelter, puts up the shelter, maintains the shelter and their big fear was they would lose that contractor. The rule currently says the local agency can contract with someone else to do all this and the contracted person can get the Encroachment Permit, buy the shelter, put up the shelter and maintain the shelter. You can still do that, the only piece that must be done by the transit agency is the Advertising Permit again for the public good connection. If you are the city of Missoula and you don't want to contract with someone and want to do it yourself, that's allowed as well. We are trying to accommodate all the different schemes out there.

That kind of gets to who owns the shelters and who gets the revenue from the advertising on the shelters. We are going to leave that with the transit agencies and the local governments. If they want to put the advertising on themselves and collect the revenue for maintenance or if they want to contract with another outside agency to collect the revenues and do the maintenance, they can. We want that control to be with them. All they need to do is to make sure that all the requirements are met by that outside contractor and then they apply for the Advertising Permit.

Cost of Permits

There is a cost for Outdoor Advertising Permits. There is an application fee, there are inspection fees and renewal fees. Our working group talked about how to do this because these transit agencies don't have any money. So, if you say to them you must apply for an Advertising Permit but they want to apply for ten of them and there is an inspection fee on each of them, now the cost has suddenly skyrocketed. So, we came up with a combined fee. If you're a local government or transit agency and want to apply for ten advertising permits at once, we will combine that inspection fee so our inspector can go out to your city and look at all ten of them at once. You only have to pay that inspection fee once. That was an attempt to get the costs under control. There is a small fee for each of the advertisements and those who renew every year. The cost of the renewal is about \$10 per sign and the original application fee is not large. The inspection fee was driving the huge costs, so we came up with a combined fee for that.

In summary, this is a whole new permit that is going to be applied for by the transit agencies or the local governments. The requirements are you must have an Encroachment Permit, you must meet our size requirements, and you must meet all the other requirements in the rule. Then you'll be allowed to put up this type of advertising.

The final thing I'd say is we have some of this advertising around the state now. It's not permitted so the rule has set up a one-year window to get into compliance. So, people who are currently showing advertising on the shelters and benches in the right-of-way will have one year to apply for the permits, get through the inspection process, and attach the permits their shelters, etc. If we get the rule in place in September 2017, then they have until September of 2018 to come into compliance. If you're brand new obviously you'd have to follow this from here on.

Rulemaking Process

The rulemaking process is by statute. All the state agencies follow the same process. The general idea is to get public comment – we want to hear what the public thinks about these proposed rules. What we need from the Commission is a vote to initiate that rulemaking process with the proposed rule we've presented here. That would be filed with the Secretary of State and begins the public comment period. We send it out to the affected stakeholders and it's also on our website so people are aware of it. They can comment for about 28 days from the publication date and we plan to hold a public hearing which would be scheduled for August 4th in Helena. People are free to attend the hearing and make whatever comments, for or against, so that we can hear from them. That's a valuable process and it is amazing what people pick up. We worked on this for months and still we miss stuff so the public comment is very valuable. At the end of the process we will come back to you to show the comments we received and how we might want to respond to those.

Commissioner Lambert asked if this presentation today was so you could start the rulemaking process, so it may change? The last time the people with disabilities were very upset because they had worked very hard to get people to help them have transportation and not being able to advertise in shelters was their big concern because that's how they paid the transit. I'm assuming it will be put in the paper so they know there's a comment period. These aren't written in stone; you haven't made the rule yet, you just want the authority to go ahead and start the process? Carol Grell-Morris said that is correct. This is marked "proposed" and that is what we're doing – we're proposing rules. We start the rulemaking process and they are all labeled "proposed" and that is the idea of the comments. If we agree with the comments we can make changes to what we've proposed. What we're proposing is in front of you and that wouldn't change but it's possible that in response to comment, some changes might have to be made.

The comment about people opposing them because they were afraid they were going to lose the shelters is what we're trying to head off. We don't want to lose any shelters. This proposal will allow all existing ones to stay in place with the advertising that pays for the maintenance. Our right-of-way folks have done an excellent job this time. They met with the transit agency people in Kalispell, Great Falls, Billings. We attended the transit conference in May and explained the rules, how they work, how they wouldn't lose existing shelters, and wouldn't lose current contracts for people who put them up and maintain them. They had a lot of questions and hopefully we explained it so they aren't so opposed to it. That education and outreach has helped a lot to head off what happened last time with everyone opposing them. They might have comments and concerns and we'll find that out during the comment period but they are all aware of it and aware of the new permit and the new process and hopefully not as opposed because they are going to get to keep the shelters that are already there. The original question was will these change? Not as their published with the Secretary of State but possibly in the process if the public comments warrant that.

Commissioner Schulz asked if there were projected revenues or is that something that transit agencies are looking at? Carol Grell-Morris said the only revenue that MDT would be adding to was the permit fees and in this case, they are quite small. We don't anticipate additional revenue for Right-of-way or the Outdoor Advertising

Program. It covers the cost of the inspectors to do the paperwork and go out and inspect, etc. No additional revenue for MDT is expected. Where the revenue stream will flow for maintenance is the advertisers will pay either the city or the contractor. If you're McDonalds and you want to advertise on this bus shelter, you go to the advertising company that is handling it for that city. The revenue goes to that company and the company uses the money to maintain the shelter. All that is arranged with the transit company; none of that revenue comes to MDT. Our only change in revenue would be from additional permits.

Commissioner Lambert asked if it was up to the transit company to maintain the shelters? Carol Grell-Morris said it would be either the transit agency or the city, depending on who is planning to put the shelter up. They can do it several ways – contract with the advertising company but if they want to do it themselves that is up to them. It's not MDT. Commissioner Lambert asked who has the authority to say they are not taking care of the shelter, is that up to MDT? Carol Grell-Morris said it is not up to MDT; it's up to the transit agency. They decide where they are going to be put up and if they are going to be removed if they are not maintained properly. We want the local control to remain since they in charge of the whole transit system. They oversee all aspects of it.

Commissioner Lambert moved to approve the MAPA Rule Making Process for OAC Administrative Rule – Transit Shelter/Bus Bench Advertising. Commissioner Schulz seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Elected Officials/Public Comment

Senator Sue Malek, Missoula

Thank you very much for having the meeting in Missoula. I want to extend a special thank you to Commissioner Belcourt for his role in helping us to listen to what was going on in Seeley Lake. I was very pleased to hear what was going on in Phillips County and Red Lodge.

I came down to see you and to thank you for responding to comments from Seeley Lake and making some changes in the speed zones there. Their festival "A River Runs Through It" is September 8-9 and I think we'll see the results of what you did in slowing down traffic and getting them to come to the literary and artistic programs and ecological programs they have. Thank you for that.

I was curious about what was happening on several projects going on in Missoula. I was curious about their status. I live up the Rattlesnake so I'm curious about that. I appreciate what happened on Orange Street. The improvement to Orange Street have been very difficult this year, as you know we tore up that road and now it's coming back together and I'm glad to see that. It's nice to see MDT putting their money into our roads. I was mainly interested in what is happening on East Missoula and Van Buren Street Exit and Russell Street.

Dwane Kailey said Van Buren was originally scheduled to be let this year but due to some right-of-way and design challenges, we ended up delaying that contract and substituted it with Bonner Bridge. We're moving forward with the design build to replace Bonner Bridge on the Interstate. In October MDT and the Commission will meet and set up our next five-year plan. We don't have a date for Van Buren right now because it was pulled out of this year but we will be setting a date for it in October. It is anticipated that we may try and get it into next fiscal year but I can't tell you that until we meet with the Commission in October.

Russell Street is all hands-on deck. Everybody is scrambling as hard as they can to deliver that this year. I got an email yesterday that we've got tentative approval from one landowner but we still have another landowner to agree and sign off. We're hoping to have that by next week. Hopefully we'll have a letting in September which means you won't see much construction this year. They may start on the bridge this winter but most of the construction will happen next year. If we get everything approved you will see utilities relocated this year in prep for the contract to come in and start on the roadway.

Senator Malek said she remembered in the Legislature there was federal money available for five years. Director Tooley said the FAST Act is a five-year authorization with four and half years of funding and it depends on Congress filling the coffers for the authorization to spend that money. We're part way through that already and we're waiting to see what the current administration does for infrastructure.

Senator Malek asked if there is a new exit and sidewalks planned for East Missoula? Dwane Kailey said he was not aware of that. There's been a lot of push for that but there's nothing on our scope to do anything but I know they are still trying.

Senator Malek said I wanted to tell Commissioner Jergeson that we have some bridges that are failing in Missoula and people are very concerned about the Russell Street Bridge. I know you visit a lot so I know you're aware of that. Thank you.

Senator Diane Sands, Missoula

My District brings in all of Lolo, Highway 12 all the way across, 93 and South Reserve, so I've got a lot of highways and I'm always concerned about this. Thank you all for your work, I sure appreciate it. I want to bring up a brief issue. I'm passionate about the issue of Native American Historic Signage on highways. I'm a member of the Native American Caucus in the Legislature and we've had a lot of discussion about trying to replicate that great work that's gone up on Salish Kootenai across the state. Part of what the Caucus has looked at, and we sent a letter to all of you and to Tribal leaders encouraging them to request the department to pay attention to this issue because I think it's important both as part of our constitutional commitment to Native American heritage and having everybody understand they are on Indian land and these places have different names. It is a great tourism attraction for people to understand this place and the interesting history it's got. I'm very passionate about this and I'm working on the People's Trail going from the Flathead Reservation down into the Bitterroot as well. I just wanted to raise that issue for you. Thank you all for coming to Missoula. It's good to see you. If there is any way I can be of help to any of you, please let us now. Thank you.

Commissioner Schulz said yesterday morning we started shortly after 8 am and we were about 14 hours and 320 miles driving projects in the Missoula District. So, we are working hard for you. We learned the necessity for project funding outweighs the need for road improvements, however, I think you've got a good crew and an elevated level of interest in this district and a passion of finding ways to get things done. We are working for you.

Commissioner Belcourt thanked both Senators for their service and Senator Malek for her involvement in the speed study in Seeley Lake. She was very supportive of it and in attending all the meetings as well. He thanked Senator Sands for serving on the Native American Sign Committee. I did not get a copy of the letter but I'll give you my email and you can email me a copy of it. I know that in talking with the Salish Kootenai Tribe, their Vice Chair had a request on signage recognizing tribal law enforcement and I'll be following up on that.

Commissioner Skelton said none of the Commissioners received the letter requesting signage. Director Tooley said I received a letter and was asked to appear before the Native American Caucus, which I did, and spoke to this issue. Basically signage falls under the MUTCD which is the national guidance. There is a proposed guidance out there that would potentially allow this if approved. It's been out therefore a few years. The problem with the MUTCD is it doesn't change very often and it doesn't change very fast but there is a proposal for guidance that would make it easier for the department to do something like this if it's adopted. It's been out there for two or three years and hasn't been acted on. We need to push that. If it's in the manual, it makes my life easier and I don't have to fight with Mr. Hasselbach anymore.

Commissioner Jergeson said I want to welcome my two former colleagues here. In my experience outside the Legislature we frequently have Legislators who claim to know lots of stuff in the Legislature but never show up and visit with the people they claim to know a whole lot about. These two Senators are engaged and when they come and talk to us, they've done their homework and I appreciate that. I wasn't worried about the Russell Bridge delaying any projects in my district because that's not how the funding is set up. I'm glad to see that project progressing. I was still going to College when a Governor promised there would be a bridge built on Russell Street. We drove across it yesterday and it's good to see that is going to be fixed.

**Agenda Item No. 8: Design Build Award – CMDO
STWD (479) – Bozeman-Livingston
ADA UPGR**

Dwane Kailey presented the Design Build Award – CMDO STWD (479) – Bozeman-Livingston ADA UPGR to the Commission. Design Build is not solely low bid. Design Build is what we call “best value.” The firms or teams, and usually a contractor and an engineering firm will team up together and submit an RFP. We score that RFP and after that they submit their bid. The points off the RFP combined with their bid is what determines the best value. The reason I'm explaining this is both are not the lowest bid. I'll explain why they are coming out at number one. In the case of the Bozeman ADA Upgrades, the RFP resulted in scores of 51,900 points for the Century Company and Sanderson Stewart and 55,550 technical score points for the Riverside DOWL Team. The bids were \$3,954,699 for Century and then \$4,259,408 for Riverside DOWL Team. When you put these two together, the highest total points is the one we recommend as the best value. You might ask why Riverside DOWL team scored so much higher? That team had higher quality staff and better quality control identified in their RFP. The other team changed some of their key personnel through the process and their project approach was not quite at the same level we saw from the Riverside DOWL team. In the report, you will see that we requested RFP's from three teams. One team dropped out and did not submit an RFP.

Staff would recommend awarding to Riverside DOWL team and we recommend the stipend go to the two teams that submitted RFP's on the proposal. Commissioner Skelton asked if they dropped out and didn't finish submitting, do we still give them the stipend? Dwane Kailey said no we do not. Knife River Hyalite dropped out prior to the RFP and they are not injured and you don't see their name in here. We are not going to pay them the stipend.

Commissioner Schulz asked what the project was about. Dwane Kailey said several years ago we were required by FHWA to go out and build an ADA Transition Plan. That required us to assess our infrastructure and identify barriers to the accessibility challenged individuals. We completed that about a year or two ago and got approval from FHWA. We then took the next step of dedicating money to eliminate some of those barriers and we have a ranking scoring system to do that. This is one of the projects to eliminate some of those barriers. We go in and eliminate or improve

ADA accessibility in Bozeman and parts of Livingston. For the most part, it is upgrading sidewalks and providing curb ramps and other features we need for the accessibility challenged.

Commissioner Jergeson asked what it was about this project that you decided to proceed with design build rather than the traditional competitive bidding process. Dwane Kailey said with ADA we find that we can spend a ton of time going out and getting a survey, designing it up, going to the smallest detail. It is more efficient to have that engineer out on the ground with the contractor because ADA accessibility guidelines are very prescriptive with very tight tolerances and very challenging. It is cheaper and more economical to go to design build and get the contractor and the engineer teamed up, get them on ground, and they can design it better and more effectively on the fly.

Commissioner Jergeson said it was disconcerting to get this document. It is my sense that the competitive bidding process is a great protection for the taxpayers who are funding all these projects and should be the first approach. Apparently, the timing of when the bids were requested and then opened and evaluated was such that you sent us this document with zero dollars in here. It is just today at this moment that we, as Commissioners, are seeing the numbers. I'm a little disconcerted by that. Was there something peculiar about the scheduling of the RFP's and when the bids were evaluated, that the financial information wasn't available for the Commissioners to see so we could have a chance to analyze that? We are substituting for the competitive bidding process a judgement here and for me to vote for a judgment that substitutes for the competitive bidding process that I believe very strongly in, it is disconcerting that I am just now seeing the dollar numbers. Dwane Kailey said there is nothing peculiar about it. We actually set it up this way. We opened bids late last week and then we go through the review process and make sure everything is responsive and everybody is on board with it. We schedule that way on purpose just to make sure that the time between opening bids and awarding the bid is short and we're not holding up the contractors and the firms. If you would like this sooner, we can change that timeframe and make sure we move it up a week or two so you have the information prior to the Commission meeting. We're not trying to hide anything, we're just trying to keep that timeframe short. We can push that timeframe up. Commissioner Jergeson said I read it the day I got it in the mail and I'm a little frustrated that I have this big long document that doesn't have a key piece of information for me to think about or to even call the department about. I would like it earlier. Commissioner Lambert agreed. Commissioner Skelton asked them to move it up.

Director Tooley said this document is printed up awhile before your meeting and these things come in closer to the end. If you have a place holder in your agenda book and these come in a week before your meeting, long enough for you to look at and scrutinize, can we send them to you electronically? Would that be acceptable to the Commission? Commissioner Skelton said absolutely that would be fine. Lori Ryan said it is a timing issue with construction and the agenda being printed in a timely manner to have it to you for your meeting. Commissioner Lambert agreed and said it would help to have the figures before we come to the meeting.

Commissioner Lambert moved to approve the Design Build Award – CMDO STWD (479) – Bozeman-Livingston ADA UPGR and stipends. Commissioner Schulz seconded the motion. All Commissioners voted aye.

**Commissioners requested the Design Build items be sent prior to the meeting with the agenda

The motion passed unanimously.

**Agenda Item No. 9: Design Build Award – STPIP-NHIP-IMIP
STWD (408) D1 Slope Stability (Phase 2)**

Dwane Kailey presented the Design Build Award – STPIP-NHIP-IMIP STWD (408) D1 Slope Stability (Phase 2) to the Commission. This is a Design Build and we are recommending award to the best value. We had three firms submit bids: GeoBuild/Gannett Fleming, GeoStabilization International/Shannon & Wilson/HDR, and Oftedal/Terracon. Their scores for their Technical Proposals were 47,260 for GeoBuild, 52,420 for GeoStabilization, and 41,340 for Oftedal/Terracon. Their bid proposals were \$4,220,000 for GeoBuild, \$4,901,775 for GeoStabilization, and \$7,886,850 for Oftedal. The best value at 87.05 total points is the GeoStabilization International Team with Shannon & Wilson and HDR.

Why the bid difference in the scores? It comes down to two main things – (1) Geostabilization’s proposal shows doing the work in one year. The other two proposals show doing the work in two years. That is a big benefit to the traveling public and MDT. These are sites, from a geotechnical standpoint, that we’re concerned with. That’s why we’re investing this kind of money to go in and stabilize them. Too many more years and they could become destabilized and could end up closing the road or causing bigger issues. Getting it done in one year is a huge benefit to the agency and the traveling public. (2) GeoStabilization International is offering us a seven-year warranty versus the other two firms which offered a one-year warranty. Those two factors were huge, hence the higher score for that part.

All bids were responsive and we recommend awarding to GeoStabilization International/Shannon & Wilson HDR and awarding the stipend to all three firms because they were all responsive.

Commissioner Jergeson said the total point difference is three between the two top ones but there is a \$700,000 difference in the dollar bid on this. I can appreciate the importance of a one-year warranty versus a seven-year warranty but is it significant enough that we would have just three points out of hundred to depart from granting to a qualified bidder based on the low bid. Dwane Kailey said the very short answer is yes. The way we treat the best value is to take all that into consideration. To be very frank, it doesn’t matter if it’s three points or .01 difference in the two, we’re treating the best value the same as a low bid. The highest score, irrespective of how far apart they are, that’s what we go with. We’re showing that their proposal is enough better than the others that we believe it is in the best interest of the public to go with that firm. Dave Ohler said the total points consider the dollar value, so it’s three points but it also considers the dollars. The difference is in the Technical Proposal score which is 52,000 points versus 47,000 points. That’s the difference in the value of the proposals exclusive of money. Commissioner Jergeson asked to be shown as abstaining on this.

Commissioner Lambert moved to approve the Design Build Award – STPIP-NHIP-IMIP STWD (408) D1 Slope Stability (Phase 2) and Stipends. Commissioner Belcourt seconded the motion. Commissioners Lambert, Belcourt, Schulz and Skelton voted aye. Commissioner Jergeson abstained.

The motion passed.

**Agenda Item No. 10: Certificates of Completion
March & April 2017**

Dwane Kailey presented the Certificates of Completion for March & April 2017. They are presented for your review and approval. If you have any questions, please feel free to ask.

Commissioner Schulz moved to approve the Certificates of Completion for March & April 2017. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item No. 11: Project Change Orders March & April 2017

Dwane Kailey presented the Project Change Orders for March & April 2017. They are presented for your review and approval. If you have any comments or questions, please feel free to ask.

Commissioner Jergeson said I'm looking at the \$.02 change order but there are all these other numbers, is the \$.02 reflected in the next three numbers? Dwane Kailey said the next three numbers are the original contract amount, total change orders for that contract. It was originally let and awarded for \$7,077,000 but we've had other change orders leading up to this in the amount of \$217,269.98 and then the final number is the current contract value. So, it should be the \$7,077,000 plus or minus the \$217,269.98 adding up to \$7,294,269.98. Commissioner Jergeson said it has a lot of change orders and here we have another one. Yankee Jim Canyon North is asking for another \$19,061 – did we ask them to do something more than originally, and we also did that for another \$227,000? Dwane Kailey said that is correct.

Commissioner Jergeson asked how the cost number was arrived at? How do we decide it is going to cost \$19,000? Dwane Kailey said there is a multitude of ways we arrive at that value. Some change orders are a growth in the existing quantities, so we're sticking with their bid item. If it grows or shrinks, we may negotiate with them to either decrease or increase price. There are times we don't agree on a price, in that case we can pay them force account which is time, materials and labor and at the end we track all that and write a change order to cover it. We score and track average bid prices every year and we will use those to negotiate with contractors throughout the process or we can use other mechanisms to negotiate with the contractor.

Commissioner Jergeson said you have a project that was originally let for \$330,000 but when the project is done you will pay almost three times the amount that was originally bid. Is that level of change order going on? I can see when the housewife changes the design of the bathroom and the cost changes but it isn't three times the cost of the house to begin with. I'm trying to understand what goes on with that project that would cause that kind of change. Shouldn't it have been a new project if it's at the magnitude of that kind of dollar amount and should have gone through the process of being let for bid. Dwane Kailey said I'm glad you asked that question. This contract is unique; it's a new style of contract for us called "Job Order Contracting". It allows us to bid a set or minimum quantity of work, in this case it is signing. We get a per unit bid price for that kind of work then, depending on the amount of money we have available, we can use that contractor at that bid price to grow that contract and address additional areas throughout the state. It's an innovative contractor procedure and you'll be seeing more and more of it because it allows us to be very flexible and deal with either less money or more money as we go and allows us to do additional work at a set price. This is a unique contract and we're exploring it more and more. It is low bid; it is defined cost, undefined quantity.

Commissioner Schulz said you are kind of bending it as a per unit cost but you don't know how many units you're going to have funding for. Dwane Kailey said we give them a mandatory minimum because they have to bid in their mobilization, so we need to have a set value to bid but then we can grow that contract to address additional areas if funding is available to do that. Commissioner Schulz asked if Mountain West does a lot of your traffic control. Dwane Kailey said yes. Dave

Ohler said FHWA requires us to put together reports on its effectiveness and use. That was just recently prepared and perhaps distribution of that report might help answer some of your questions particularly if you're going to see more of this in the future. Dwane Kailey said they could send the Commissioners that report. The Commission said they would like a copy of that report.

Commissioner Skelton said if this comes into the Butte Change Orders but some of this signage comes to Billings, how does that equal out. Does Butte get charged the money? It doesn't seem quite fair. Dwane Kailey said that is not happening here. This is HSIP funding which is state-wide not district-wide. We are looking into that because the next phase could run into that issue and we do need to make sure we maintain the district values. Commissioner Lambert asked if the company, Mountain West, was obligated to do more signs or can they decline to do that. Dwane Kailey said I would have to look at the contract but under contract, they are somewhat obligated to do that but obviously if something were to change and they have the minimum quantity done, we would work with them if they want out of it. Dave Ohler said there is a minimum and a maximum in the contract, so we have a guaranteed minimum number of items and a maximum number. The contractor is obligated to work between the minimum and the maximum.

Commissioner Jergeson asked if the Commission proactively adopted a policy or procedure for these kind of contracts as well as the ones in the previous design build or was it something that kind of emerged organically out of the department rather than a conscious Commission decision to proceed, in certain circumstances, with certain contracts that vary from the competitive bid process or varied in a way that is not obvious when you look at these kinds of numbers? Dave Ohler said two different ways – the design build was legislatively authorized so there are statutes that were adopted and the Legislature gave the Commission the authority to do design build projects. During the last Session, we had a bill that would allow the department and the Commission to do CMDC construction manager general contractor alternative contracting. So, those are both legislatively authorized. The job contracting was more internal. Dwane Kailey said I don't recall if we specifically brought it for Commission approval, I do believe we talked about it and you have awarded these contracts. I don't believe we officially brought it to you for approval.

Commissioner Lambert moved to approve the Project Change Orders for March & April 2017. Commissioner Schulz seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item No. 12: Liquidated Damages

Dwane Kailey presented the Liquidated Damages to the Commission.

Project ID	Project Desc	Contractor	Disputed	LD Days	LD Amount
STPX 02047(2)	Agency Canal South of Hardin	Knife River Corporation - Yellowstone	N	1	\$1,167

The Commission need do nothing and they will stand as is. As a reminder, if you choose to reduce them, we end up bearing the cost with state funds.

Liquidated Damages STAND

Agenda Item No. 13: Letting Lists

Dwane Kailey presented the Letting Lists to the Commission. They are presented for your review and approval. Based on the funding we're projecting this year and the estimated cost of the contracts, we do not anticipate any changes this year. You may recall that in the past we've had deflation and had to bring some new projects in but right now the costs are coming in very close to what we anticipated and we are not proposing to bring in any new projects.

Commissioner Schulz asked if these were being let for bid so we would review these again as low bid projects? Dwane Kailey said that is correct and you will see all these projects again when they come before you for award.

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

The motion passed unanimously.

Commissioner Skelton thanked Carol Grell-Morris and Rob Stapley for all their hard work on the rulemaking. They did a fabulous job and I'd like it on the record how much we appreciated that.

Agenda Item 14: Director Discussion and Follow-up

Thank you

Director Tooley thanked the Commission for their indulgence yesterday which was a very long day. It was a very education and fun to get out and see some of the challenges this district faces and all districts face. In Missoula, you could see the complicated issues they have with geology, location, history, and how that can all come together to complicate a highway construction project. I don't think you'll forget Bad Rock Canyon any time soon or seeing the bridge at Hungry Horse and its current status and then finishing the day on Russell Street which is all hands-on deck and we're praying that comes through so we can get that going. Thank you for your hard work yesterday and the staff. This all comes down to money so I'll update you a little bit on what I know about the federal and state side.

Federal and State Funding

On the federal side, it's still uncertain. The administration has little detail to their proposal at this point, so what we're doing right now is remaining vigilant to protect what rural states have. We're in an advantageous position to do that. Senator Barrasso from Wyoming is the Chair of a key committee on the Senate side that considers anything the administration brings forward and he's paying very close attention to the needs of Wyoming and rural states like us. The real threat is that any new infrastructure program will focus mainly on urban centers and take money away from rural states when we have needs too and you saw some of those yesterday. We're a connecting state, you can't get from Chicago to Seattle without coming through Montana and other states like us, so we need that federal support because we don't have the population to raise revenues to the point where we could take care of it ourselves. Both our Senators are very aware of this and they are very good advocates for us. Also, it is starting to have some effect. The White House is beginning to reach out to Representatives of rural states to pick their brains on this. They know they must go through Senator Barrasso and a number of rural Senators to get their agenda completed. It is time to negotiate and we'll see how that goes.

On the State side, House Bill 473 funds will start being collected by the distributors on July 1st and the first distribution to MDT and the other accounts will be about October 1st. We're waiting to see how that revenue collection turns out but projections are that local governments and MDT are going to see some significant increases in our ability to match federal aid and also create projects. To that end, MDT has been working with MACO and the League of Cities and Towns to set up not only procedures but understand how all this is going to work in the future. It's a significant change for local governments because it more than doubles the amount of money they have available to them for projects and with that we must make sure that there is no misunderstanding that local projects don't somehow create liability for MDT long term. We're watching for that specifically in things like bike paths in our right-of-way or secondary roads. Right now, we spend up to \$15 million per year maintaining secondary roads that we never used to so we want to watch that and work with them. So far, it's been very productive.

Commissioner Schulz said one of the Lewis and Clark County Commissioners has learned a little bit about the availability of these funds and I understand that he can use some of these funds and crush gravel to put on county roads. Am I correct? Director Tooley said the uses of that are very broad on the local level. We're just a pass-through. Representative Garner wanted it simple and wanted money going to the locals quickly without a lot of regulation on our side and really there is none. Yes, as long as it's a transportation-related activity and we can keep track of it to report on their behalf to the Legislature. Commissioner Schulz said, with SRS funding being cut and concern about future funding, this is a tremendous benefit for local transportation departments. He's called me about three times asking how to get the money. Who do I send him to for an answer to that question. Director Tooley said Lynn's division is setting up the grant system; it's pretty simple.

Lynn Zanto said we're working with MACO and the League right now and both those organizations have said if we get inquiries from local governments, they would be the best source for them to get out a consistent message. Our role is an oversight function and making sure they do their projects to a certain standard. It's their money intended for their work to do improvements on roads and bridges or maintenance. They must request the money through us so on March 1st we will determine the amount of money available from calendar year 2016. We are required to do an allocation basically on paper by city and by county to get this much money. We're building that into our web system. They have between March and November to request distribution of that money. There are two or three things in the law that are required: the project name, a resolution of the council, and to identify their match source. We'll have an on-line system where they can put in the basic information, upload their resolution and if they meet the content of the law, then we can distribute funds. There's a little more to it, i.e., if they don't have the match funding at the start, they can request to reserve it up to two years while they determine their match source or the project. I believe both MACO and the League will do some training. The form is not there yet and we'll do some testing on it to make sure it works for them.

Commissioner Lambert asked how it will be awarded to the county – will it be by population or road mileage? How will they decided which counties get what money? Lynn Zanto said basically the allocation is a formula in state statute. It is the same formula used for the current fuel tax allocation. Depending on whether it is a city or county, population is a piece of it, road mileage is a piece of it, etc., but every one of them will get an allocation but it's up to them to request it and distribute it. Commissioner Lambert said Director Tooley mentioned we needed to be vigilant. If the counties are deciding how to spend the money, how can we be vigilant to know that it's not being spent on something that would obligate our money later? Lynn Zanto said we give the money and it is left up to them and their respective bodies to move the money forward. The other part of the bill gives us a portion of the money and maybe Director Tooley was referring to the federal projects that we need to be vigilant and pick projects that can move. Director Tooley said we also want to make

sure we don't incur long-term liabilities. The Secondary Program is an example of that. It's not a bad program but the way some of the locals have spent some of the money has been to maneuver the department into taking over maintenance which has increased our state maintenance cost substantially. I'm not saying they are all bad actors but there are a few that want it off their system and transfer it to MDT. It's going to take some communication and working with them to prevent that liability. It sounds like the counties are not planning to do that; they just want to take care of their basic needs. We need to share with them our concerns.

Commissioner Lambert said she had an incident in her district where they took a major Secondary road and transferred into a Primary road. I'm sure the reason was because of maintenance although I don't think it's going to work. All of those must come in front of us, correct? Some county can't just take a Secondary road and turn it into a Primary road without coming in front of the Commission? Director Tooley said yes, they can. State law allows counties to take a Secondary route that might be gravel right now and, under the county's jurisdiction for maintenance, once they pave that road they can turn it over to the state for maintenance. That is what has occurred. Some routes in the state are paved that, if it were up to us, we would never pave because they don't meet the ASHTO standard for the traffic that is on them to be paved, but now they're ours because they are paved. That is an issue in state law. It sounds like locals are going to focus more on their immediate needs but as time goes on, there might be a temptation to gain that additional benefit. That's why we need to work together to make sure we're all on the same page. Commissioner Lambert said if we have no control over this, how can we keep from being obligated in future years? Director Tooley said we can't at this point. It would have to be legislative and we don't want to have to go there. Commissioner Schulz said 2002-2003 is when the Legislature authorized the transition of several Secondary's into the state system for maintenance. You are correct, some of those roads had to be improved to a certain standard before the state took them but in Madison County, we had 60 miles of road that were rolled over to the state. Director Tooley said it is a significant growth cost to the department. Having gone through the Session with you where state funding was an issue, I see that as a significant continuing threat that we need to work with the locals to make sure it doesn't expand. Commissioner Schulz said Commissioner Lambert is very accurate that it could become a tremendous fiscal demise for the department if there isn't good oversight. Commissioner Lambert said it's amazing how your perspective changes as you transition into different avenues. I was in the Legislature when this all happened and it made perfect sense to me then but now that I'm on the other side of the coin, it doesn't. How do we stop it from happening? Commissioner Skelton said I understand it because, in Billings, the county paved a big road. Director Tooley said if it isn't a state Secondary, it's not an issue; it's just a state Secondary.

Lynn Zanto said the maintenance is what Director Tooley spoke to but on the road to Alzada it is under Commission authority to change the designated highway system from a Secondary to a Primary. We consider local input but it is under your authority to change the designation of a highway system. Commissioner Lambert said that is how we would keep track of it. Lynn Zanto said yes. Director Tooley said we are talking about two different things – if a gravel Secondary turned into a paved Secondary, you would not see it. If it were to become a Primary then you would hear about it. Commissioner Lambert said that was my concern.

Commissioner Jergeson said yesterday there was something mentioned about core budgets for each of the districts and it is a different amount for each district. There is a basis for how the current fuel tax and I assume the additional revenue from the new fuel tax are apportioned to each of the districts. Could somebody explain what that apportionment is, how much it is, where we would find it in the documents, what is currently available under current estimates from the current fuel tax to each of the districts based on the formula, and how much additional each of the districts may anticipate having in their core budget allocation for projects? Lynn Zanto said it's

not so much an allocation of the state fuel tax funds to the districts. At the next meeting, you'll see the new allocations for our program and how the federal funds get allocated. When you hear talk of "core" funds, that means it is federal money they have for the Interstate, Primary, and the Secondary. It's Interstate Primary funding and NHS funding and about 70% of our federal funding goes to those core funding programs. The way it gets allocated to the districts is based on an asset management approach where we have performance targets for pavement and bridges. We run a system each year called Performance Programming Process or P3 where we look at existing condition of the system across the state and we run funding scenarios by district. We only have so much money and what is our optimal condition we can get to invest this money into our system. Through the P3 process, you'll see that we show the allocations for each district – where they are for the year we're adding in that funding. The current years, 2017-2020, those allocations have been years back – we're always adding the fifth year to the program so they can enter new nominations. Prior to P3 it might be helpful for you and Commissioner Schulz to meet with me and go through it in depth prior to the meeting so you understand it because that entire process drives the funding plan and helps us tell the districts how much money they have for the Interstate, NHS and Primary for 2021 to get them to marry up projects and get them advanced to the Commission. It is based on needs of the system. Commissioner Jergeson asked if each district gets state fuel tax money based upon what's needed to match federal money that goes into various projects. Commissioner Schulz asked if they could come up the evening before and meet with you. Lynn said yes.

Grass Range Intersection

This is in Commissioner Skelton's district. To bring you up to speed we have received another report from our consultant we hired to work with us on the Intersection at Grass Range. We asked them to go back and look again at the data and some of the suggestions made at the public meeting in January. We pulled the bid that was scheduled for early February for a roundabout because of the public feedback in Lewistown and asked for that review. We've received that report. Interestingly one of the things the report urged was immediate action at that intersection. The day before we got the report we had a pretty serious crash there and luckily there were only minor injuries. On May 31st, we had another two-car, high-speed collision with somehow no injuries; it looked like a plane crashed there. We sent maintenance forces from the Billings District out to implement the immediate fix recommended in the report which was a four-way stop. That's in place now. Here's a copy of the News Argus story that Lori gave me that basically explains our rationale for doing this. We can't allow high-speed, right-angle collisions to occur at that intersection; it's killing people and it puts the state in a high liability situation. There is no excuse; liability is a big deal but it's also threatening people. There was some pushback from two Legislators in the area but it's our responsibility to prevent that from happening and we take that seriously. The report still recommends a roundabout at that intersection. We want to evaluate the operation of this intersection with the four-way stop until late fall. We'll go through the harvest season and see how traffic is behaving and then make a final determination. Public input in Lewistown was overwhelmingly against. Public input is extremely important but it's not the only factor. It comes down to the fact that we need to fix that intersection and we have the information to do it. We'll continue to evaluate and see how this works out.

Commissioner Jergeson said a week ago my wife and I drove to Billings to attend a concert and came upon the four-way stop, complied with the law and stopped but on the way home, a Highway Patrolman had someone pulled over that was southbound who apparently had run the four-way stop. I realize the Highway Patrol can't have somebody out there all the time. Maybe people will sit up and think about that intersection. I guess people from Lewistown think they have a right to make a right turn without stopping, looking and listening and the north-south traffic thinks they

have the right buzz through every intersection at 100 mph if they please. Making people stop is probably a good thing and I hope, for the interim, this works to reduce deaths. Director Tooley thanked him for his comments. That was the goal. It's not the best situation because it's not efficient and it sets up other safety issues. What if somebody doesn't stop at the intersection or what if somebody does and then somebody doesn't. A four-way stop isn't the best solution but we're evaluating it. Right now, it is stopping the high-speed, right-angle collisions and that was our first goal.

Commissioner Lambert said if we go ahead with the roundabout, it's already been designed so except for letting the bid and going with it, there's not a lot to do before we could do it. Director Tooley said it's been designed, right-of-way has been acquired, and everything is ready to go. It's simply putting it out to bid. That's why it's still on the table – it's a viable option and it's been approved through the entire process except for the actual contract. There's only one more step to go and if we don't carry through with this, at some point our friends from FHWA will say, "we invested several hundred thousand dollars in the design and acquisition for a roundabout and you've got a four-way stop there, where's the rest of our money." That's why we have those processes. We're paying attention to that and we'll have to decide if that's worth it to us or if we want to proceed. Commissioner Skelton thanked Director Tooley for his diligence; it's been a process. Commissioner Lambert said yes, it has and that begs another question – is there a point where FHWA could say they want you to pay back the money? Director Tooley said there is. There is a process in place for inactive projects and the clock is running so we have to make a determination before too long. They are watching.

STIP

To follow up on comments about the STIP, Commissioner Jergeson I appreciate those comments and concerns. I struggled with that myself when I received my first copy of that document. I couldn't read it and I had no idea what that thing said. Lynn has been working hard to make it more user friendly and make it exactly what you're asking for so you can see the whole scenario start to finish. The systems don't support that and that's the problem. That's the result of a huge amount of under-investment in the agency in a lot of the IT systems and other areas that we're trying to rectify. Again, we have the appropriation but we haven't had the cash to move forward. It makes sense – if your kitchen is on fire then it's not the time for a bathroom remodel, it's time to put out the fire. That's exactly what this agency had to do over the past few years when it came to finances but now that is temporarily fixed and we can start making those investments again and take advantage of those continuing appropriations and bring those systems up to speed. She's done some things like the map which is very helpful. I want our investors to know what they are getting and I want them to be able to ask those intelligent questions and it's hard to do that with where we're at. So, I appreciate what you said.

I'll echo my thanks to Carol and Rob for working so hard on the outdoor advertising issue with bus shelters and Brian Hasselbach who was a part of that team. FHWA came to the table and were a partner. I think we have a great solution and I'm looking forward to moving on from that, not only protecting bus shelters but also having regulations for our right-of-way. I appreciate your comments.

Commissioner Skelton thanked Missoula for a great tour and an enjoyable day and thank you Lori for all the work you put into it also.

Next Commission Meeting

The next Commission Conference Calls were scheduled for June 6, 2017, July 25, 2017, and August 22, 2017. The next regular Commission Meeting was scheduled for August 24, 2017.

Adjourned

Meeting Adjourned

Commissioner Skelton, Chairman
Montana Transportation Commission

Mike Tooley, Director
Montana Department of Transportation

Lori K. Ryan, Secretary
Montana Transportation Commission