

Montana Transportation Commission

**August 23, 2018 Meeting
Commission Room
2701 Prospect Avenue
Helena, Montana**

IN ATTENDANCE

Barb Skelton, Transportation Commission Chair
Greg Jergeson, Transportation Commissioner
Carol Lambert, Transportation Commissioner
Dan Belcourt, Transportation Commissioner (excused)
Mike Tooley, Director, MDT
Pat Wise, Deputy Director MDT
Lori Ryan, Commission Secretary
Dwane Kailey, MDT Engineering
Dustin Rouse, MDT
Val Wilson, MDT
Lynn Zanto, MDT
Dustin Rouse, MDT
Paul Johnson, MDT
Duane Williams, MDT
Eric Belford, MDT
Stephanie Brandenberger, MDT
Kevin McLaury, FHWA
Ryan Hammond, FHWA

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 lrayn@mt.gov. Alternative accessible formats of this document will be provided upon request. For additional information, please call (406) 444-7200. The TTY number is (406) 444-7696 or 1-800-335-7592.

OPENING – Commissioner Barb Skelton

Commissioner Skelton called the meeting to order with the Pledge of Allegiance.

Approval of Minutes

The minutes for the Commission Conference Calls of June 26, 2018 and July 24, 2018 were presented for approval.

Commissioner Lambert moved to approve the minutes for the Commission Conference Calls of June 26, 2018 and July 24, 2018. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 1: Local Construction Project on State Highway System – Central Avenue, Rimrock Road, King Avenue & 24th Street West - Billings

Lynn Zanto presented the Local Construction Project on State Highway System – Central Avenue, Rimrock Road, King Avenue & 24th Street West - Billings 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 Billings is planning to design and build transportation improvement projects on the state highway system. The projects will be funded locally and will utilize contract labor. The projects will be designed with input and concurrence from MDT staff to the extent practicable.

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

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 Billings to let and award contracts for the projects listed below.

Location	Type of Work	Cost (estimate)	Fiscal Year	Type of Labor
Central Avenue (U-1008), from Shiloh Road to 32 nd Street West, in Billings	Reconstruction	\$5,000,000	2018	Contract
Central Avenue (U-1008), from 24 th Street West to 29 th Street West, in Billings	Overlay	\$300,000	2018	Contract
24 th Street West (U-1005), from King Avenue to Central Avenue, in Billings	Overlay	\$1,000,000	2018	Contract
Rimrock Road (U-1034), at the 54 th Street West intersection, in Billings	Intersection Improvements	\$500,000	2018	Contract
King Avenue (N-111), at the S Frontage Road (U-1011) intersection, in Billings	Intersection Improvements	\$350,000	2018	Contract

Staff recommends the Commission approve these modifications to the state highway system and delegate its authority to let, award, and administer the contracts for these projects to the City of Billings, pending concurrence of MDT’s Chief Engineer.

Commissioner Lambert asked if Billings was paying for it and doing the work. Lynn Zanto said yes, they are doing this with local revenue sources. Billings has arterial fees that they use to improve a lot of their local roads. Commissioner Jergeson asked if it utilized their Urban Transportation monies. Lynn Zanto said no federal or state funds are being used; it is being paid for with revenue generated at the local level. Commissioner Jergeson asked if it was coordinated with any plan. Lynn Zanto said yes, Billings has a Long-Range Transportation Plan, and the reconstruction project is consistent with that plan. For overlay projects, they may not specifically name the project because it is the right treatment at the right time, but their goal is to preserve their system. So, generally it might say, “pavement preservation projects.

Commissioner Jergeson moved to approve the Local Construction Project on State Highway System – Central Avenue, Rimrock Road, King Avenue & 24th Street West - Billings. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 2: Construction Project on State Highway System – Fairfield Inn & Suites - Livingston

Lynn Zanto presented the Local Construction Project on State Highway System – Fairfield Inn & Suites – Livingston 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.

Fairfield Inn & Suites – Livingston

The developer for the Fairfield Inn & Suites facility is proposing modifications to Park Street (N-11) in Livingston to address traffic generated by their new hotel. Proposed improvements would include relocation of an existing approach and installation of a new left-turn lane on Park Street.

The City of Livingston 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 developer 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 developer for the Fairfield Inn & Suites facility is proposing modifications to the National Highway System to address traffic generated by their new hotel. Specifically, the developer is requesting to relocate an existing approach and install a new left-turn lane on Park Street (N-11) in Livingston.

Staff recommends the Commission approve these modifications to Park Street in Livingston, pending concurrence of MDT’s Chief Engineer.

Commissioner Lambert moved to approve the Local Construction Project on State Highway System – Fairfield Inn & Suites - Livingston. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 3: Highway Safety Improvement Program (21 New Projects)

Lynn Zanto presented the Highway Safety Improvement Program (21 New Projects) to the Commission. The Highway Safety Improvement (HSIP) Program makes federal funding available to states to assist with the implementation of a data-driven and strategic approach to improving highway safety on all public roads. In Montana, the primary focus of the HSIP program involves identifying locations with crash trends (where feasible countermeasures exist) and prioritizing work according to benefit/cost ratios.

MDT is proposing to add 21 projects to the HSIP program – six in District 1, seven in District 2, five in District 3, zero in District 4, and three in District 5. The projects on the attached list (Attachment A) meet the criteria set forth for HSIP-funded projects. If approved, it would be MDT’s intention to let these projects individually.

The estimated total cost for all projects is approximately \$5,995,000.

Summary: MDT is requesting Commission approval to add 21 projects to the Highway Safety Improvement Program. The proposed projects are consistent with the goals and objectives identified in the Performance Programming (P3) Process – as well as the policy direction established in TranPlanMT. Specifically, traveler safety, access management and bike/ped features will be enhanced with the addition of these projects to the HSIP program.

The total estimated cost for all projects is approximately \$5,995,000.

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

Commissioner Lambert moved to approve the Highway Safety Improvement Program (21 New Projects). Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 4: Speed Limit Recommendation Three Mile Drive (U-6706) Kalispell

Dwane Kailey presented the Speed Limit Recommendation – Three Mile Drive (U-6706), Kalispell to the Commission. The next four items are all on the Kalispell Bypass. We've completed the north half and we've evaluated, not only the Bypass, but also some of the connecting roads such as Three Mile, Four Mile, and one on West Reserve. They are all associated with the Bypass. The first one is Three Mile Drive. As you may know, this is a roadway that crosses the Bypass, but it bypasses access control at this point, so it uses an interchange.

Based on the reconstruction, we've evaluated the roadway characteristics, the travelling speeds, and the accident history. Based on that, we're recommending the following:

A baseline speed limit of 35 mph beginning at the intersection with Meridian Road and continuing west to station 18+00 (200' west of Garland St.), an approximate distance of 1,800 feet.

Then transitioning to a 40-mph speed limit beginning at station 18+00 and continuing west to station 45+00 (100' west of Empire Loop), an approximate distance of 2,700 feet.

We have presented this to both the city and the county for their review, and their comments are attached. With that, staff would recommend that you approve the speed limit recommendation as presented.

Commissioner Lambert asked if this was the road where we were stopped on the tour. Three Mile is at the end and half way up Meridian Road, so it doesn't intersect with US 93. Meridian Road takes off by the Fairgrounds in Kalispell off US 2. Half way from there to the intersection with US 93, Three Mile takes off and crosses the Bypass and connects with Stillwater.

Commissioner Lambert moved to approve the Speed Limit Recommendation – Three Mile Drive (U-6706), Kalispell. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 5: Speed Limit Recommendation 4 Mile Drive (U-6735) – Kalispell

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Dwane Kailey presented the Speed Limit Recommendation – 4 Mile Drive (U-6735), Kalispell to the Commission. This is on the north end of the Bypass and connects in with the Kids Sport's Complex which is a large recreational area. We have done a speed study and based on the review of the configuration and travelling speeds, we are recommending the following:

A 35-mph speed limit beginning at straight-line station 27+00 (200' west of Northland Drive) and continuing west to the intersection with Stillwater Road (end of the urban route designation), an approximate distance of 2,500 feet.

For clarity, right now it is signed at 25 mph from US 93 and we are recommending that stay at 25 mph through the Kids Sports Complex and then just west of there, it will transition to 35 mph. That area is currently rural; however, they are starting to develop that area and we may have to revisit this before too many years. Staff recommends approval.

This has been presented to the county and the city. The county abstained because it is all within the city limits. The city wanted the entire route at 25 mph, but we believe 35 mph after the Kids Sports Complex is more appropriate, but we are leaving it at 25 mph through the Complex.

Commissioner Jergeson asked if the recommended motion is 35 mph at the intersection of US 93 and leaving it at 25 mph through the Kids Complex. Dwane Kailey said there is a map that will show you exactly where it is. The red section past Northland Drive is going to remain at 25 mph and, if Commission approves, we are establishing the 35 mph zone up to Stillwater Road. Commissioner Jergeson questioned the language in the recommendation. Dwane said we had an original recommendation to the local government, however, based on their comments back, we adjusted that to what it is now.

Commissioner Jergeson moved to approve the Speed Limit Recommendation – 4 Mile Drive (U-6735) as indicated on the map, Kalispell. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 6: Speed Limit Recommendation Kalispell Bypass – (N109)

Dwane Kailey presented the Speed Limit Recommendation – Kalispell Bypass (N109) to the Commission. This is the Bypass itself. We built the south half of the Bypass several years ago and signed it at 45 mph. Now that the Bypass has been completed, we evaluated the entire corridor and based on our review, we are recommending the following:

A 60-mph speed limit beginning at station 8+00 (metric) project NH-MT (90) (south of Ashley Creek) and continuing north and then east to station 122+40 (intersection with US 93), an approximate distance of 7.10-miles.

We've presented this to both the county and the city. The city of Kalispell concurs. The county asked for a 55 mph, 60 mph, and 65 mph transition through part of it. We think it is better to leave it at one flat speed and not adjust it by five miles either way for different areas of the corridor. We think that would be confusing. So, we are

recommending a 60-mph speed limit starting at Ashley Creek to the intersection with US 93, an approximate distance of 7.1 miles.

Commissioner Lambert said this is shown in metric. Dwane Kailey said that is the metric station. When we built the south half of the Bypass, we were still transitioning out of the metric system. With some projects it was cheaper to let them go to contract in the metric system, so we're showing that is a metric station.

Commissioner Lambert moved to approve the Speed Limit Recommendation for the Kalispell Bypass (N109). Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 7: Speed Limit Recommendation West Reserve Drive (S-548), Kalispell

Dwane Kailey presented the Speed Limit Recommendation – West Reserve Drive (S-548), Kalispell to the Commission. This is the conclusion of the Bypass; the segment between US 93 and US 2. We have been asked to evaluate the speeds and based on the crash history, the roadway configuration, and our analysis, we are recommending an adjustment as follows:

A 45-mph speed limit beginning at the intersection with US 93 and continuing east to straight-line diagram station 96+00 (100 feet east of the intersection with Cherry Lynn Road), an approximate distance of 1.82-miles. From this point east, the speed limit is approved and posted at 40 mph.

Commissioner Lambert noticed the chart now contains seat belt violations, is that something new? Dwane Kailey said we added that in the analysis about three years ago. We show the seat belts as a predominate feature.

Commissioner Lambert moved to approve the Speed Limit Recommendation for West Reserve Drive (S-548), Kalispell. Commissioner Jergeson seconded the motion. All Commissionees voted aye.

The motion passed unanimously.

Agenda Item 8: Speed Limit Recommendation Secondary 393 – Basin Creek Road

Dwane Kailey presented the Speed Limit Recommendation for Secondary 393 – Basin Creek Road to the Commission. This is Harrison Avenue, south of Butte. We were requested to look at the speeds and based on our review of accidents, roadway geometry, and the traveling speeds, we are recommending the following:

A 45-mph speed limit beginning-continuing at the end of the official 45 mph speed zone on Harrison Avenue (1,200 feet north of the intersection with MT 2 with Secondary 393, and continuing south to milepost 1.43, an approximate distance of 1.66-miles.

A 55-mph speed limit beginning at milepost 1.43, the south end of the horizontal curve (1,500 feet south of the intersection with Beacon Road) and continuing south to milepost 3.0, an approximate distance of 1.6-miles.

A 45-mph speed limit beginning at milepost 3.0 (500 feet north of Standby Creek Road) and continuing south to milepost 3.35, an approximate distance of 0.35-mile or 1,850 feet.

A 35-mph speed limit beginning at milepost 3.35 (1,300 feet south of Standby Creek Road) and continuing south to milepost 5.9, an approximate distance of 2.55-miles.

A 25-mph speed limit beginning at milepost 5.9 and continuing south to the end of Secondary 393, an approximate distance of 0.7-mile.

We have presented this to Butte Silver Bow for their review and comments and they concur with the report, except for approximately between MP 3.55 to MP 3.70 they would prefer a short 25-mph section but that is included in our 35-mph recommendation. We are not concurring with the 25 mph and we're recommending 35 mph in that area.

Commissioner Lambert moved to approve the Speed Limit Recommendation for Secondary 393 – Basin Creek Road. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item 9: Speed Limit Recommendation US 212 Lame Deer

Dwane Kailey presented the Speed Limit Recommendation for US 212, Lame Deer to the Commission. This one is a little different. Traditionally when you approve a speed study, we allow the staff a little flexibility to field-fit that speed study whether it be side issues, a curb, utilities in the way or an approach in the way. However, if that adjustment becomes a little more than we're comfortable with, we bring it back to the Commission and get your approval.

We just completed the Lame Deer roundabout and based on that construction project and some changes in the roadway, we felt we needed to adjust the speed limits. We were not comfortable with the adjustment, so we're bringing it back for your approval. Essentially, we're pushing the 35-mph speed limit out a little bit and then adjusting the 55-mph speed limit to accommodate for that transition and slow down. We're lengthening the 35-mph zone just slightly. Our recommendation is as follows:

A 55-mph speed limit beginning at (metric) station 276+40, project NH 37-2(18) (670 meters west of MT 39/Cheyenne Ave) and continuing east to station 279+50, an approximate distance of 310 meters or 1,000 feet.

A 35-mph speed limit beginning at (metric) station 279+50, project NH 37-2(18) (360 meters west of MT 39/Cheyenne Ave) and continuing east to station 290+20, an approximate distance of 1,070 meters or 3,500 feet.

A 55-mph speed limit beginning at (metric) station 290+20 (200' east of the eastern approach to the Charging Horse Casino), and continuing east to metric station 294+00, an approximate distance of 380 meters or 1,250 feet.

Commissioner Lambert moved to approve the Speed Limit Recommendation for US 212, Lame Deer. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item 10: Certificates of Completion
May & June 2018**

Dwane Kailey presented the Certificates of Completion for May & June 2018 to the Commission. They are presented for your review and approval. If you have any questions or comments, please feel free to ask. Staff recommends approval.

Commissioner Jergeson moved to approve the Certificates of Completion for May & June 2018. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item No. 11: Project Change Orders
May & June 2018**

Dwane Kailey presented the Project Change Orders for May & June 2018 to the Commission. They are presented for your review and approval. If you have any questions, please feel free to ask. Staff recommends approval.

Commissioner Lambert moved to approve the Project Change Orders for May & June 2018. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item No. 12: Liquidated Damages
STPP 28-2(47)95
Joliet Sidewalks**

Dwane Kailey presented the Liquidated Damages to the Commission. They are presented for your review and approval. We have one project and contractor for liquidated damages:

STPP 28-2(47)95 Joliet Sidewalks. The contractor is AD Construction, Inc. They have three days of liquidated damages for a total value of \$3,501. They are not disputing these costs.

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

STAND.

**Agenda Item No. 13: Access Control – North of Desmet
Interchange – North, Limited Access Control**

Dwane Kailey presented Access Control – North of Desmet Interchange – North, Limited Access Control to the Commission. This is on US 93 just outside of Missoula. We're presenting the Limited Access Control for your review and approval. Limited Access Control puts the county on notification that this segment of the corridor is limited access and anybody trying to change, modify, or add an access point must get MDT approval and ultimately the Commission's approval to change or modify those access points. So, somebody developing more property can't just arbitrarily go in and add an approach to that property.

Commissioner Jergeson asked if there had been any others since he'd been on the Commission. Dwane Kailey said I think we did one a few meetings ago.

Commissioner Jergeson asked about a farmer who currently has an access point and we're going to tell him he can't keep using it? Dwane Kailey said this is in connection with a project we're working on. We will visit with all the land owners and, if we're modifying their access, we will negotiate the right-of-way deed with them to make that change. It is really locking the corridor for the future. It does not say they can't have future access, it just says that if they change or modify their access in the future, it must come back to MDT and the Commission for approval. Typically, we approve all the access points that are already there, unless we're building a frontage road to modify their access points.

Commissioner Lambert asked if the county used to approve the access roads or did people just put an approach in. Dwane Kailey said, until we do Limited Access Control, the county doesn't think about access to our facility. Once we do this, it is filed with the county and then the county knows when a developer comes in, they must send them to MDT to get approval for the access.

Commissioner Jergeson said any time a topic that might involve Eminent Domain comes up, lots of people get nervous. In my experience with these kinds of resolutions in the past, there are some landowners that push back, and it goes to Eminent Domain. Dwane Kailey said in my history I can only think of one parcel that went to Eminent Domain based on access. Back in 2006 on US 93 South, we had a land owner that was proposing to develop his land and we had proposed to build a Frontage Road for him to maintain that access. We ended up going to Eminent Domain and resolving it through that process. Outside of that, access is a discussion point, but I can't think of too many that have ended up in Eminent Domain. This doesn't preclude people from modifying access, it just establishes a process for them to do that.

Commissioner Lambert moved to approve the Access Control – North of Desmet Interchange – North, Limited Access Control. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item No. 14: Access Control – Livingston South

Dwane Kailey presented the Access Control – Livingston South to the Commission. This is for Livingston South on Hwy 89. This came out of a corridor study with a recommendation for reconstructing and adding a turn lane. We're not proposing to remove any accesses, we're just establishing a process for them for modifications or changes.

Commissioner Jergeson moved to approve the Access Control – Livingston South. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item No. 15: Letting Lists & 2019 Letting Dates

Dwane Kailey presented the Letting Lists & 2019 Letting Dates to the Commission. They are submitted for your review and approval. Since you received your packet, we updated the Letting List. This is very fluid these can shift one or two months. I'm letting you know that the projects are predominantly the same. I've handed out a single sheet which at this time of year we are getting prepared for what happens with Redistribution. In August and September, the federal government consolidates all their funds and redistributes any funds that weren't used out of the highway program.

We don't usually know until the end of August or first part of September what that is going to be, however, because it takes us a while to get ready for it we must plan ahead. The single sheet contains the projects we are planning for Redistribution depending on the funding level we get. These projects came out of the TCP and have been approved by the Commission, however, they might have been in 2019 or 2020. If we get Redistribution, we're moving those project up to let them. If we don't get Redistribution, they will go back into 2019 or 2020. There is one project in here that isn't for Redistribution, it just happens to fall in our October Letting and that is the Multi-Use Path in Lame Deer. We won't know what the value of Redistribution will be for another three weeks.

Kevin McLaury said the Redistribution is going to again be healthy. Traditionally we've received \$12-\$15 million with August Redistribution. The last few years it has been around \$30-\$35 million. We don't know the exact amount until we get it. My sense is, it will be in that same range again this year but that's just a guess. We're hearing there are a fair amount of dollars left.

Commissioner Lambert asked about the Lame Deer project. They have one multi-use path, are they putting in a different one. Dwane Kailey said I believe this is an extension of that path. Dwane Kailey said this is what we call our Transportation Alternatives Program where the local/Tribal governments send in requests for projects using this funding source. These are not our recommended projects, they are recommended from local governments and Tribes.

Commissioner Jergeson asked if the single page Redistribution money was at \$15 million or is that the anticipated \$30 million. Dustin Rouse said we don't know the amount, so the projects are higher than that amount; we prorate across all the districts to provide equity and then whatever they are lacking we put into their next fiscal year. There's an estimated number of projects we anticipate will get into Redistribution, so we estimate as close as we can. If it comes in exactly, then great. If we get a little more, we have additional ways to spend the additional funding. If it comes in less, we adjust, and those programs would have a carry-over that goes into the next fiscal year.

Commissioner Jergeson asked about pro-rating the difference if the money is less than what is represented in this total. My district only has one project, so does the pro-ration reduce the amount of money available for that project, or does that project need to be modified to accommodate that pro-ration? What's going to happen to it? Dustin Rouse said the dollars are for all the projects, the ratios follow what we go through in the P3 Process. That's the intent. There will be an adjustment on what we get in Redistribution and what their ratio ends up being.

Dwane Kailey said we have the letting list as presented, and then the Redistribution Projects, and then at the very end you see a sheet for the 2019 Letting Schedule which is our proposed bid dates for the next calendar year. We need you to approve that as well.

Commissioner Skelton asked if the Lodge Grass Culvert was the one we had trouble with. Dwane Kailey said yes. They are working on a project in Lodge Grass which is a retaining wall that had issues. This is the full replacement of the culvert.

Commissioner Jergeson moved to approve the Letting Lists & 2019 Letting Schedule. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Agenda Item No. 17: Discussion & Follow-up

Director Tooley said we have a few things to talk about today. We have staff here that you normally don't get to hear from. Duane Williams is our Motor Carrier Services Administrator who will speak about the state code that you need to be aware of and give some advice on how you would be interested in proceeding.

Duane Williams, Motor Carrier Services Administrator

I'm Duane Williams, Administrator of the Motor Carrier's Division. Eric Belford is here with me and he is our License and Permitting Bureau Chief. Eric has been an enforcement officer for over 20 years. If there are questions that I may not be able to answer, he's been out on the road and he may be able to answer it.

Last week I had to give a presentation "Welcome to Montana" for a group of folks down in Billings – the Help Board who are the ones who deal with the pre-pass that allows commercial trucks to bypass our scales. So how did I welcome them to Montana? I did some fun facts regarding Montana laws. There are some odd laws on the books, for example, it's a felony for a married woman to open her husband's mail; if you're a single woman it's illegal to go fishing by yourself. There are some different-type laws like that.

What I'm going to talk about today may be a law like one of those. It may not be as humorous, but it is a law that's been on the books forever. This is something that was brought to my attention for several years now. I've been working with legal to find out if there are weasel words in the language and they have given us some recommendations. We probably just need to do something with it. It's a law that's been on the books for over 40 years, Section 61.10.143, MCA. You have a copy. There are also some Administrative Rules that have to do with permits. When the Bakken was really going, we issued almost 100,000 special permits a year, i.e., if you're over a legal width, you need a permit. If you're over weight and it's a non-reduceable load, you need a permit. You can get an annual permit that runs all year long for \$75 if you want to do a certain width. So, we have all these permits that we issue to the carriers.

There are times, and the biggest example may be, when you're driving down the road and you have a permit to run over weight, and an officer pulls you over and looks at your axel spacings and your weight and they are not correct, typically the officer will confiscate that permit and issue a new permit for the correct weight. Now the dollar amount for most trucks probably isn't a huge amount, i.e., if you're over 5,000 pounds in the axel weight, for every 25 miles it will cost you \$3.50. So, a load through the state will be \$400-\$500; but some mega loads can be \$2,000. For hauling a loader, it may be \$100 depending on the variables. The officer will confiscate that permit and issue a new one and the driver is out the money they paid for the permit and they must buy a new one. I've been here since 2011 and I've never heard any complaints about our officers taking a permit. We confiscate about 100 per year. The driver probably gets more upset about getting a citation because that goes on their record.

If you read the law, it says that if we confiscate a permit, it needs to be presented to the Commission for action. It's been on the books for 42 years, and we haven't been doing that. We have Administrative Rules that contradict it because it gives our division the power to do it. Logistics would be a nightmare. If we were to take a permit for an over-weight load and issue a new one, the letter of law requires us take it to the Transportation Commission and they would act on it. That's probably not realistic and not going to happen; it would be tough to do that. I wanted to let everyone know that this law is on the books.

My suggestion, and it's in our Administrative Rule, is the Transportation Commission should have an appeal board. So, if there is ever a case where a permit is taken and the driver or the trucking company does not agree with it, then they can appeal it to this

body. We have provision for that in our Administrative Rules. We've tried to work with legal to figure out how to interpret this correctly. If we're ever challenged on this, legal said that because we've been doing it for years and years, we're probably defensible but they advised that we should clean up the language in the statute in the upcoming legislative session. We have a clean up bill that could do that. I wanted to get your thoughts and answer any questions you may have.

Commissioner Jergeson said cleaning up this language would be cheaper than dealing with something down the road. Commissioner Skelton asked if there needed to be a motion. Lynn said no. We didn't want to take this to the Legislature without advising the Commission that they are losing some power. If it's agreeable, we don't need a motion, we can just go to the Legislature. Duane Williams said as far as the power goes, it wouldn't be losing power just redirecting it. We would still have an appeal process, it just wouldn't be with every single one. When legal did their research, we can't find anything as to the reason why it was written the way it was. Lynn Zanto said we couldn't find anything that delegated, so we're really in limbo with our procedures and rules not matching this section of code. Commissioner Skelton suggested they go to the Legislature and get it cleaned up. Duane Williams said if you have any questions down the road, feel free to get ahold of me.

McKinnon Family Request for a Memorial Bridge Designation

Director Tooley shared a letter from the McKinnon family. You might remember having a presentation more than three years ago from a man named Rod Kreill who represents "Bridges for the Fallen". The Commission and the Department has advised them if they want to name a bridge after a fallen veteran, they should have this vetted by another bonified, well-known veteran's group. Bridges for the Fallen is one of many groups that are on the periphery, but we recognize groups like the American Legion or the VFW and it's important if you're going to name a piece of infrastructure after somebody that it meets the qualifications that those larger groups understand as being bonified. This is the first one that has made it all the way through that process to have been endorsed by the VFW and the American Legion of Montana. Mr. Kreill got ahead of everybody by approaching Families First and then approaching the Department.

Finally, we have a request from the McKinnon family endorsed by two veteran service organizations of good standing to name a bridge after Michael McKinnon – the I-15 bridge at MP 234. The request is to put a plaque on the bridge that meet MUTCD and when we set up a memorial garden, former Commissioner Rick Griffith wanted to have the stories told at the nearest rest area. They've also made that request. So here it is for your consideration; for a yes or no action. If you approve, we will create the MUTCD compliant plaque and start looking at constructing the first memorial, so people can learn about the veteran at the Deerborn rest area.

Commissioner Jergeson asked if that was one the bridges that needed to be fixed. Director Tooley said I'm sure that is one we've worked on. The work will be on the deck of the bridge not on the abutment. Commissioner Skelton said this would be a good thing to do. They've worked very hard to make this happen. She asked when they do this could the Commission be notified. Director Tooley said I don't anticipate having the ceremony at the bridge; it would be done at the rest stop.

Commissioner Jergeson asked if there were other bridges in the area that have these designations? Director Tooley said this is the very first one. Commissioner Jergeson asked how far from a rest area can you name a bridge? Director Tooley said it would be up to MDT; if we can come to an agreement on it. Deerborn is the nearest rest stop to this bridge. Now that we have a template for requests, we can ask that they name not only the bridge, but which rest area they would like the memorial. Commissioner Jergeson said we've had discussions about closing of some rest areas and converting them to a pull out, if the rest stop that contains the memorial

information was going to be converted, would the memorial remain? Director Tooley said that is exactly what will happen. When a request comes forward, we will run it by the Rest Area Program to make sure they aren't requesting a memorial at a location that might be converted and give them another option.

Commissioner Lambert moved to approve the Michael MacKinnon – Bridges for the Fallen – I-15 Bridge – MP #234. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

MDT Bridge Program

Duane Kailey said not that long ago we had a major issue on the Interstate in and around Butte where a bridge was failing. It has caused quite a stir in the Agency. In and around that time we had a few other bridge issues and it created some concern, not only with the Commission but with others, that our bridge program was operating in accordance with the rules and regulations and best practices. We sat down with the Bridge Engineer to talk about what we could do to assure ourselves, the Commission, the Director, and ultimately the public that we were doing the best job we could. So, we embarked on two efforts: We worked with FHWA and brought in a peer review using some of their funding. We brought in Minnesota, Idaho, Oregon, and Washington as well as FHWA staff. They did a thorough review of our structure, operating procedures, communications, protocol, etc. and ultimately took a good hard look at our program and provided us with a few recommendations. For the most part, the recommendations were minor. They found we were doing a good job, but we didn't stop there. We also hired a consultant to come in and review our inspections – go behind our inspectors to see if we were missing anything. We recently received their report. They looked at 23 structures and out of those inspections, they found very minor issues. So, we've had two reviews of our program and I can assure you that we are doing the best job we can.

I want to introduce our current Bridge Engineer, Stephanie Brandenberger, who is doing an awesome job. If you have any questions, she is the expert and she can answer them. Commissioner Skelton welcomed her to MDT. Stephanie Brandenberger said if the Commission has any questions or concerns about the bridge program, she would be available and happy to talk with you.

Commissioner Skelton asked if the bridge at Hungry Horse was done. Duane Kailey said it is not done but they are working on it right now. In our discussion at the bid review, that is one of the bridges being done by Sletten Construction and they are behind schedule. One of the issues they are dealing with is staff; they went to the hall asking for 30 workers for the decking crew. The hall said they could give them 10 workers. We are really struggling with a labor shortage issue right now.

Commissioner Lambert asked if they were working on a program to try and get more out-of-state bidders. Duane Kailey said yes, we are going to a meeting next week, the Quad State American Association of General Contractors, that includes Montana, Wyoming, Idaho, and Utah. We are going to talk to other state counterparts and see what we can do with them. I'm also looking into a way to reach out to Washington and Minnesota and see if we can get more advertisement in those states. I also did a peer exchange with my counterparts in North Dakota, South Dakota, Wyoming, and Idaho to see what they're experiencing. I've gotten a mix-mash back from them; they are all seeing price increases in oil and oil-related products. Idaho is dealing with very similar issues that we're seeing – bridge costs are through the roof while bids are through the roof. Wyoming is seeing somewhat similar issues but North Dakota and South Dakota not so much.

Commissioner Lambert asked if the Davis-Bacon wages would have any impact on that? Duane Kailey said Davis-Bacon wages does have an impact. We talked on the Conference Call that we have to look at how we package that one because there is a zone pay issue and it's based on the furthest distance from the courthouse. So, when you tie a bunch of these bridges together, you've got to look at the furthest bridge from the courthouse and it sets the zone pay for all those structures. When so much of our work is labor intensive, it has an impact on it. So yes, Davis-Bacon does have an impact on our projects, however, all our projects require Davis-Bacon.

STIP

Director Tooley said I had a conversation with Commissioner Jergeson about the STIP and communicating that data to the public. Here is the issue: I'm a lay person and when I want to know about a project I can look at the STIP and try to find my way through six different phases of the project, the money being spent on all of them, add all that up to see where it's at, or I can go back to the Red Book to see what the plan was for that project, or eventually get frustrated and go down and see Lynn or Dwight, which is what I do. It's hard to get all that data in one place where you know what's going on with a project.

The STIP is a federal requirement and it's built for use by Federal Highways, so they know what we're spending or intend to spend on what phase of a project, but it still leaves lay people in a difficult place to figure out what is going on. When I started here I had the same issues and the Department has made some improvement on the STIP and it's easier for me to read now but not so much the public. What's happened lately is there are vendors out there that can aggregate all this data and turn it into something that normal people can easily understand and get an idea of what the project is, where it is, what its current health is, and the anticipated completion date, and where it is in that regard. I've had conversations with a group called "Socrata" and I hoped to have them down on August 2nd but there were conflicts and we haven't rescheduled since then.

Also, since then I've seen what other states have done. Virginia has a robust system that does this, and it is mainly targeted for local government use and not so much the public, but I was able to access it through a public portal and see what's going on. I like this Socrata product more which is what Utah uses but it's very expensive so that might be a HB 10 request. The one Virginia uses is pretty functional and they did that for less than one million dollars, but that's still a million dollars.

That is where we left the discussion and I'd like to propose that instead of chasing down vendors or having them chase us down and try to get everybody in the room at the same time, why don't we take one of the meeting dates in the future and have Socrata come in and make a presentation so we're all hearing the same thing at the same time. We can ask questions and see what the possibilities are and try and get them down to what this might cost us. Utah does use this and has mixed reviews on it. I think it's great, but they thought they'd get more for what they paid. The STIP is fine for its purpose but we're lacking in the ability to share information.

Commissioner Jergeson appreciated the update and said I would be willing in October to listen to a presentation, so we can get the data organized in some manner we can access to make more effective tracking of where we're going with projects. The other day I was trying to express some frustration on this whole process about how we identify things. These documents are supposedly identifying the anticipated costs of a project but the numbers from one set of engineer's estimates are so dramatically different from another. I'm not sure just properly organizing the data is going to answer that question. I wonder if the engineer who put the project estimates together for the STIP that their professional reputation is somehow being injured because the numbers on the projects are so much higher than the engineer's estimates. I'm a little frustrated with that because I think we've got some great

professionals throughout the department but when I see that disparity in what one group of professionals are doing from what a different group of professionals are doing, I'm wondering if there is something that is not allowing their own professional skills and integrity to come through. I looked at the difference in those numbers and find us being critical of what the professionals in a private firm came up with looking at the same data set. Are they looking at the same data set as the engineers from the private firms? I'm not sure why that number was so different. There must be a reason. Are the ones with the responsibility of coming up with the numbers, are they given all the same data that the engineer's have. I would assume they are. Is it a generalized view of the project versus the specifics that are itemized by the engineer?

Duane Kailey said our process is very cumbersome and very detailed and it is a very long drawn out process. Maybe in October I could work with Steve and Dustin and walk you through our process so that you better understand it. When they originally nominate those projects, that is at the very beginning of a project and they have minimal information about what they are going to be doing. They are proposing possibly an overlay of a job, but they don't know a whole lot of information about that roadway. We've got minimal information for them. It's after that nomination that all the professionals come together and offer up their opinion and advice as to what all needs to go into that overlay. I can work with Dustin and Steve Prinzing out of Great Falls and walk you through that process and help you to understand. It was a challenge for me growing up through the program, when you look at these numbers and they are vastly different because we're dealing with millions. In our private lives we deal with the same percent changes all the time, but we don't think as much about it because we're only talking tens or hundreds of dollars. When you put it into the millions, which is what we deal with, it looks so much bigger and so much more drastic of a change.

I used to do a lot of presentations to Non-Governmental Organizations and I used the scenario of changing a water heater in your house. Almost everybody in this room has dealt with that at least once in their life. You start out with an estimate, then you find out more information and adjust the estimate, and get a professional and they look at it and they give you a new estimate and by the time they start it, you're down here because you know a water heater only costs \$300-\$400, but you've got the installing, and adjustments because you're going from gas to electric, and the connections don't all work. So, you go from \$300 to \$800 to get an install and get the old one removed. We deal with that every day and we're used to that every day. That scenario is almost a 200% change. It looks huge on our side when we have those adjustments because we're dealing with millions. If you look at it, we're dealing with 30-40% changes for the most part and it looks huge because your dealing with millions not hundreds or tens. It is a nation-wide issue; not just in Montana but across the nation. FHWA has done tons of research, tons of peer exchange trying to hone those estimates, get them more consistent, get them more accurate. It's a huge challenge. I get your frustration; I understand it. We have it internally as well. I think one thing that would help would be to walk you through the life of a project and help you understand everything we go through. Would that be acceptable?

Commissioner Jergeson said that might be acceptable but last year I met with Doug and Steve ahead of our meeting about the Red Book, so I don't know if that would help. Duane Kailey said he would work with Doug and Steve and set up something. I'd be more than happy to offer this to any Commissioner who wants this information as well.

Director Tooley said he appreciated the conversation. We will see if we can find the time in October when you meet. If not, we will look at another time to meet. I'd like the vendor there because I don't want to try and explain it since we've never used it. That will give us the opportunity to ask them questions. Commissioner Jergeson asked if there was a bidding process. Director Tooley said yes there will be. You'll see Socrata and they put on a good show but that may not be who you get in the end.

That's just the way the state works. If they come back with a price tag of \$6 million, we're all going to be waiting awhile because that's more money than we have.

DBE Presentation

Director Tooley said it is good to touch based with the DBE Program to see where we're at with it. Patty Schwinden and Megan from our DBE Program are to give you an update on their program.

I'm Patty Schwinden with the DBE Program. Megan is going to present an update on the DBE Program. We gave you some information in your packet for those of you who are unfamiliar with the DBE Program. Hopefully that brought you up to date. We're getting ready to close out our federal fiscal year and it looks like we're going to be shy of meeting our goal. With that being said, we have one more major project left to see if we can get a little bit closer. Our goal is 6.14% and we're a little under 6%. That's a little closer than what we thought we were going to be in June and July, but we're heading in the right direction. We want to give you an update on where we've been and a synopsis of our last three years of participation with the DBE Program, and what we've done with our contractors to try to encourage more participation as well as recruit more DBE's. Megan has prepared a nice power point presentation for you to review.

Megan is very knowledgeable about our program. We have three staff that work in the DBE Program now. Those of you who have been around for a while might remember when we tried to do it with 1.5 FTEs, so we've beefed up our FTE and we're confident in our program. We've been asked to speak at national conferences now and present what Montana has done to raise the bar a little bit for, not only our DBE's, but our contractors and for MDT. If you have any questions during the presentation, interrupt Meghan and she will answer your questions.

DBE Power Point Presentation

Our material talks about a three-year overall goal that we calculate for the DBE Program which is the number of DBE's divided by the total number. The calculation is not that easy. We have a disparity study that calculated some big numbers for us and they did in-depth interviews and surveys with all the transportation-related firms in Montana and asked them a whole bunch of questions about what types of work they could perform, what areas of the state were they willing to work in, what their ownership looked like, how big a contract they had bid on. They took all that information and then looked at what type of projects MDT is anticipating awarding and the work-type associated with that to find out how many DBE's can perform that type of work. That is how we came up with the 6.14% goal which is from 2017-2019. This time next year we will have submitted a new goal to Federal Highway for the 2020-2022 timeframe.

When you set an overall goal, you have to estimate how much of that you can meet through race-conscious means and race-neutral means. Race-conscious means are having specific goals; so if you say on this specific project, you have to meet 3% DBE participation and if the apparent low bidder does not have 3% DBE participation and they don't show they made good faith efforts to meet that goal, they don't get awarded the contract and it goes to the next low bidder. Right now, we're 100% race neutral. There was just a tiny portion around 2013 that was race-conscious and then prior to 2006 but for the most part our program operates on a race-neutral basis which I consider more of the soft skills. We have a Supportive Service Program that offers training and assistance and tries to make DBE's more competitive to bid on their own without necessarily having the strict requirement of a project-specific goal.

There are other things that are race neutral – DBE's getting a prime contract is counted as race neutral participation. The other thing I will talk about in depth is we

also set aspirational goals on our contracts. It is similar to the race-conscious portion – there is a project specific goal but there is no penalty if the contractor doesn't meet it, it's just supposed to be a transparent way of saying this is what the contractors can expect to achieve for DBE participation on this contract. It's just transparent but there are no penalties. That is considered race neutral measure.

You can see over the past four years that we've met our goal (referring to slide). You can see where we are for the first half of 2018. We report to the federal government every six months, so September 30th is the end of the fiscal year and we get ready to prepare our second half report. We have until December 1st to turn that in. Then there is a short turn-around time if we don't meet our goal, we have 15 days to give them a short fall analysis. When we saw we were up 4% we knew we needed to prepare for that now and figure out what measures to put in place, so we can have a good action plan to send to the federal agencies. I wanted to give an update and talk about where we're at and see if there are different trends or different things we can do with our program to make sure we're meeting our goal and making good progress to meet that goal to satisfy the federal government.

This is what the actual report looks like that we turn into the federal government. We send this to three different entities – Highways, Aviation, and Transit. Highways is always the biggest dollar amount and the biggest focus of why we're here. It is basically broken down into four parts. The top section is awards, so any prime and subcontracts that were awarded during that six-month period, and how much of that went to prime contractors and how much went to DBE's. The second part is a breakdown by ethnicity and gender. Then the bottom is the payments on on-going contracts and completed contracts. The top Awards is a real leading indicator of where our DBE Program is. The payment section on the bottom is much more of a past indicator of where we've been. When the federal government looks to see if we've met our goal or not, they look at awards and where we are currently. You can see the 4% comes from right there (referring to slide).

If you break down what types of projects that we're awarding and how that impacts the goal, you can see the biggest impact comes from the construction. With them getting 4.12% for the first half, it makes sense why our overall goal was at 4%. There is some design build and consultant contracts in there and you see we get pretty good participation in the consultant contracts but again not a big portion of the overall amount of work, so not a huge impact. Purchase Orders are epoxy paint striping projects or asbestos removal, so again not a lot of impact. That is how the overall 4% is calculated.

This is how we calculate the aspirational goal (referring to slide). When I talked about how we came up with the figures for the disparity study, this is basically how they calculated the disparity study on a project specific basis. We put in the district where the work is going to take place and it populates the figures from the disparity study on those work types and how many DBE's will do that type of work and how many total firms do that type of work. Then we plug in the amounts from the engineer's estimate before that project is advertised and it takes the availability and multiplies it by the weight of the contract and comes up with the number in the bottom right-hand corner. In this case the project had a 7.4% aspirational goal and the contractor did meet the aspirational goal. These are based on all the types of work types that are associated with that contract; it is not just focused on any one work type.

Commissioner Lambert asked how they come up with the DBE availability? Meghan said it is from the survey they did during the disparity study, so there is another spread sheet that populates into this one that shows the DBE firms, what type of work they do and where they are located.

Sometimes we set zero percent aspirational goals because it is mostly based on the amount of work types. So, a center-line rumble strip project might have only two work items, so by setting a goal on that they are saying either the Prime must be a DBE or the one sub you hire must be a DBE. We're not about saying you must hire DBE's, so if there are limited work items, we don't set aspirational goals on those.

Commissioner Jergeson said when I look at the contracts we approved the other day, everyone one of them had a DBE goal of zero percent. Megan said that would be where the project specific goal is zero percent. That is the race-conscious measure but when you see the project in the bid letting, one of the special provisions says the aspirational goal on this contract is whatever percentage. That spot is the project specific goals because that is the one where if you do not meet the goal, you do not get the contract, so we didn't want the perception of people not getting awarded the contract with that goal in there. If the aspirational goal is something you want to see on the bid comparison report, we can add that.

Commissioner Lambert asked if we used to have on the contract that they had to have whatever percent of DBE. Megan said there was a small time-frame from 2012-2013 and half of 2014 that did have the project specific goals on there. USDOT says that you should meet as much of your goals through race-neutral means as you can. As you can see, we've met that since 2014 solely on race-neutral measures. Until we don't meet our goal, we should be putting race consciousness on there.

Commissioner Jergeson said we show the project goals at zero percent, and then wonder why we don't get the 6.14%. Where is the push for DBE's? Megan said that document does not go to the contractors; it's more of an in-house discussion document. When the contractors are bidding on the project, they see the aspirational goal as an item. Adding it on there would be more of tool for MDT, not the contractor. Patty Schwinden said the contractor sees the aspirational goal when the project is put out for bid. It will say there is a DBE aspirational goal which encourages them to try and strive for that goal because at this current time we don't have project-specific goals because we've been meeting our goal in the past. This is just a transparency measure to say we believe on this particular contract, based on these work items, you should be able to get x amount of percentage for this project in DBE participation. We don't hold it as a firm number, if they don't get it then they don't get it, but it lets them know that if they don't, as we get closer to the end of that fiscal year, if we continue to not reach those aspirational goals, the actuality of reaching that goal is going to not be there and we won't reach it. It's letting them know this is where we see it.

Commissioner Jergeson said if a project is going to have a lot of electrical work where the aspirational goal is at zero percent. Megan said it's rolled up for the whole project. If there is a lot of electrical work, the aspirational goal would probably be a lower amount. Commissioner Jergeson asked why that work had a lower aspirational goal than asphalt and concrete pavement. Megan said because there are more DBE firms, as a percentage, that do that type of work as compared to those that do electrical. It's just saying there are this many DBE's available that do that type of work, and there aren't a lot of DBE's that do electrical work. You can't go out and expect contractors to meet a higher goal if there's not the availability there to meet that.

We started the aspirational goal setting in April 2017 and this shows the federal fiscal year to show how we're doing for this time frame since we aren't meeting our goal for this time frame (referring to slide). The blue line is the actual DBE participation for the letting, the yellow bar is the aspirational goal for that letting, the green bar is our goal at 6.14% and the blue line is the running DBE totals as we go through the lettings and you see some bigger peaks here and here. We do a report for the Commission once a month that shows our DBE participation and the Engineering Division shares that with the Contractor's Association. After the March letting, there

was a bit of a heavier discussion that you're not meeting your goal and the next letting seems to have a peak and then the next thing happened in May. I'm not saying that is the reason, but it points to that. It tends to make me think it is somewhat based on contractor's participation and how willing they are to contact the DBE's. There seems to be a correlation but that may not be the case.

Right now, just on the contracts that have aspirational goals, we're achieving 5.21%. We had 4% through March, so they are doing a little better. I also want to point out that on the contracts that have the zero percent aspirational goals, we had 12.46% DBE participation and that tells you that DBE's are doing a pretty good job of competing as Primes on those smaller contracts that have the zero percent aspirational goals. So, we get pretty good participation even though they are zero percent aspirational goal.

I'm an ex-auditor so my mind cycles about all these different situations and what might be happening and what might be causing us to not meet our goal. The first thing I evaluated was by district – was there any differences by district. You can see that less than half of the time they met the aspirational goals on the contracts within their district. This brown line is the total DBE participation, the blue is the participation they got when they met the aspirational goal. Most of the goals are set between five and seven percent aspirational goals. So, you can see when they met the goal, they really met the goal; it wasn't just by a little bit. The yellow line is when they don't meet the aspirational goals. When they don't meet it, it is a much lower percentage. When they are not meeting their goals, the contract dollars amounts are much higher. You're looking at a heavier weight on these two percent participations and not as great of participation on the higher. The one exception is the Glendive District; they are consistent. We have a couple of contractors there that do a pretty good job about getting DBE participation.

When you compare this across 2016 and 2017 to see trends, you see that from 2017 where we met our goals to 2016 there is definitely a downward trend in every district. Billings is a bit skewed in 2016 because they didn't have as many contract dollars awarded in that time frame and they had decent participation. So, you see we have decreased over the past three years.

The next thing I looked at was contract size. I thought the bigger the contract, the more subcontracting opportunities there are, and the better DBE participation would be, but you can see from these charts, it is the exact opposite. We get the most participation under one million dollars and very little participation on contracts over one million dollars. In 2017 we had a \$20 million project and they had 8% participation and we met our goal. When you do good on the \$20 million projects, it basically sets the tone for the year and when we don't, it has a big impact on whether we are going to meet our goal. In 2016 and 2017 when we met our goal we had better participation on \$20 million contracts, and since then there has been quite a drop off. It is definitely the biggest impact on those huge projects.

We set the overall goal based on the types of contracts we anticipated MDT awarding. Maybe the types of contracts changed, but you can see the pie charts look pretty much the same and the overall contracting types have not changed very much. So, we should have still been able to achieve our goal based on the availability.

When you do a breakdown, it really comes down to the reconstructs because obviously a lot of money from the department goes for reconstruction and there is a definite drop off on the participation in 2018 compared to the other two years.

The other thing we hear a lot is that all the DBE firms are leaving. The first one people latch onto is highway specialties but that was out of the program a long time ago and we met our goal in 2016 without it. Then they said aero striping stopped but in 2017 we still met our goal and we didn't have aero striping. So, the red shows the

people who are no longer a part of the program, but the green are also people who have been brought into the program. They didn't have contracts in 2016 but did in 2018. So, even though we are losing some, we are gaining DBE's as well. This is just based on construction contracts and doesn't include consultants and other DBE's that are getting good participation as well. So, it's not necessarily a lack of DBE firms bidding or getting work.

I compared if DBE's got less work over the years but when I started comparing over the years, it made it hard to compare because if you look at the total construction contracts awarded in 2016 through 2018, it was \$100 million more in contracts awarded between 2016 and 2018 and only one million more went to DBE's. That is only one percent.

When you look at all the contracts that had aspirational goals in 2018, 36% of those met the aspirational goal. Then there were 12 contracts where the low bidder didn't meet the goal, but other bidders had DBE's that weren't necessarily responding subcontractors to the Prime that if you factored in that participation, it would have given us another .3% DBE participation. There were 37 contracts that didn't meet goals, 15 with zero percent participation and 14 between one half percent and two percent. You can see they had work items for people to bid on and DBE's were bidding on them, just not big subcontracts. It really comes down to the big projects – ones over \$10 million have small percentages. It continues to support that we can't meet our goal when we're not getting participation on the big contracts. This last contract might still get DBE participation and we'll watch closely to see if that will happen. We wait to submit our goal until closer to December to make sure we capture all the utilization.

I also did a slide to show you the top Primes that get the most amount of work from MDT for the past three years and where their participation levels are at. The top two are less than five percent, and that has an impact on whether you meet the goal.

This slide shows the participation through the whole year. The consultants are at 9.51% and a big chunk of that comes from the public involvement and that has to do with the term contracts we're doing with those firms. It was associated with a couple of construction projects but now they are doing the life of the projects through consultants all the way and we have two DBE firms that were successful in getting term contracts with those. So, we've seen a big increase in participation on that side from them.

There wasn't much change from design build and purchase orders from the first six months. A couple more striping projects were awarded in April but not much participation in that.

We have some requirement contracts like bridge and geotechnical work and they have term contracts with the traffic control firms. So again, not a huge contract amount but there is one DBE at the bottom and not a lot of participation. I compare subcontracts across all construction projects to make sure that there's sort of a level playing field and we must make sure that we're not having an over concentration in traffic control. We hear that we have over concentrations of DBE's in traffic control and the only way they can meet the goal is through traffic control. There are two DBE's in that field but not an over concentration.

If you look at all the contracting types and phases on job order contracts where the DBE is the prime contractor, if you add in all those extra change orders with those phases and all the contracting types, we're at 5.85%. Not 6.14% but not as bad as the 4% that we were concerned about at the end of March. The chance of us meeting the goal by the end of the fiscal year is minimal. Even the September letting will not have enough impact on the goal. If you remember there were 12 contracts where the

low bidder didn't have the DBE's that the other bidders did which was .3% and if we would have had that .3%, we would have met our goal.

We're not as far off as we thought, and I think it's achievable for the contractors. We've done the presentation for our division, the Commission, and we want to present it to the Contractor's Association just to get the feedback on whether there were less opportunities on the bigger projects, what was happening, and what's your feedback on why we didn't meet the goal, and what are we going to do to make sure we meet the goal next year.

The disparity studies are good for six years and they do the complex availability calculations for us. It takes about two years from the initial planning to completion, so even though I feel like we just finished it, we have to start thinking about doing another one in 2020. Thank you for your interest in our program. If you have any feedback for us or if there are any questions, or if you want to see anything different in your monthly Commission reports, we're happy to help.

Commissioner Skelton said it needs to be acknowledged that the department is doing fabulous work if we're in the top ten in the nation. You should all be commended for it. Congratulations.

Agenda Item No. 18: (P3)

Commissioner Skelton asked if ARA funds were included in the federal comparison. Director Tooley said we get lots of other funding sources that draw out of this bag. For baseline purposes we didn't want to add any supplementary funding sources. This is just the core program. At the federal level if we can keep the share we have right now, it is very good. The good story is it is very favorable to us. The key legislative folks that recommend implementing these bills were in the middle to make sure we got a good deal and it continues to this day.

Commissioner Lambert moved to approve the funding distribution and the funding reserves. Commissioner Jergeson seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

Commission Vacancy

Director Tooley we have been talking to the Governor's office in the last two weeks about that. They are paying close attention, they have some names and are trying to find someone from that area, of course it must be Republican or an Independent, and they are working hard to find someone and I'm sure we'll see some results soon.

Next Commission Meeting

The next Commission Conference Calls were scheduled for September 18, 2018 and October 2, 2018. The next Commission Meeting was scheduled for October 24, 2018.

Adjourned

Meeting Adjourned

