

# Montana Transportation Commission

March 26, 2015 Meeting  
Helena, Montana

## IN ATTENDANCE

Kevin Howlett, Transportation Commissioner, Chairman  
Rick Griffith, Transportation Commissioner  
Barb Skelton, Transportation Commissioner  
Carol Lambert, Transportation Commissioner (Conference Call)  
John Cobb, Transportation Commissioner  
Mike Tooley, Director MDT  
Pat Wise, Deputy Director MDT  
Dwane Kailey, MDT Engineering  
Lori Ryan, Commission Secretary  
Tim Reardon, MDT  
Carol Grell-Morris, MDT  
Jim Skinner, MDT  
Lynn Zanto, MDT  
Paul Harker, FHWA  
Kevin McLaury, FHWA  
Paul Dennehy, Lamar  
Ralph Fleck, Yesco Outdoor  
Matt Clyde, Premiere

*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](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](mailto: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 Kevin Howlett**

Commissioner Howlett called the meeting to order. After the pledge of allegiance, Commissioner Howlett offered the invocation.

## **Approval of Minutes**

The minutes for the Commission Conference Calls of February 3, 2015, February 24, 2015, and March 10, 2015 were presented for approval.

Commissioner Griffith moved to approve the minutes for the Commission Conference Calls of February 3, 2015, February 24, 2015, and March 10, 2015. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

## **Agenda Item 1: Highway Safety Improvement Program In-System HSIP Projects**

Lynn Zanto presented the Highway Safety Improvement Program In-System HSIP Projects to the Commission. The Highway Safety Improvement Program (HSIP) 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 nine projects to the HSIP program – two in District 1, two in District 2, one in District 3, one in District 4, and three in District 5. The projects

meet the criteria set forth for HSIP-funded projects. If approved, it would be MDT's intention to let these projects individually.

The estimated total cost for all projects is approximately \$7,565,014.

*Summary:* MDT is asking the Commission to approve the addition of nine 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 TRANPLAN-21. 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 \$7,565,014.

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

Commissioner Cobb asked about the Manhattan Safety Improvement with a benefit/cost ratio of 273/1. He asked if that was correct. Lynn said it was correct. Commissioner Cobb asked how the benefit/cost ratios are done. Can the ones with the highest cost/benefit ratio get bumped up because of public demand or is it pretty firm? There are some in other districts that are higher and some that are lower. Dwane Kailey said once we go through the benefit/cost ratio analysis and select the projects, they all move forward; we don't look at that ratio any more. In our view they are all warranted; they are all safety projects and we don't prioritize them. Some may have a few more challenges which may delay them but for the most part we are working on them as expeditiously as we can to get them out to benefit the public and have safety on the highway. We don't go back to the benefit/cost and prioritize. We just simply try and get them done as fast as we can and get them out the door. Commissioner Griffith asked if they analyzed them before they prioritized. Dwane said the only priority happens at the end of the year to make sure they benefit/cost out. Once we set them and they are greater than a one benefit/cost ratio, we want to get them out as fast as we can.

Commissioner Cobb said if one is three million but that three million could be used for a bunch of little projects, do they change? Someone has to go through them. How is that done so the most important are done first? Even though they all need to be done, how do you make sure the most important ones get moved to the top of the list? Dwane Kailey said you want to be very careful of saying that a higher benefit/cost ratio is a higher priority project. For example, a fatality rates as a high priority but it may ultimately result in a lower benefit/cost ratio because the cost of mitigating that fatality is rather large. We want to mitigate for that fatality as soon as you can. You can't look at the benefit/cost ratio and use it as any kind of a priority. We query the system, identify what projects are out there and what crash clusters are out there. We look at the appropriate mitigation and take the cost of the accidents happening, divide them by the cost of mitigation, put them all into a spreadsheet and figure out where the funding runs out and that's where we draw the line. So all those projects are funded. From there, we do not prioritize them. We try and get them out the door as fast as we can.

Commissioner Howlett said it would be interesting to see what goes into the benefit/cost ratio. He asked Dwane if he or his staff could make a presentation to the Commission showing how that is done. Dwane Kailey said his staff had been working on a presentation for the Commission. He said there were also some advancements in the safety program which the Commission might be interested in seeing.

Commissioner Griffith asked about District 5 and the proposed roundabout. Commissioner Skelton asked if they were going to hold public hearings on the

roundabout. She had received a lot of calls about it and the public is not real crazy about a roundabout. Dwane Kailey said once these are approved by the Commission then we start going through our normal design process. We will hold public meetings on the project as it is developed. The roundabout is our best guess for the most appropriate mitigation at that site. However, as with other projects, we go out and hold public meetings and get public input prior to implementing the project. Commissioner Howlett said he felt it was important not to telegraph that they are doing a roundabout because that may not be the final outcome. Commissioner Skelton said it was four million dollars that could be spent on other safety projects that the public is more in favor of. The public is going to have a lot of input on this because it is a very stressful intersection. Dwane Kailey said that is understood. Please also understand that when we look at the accidents taking place out there, in our best analysis we believe this is the best mitigation for the accidents at that location. Are there other options? Yes. There are always other options. Are they as effective at mitigating those accidents and crashes? In our opinion they are not as good. A roundabout really is the best mitigation given the accidents that are taking place at that location. Commissioner Howlett said if we recognize there are crashes happening, are we stamping something in advance? We know we need to do something there but it seems we are baiting ourselves with what you feel is the answer. This Commission wants to hear what the public has to say because they are the ones being affected by the project.

Commissioner Griffith asked about the ADT. Dwane did not have that information but said he would get it to him. Commissioner Griffith asked if a stop light would fix it. Dwane said a stop light would mitigate some of the accidents but even with a signal, you still have a higher percentage of severe crashes at those intersections. Roundabouts have crashes but they are less severe and are property value only; you don't have the injuries or the severe crashes or the fatalities. We are very aware and are concerned with public input but understand, based on the crashes that are taking place, this is our best mitigation at that site. We need to be open to public comment and we will take that into consideration but we want to convey to the public that this is the best mitigation. If they are in total opposition, we will back off. We have backed off on roundabouts before. Highway 83 and 206 up by Kalispell is a primary example. We went in with an idea for a roundabout and received total public opposition so we backed off and did not do the roundabout. We've also have cases where we've been able to educate the public and sold a roundabout. So I'd like to go into this being clear that we think this is the best mitigation for the type of crashes taking place but if we get total public opposition, we'll back up and figure out what else we can do.

Commissioner Skelton said the other question is what are you going to do about the bike paths on the roundabout? That is a heavily biked area and a heavily run area. The public is going to ask you that. Dwane said we have very good ways of handling the pedestrians and bicyclists in and through roundabouts; it works extremely well. Commissioner Griffith said don't move forward until you get approval. Dwane said the Feds will hold us accountable. We have to do an environmental document and we have to get public input; we can't avoid that. They will hold us accountable.

Commissioner Howlett asked about District One. Over a year ago, we approved a Safety Project for flashing beacons in the community of Arlee. That was over a year ago. The target was to get them in before school started and school is about out. Could you find out where those are? Dwane said he would look into that.

Commissioner Griffith moved to approve the Highway Safety Improvement Program – In-System HSIP Projects. Commissioner Cobb seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item No. 2: Rail/Highway Crossings RR Xing – S-426  
Moccasin MRL – RR Xing Stop/Yield & ENS**

Lynn Zanto presented the Rail/Highway Crossings RR Xing – S-426 Moccasin MRL – RR Xing Stop/Yield & ENS Construction Project to the Commission. Rail/Hwy Crossing–Protective Devices (RRP) and Rail/Hwy Crossing–Hazard Elimination (RRS) projects are funded under the Highway Safety Improvement Program set-aside. Projects are selected by inventorying railroad crossings and identifying hazardous sites.

MDT is asking the Transportation Commission to approve the following rail crossing projects:

Project Name (Control No.)	Location	Description	Approx. Est. Cost	Funding Source
RR Xing – S-426 - Moccasin (UPN 8948)	RP 0.1 on Secondary 426 (S-426) in Moccasin	Install signals and improve crossing surface.	\$709,000	RRP-RRS
MRL – RR Xing Stop/Yield & ENS (UPN 8952)	All public at-grade crossings along MRL line	Add stop or yield signs and ENS notifications.	\$309,000	RRP

*Summary:* MDT is requesting Commission approval of the two railroad crossing projects shown above and on the attached maps. The total estimated cost for these projects is approximately \$1,018,000. The proposed projects are consistent with the goals and objectives identified in the Performance Programming Process (P3) – as well as the policy direction established in TRANPLAN-21. Specifically, traveler safety features will be enhanced with the addition of these projects to the Railroad Crossing program.

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

Commissioner Howlett asked if it was for the whole line. Lynn said yes. Commissioner Howlett asked about the UP. Lynn said with the pending deadline this summer, they may already have them in. The rule came out in 2012. Lynn said she would find out and get back to him.

Commissioner Skelton said about one year ago we discussed the railroad crossing in Billings which is very controversial. Someone from the staff was going to keep me updated on the progress of that study and I’ve never heard from them. It is serious. I would like an update in two weeks. Lynn said they would get her an update.

Commissioner Griffith moved to approve the Rail/Highway Crossings RR Xing – S-426 Moccasin MRL – RR Xing Stop/Yield & ENS. Commissioner Lambert seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item No. 3: Billings District Projects  
Retaining Wall – Lodge Grass  
RR Xing – 2.5 Miles South of Eddies Corner**

Lynn Zanto presented the Billings District Projects Retaining Wall – Lodge Grass and RR Xing – 2.5 Miles South of Eddies Corner to the Commission. The Interstate Maintenance (IM) Program finances highway projects to rehabilitate, restore, resurface, and reconstruct routes on the Interstate System. MDT Districts are

allocated IM funds (by Montana’s Transportation Commission) based on system performance. In response to an emerging safety issue, the Billings District is advancing a project to repair a retaining wall on I-90 near Lodge Grass. The project will include slope stabilization, restoration work (on the retaining wall), and repairs to the roadway surface. The total estimated cost for the project is \$2,811,000.

The National Highway System (NH) Program finances highway projects to rehabilitate, restore, resurface, and reconstruct non-Interstate routes on the National Highway System. MDT districts are allocated NH funds (by Montana’s Transportation Commission) based on system performance. In response to an emerging operational and safety issue, the Billings District is advancing a rehabilitation project to address a rapidly deteriorating railroad crossing on US-191 / MT-3 (N-63) south of Eddie’s Corner. The project will replace the existing rubber surface with a concrete surface at an estimated cost of \$126,000.

*Summary:* The Billings District is requesting approval to add two projects to the highway program. The total estimated cost for all projects is approximately \$2,937,000. The amounts originating in specific programs are listed below:

Interstate Maintenance	\$ 2,811,000
National Highway System	<u>\$ 126,000</u>
	\$ 2,937,000

The proposed projects are consistent with the goals and objectives identified in the Performance Programming Process (P3) – as well as the policy direction established in TRANPLAN-21. Specifically, roadway system performance and traveler safety will be enhanced with the addition of these projects to the program.

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

Commissioner Skelton moved to approve the Billings District Projects Retaining Wall – Lodge Grass and RR Xing – 2.5 Miles South of Eddies Corner. Commissioner Griffith seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item No. 4: Speed Limit Recommendation  
MT 16 – Antelope**

Dwane Kailey presented the Speed Limit Recommendation for MT 16 in Antelope to the Commission. This is the speed study where the Sheridan County Commission had asked for an increase in the speed limit but there was a fair amount of public opposition for that. We postponed the vote in order for Commissioner Lambert to participate. The existing speed limit is 45 mph. The County Commission asked for an increase. MDT reviewed it and we are recommending a 55 mph speed limit. The Commission has concurred with that but again, members of the public have voiced their opposition to that increase. Reviewing the traveling speeds, accident history, and the nature of the community and the roadway, our recommendation is as follows:

A 55 mph speed limit beginning at station 741+00, project F 22-2(3) (250’ south of Davis Street) and continuing north to station 772+50 (400’ north of Twin Bridges Road), an approximate distance of 3,150 feet.

The Sheridan County Commissioners have concurred, however, we did receive a petition from citizens in the area that shows there isn’t public support for the increase in speed. Statutorily we can’t increase the speed without a recommendation from the County Commission. We have that so we can increase the speed but it is up to the Transportation Commission to choose whether you want to do that or not.

Commissioner Lambert said she had visited with her district about this and there are definitely some people who don't want it changed but the County Commissioners are in favor of the increase. I put great stock in the Commissioners in my district and they are in agreement with the state.

Commissioner Lambert moved to approve the Speed Limit Recommendation for MT 16 – Antelope. Commissioner Cobb seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item No. 5: Speed Limit Recommendation  
US 93 Woodside to Stevensville “Y”**

Dwane Kailey presented Speed Limit Recommendation for US 93 Woodside to Stevensville “Y” to the Commission. This speed study is based on a request from the Ravalli County Commissioners. This is on US 93 from Hamilton all the way to the Stevensville “Y”. We were asked to look at the speeds. The current speed is 65mph and they've asked for an increase based on the reconstruction of this corridor. We looked at the traveling speeds, the accident history, and based on our review we are recommending the following:

**Woodside**

A 55 mph speed limit beginning at metric station 57+80 (mp 52.12) project NH 7-1(86) and continuing north to metric station 63+20 (mp 52.46), an approximate distance of 540 meters or 1,800 feet.

**US 93 Corridor**

Statutory 70 mph Speed Limit along the portions of US 93 from Woodside (mp 52.5) to Victor (58.64), and Victor (mph 59.97) to Stevi “Y” (mp 66.15).

We submitted it to the Ravalli County Commission and they support the increase in speeds. Commissioner Howlett asked if there was a reduced speed through Victor. Dwane Kailey said there is already an existing Commission approved reduced speed through the town of Victor. Commissioner Griffith asked if the speed limit was the same at night. Dwane Kailey said the nighttime speed limit would be 65 mph which is the statutory speed limit for the corridor. Through Victor it is 45 mph. Currently it is 65 mph during the day and night. It would stay 65 mph at night and go to 70 mph during the daytime.

Commissioner Griffith moved to approve the Speed Limit Recommendation for US 93 Woodside to Stevensville “Y”. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

**Agenda Item No. 6: Certificates of Completion  
December 2014 – January 2015**

Dwane Kailey presented the Certificates of Completion for December 2014 – January 2015 to the Commission. If you have any question please feel free to ask. At this time staff is recommending approval.

Commissioner Cobb asked about the gravel overlays in Helena. What was the big increase for? Dwane Kailey said he would get back to him on that. Commissioner Cobb asked Dwane to break the costs down for him. Dwane said he had already done that and would get that to him before the end of the day.

Commissioner Griffith asked why there was “acceptance by the Director” on some items and not on others. Dwane said the first two projects are tied projects but there is only one approval. All projects were approved by the Director on 12/20/2014.

Commissioner Cobb asked if he could get the breakdown between sub and prime in the DBE portion of the report. Dwane Kailey said the larger numbers indicate the prime and the smaller numbers indicate the subs. The 3<sup>rd</sup> column shows the DBE primes. If that column is filled in then it would be a prime contractor that is a DBE.

Commissioner Griffith moved to approve the Certificates of Completion for December 2014 – January 20-15. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### ***Agenda Item No. 7: Project Change Orders December 2014 – January 2015***

Dwane Kailey presented the Project Change Orders for December 2014 – January 2015 to the Commission. These are presented for your review and approval. Staff would recommend approval of the Change Orders as presented. Commissioner Cobb asked about HB 494. Dwane Kailey said the \$500 is for compensating the contractor to transfer the Storm Water Prevention Protection Plan (SWIPP) to MDT because MDT becomes the owner when the project is completed. Commissioner Cobb asked why some were zero. Dwane Kailey said in some of the older contracts we did not compensate the contractor because the cost was contained in other bid items. The newer contracts we are actually paying them for it. It will be consistent as we go forward.

Commissioner Lambert moved to approve the Project Change Orders for December 2014 – January 2015. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### ***Agenda Item No. 8: Liquidated Damages***

Dwane Kailey presented the Liquidated Damages to the Commission. You have several projects with Liquidated Damages. The contractors are not disputing any of the Liquidated Damages. You need take no action unless you want to modify the damages.

Liquidated Damages Stand

### ***Outdoor Advertising Digital Signs***

#### ***Paul Dennehy, Lamar Advertising***

I’m the General Manager for Lamar Advertising in Montana based in Billings. I’m here today to discuss digital billboards in Montana. I hope to make clear that digital billboards are off-premise signs on private property that are controlled by MDT, compared to on-premise digital signs that are on the premise of the building that the business is in that is not controlled by MDT. It’s important to understand the difference between the two.

You may be aware that some cities in Montana allow digital billboards – Billings, Great Falls and Helena allow them on surface streets or streets that are not controlled

by MDT, however, there are no digital billboards allowed on streets in the cities or on the highways that are controlled by MDT or on System whether on the Interstate or in the cities. What I'd like to touch on today is to see if we can create some reasonable regulation for off-premise digital billboards. That's my goal today.

Billboard advertising has caught up to the digital age. Nearly all states that allow billboards; 46 states allow billboards and four states don't allow billboards. Forty-four of the states that allow billboards allow digital billboards on the System. There are only two that don't – Montana and Washington and Washington is in the process of writing new regulations.

You may be aware that outdoor advertising is controlled by the Beautification Act of 1965, a/k/a The Ladybird Law as it was known, as well as federal and state agreements that are in effect now that were enacted by statute from the federal to the state governments. However, advertising since the 60's has changed and advertisers now want to have the opportunity to show their wares on digital signage. Digital signs are also accepted by the government. The federal government states that, "digital billboards are allowed on system as long as they don't flash, scroll, or have any moving part." So the federal government does allow states to do it but provide a static message. So the message on digital billboards has no moving part and no explosions; it's just a static message. Messages rotate every six to eight seconds depending on what the state sets up as their criteria. The rotation period is a split second.

Digital billboards provide a cost-effective means for businesses in Montana to advertise their wares. The only difference is that digital billboards can install ads using a computer versus having a man go up and install the billboards. Copy can be changed more often on a digital billboard than it could be before. Normally, in our business, we change billboards annually, monthly and some every two weeks. Digital billboards allow us the opportunity to change messages on a daily basis. A customer can have an ad up on Monday and a different ad up on Tuesday if he wishes. It also reduces his cost in that he doesn't need to reproduce a billboard every time he wants to change his message. Digital technology is simply a non-manual way to change billboards via a compute. In our particular case, we change it via computer in our Billings office.

LED's (Light Emitting Diodes) makes changing messages easier and quicker. The LED's can be programmed remotely from an office or a computer on a daily basis. So states have amended their advertising regulations to allow for the erection of the new digital billboards. The industry supports reasonable lighting rules which is one of the concerns of the public and the industry as well. It seems the biggest concerns with digital billboards are safety, aesthetics, and lighting issues.

Safety. As I mentioned before, off premise digital billboards don't allow scrolling, moving, or flashing, or intermittent signs at all. It's always a static message. In December 2013, FHWA released findings of its multi-year research of driver's behavior in proximity to digital billboards. They found that digital billboards did not distract drivers. The federal government has also tracked the outcome of other state DOT's on local crash data near digital signs as well and some industry sponsored research found that there was no connection to accidents near digital billboards.

Regarding the aesthetic issues, it has gone by the wayside slightly because the digital signs now go on the same structure that our static billboards are presently on. The only difference is now there is a digital face instead of a face that is made out of wood or steel. Size and configuration stay pretty much the same.

Commissioner Howlett said we've had this discussion multiple times. If you could change messages daily, is there any movement toward reducing the number of billboards out there? Paul Dennehy said that would be a discussion point when the

Department starts looking at regulations. That would be a possible discussion point because you can have multiple advertisers on one sign. Commissioner Howlett said, from my perspective I don't want to see Montana get blighted with billboards. I kind of like the open space in Montana. Paul Dennehy agreed and said we want the same thing. I think reasonable regulation through the Department is very important.

The industry supports regulation for lighting both through industry standards as well as government standards. All digital billboards are monitored by light sensing devices that sense what the light should be compared to the ambient light around the structure. So it changes the intensity of the lighting during certain periods of the day. It's monitored. As technological innovations in the industry continue to outpace regulations, the trend is moving toward all states with billboards to accommodate changeable message signs. Colorado and New Mexico were the latest two to adopt digital message signs. Again now 44 of the 46 states that allow billboards do allow digital billboards. We think that embracing this new technology is good for Montana both for the advertiser and the consumer.

Digital is important to government. Since 2008, the National Center for Missing and Exploited Children has transmitted over 1,000 Amber Alerts to digital billboards. Time is of the essence after child abductions and therefore quick posting on digital billboards is an important part of the Amber Alert System. The FBI tips generated by "wanted" information displayed on digital information has led to the arrest of 53 fugitives by the FBI. FEMA also uses digital billboards for disaster information weather warnings, evacuations, shelter location, etc.

Over 1,000 communities in the country now have digital billboards. In the Rocky Mountain West, Colorado, Idaho, Nevada, New Mexico, Oregon, North and South Dakota, and Wyoming allow digital billboards with different statutes according to their specific state regulations.

All billboards change their messages, some annually, some monthly, and some weekly. Again digital signs merely change it electronically rather than having a man go up and change it. In 2006, MDT drafted rules to address variable message signs in Montana. I believe it was really well written and with a few tweaks, it would really work well. We held three public hearings on digital signage in the state during that process and I believe the record will show that the majority of people who spoke at those three meetings were in favor of creating rules for digital signage in the state. The purpose of those meetings, put on by MDT, was to get a feel for the state, so they held them in Kalispell, Missoula and Billings to get a wide variety of what the public wanted.

In closing, I'd appreciate it if the industry could work for or help with writing new regulations for digital signage with MDT to develop reasonable regulations in our state as they are in most others. Thank you.

Commissioner Lambert asked if it was illegal now to have a digital billboards – is it a state law or an MDT rule. What is it you want to change? Tim Reardon said the Transportation Commission is responsible for the rules that regulate outdoor advertising. In 2008 the Commission passed a rule that prohibits CVMS and electronic billboards. So it's in your jurisdiction. Commissioner Howlett asked the Commission if they wanted to revisit that rule. Do you want to encourage the Department to have discussions about current technology and opportunity? I'm not for throwing out the rules but I do think, if we move in this direction, there has to be some give and take. It can't just have the landscape blighted with LED signs.

Director Tooley said there may be a different point of view represented by others in the room. Commissioner Howlett said he was open to that. Commissioner Griffith said he did not have a problem reviewing electronic billboards but would like it to be more global than just electronic billboards. It's the whole program including Kevin's

thoughts about less billboards and how we get to that point. Let's review it globally not just for the one issue. Commissioner Lambert agreed. She was interested in learning some history about why the rule was made in 2006? What brought it about? Didn't the Legislature address this issue? I'd like to hear some history before we go any further. Tim Reardon said when this issue was presented to the Commission seven years ago, there was a tremendous amount of information generated by the outdoor advertising folks as well as department staff and I'm sure that could be easily updated. He noted that if any consideration is given to altering the existing rule, there has to be a public process; a considerable public process. Last time it was a very extensive process. Whether you chose to go forward or not, if you simply want background like history, current state of the art, I'm sure the department staff could put that together for you at a time the Commission wants set aside for the program and the pro and con folks could present their side of the story. My point is, considering a move is fine but if there is even a proposed rule that goes out, there will have to be a public process.

Commissioner Cobb asked if they could schedule a presentation of what a digital sign is, how it works and get a little more in depth understanding, that would be appreciated. Montana is a zero sum game – if you have digital, the non-digital players are going to get wiped out. I'm curious about what happens in other states when they went digital. The bottom line is how many other businesses get wiped out if we go to this. I don't want to see the losers get hurt. You talk about safety, to me the issue is what happens to the other businesses if they can't adapt. Are they wiped out and can they even adapt because of cost? What happened in the other states? Did just a few businesses end up owning everything? I'm not criticizing but I just want to know the ramifications when you do something like that? You can only have so many businesses doing it. I'm just talking out loud. I'm just curious. A lot of times when a new technology comes in the other ones are wiped out. If I was them, I'd fight you tooth and nail. I imagine you'd pick up other customers if you go digital.

***Ralph Fleck, Yesco Outdoor Media***

I'm the Montana Account Representative for Yesco Outdoor Media. Just a quick comment specifically regarding your concern. Your concern about the proliferation of more billboards is very valid. The idea is not that we're going to place digital billboards everywhere. It's not going to expand the number of billboards but more of an idea of conversion of billboards. Mr. Dennehy can support me on this fact, I think there would be very few candidates that are ideally suited for digital billboards. So it's not the idea that there's going to be more and more but rather a conversion of existing billboards and turning them into digital. We're not looking to increase the number but certainly not looking to decrease the number either.

With regard to addressing the future proliferation of billboards, rather than building more and more billboards, which the industry supports but we don't want them everywhere either that just makes us look bad, one digital billboard can carry six to eight advertisers. So the fact that you can put that many advertisers on one structure is much different than adding six or seven more structures to accommodate six or seven more customers. I just want to convey the idea that it is not just going to explode and mushroom with more billboards; in fact it will be quite the opposite.

Commissioner Skelton asked if there was a cost analysis for the cost of digital versus the standard billboard. Wouldn't that be important for small businesses? Ralph Fleck said because digital is not yet allowed in Montana, we don't have any experience with that. Commissioner Skelton asked if they had billboards in Wyoming. Paul Dennehy said they did and he would be able to provide the Commission with a cost analysis before the May meeting.

***Matt Clyde, Premiere Outdoor***

I'm speaking on behalf of some people who are not here today. With all due respect to the people from Lamar and Yesco, they do have valid points but look at it from a different angle, from some of the small companies who reside here in Montana. Are the little guys going to be able to play in this game? The cost analysis for a 14 x 48 digital billboard is \$180,000 - \$250,000. That pretty much puts all of us out of the game. Not only that but the other important fact is with the current existing billboard regulations set up the way they are, there is not any location in Montana where you can build seven new billboards to have one digital replace it. If there was, there would already be seven billboard there. So it's not going to reduce the number of billboards in Montana; it's just not going to.

From our perspective there is a safety issue. I know that it is a stacked display on a digital and it is for six seconds but it does move as it goes to the next advertiser. When people catch that, their eyes are drawn to it. It is not up to me to determine whether or not it is safe. But as they pointed out, there was a report done by FHWA in 2013 but I'm not sure if you are aware there was another report done that was produced in January 2015 by a panel of experts that basically evaluated the FHWA report and found 50 pages worth of flaws. That report is available.

This is hard for us because as an industry we all want to be able to work together for what's best for everybody in the industry and not just a few select people. We didn't even know this was being presented today. This is the type of thing where we'd like to get a phone call saying they want to present this rule change and how do you feel about it. I think the Commission is aware that virtually every other small billboard company will not support it because none of us can play the game. In fact with the current billboard regulations in some cities and towns, they don't allow digital billboards anyway so even if you allow them on MDT highways that still puts some of these companies in certain cities unable to adapt because the city won't change its regulations.

They pointed out a lot of things like the messages are easier to change; it's more cost effective. Basically everything they described is exactly right but ultimately that is a benefit for them because it generates more revenue. I would ask that the Commission evaluate it and ask what is in the best interest of Montana and the people here and not let it be driven by the fact that it creates more revenue for these companies.

They also have a good point that they can be used for Amber Alerts, but Montana obviously doesn't get the type of capacity you get in the high volume states. Also the number one thing we fear and Ralph pointed out they would not go up on every billboard they have and I agree with that. However, there are certain locations that if they put up a digital billboard, some of these other companies who have billboards near that location might be done. If those six or seven advertisers go to that one digital display, that leaves the small guy trying to scramble to get advertisers. Places like Salt Lake, Spokane, and Las Vegas have the business infrastructure to support that kind of advertising. Montana doesn't have it. I don't think they would argue that they don't have 100% of their billboards full right now. So in some of our communities when we're trying to get our last empty billboard filled up, if we have to compete with a digital billboard one mile down the road, it's going to be really tough. If they can go in and offer a billboard rate of half or two thirds the cost, now we have to follow that rate. They are basically setting the market rate and we would have to follow and we might not be able to cover our cost at that rate. Digital billboards were designed for high traffic volume areas because you have one advertiser advertising with six or seven other advertisers so they are up for six seconds. Not all traffic is going to see that. It is designed for people who are commuting non-stop back and forth; that's what digital billboards were really designed for.

We were glad to come listen to Lamar's points because we weren't certain what their arguments would be. Right now, speaking for at least six or seven other billboard companies, we don't feel the rule needs to be changed.

This is a very sensitive subject, not just in Montana but nationwide. Back in 1995 there was a billboard outcry here in Montana and everybody was well aware of it, where our regulations went from here to what they are now. Quite honestly it is not easy to build billboards right now. The rules right now are pretty good to keep that boom from happening. So we ask that it stays that way. Because when people like Scenic America and other groups that are gaining strength find out about this, it's going to create another nightmare for the rest of us and we don't want further restrictions on what is already in place. So we ask the Commission evaluate what's best for Montana, the safety of Montana's drivers and as a small business we'd like to have the same opportunity. Thank you.

Commissioner Howlett said the Commission was willing to look at this but I agree with Commissioner Griffith that it needs to be a global look. The issue that was just presented here about the small guys, we have to do what's right for the state and try to make this as equitable and as accessible as we can for everyone. He asked Director Tooley to have his staff begin to assemble some background for the Commission.

Commissioner Howlett said he was unaware of the depth of this conversation and what it was going to be and I was caught a little bit off guard with this presentation today. When we have these kinds of discussions, the Commission needs to be advanced substantially more information and history so that we're not put in a position of not knowing what to expect. We'll move forward with a look at it. I appreciate you coming today.

Tim Reardon said there is a lot of information out there. We can certainly gather information from other states – the pros, cons, consequences, etc. Carol Grell Morris has taken the lead on the OAC Program as far as Legal Services is concerned. She is also our rule drafter and rule approver for the Agency, and we're open to undertaking a review rather than coming back with a proposed rule. Commissioner Cobb wanted a person that people could go to get information so people feel it's a fair process. Tim Reardon said Right of Way is also involved with permitting all the signs under our jurisdiction. We can certainly engage anyone and everyone who is interested in the program and provide you with whatever information you want.

### ***Homestake Pass Billboard***

Commissioner Griffith asked Pat Hurley about a billboard at the bottom of Homestake Pass – was there any resolution with that? The problem with the billboard is that it is not built on the level. If it were built on the level it would be fine but the way it's built the lights on the eastbound lane shine through and underneath and into the other lane of oncoming traffic. Pat Hurley said he would look at that and get an answer for you. Commissioner Griffith said it was a distraction. Pat Hurley said they would take care of it.

### ***Agenda Item No. 9: Letting Lists/Proposed Lettings***

Dwane Kailey presented the Letting Lists/Proposed Lettings, March through September 24<sup>th</sup> Letting to the Commission. We talked about MDT having to do some contingency planning based on the fact that Congress has yet to pass an extension of the existing bill. At this time we do not have any funding coming into the agency from the federal government after the end of May. It is anticipated that they will pass something but most likely it won't be until the end of May. Even with that it's going to take a fair amount of time for FHWA and USDOT to analyze what has passed and get those funds to MDT. For us to advertise a project we need a

month of advertisement plus we need a couple of weeks ahead of that to get it over to FHWA and get the funds obligated. So even if they pass the funding at the end of May, it will be six weeks before we can get a project essentially to bid. With that we've had to move some projects out. Roughly we've moved out \$76 million worth of work and about 24 projects to a later letting. We anticipate letting those later in the year but we just don't have the funds given where we are today. The Letting List that you have today is accurate with that plan in place.

The other thing we are asking you to do at this time, you already approved double lettings per month up through May or June but with the delay of these projects, its asking MDT and the contractors to advertise and bid on about 49 projects and a little over \$100 million. Trying to get all those done within two lettings, August and September, is unreasonable and unfeasible for our staff as well as the contractors out there. So we're asking the Commission to approve an additional letting in the month of July and the month of August and the month of September. That will allow us to spread those project out a little more and allow the contractors to have a little more time to bid on some of those projects given we won't be asking them to bid on such large lettings.

So there are two actions we're asking you for today: (1) to approve the Letting List as presented to you today, and (2) give us three additional lettings, one the end of July, one the end of August and one the end of September.

Commissioner Howlett said in a previous discussion we talked about priorities. We talked about the projects that were safety projects or crash data that put them in a position of being a priority. Is this list reflective of that? Dwane said yes. We prioritized based on the following criteria: (1) pavement preservation on the Interstate or NHS System, (2) safety, and (3) structurally deficient bridges. Beyond that and to be very clear those three areas covered exactly what you're going to see in the Letting List through July 9<sup>th</sup>. Commissioner Howlett asked how the Kalispell Bypass fit into that. Dwane said it doesn't; it was moved outside the funding we have available to MDT today. Commissioner Howlett said if the List includes August and September and part of the August listing, therefore it should include projects related to the Kalispell Bypass. Dwane said this is a project that you approved through the TCP. It will be funded if we get an extension or a Continuing Resolution that gives us additional funds. We are not committing the funds we have available to us today to the Kalispell Bypass.

Commissioner Griffith said when we had funding problems on the airport side, we went from holding bids for 60 days to 90 days for the contractor to hold his bid. Is that a possibility to try and bid the projects out so you don't end up with a cluster all in the same two-month period? So bid them out earlier than you think even though you don't have money. Dwane said that was an option but it's banking on what Congress is going to do and I would defer that to the Director. I think that is very risky business right now. Director Tooley said this Letting List represents my maximum comfort with risk. Commissioner Griffith said that would give you another option; it doesn't say you have to award them, it just says hold the prices so you've got an extra month. Then you can squeeze it into three month rather than two. Dwane said you are correct. Something I would add is that you're adding risk to the contractor whether or not he actually gets it or not. We've heard loud and clear that they are not very happy with us when we bid a project and then ultimately don't award it or pull it back because they've invested a fair amount of time in the bid. I think we're also addressing the issue by bringing in additional lettings. Unfortunately it doesn't lock that price in early but it reduces the risk of not knowing exactly what's going to go on. The other thing we're flirting with right now is fuel prices. We've seen them drop quite substantially and now we're seeing them climb back up. Nobody really knows where they're going to level off. That's a risk for them and the longer they have to sit on a project not knowing whether they can go to work or not, fuel price is going to weigh in their mind. Commissioner Griffith said

there's always a risk. It's also good for the contractors to line up work if the money comes in. We've got to consider ourselves a going concern. In the last 20 years have they ever not funded the Department? The answer to that is no, they always come through at some point in time. So I think the risk is miniscule. I understand your concern and you've got to balance the budget. I'm just saying that gives you another month if you add another 30 days to the length of time you can hold bids. They know what the problem is and they know we can't fund a project without federal reimbursement. Dwane said that requires the agency to AC Advance Construct. Commissioner Griffith said he didn't mean go build it, I'm just saying bid it and hold the bid for 90 days. That gives you another month to get funding.

Commissioner Lambert said but we've never been \$17 trillion dollars in debt before. Isn't there something we can do to put everything on hold? Is it wise to spend what we do have or can we keep something in an emergency type account? Dwane said we did reserve approximately \$10 million in our plan for contingency and emergencies. We're coming into spring and we typically have some flooding and/or landslides, so we thought it was prudent to reserve some funding. The short answer is yes we could sit on even more but my concern is that loads up the projects at the end of the year and it also doesn't get the work out to the contractors where they can begin. It was our opinion that we wanted to get as much work out the door as we could with the funding we had available and not add to MDT's risk and not add to the contractor's risk. Wait until funding is approved by Congress and when it is then we will expeditiously try to get the remaining projects out the door as soon as we can. Commissioner Griffith said his concern is our construction season is five months long if we're lucky and in some places like Elk Park it gets down to three months. If we lose any time with that, we're going to be hurting. While you're right if this were in December it wouldn't matter because we wouldn't have to build anything until March but you're taking the cream right out of our construction season. Commissioner Lambert said her trust in the federal government was not real great at this point. Commissioner Howlett said about 80% of America feels that same way.

Commissioner Cobb said you could actually have more money coming in. The flexibility we need is once the money comes in, can you move things forward then? You have some things put out to October, can you move things forward? How capable is the staff to move things forward say from October to August or from August to June? That gets kind of messy. You've moved some things out but how fast can you move them back in? How fast can you turn this big ship to move things up? Director Tooley said this Letting List is part of the Contingency Plan that took all of that into consideration. Our plan at the end of the day, which is why you still see Kalispell Bypass in there, is to deliver the entire federal program for this fiscal year previously approved by the Commission. All we've done is put ourselves in a position to where we can mitigate risk. It is way easier to draw things back than it is to accelerate at the end of the year. We're putting some faith in the Congress. Could things move slightly? Yes, but not a lot because staff is already going to have a tough time even cranking out this plan. This matches their capabilities. Commissioner Cobb said you had an original plan before and these got bumped out further. You already had them scheduled didn't you? Director Tooley said they were ready to go. For example, the Kalispell Bypass is ready to go today. Commissioner Cobb said if you start hearing things, can you move things back to the July Letting if it's ready to go? Director Tooley said if it's ready to go but it's a lot easier to move it back in closer to where it should have been. Dwane Kailey said we've asked staff to do as much as they can and start working on the projects to get them ready to go as soon as the money becomes available. A prime example is the Kalispell Bypass which is down in Contract Plans today; they are working up that plan set and will have it ready to go as soon as we get the money available to go ahead and obligate it. Does that mean we can move it into June? It depends on when Congress acts and passes a bill.

Commissioner Howlett said I've been through this Letting List and the three criteria you outlined – Hungry Horse Bridge isn't in there. Director Tooley said it is in the

program but it's not scheduled. Commissioner Howlett said it had entitlement money associated with it. Dwane said its next year's project in the TCP. Commissioner Howlett said we all thought that would become a higher priority. Director Tooley said it actually has been accelerated. Commissioner Howlett said that bridge is a disaster waiting to happen. We've got four projects for a big amount of money and we can't get that bridge done which has more consequence to the Department because Hwy 2 gets shut down if that bridge fails.

Commissioner Cobb asked about the rock fall mitigation in Wolf Creek Canyon Phase I, is there going to be another phase right away or is that put off another year. Dwane said it's out a year or two.

Commissioner Griffith moved to approve the Letting Lists/Proposed Lettings. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### **Agenda Item No. 10: Amended Access Control Intersection of Bridger & Griffin Drives**

Dwane Kailey presented the Amended Access Control for the Intersection of Bridger & Griffin Drives to the Commission. This is an Access Control Resolution that we need to amend. The Resolution has the approach located at 23+55 on the left (referring to map). The picture shows the existing approach. We are asking to adjust that approach to 23+35 on the left which will match up with the existing access easement. Commissioner Griffith asked why it had to be curved. Dwane Kailey said he assumed there were utilities or some other obstruction in there that they were trying to avoid. Commissioner Griffith asked if this was on the old Highway building property. Dwane said yes.

Commissioner Griffith moved to approve the Amended Access Control, Intersection of Bridger & Griffin Drives. Commissioner Skelton seconded the motion. All Commissioners voted aye.

The motion passed unanimously.

### **Elected Officials/Public Comment**

No public comment.

### **Directors Discussion & Follow-up**

#### *State Funding and Legislative Issues*

Director Tooley said the Legislature treated us pretty well. They approved the Department's budget for most of the things we asked for. We can carry on our Construction and Maintenance Program which is the bread and butter of the agency. We did not get more Safety Engineers which was disappointing as well as a couple of other personnel in Maintenance that we needed. We also didn't get \$1.2 million in federal pass-through authority for Transit. We are going to try and put that back in the Senate. The positions we're going to let go; we understand that. There was a long discussion on fund balance on the state side within our budget subcommittee. We've talked about this before, the income has been pretty flat and the expenses have gone up. The Subcommittee discussed that and took some action. On the full Committee side, the Division of Motor Vehicles has \$12 million per biennium that has been stripped out of the Gas Tax Fund and put in the General Fund. Where that winds up we don't know yet. At the end of the day, based on our own analysis and where the Legislature is at, we have a positive fund balance through this next

biennium. We don't have enough to do things like advance construct big projects like the Kalispell Bypass. We have to manage our cash a lot closer than we have in past years because our fund balance isn't as healthy; right now it's about \$54 million. That's a lot of money but we're also pushing a lot of money out the door and because it is a reimbursement program with the federal government, we need to have good healthy balances of cash. To address that issue we and the contractors have asked for a study resolution of the Highway Special Revenue Fund – the income, the outgo, who's in and who should be out. That has resulted in HJR 24. Representative Curdy is introducing that and it has a hearing on the 30<sup>th</sup> and needs to be passed out right away. There is interest in that.

There is also interest from Senator Rosendale to do something in the Revenue and Transportation Interim Committee if a study resolution doesn't occur. So the Legislature's eye is on the issue and they are going to try and react to it. What it will look like, we don't know. The good news is they are talking and not just sweeping it under the rug. They care about transportation; they know it's a jobs program and good things like safety come out of it so they are looking pretty hard at that. So we'll see where this study resolution goes and what the Interim Committee decides to do and we'll participate in that.

Commissioner Howlett asked if there was a possibility of hiring more safety engineers through attrition. Director Tooley said there's always vacant/empty in the Agency and we just have to analyze that. It's a function of balance and authority. Commissioner Howlett said that is where your money is at because we've doubled the amount of safety funds available. Director Tooley said we haven't given up on that. Commissioner Howlett said if we can't get the projects out, it defeats the purpose. Director Tooley said we have a lot of work to do in Safety. We were disappointed in that. The message is pretty clear on FTE's. We will look internally and see if there are some adjustments we can make for those type positions.

### *Legislative Actions*

You've probably heard HB 97, the Construction Manager General Contractor, died on the Senate floor on third reading. It happens but it shouldn't have. Next time we'll see if we can get that one unstuck. We made it a lot further than we did last time when it didn't even get out of Senate Highways and Transportation. This time it made it past second reading and we were pretty confident it was going to pass third reading but there was some work done by the opponents at the last minute. Even though it's disappointing that it didn't pass, we had a great coalition between ourselves and the contracting community. We all stood up and there was not one single opponent to this bill throughout all the hearings but we still lost. I think we can get it next time but it's just going to involve more communication and education. What that means to you is the Commission would see some different type of contracts come forward, for example, Whitefish West. That would have been a great project to apply this to. You could have brought a contractor in earlier to help sequence it properly and not get so many phone calls about business impacts and utilities. That's why we were disappointed and why we'll try again.

We were very successful in some of our other priorities including some cleanup on the Gas Tax. We also were very successful in making sure your authority wasn't given away to other entities. All those bills failed to transmit and the Commission emerged unscathed.

Commissioner Howlett asked about speed limits. Director Tooley said SB 375, Senator Stales' bill, Dwane worked very hard on that bill with Senator Stales and the Patrol. We wanted to make sure there wasn't a simple blanket 80 mph speed limit and we wanted the Department and the Commission to be able to weigh in on that. We saw it as a potential safety bill. We wanted the Commission to have a greater ability to look at some of the places where you shouldn't drive 75 mph. If it's not

amended out, it will actually broaden your authority to deal with speed limits on the Interstate. Commissioner Griffith asked if it would affect the 65 mph speed limit going through areas. Director Tooley said it should not. Commissioner Griffith said he drives through Idaho and Utah and since they raised the speed limit to 80 mph I felt way more unsafe than I've ever felt on those roads. I know I'm preaching to the choir. Director Tooley said our desire was to take a look at the speed differentials on two lanes and do what we did in Sidney but that wasn't attached to the bill. So it's kind of a mixed bag. The Legislature is down to the last 30 days and now it's all about money and we're part of that discussion. The Legislative side overall has gone fairly well for the Department.

Commissioner Howlett said if there is anything that happens on the federal side, get the Letting Lists out to us and we'll try to get things approved on a Conference Call so we don't have to wait. Dwane Kailey said we would be more than happy to do that.

### **Next Commission Meeting**

The next Conference Calls were scheduled for April 7<sup>th</sup>, April 28<sup>th</sup>, and May 12<sup>th</sup>. The next Commission Meeting was scheduled for May 28, 2015.

### **Adjourned**

Meeting Adjourned

Commissioner Howlett, Chairman  
Montana Transportation Commission

Mike Tooley, Director  
Montana Department of Transportation

Lori K. Ryan, Secretary  
Montana Transportation Commission