

Minutes of Nevada Department of Transportation
Board of Director's Meeting
September 9, 2013

Governor Brian Sandoval
Attorney General Catherine Cortez Masto
Controllor Kim Wallin
Frank Martin
Len Savage
Tom Fransway
Rudy Malfabon
Bill Hoffman
Dennis Gallagher

Note: Lt. Governor Brian Krolicki was absent, but excused, due to State business.

Sandoval: Good morning, ladies and gentlemen. I'd like to call the meeting of the Board of Directors for the Department of Transportation to order. My understanding is that the Lieutenant Governor is not going to be present today. He's traveling internationally and that the Attorney General should be with us in short order. So we'll commence with Agenda Item No. 1, Director's Report. Director Malfabon, if you'd please proceed.

Malfabon: Thank you, Governor. Lots to report this month. Currently, Congress is getting back in discussions about what to do with the budget for the next federal fiscal year. We anticipate that they will pass a continuing resolution for transportation. There's a lot on their plate with the deliberations about what to do about Syria and the federal budget in general, as well as some other major issues that the committees that deal with transportation are also going to deal with, such as water resources projects and -- across the nation. So with that continuing resolution, we anticipate that we'll just continue to receive about what we've been receiving until Congress passes a federal budget for transportation.

Recently announced the 2013 round of TIGER grants, Pyramid Lake Paiute Tribe was successful in getting a \$2.9 million grant for Pelican Point Road Project for better access to Pyramid Lake. They've had some issues with flooding in that area, so they hope to make some improvements to address that. That will be under the 2013 round of TIGER grants though. That one is going to be funded. But future discussions between the Senate and the House are in disagreement on the TIGER Program and whether it will be

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funded. In the Senate version of the bill for the budget they're talking about a \$550 million program for 2014 for TIGER, but the House version doesn't have any money for TIGER grant.

In other news...

Sandoval: Excuse me.

Malfabon: Yes.

Sandoval: If you -- I'd like you to put in context how -- what a great success it was for the Pyramid Lake to get that TIGER grant.

Malfabon: Yes, it was -- there were over, I think -- for a \$474 million program, I think there were something like billions of dollars of applications that went in, so it was very competitive. Most of the recipients were non-DOT type agencies, so the Paiute Tribe at Pyramid Lake was successful in competing for that. It's a great -- I think that it goes towards their ability to submit a successful grant and to be -- I mean, a very competitive process. I think that the tribe did well. Comparably speaking, we had several grant applications from Lake Tahoe from the RTCs, so considering a small tribe like Pyramid Lake being successful in that type of competition, it speaks well of them.

Sandoval: Yeah, and I -- when you told me about that previously I thought it was absolutely remarkable, and perhaps we should send some type of a letter of congratulations to them. But...

Malfabon: Will do, Governor.

Sandoval: ...we're very meaningful out there.

Malfabon: As far as the other news in the state dealing with funding for transportation, last Tuesday the Clark County Board of Commissioners approved the fuel tax indexing which was passed by the legislature and approved by you, Governor, to allow them to implement similar to what's already been implemented in Washoe County; indexing the fuel tax to a price index so that there's not as much ground loss to inflation. With that result, eventually the Regional Transportation Commission of Southern Nevada will approve the projects -- the preliminary list of projects, 183, totaling nearly \$700 million in projects that would go to Clark County and the cities of North Las

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Vegas, Las Vegas, Henderson, also Mesquite and Boulder City to do some projects.

Within that 183 projects there are two projects that are NDOT projects. And on the list we're slated for \$31.2 million for Phase 1 of Boulder City Bypass. That is the phase that we currently have under the initial project construction doing the fencing and doing some preliminary work with plant salvage. Eventually, we are going to advertise the frontage road project and then the main line project. We will be entering into an agreement with the RTC to coordinate the interchange with U.S. 95, so that we'll work out the timing of the project so that it is in alignment with the RTC Phase 2 project, which will be funded out of that \$700 million. There's also the \$6.4 million for U.S. 95 and road to Durango Road widening in Las Vegas there in the northwest.

Sandoval: And, Mr. Director, what timing are we looking at now, because that's obviously going to accelerate the completion of at least our piece of the bypass? What are we looking at from the state line to 95 there?

Malfabon: They are looking at putting out \$21 million towards the design effort to package a design-build contract which would be about a year from now to be awarded to a design-build team, so -- and we're thinking about a couple of years. So we're looking probably three years to completion, roughly, which is about the same timeframe that we would like to deliver our Phase 1 contract. So we have to accelerate a little and them giving us the \$31.2 million to Phase 1 would help us to accelerate that project.

Sandoval: And are we on track with regard to the property acquisition as well? I know there's litigation associated with that.

Malfabon: It's going to be dependent on the litigation, Governor and Board members. There's several cases. I'm going to -- they're doing depositions and I'm going to be deposed this week for one of the larger (inaudible).

Sandoval: You look so excited about that.

Malfabon: Yes. You have to remember things that happened several years ago, and it's taxing on one's memory sometimes.

Sandoval: Mm-hmm.

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Malfabon: But it's something that we'll have to go through, the court process. We're thinking they'll start between now and about a year that it's going to take about that long just to get through several cases, not only with Boulder City Bypass, but Project Neon, several imminent domain cases where we feel that it's better to go to court and -- rather than to pay some inflated amount that the other party may be asking for unfairly, in our opinion, because we always have a fair process in acquisition. We base it on the current information of appraised value. And we know that things are happening in Las Vegas where comparable sales are rising and we're willing to look at that information, but often a landowner will not give us information, just throw out a number and expect us to settle or give them that amount.

Speaking about the other major project, Neon, we are proceeding with -- the statement of qualifications was released. We'll receive that in a few more weeks, receive -- have a firmer idea of how many teams are actually going to proceed through the development of the proposal and ultimately submission of proposals for that project.

When we get proposals submitted and they're of adequate quality, then we will pay a stipend, which will be approved by the Board to release to -- for the efforts -- to pay for the efforts in developing that proposal which will be substantial. The stipend won't pay for all that effort, but it will be a substantial amount of stipend, over \$1 million.

The acquisition continues with Neon, negotiations with property owners. In some cases we have to prepare to go to court in some cases where we can't reach a settlement. But even when we go to court, Governor and Board members, we still try to negotiate a fair settlement for both parties in consideration of any kind of risk that could be mitigated or keeping the project going. Definitely, we always consider what is reimbursable by the Federal Highway Administration also in those determinations.

As far as the issue that's been in the press recently about equity, we will prepare a formal presentation to the Transportation Board for next month's meeting on this issue. It's been in the press as far as Clark County feeling there's inequity in providing information recently. We're looking at our work program and the years that projects were obligated. Between 2008 and 2012, about 60 1/2 percent of the state fuel tax revenue was raised in Clark County. And when you look at all the combined transportation funding that

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went back through Clark County, either federal funds flowing through NDOT to the RTC or NDOT funds state or federal, 55 percent roughly was spent in Clark County. We know it still doesn't pay back all the money that's raised in Clark County, but there is a responsibility of the Department of Transportation to take care of the needs of the rest of the state, particularly rural Nevada and the state routes and also some of the major U.S. routes that are important for the movement of freight and for tourism and for recreation, and for the residents of Nevada.

One thing to note is there are some major routes that go north and south. You have U.S. 95. You have U.S. 93, which is part of the NAFTA Corridor for trade internationally. So we have responsibilities throughout the state. We know that a lot of money is raised in Clark County, but we have an obligation and, in fact, have to make a commitment to the Federal Highway Administration to keep our entire system in a state of good repair, as an obligation of receiving federal funds.

But as I said, we will present to the Board a bigger picture of about how many dollars are raised in Clark County and across the state. I know that Member Fransway was interviewed recently on that issue of the rural counties and how much is raised there and what ability they have to increase fuel taxes in their areas. Anyone that's traveled across rural Nevada knows fuel tax -- I mean, fuel prices, gas prices in rural Nevada, gas stations are particularly higher as you leave the city, leave the urban area. There's more cost for transporting the fuel out there to the -- to the dealer. But it's an issue that, as I said, we'll cover more in detail next month.

We did have some flooding damage recently. I know it's raining in Southern Nevada today. We've had some issues with State Route 375 and also U.S. 93 near Alamo. We will have some emergency contracts to repair the road, but our maintenance folks have been doing an amazing job in -- day, night, weekends, whatever it takes to repair the damage to some of the roads that were damaged by floods and to keep traffic moving. I know that one that was important recently with the Burning Man event in Black Rock Desert. We had some issues in the weeks previous to that event with flooding damage, and they were able to get that road back open and passable to the -- to the community that was going out there for that event.

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Another project that you may have read about recently which caused some confusion in the press, because it's -- on U.S. 50, we've been joining forces with Carson City Inline (sp?) County Sheriff's Department on safety and building awareness out there on that corridor, where there's been a large amount of accidents and fatalities. We have a project coming out on U.S. 50, an overlay project which had some safety elements, so some safety improvements including median islands and some channelization of the traffic there on the road up to Virginia City. So that project is going forward. We'll advertise for bids and it will be constructed. So there was some misinformation in the press and letters to the editor that that project was cancelled, and we confirmed that that project is going forward.

Another thing to report, we did our speed study on the freeway here between the part in Washoe Valley there where it goes from 70 to 65 and then it continues up through Mt. Rose Highway to the urban area. The speed study was completed and that will be raised to 70 miles per hour speed limit in that section to match the 70-mile-per-hour speed limit in the flat area there where it's a divided highway. That just took some time to complete the study. And there were some lane closures recently. You may have noted some work on the barrier rail. That's being done by the subcontractor to repair some problems with the face of the rail.

Recently, I rejected a bid for slope flattening, a safety project on U.S. 93 near Winnemucca, a \$7 million project. We don't do that lightly, but we had an area that was a concern for us that had exposure for the state for a major change order or an inconvenience to the public traffic because we didn't have our limitations on stopping traffic if there was rock blasting for excavating that rock area. We feel that it was in the best interest of the state to reject all bids and re-advertise. We don't like to do that because all the price information gets out there on a competitive basis, but it was the best thing to do, because it could have been a substantial change order according to staff's recommendation on that. So I accepted that, had some discussions with the apparent low bidder, but in the end we can't get into a contract relationship before we award and we were in a catch 22 where we had to reject bids based on staff recommendation for that.

On a sad note, we will be losing our pilot again. Unfortunately, Pilot Marcus Thomason is leaving. When he had applied for the position to return to NDOT, he had an opportunity that he had also applied for at the

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same time with Boeing, and he will be taking that position shortly. And we are in the process of repairing some unintended damage to the nose of the plane caused in an accident with the tug hitting the nose of the plane caused by -- not by Marcus, but we'll get that repaired. And we're going to look at trying to fill the copilot position, at least, so that we can have the copilot flying with an intern. But that person has to go through the safety and training aspects to operate that specific plane, so it won't be immediate. So that's an unfortunate event there that I wanted to report to the Board, because I know that we have a lot of business in Las Vegas. We use that plane very cost efficiently and cost effectively to make those trips to Las Vegas, but it will be out of commission until we get that situation cleared up.

Sandoval: Do you have any estimate on what the -- how long it'll take to replace Marcus?

Malfabon: I don't at this time, Governor. We...

Sandoval: That means a long time.

Malfabon: Yes.

Sandoval: Yeah.

Malfabon: It could be weeks unfortunately. Marcus probably has some interviews to do -- conduct before he actually feels comfortable with hiring the copilot. I know he was in the process of doing that and it's -- we still would abide by his recommendation on that since he's got a lot of experience in that area.

On the old business next month, Governor, we will have the freeway service patrol backup. One of the items that came up before was the approval of that contract for the Reno-Sparks urban area. And we didn't have the backup on the hourly cost of self-performance versus the contractor. We were unable to get it into -- before the deadline on this packet, but we will have it as part of the packet for the October Transportation Board meeting. And I think that that covers all of the items that I wanted to cover in the Director's Report.

Sandoval: Okay. Thank you, Mr. Director. Board members, do you have any questions with regard to Agenda Item No. 1?

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- Martin: I don't have any questions, Governor, but I would like to commend Rudy and his staff for this bid rejection that he did. I know that him and his staff didn't do that lightly. They called -- had the courtesy to call me up and consult with me, and I'm certain they did with other Board members as well. And I wanted to thank the staff for allowing us to participate in that very difficult decision. It's one that I totally supported. So, Rudy, you're not hung out there by yourself, okay?
- Malfabon: Thank you.
- Sandoval: Thank you, Member Martin. Any other comments or questions? Member Fransway.
- Fransway: Thank you, Governor. Mr. Director, I'm just curious. Now we have two RTCs in the state that are utilizing the formula for indexing. And are they different formulas? Are they -- who makes the formulas? I'm very curious to learn more about indexing as we go through the issue of funding in the state.
- Malfabon: Member Fransway and Board members, I think that we can cover that more in detail when we talk about the equity presentation in October. But I believe that they are two different formulas. They're producer price index, PPI, but I think that from the testimony that I observed during the discussion on Assembly Bill 413 that they were different formulas, and that was one of the issues that some of the members in the legislature had with it.
- Fransway: Okay. So if you would add that to the informational item when we discuss that next meeting, I would, for one, would be very appreciative.
- Malfabon: Definitely.
- Fransway: Thank you. That's all, Governor. Thank you.
- Sandoval: Thank you, Member Fransway. Any other comments? We will move on to Agenda Item No. 2, public comment. Is there any member of the public here in Carson City that would like to provide comment to the Board? Any public comment in Southern Nevada?
- Cortez Masto: No, Governor.

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- Sandoval: Thank you. I just -- I have one comment which was to acknowledge the presence of Irene Bustamante Adams, our Assemblywoman. Thank you for being here today.
- Malfabon: Yes, thank you. Governor, I did have one comment on the Agenda. We have the DBE disparity study presentation item. We will not be requesting Board approval of the 7.5 percent, so you don't have to take formal action. It's just for information, but we would just like feedback on the presentation and the intended -- the intention is to forward that to Federal Highway Administration for approval formally before it comes back to the Board after the public comment period.
- Sandoval: Thank you. Agenda Item No. 3, approval of August 12, 2013 Nevada Department of Transportation Board of Directors Meeting minutes. Have all the members had an opportunity to review the minutes and are there any changes? If there are none, the Chair will accept a motion for approval.
- Wallin: Move to approve.
- Sandoval: Madam Controller has moved for approval. Is there a second?
- Savage: Second.
- Sandoval: Second by Member Savage. Any questions or comments on the motion? All in favor, please say aye.
- Group: Aye.
- Sandoval: Opposed no? Motion passes six, zero. We'll move on to Agenda Item No. 4, contracts, agreements and settlements.
- Malfabon: Thank you, Governor. Assistant Director for Administration Robert Nellis, his first opportunity to present this item to you.
- Nellis: Good morning, Governor, members of the Board. There's three contracts that were awarded under \$5 million on Attachment A. The first is a chip seal project for existing roadway on U.S. 395 in Mineral County. The Director awarded this contract on August 2nd to Sierra Nevada Construction in the amount of \$558,007. The second chip seal project was on SR 319 in Lincoln County. The Director awarded this contract on August 12th to

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Sierra Nevada Construction in the amount of \$1,174,007. Did the Board have any questions on either of those chip seal projects?

Wallin: Governor, I -- can I have...

Sandoval: Sure.

Wallin: Okay. On the second one that you mentioned, the engineer's estimate was \$691,000, and we awarded for \$1.2 just about. Can you comment on...

Nellis: Yes, we anticipated that question. Thank you.

Wallin: ...the gap?

Terry: John Terry, Assistant Director for Engineering. Similar to the answer in last month's meeting, this is again a chip seal in quite a rural area where we didn't have a lot of experience added to that. In this case, it's a newer product of a rubberized asphalt treating of the chips that we had not really used previously. We were off on our estimate of what those were. And, again, I would say that we looked at -- we could have re-advertised the job as a regular chip seal, but we were advised against that because we felt this was a better treatment for these roads. So I guess added to that is the second and third bidders, et cetera, were very close to the first bidder, and so in our analysis it was a reasonable bid and our estimate was off due to the specialized nature of the product. We will, of course, look at using this product in the future and using the information from this bid before we consider using it again.

Wallin: Thank you.

Sandoval: One quick question on -- you're using that rubberized product. Is that the recycled tires product?

Terry: I get a nod of the head. Yes, it is.

Sandoval: No, and I don't recall. I know we have an entity in North Las Vegas that supplies that product, but there's also another one in Arizona. Do we have any idea of where the contractor is going to acquire that product?

Terry: We could get back to you, and we don't know that yet, but we could follow up and get you an answer. Obviously, we can't dictate that.

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- Sandoval: I understand.
- Terry: We believe that they're getting it from Cedar City, Utah, but we will confirm that.
- Sandoval: And, again, I -- with my remedial knowledge of that product, is it lasts longer and it's a better product. So we...
- Terry: For certain applications, absolutely.
- Sandoval: Yeah, okay. Please proceed.
- Nellis: Thank you, Governor, members of the Board. The final item, Item No. 3, is a waterline backflow upgrade for the District 2 headquarters maintenance yard. The Director awarded this contract on August 2nd to Sierra Nevada Construction in the amount of \$623,007. Are there any questions on that item?
- Sandoval: Not that item, just that I guess somebody would notice that the same contractor got all three contracts. Is that just the way it worked out?
- Nellis: I asked that question as well and that's just the luck of the draw. It was just their turn, I guess, on getting the low bids.
- Sandoval: A little more than luck, I guess, but -- and I mean that in that they just essentially, as you say, were the low bidder each time.
- Nellis: Correct. Yes, sir.
- Malfabon: They were all on the same date too as the bid, so I'm sure that he's probably going to be thinking how is he going to do all three. But I think that he can. He bid appropriately.
- Sandoval: Mm-hmm. Yeah, all right. Any further questions, Board members? Thank you very much.
- Nellis: Okay. The second item is Attachment B. There are three pages of executed agreements under Attachment B, 1 through -- Items 1 through 35, starting on Pages 7 of 9. Did the Board have any questions on any of these items?
- Sandoval: Madam Controller.

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- Wallin: Thank you, Governor. I have a question on Items 33 and 34. They're the expert witnesses for, let's see, they're doing real estate appraisals. And my question is are they local or are they from out of state? Because I'm concerned if we have real estate people coming from out of state. They don't really know the conditions in our community, so that's my question. Are they local or out of state?
- Sandoval: Sure.
- Gallagher: For the record, Dennis Gallagher, Counsel. Madam Controller, I believe -- but I will double check and get back with you. I believe that both of these providers have offices in the State of Nevada. Whether or not they're main offices, I'm not sure.
- Wallin: Okay.
- Gallagher: But I will get you that information.
- Wallin: Yeah, because I've just been concerned when I've seen some of our estimates of what our right-of-ways are going to be bought for and then we settle for double or even more than that than what was appraised and stuff. And I think a lot of those appraisals were done by out-of-state. You know, granted, yeah, they have an "office in Nevada, they're licensed in Nevada," but they don't work in Nevada. So I was just (inaudible).
- Gallagher: And if I may, Madam Controller, both of these entities were selected for litigation purposes. These were not entities that are selected to do appraisal work on the front end, just to determine just compensation.
- Wallin: Okay. All right. Thank you.
- Sandoval: Other questions from Board members?
- Fransway: Governor?
- Sandoval: Member Fransway.
- Fransway: Thank you, Governor. Number 2, I have a hard time making the math work, and my mathematician when I was in grade school probably would agree with me that five years at \$350 a year I assume is a misprint there

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somewhere. Even if it's a month, I can't come up with a receivable amount of \$6,600.

Nellis: Is it the full amount for 15 years?

Unidentified Male: Includes...

Fransway: What is it?

Malfabon: Oh, it's 20 years.

Nellis: Twenty years total.

Fransway: Okay. But it says -- okay. So we're going to be receiving that over 20 years with -- renewable in 5?

Nellis: Correct, 5 on top of 15.

Fransway: Okay. So that's where that came with -- the math came with 20 years.

Nellis: Right. Yes, sir.

Fransway: Okay. At \$330 a year?

Nellis: Yes, sir.

Fransway: Okay. Thank you. Now, number 18, I see where we are contracting for weather forecast. And I'm wondering if we could utilize the NOAA system, which is a national system that's free. As a pilot I find that very effective and informative, and \$206,000 seems like -- quite a little bit for that when there may be another source. And it's just a question. If it's not appropriate then we can't use it, but I would think that maybe we could look into that.

Malfabon: Governor, I'll respond to that. Typically, what we're looking for in weather forecasting is a very kind of drill down into microclimate areas for maintenance forces, and we're putting in a lot more of these roadway weather information systems to tell us about the conditions in a specific area. But we've also found that some of the more available sources such as NOAA or other national weather sources are not giving us all of the information that we would need to make some of the maintenance decisions, particularly in the winter storm areas. So that's why we go out with an RFP

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for this type of more detailed information. But it's something that we can look into in the future to see if any changes have been made.

But between us putting out our devices on the road to tell us more specific information and what's available at the national level, we might be able to make some changes there, but that's why we have been doing it through this type of provider. I think it's a different provider this time than before, so we had an RFP to get a competitive procurement.

Sandoval: And I had that one circled as well. And does this individual work with the state climatologist at all or is there any overlap there?

Malfabon: I don't know. Denise is here. Oh, it's Anita's -- Anita Bush is our Chief of Maintenance and Asset Management Division, and she can respond to that question.

Bush: For the record, Anita Bush, Chief of Maintenance and Asset Management Engineer. And Schneider Electric, the name is misleading. This is DTM and -- let me look at my email. But they have been bought out, that company -- that weather company that have been doing weather forecasting for like 20 years. And I don't know if they work for the state climatologist or not, but we can look into that. It's...

Sandoval: No, and I -- just this -- I didn't know we paid \$200,000 for two years for forecasting. Do we know, does it work? Has it saved us money? Is it worthwhile?

Bush: Yes.

Sandoval: I mean...

Bush: (Inaudible).

Hoffman: Governor, if I could. Bill Hoffman, for the record, Deputy Director. I used to be in Anita's position as the state maintenance engineer. From our records, it does show a very good savings. A lot of these forecasts are very -- are road specific, and there are forecasts that go down to the crew levels. So if you can get a jump on a storm, say, 15 or 30 minutes ahead of the storm coming in and mobilize your maintenance crews, there's a huge

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benefit in savings in trying to keep the roads clear instead of trying to then deice or remove larger snow pack later.

So although we don't have the specific numbers at hand, it's shown a very good value in the past for what we're getting in terms of the cost that we're paying for the weather forecasting service. So it's extremely beneficial and it is -- there are large cost savings to paying for this very specific weather forecast. NOAH, they actually put winter weather models together and they use, you know, they use NOAH information. They use their own model information, but it's very complex. And, like I said, it's very specific to the actual roads, and there are weather forecasts going to specific crews all over the state, so...

Sandoval: Right. I mean, I think something else that bears mentioning is I imagine has a lot to do with safety of the drivers out there on the road too.

Bush: Also, and then we don't have to call them in for overtime. So we really minimized overtime with that.

Sandoval: I know I'd rather have the sand out on those icy roads before rather than having to react, so that's just good to know. When we look at it and we see one sentence, we don't always get the full picture.

Fransway: So, Governor, it sounds to me as though the current system with these people onboard helps the Department to be proactive rather than reactive when we need to be and it's crucial. So thank you for answering that for me.

Hoffman: Sure.

Sandoval: Tom, did you have any more questions? Okay. Member Martin, I understand -- I think I saw that you may have some questions.

Martin: No, sir.

Sandoval: Oh, all right. I thought you were reaching for the microphone at the same time Member Fransway was.

Cortez Masto: Governor, if I may. We were just referencing the Farmer's Almanac and why that would be a better source. But we recognize the new technology now, so we were just having that discussion here.

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- Sandoval: I'm sure we use all sources available to us.
- Martin: And along with that conversation went do we need to offer Member Fransway the pilot job?
- Sandoval: I don't know if I'm going to respond to that one.
- Fransway: Only if it has a tail wheel.
- Sandoval: All right. Members, do you have any further questions or is there any further presentation with regard to Agenda Item No. 4?
- Nellis: That's all we had, Governor.
- Sandoval: Thank you very much. We will move on to Agenda Item No. 5, relinquishment.
- Malfabon: Thank you, Governor. Under this item, this property is located along the freeway there, U.S. 50/U.S. 395 in Carson City. And for this specific parcel we had obtained it originally for construction of the freeway. It's now complete and operational. And the surplus property, a review process has taken place to review this request, and it's no longer needed based on the determinations and deliberations of that committee. So we recommend relinquishing this property to be used in the future by Carson City as a multiuse path along the freeway.
- Sandoval: Board members, do you have any questions with regard to this Agenda item? If there are none, the Chair will accept a motion for approval of the resolution of relinquishment as provided in Agenda Item No. 5.
- Fransway: So moved.
- Sandoval: Member Fransway has moved for approval. Is there a second?
- Martin: Second.
- Sandoval: Second by Member Martin. Any questions or discussion on the motion? All in favor, please say aye.
- Group: Aye.

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Sandoval: Opposed no? Motion passes six, zero. We will move on to Agenda Item No. 6, approval of the agreement and contract process approval matrix.

Malfabon: Thank you, Governor and Board members. Previous action by the Board in July of 2011 basically came up with the process for approval of certain agreements and contracts. And as we've gone through this process for a couple of years now we've noticed that there's been a couple of instances where we ask the question, well, was that written down before or what's the process. In consideration of the fact that it's better to be transparent, we brought forward some items for the Board consideration, but we wanted to - - as we put together this table, we wanted to make it clear about certain items that have come up in this last two-year period, and bring it before the Board for formal adoption as a policy.

So on the table that's attached to this Agenda item, you'll see under the second from the right column, Source. You'll see July 2011 Board meeting. That was clearly identified as an item that would -- was covered under the original policy adopted in July 2011 by Board action. The ones that we're trying to call attention to are NDOT Director's Office with an asterisk. We wanted to go through those ones and have discussion.

The first one is Line Item No. 4, amendments bringing agreements total over 300,000. You've seen agreements that have been approved or brought for your information that are, say, for 250,000 in the example in the notes. And let's say that we have a substantial amendment that then puts it over. Well, that type of agreement would have normally -- if it was over 300,000 would have required Board approval. So we're saying when an amendment initially takes the total amount, amended amount, over 300,000, we'll bring those to Board approval on that amendment. The next one is if it's under \$300,000 by amendment, that will be an informational item.

Another case of amendments over 300,000, those will be brought before the Transportation Board for approval regardless of the existing agreement amount. So if it's a substantial amendment and we feel that it's for -- appropriate for Board approval to bring those to you.

The next item amendment up to 300,000, but the existing agreement total is over 300,000. We'll give you an example. Let's say that we had an existing agreement of \$350,000, that would have already gone to the Board for

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approval on the original action, and we have an amendment that's substantial but not over 300,000 on its own as an amendment. So that would be brought forward as an informational item. In the example here it's -- we have an amendment amount in \$45,000. But the original agreement would have been approved by the Board, and the amendment is not in itself over 300,000 by itself, just it would be brought for informational purposes.

Claim settlements were covered under the July policy, adopted in July 2011. Construction Manager At Risk is something that we've been bringing to the Board for approval, but we wanted to memorialize that and adopt it as policy that these Construction Manager At Risk types of contracts -- when we have a contract of any amount, we'll bring it for the Board approval. And when we have the independent cost estimator service agreement, the ICE, we'll bring those -- if it's over \$300,000, we'll bring that for Board approval. If it's an independent cost estimator service agreement that's up to 300,000, we'll just bring it for information. The preconstruction services, that's the agreement that we have with the contractor to have their -- benefit of their input during the design phase. We'll bring that for Board approval.

Continuing on, Line 13 was already covered, 13 through 16 was under the original Board policy. Moving on to grants. Grants are just a normal activity that we consider that would be an informational item. Typically, when we receive grants, we already have to take that to Interim Finance Committee, and then the Board of Examiners, I believe, in some cases when it's related to a different type of mode of travel such as rural airports or rail, for instance.

The next page, Line 18 was covered under the original policy. Line 19, master agreements with task orders total authority up to \$300,000. If it's up to \$300,000, we feel that it would be an informational item. So what these are -- the master agreements can have several task orders, but if an individual task order is up to \$300,000, we would not bring it to the Board other than for information, not for Board approval. If it was over \$300,000, we will bring it for Board approval on a task order.

Next item was covered under the original policy for state purchasing. Nonmonetary agreements would be provided for informational purposes. Quotes, which what we informally call -- that's the informal bid process, so projects that are estimated to cost less than \$250,000, those are going to be

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under that \$300,000 limit, so we would bring those for your information. The other items through No. 26 were under the original policy.

Task orders for master agreements, we talked about that a little bit earlier, but these items are reported under the master agreement list, so they're not - - basically master agreements are -- you're informed about master agreements, but it's not something that's regularly reported as far as these task orders under that, unless it's within those dollar amounts that I previously mentioned. If it's above 300,000, it's going for your approval; less than 300,000, it's an informational.

Time extensions are just proposed to be informational only. That's the way that we've been enacting those. The Tort Claim Fund was previously under the July 2011 policy that was adopted. And utility relocation agreements, those are typically informational items. We follow the FHWA process on that. It's considered a right-of-way expense, so we're regularly entering into those for utility relocations on our projects. So it's a normal line occurrence and just brought for your information. So with that I just would request consideration. We're prepared to answer any questions about this table and kind of our thinking of our proposal here.

Sandoval: Any questions from Board members?

Wallin: Yes.

Sandoval: Madam Controller.

Wallin: Thank you, Governor. I have one question, and I don't know where it might be on here. We don't see it. But when we have instances like Meadowood Mall where we might have liquidated damages that they'll be paying us, and sometimes we have to pay liquidated damages too, right? Where would that fall into being reported to the Board?

Malfabon: Construction items are still within the Construction Division, working with the districts on those. Liquidated damages, things like charging of working days and assessment of damages are still kind of a construction level item. It would be incumbent on me to present that to the Board, so it would be my responsibility to mention to the Board as I did with Meadowood. We did implement liquidated damages at a subsequent date, but we didn't want to, in the case of their -- the Black Friday, and not to have finger-pointed about

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delaying him from completion because of cash flow. We did suspend them during that time until we received their claim. We did receive their claim subsequent to that, and we still disagreed with it. And then we, subsequent to that, implemented liquidated damages again.

But typically it's a Construction Division call, and that one has a special case because of the nature of the importance of the interchange in the Reno area and the incoming -- or upcoming Black Friday event. It was important for the Director's office to get involved, but that's not typical on construction projects.

Wallin: So maybe Construction Work Group might want to have that as something that we look at on a quarterly basis.

Malfabon: Yes...

Wallin: Okay.

Malfabon: ...that's a good suggestion, Madam Controller.

Wallin: Okay. Thank you.

Sandoval: Member Savage.

Savage: Thank you, Governor. And to add to Madam Controller's comments, so a significant change order on a project -- I'm a little bit confused between Line Item 2 for agreements over 300,000 and Line Item 14. If you could clarify if there's a number over 300,000 and below 5 million, because 14 does not have Transportation Board approval. And I know in the past that we've been asked to approve projects below \$5 million.

Malfabon: In response, typically we do not bring change orders. And a substantial change order, I will mention it during the Director's Report or especially during -- it's appropriate in the Construction Working Group to let the Construction Working Group members know ahead of time of substantial change orders that are going to hit. But typically we do not have any kind of Board approval of that change order process. We just bring it to your attention. Typically, any kind of things related to construction contracts. What's mentioned here is specifically the initial contract with the -- after

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we've received bids and we determine that it's appropriate to award to the apparent low bidder.

But as far as some of the situations that arise during construction and implementation of construction and oversight, we do not bring those issues back to the Board unless it's substantial like -- I will inform the Board. The Board is, say, definitely interested in certain cost growth on...

Savage: Mm-hmm.

Malfabon: ...change orders and such as that, so we do take note of that. In the interest of transparency, we mention it either in the Construction Working Group meeting or if it's substantial I mention it during the Board meetings in the Director's Report.

Sandoval: Well, if I may, perhaps we should consider some type of a threshold, because if there's a significant amount of change orders, I would like to know that. So I don't know what that threshold would be, but what percentage of the original contract if it starts to go up, I think it's important that we know, because that's typically a signal that there may be an issue later on.

Malfabon: Yes. Governor, if I may suggest then would be have an item -- Agenda item on the next Construction Working Group meeting to talk about change orders and approvals.

Savage: I think that's -- I think that's fair, because I know at one time we were asked at this level early on. I think a couple years ago we had talked about changes, but I think that's why the Construction Work Group has been appointed by the Governor, and I think we can work through those items. But back to Line Item 14, I know at times we were asked here at this level for projects and agreements below \$5 million. Am I mistaking on that?

Malfabon: Do you recall which specific project? Because usually if it's less than \$5 million, we report it as an informational item such as the ones today. I can't think of any that were under 5 million that were brought for formal approval.

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Hoffman: Governor, if I could real quick. For the record, Bill Hoffman. I'm thinking the one project that you may have -- that you may have approved that was under 5 million was probably the bike path up at Lake Tahoe.

Savage: Mm-hmm.

Hoffman: It was a CMAR project, and all CMAR projects come before the Board regardless of dollar amount. So that might have been the one that you were thinking about.

Savage: I think you're right...

Hoffman: Okay.

Savage: ...Mr. Hoffman. Thank you. Thank you, Mr. Director. Thank you, Governor.

Sandoval: Any other questions from Board members on this Agenda item? I have one, and I don't know where it may or may not fall. But what comes to mind for me is that EPA enforcement action, and that was something that went for months without the knowledge of the Board. And so where would that fit so that we as a Board would be aware of that?

Malfabon: Typically, Governor, if there's any types of exposure to the state, we typically would mention that. But if it's something as complex as the EPA stormwater program and the audit, I think that it's incumbent on us to have it as an initial briefing to the Board so that you can get all the facts and understand the exposure to the state, and give us direction accordingly.

It wouldn't normally be something that -- in the case of the EPA audit, we were anticipating that we were going to have the substantial consultant contract before you for approval, so we had that as the presentation. But we have to foresee when there's something that's -- where the state has a significant risk or exposure, we could have it -- and if it's a complex issue, we could have it as its own Agenda item so we can present that to you so that you're well informed ahead of time.

Sandoval: No, and again I -- it's one of those things that fortunately it doesn't happen often, but when it does, I'd like to know before we hear we're, you know, it's a matter of how much rather than if and perhaps provide an opportunity

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for more dialogue between me or a member of the Board and the EPA to try and head those things off.

Malfabon: We'd appreciate that, Governor.

Sandoval: Yeah. Member Fransway.

Fransway: Thank you, Governor. And to add to that the EPA issue, was that basically in regards to the proposed action by the feds to create water to the U.S.?

Malfabon: In response, it was related to the Clean Water Act and...

Fransway: Right.

Malfabon: ...and the activities that we do both in construction and maintenance to comply with the Clean Water Act.

Fransway: Okay. And that is, as far as I know, it's still an ongoing issue, whether they're going to make the change from navigational -- navigable waters to water to the U.S. And I believe that if that happens, Governor, I think that we're going to be in for some major expenses in that regard to environmental issues. So I would like to have an update on where that's at, and I think that the Nevada Association of Counties and the National Association of Counties both are working to get an equitable resolution to that federal issue. And I would suggest that that may be a resource to find out exactly where the feds are with that change.

Malfabon: We'll have that as a future Agenda item, Governor, to respond to Member Fransway's comments.

Fransway: Thank you.

Sandoval: Any further questions from Board members? And I'm a little unclear as to what the form of a motion would be for approval of this Agenda item.

Gallagher: Governor, for the record, Dennis Gallagher, Counsel for the Board. I think an appropriate motion, Governor, would be move to approve the matrix that's been presented to the Board governing agreements and contracts and miscellaneous items.

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- Sandoval: If there are no further questions or comments from Board members, the Chair will accept a motion with regard to Agenda Item No. 6, to approve the matrix that has been presented to the Board governing agreements and contracts and miscellaneous items.
- Savage: Move to approve, Governor.
- Wallin: Second.
- Sandoval: Member Savage has made a motion to approve. Madam Controller has seconded the motion. Any questions or discussion?
- Fransway: And so what we're approving is option two, correct?
- Sandoval: I don't know the -- it's what is presented in the Agenda item. I don't think there's an additional option.
- Fransway: Okay. Well...
- Sandoval: What you're looking at, Tom, is what we approved in '11, the second submission.
- Fransway: Okay.
- Sandoval: So that's what we had already approved and this is in addition to that.
- Fransway: Okay. I understand. Thank you.
- Sandoval: So we do have a motion by Member Savage, a second by Madam Controller for approval of the matrix that has been presented to the Board governing agreements and contracts and miscellaneous items as described in Agenda Item No. 6. Are there any other questions or comments? If there are none, all in favor, please say aye.
- Group: Aye.
- Sandoval: Opposed no? Motion passes six, zero. Thank you. We will move on to Agenda Item No. 7, which is a presentation of Nevada Department of Transportation's disparity study for Disadvantaged Business Enterprise Program and possible approval -- I guess there is no approval. We're not

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going to take action of DBE (inaudible) for federal fiscal years 2014 to 2016.

Malfabon:

Correct, Governor. After we receive the public comment, it will come back to the Board for formal adoption of the disparity study and its findings. But currently we're in a draft stage with the public meetings to occur in the coming months ahead, and then with the formal Agenda item to bring it back to the Board later, at the end of the year. With us today is David Keen who's our consultant that performed the disparity study for the Nevada Department of Transportation. And he's going to go over a little bit about what the disparity study is about, why we have to do one.

And it really is something that is focused on NDOT's work program and NDOT consultants and subconsultants and contractors and subcontractors. So it is very specific and very targeted. And I'm going to turn it over to David Keen to kind of give the Board a presentation. And this is, as I said, a draft document. We gave you -- it to each of the Board members on a disc. It is a substantial amount of pages to look through. We understand that. So it'll be a few months before it comes back for the formal item. Dave.

Keen:

Thank you. I appreciate the opportunity to present a very short briefing on quite a long study and a lot of information in that study. And this has been a team effort on our part as well as working with all of the different parts of NDOT to collect the data and keep people informed, and then an external stakeholder group that was involved with us from the very beginning. So we had many other team members involved I'd like to point out; Megan Jones of MJK Consulting who's a Las Vegas subconsultant on our team who is very important. You all may know Megan. And I'm just going to dive into this. We're going to go very quickly through it, and then any questions you have for me, I'd be happy to spend as long as you'd like going through all this.

You all implement the federal DBE program because you receive USDOT funds, and that comes -- that requirement comes along with those funds. And so I've worked with -- I've worked in this area for 24 years, worked with many states that have received federal funds as well as local agencies. Especially in this part of the country, in the main circuit states, an agency such as NDOT has a lot of responsibility for crafting the implementation of the federal DBE program to the conditions in Nevada, and your own

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contracting. So it isn't a -- it's a federal requirement that comes to you that then you need to narrowly tailor would be the legal word, term for what you then need to do to have a legally defensible operation of the federal DBE program here in Nevada.

And some states have -- in the western part of the country have come under legal challenge such as Washington State DOT back in 2005, or I guess earlier, Caltrans in recent years where contractors who didn't see eye to eye with how the state was implementing the federal DBE program or did not like affirmative action-type programs in general, filed suit and challenged the constitutionality of those programs. And then the states in those cases needed to defend their operation. And Washington State was unsuccessful, and Caltrans, hopefully with some of my help because I was the lead author on their study that was in court defending -- helping to form the basis for their program. They were successful in April of this year, in front of the 9th Circuit in saying, okay, well you have a narrowly tailored operation of the federal DBE program.

There are many components of the federal DBE program. You need to set an overall goal, and that's a state by state or agency by agency decision. You set the goal and that sets the goal and requests Federal Highways' approval for that goal. And I'm going to give you some information about that this morning. You then determine whether any race or gender-conscious programs like a DBE contracting program is needed to help you meet that goal. And the law and the federal regulations read if you can have -- if you can meet that goal through small business programs such as your small contracts program under 250,000, you can have informal bidding on that, or technical assistance or outreach or mentor protégé programs. If all of those neutral types of programs will help you reach that goal without having DBE contract goals, then you are to try to achieve that goal solely through those small business type programs. If you don't think you can reach that goal and you have sufficient evidence of that, then you can implement the DBE contract goal as part of the DBE program.

So this disparity study is recommended by USDOT and the 9th Circuit state - - every 9th Circuit state has done one. You have now done two. I was the lead on the 2007 study for NDOT. And it helps you implement the program in a better way than an agency without this information, and it helps you then defend any decisions in court if you're subject to challenge. And

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there's been quite a bit of litigation around this, not only out west, but in other states as well.

This slide tells you that we did a lot of work and talked to a lot of people, and Nevada is part of the study. We successfully contacted more than almost 4,000 Nevada businesses, and on the engineering side and related services and on the construction side and all the related services in construction. And we had an external stakeholder group from the beginning. We actually sat down for several hour interviews with 40 business owners and trade association representatives.

And it's important here for you to know that we, you know, from large contractors to small contractors, large engineering firms to small subconsultants, we tried to get a cross section of these in-depth interviews including, very frankly, people who were very much against a DBE contract goals type of program and thought that that adversely affected their ability to work as a prime contractor or -- and were critical about the way NDOT administers the program, or felt that they were in an area of subcontracting where primes were meeting the goals in their area, and there was really very little work left for them. And trucking is one example of that that you may have heard from those truckers before. Then we examined that question specifically, whether there was over concentration of DBE participation in certain fields like trucking.

So there was quite a bit of discussion with the community and not just with those businesses or trade associations who were very supportive of the DBE contract goals. We talked with everybody. And we had an opportunity that if we didn't call you, you could call us and give us comments as part of the process.

There is -- in the federal regulations for the federal DBE program, there's a base figure requirement and a step two adjustment requirement to coming up with an overall DBE goal. And these goals are aspirational. You don't have to exactly meet that goal, but -- especially in recent years USDOT is asking agencies to really take a hard look. If they fall short of the goal, which you have consistently over the years fallen short of your DBE goal, take a very hard look and explain why that happened and what you're going to do about it. And there's much more pressure now on it, to the point of withholding federal funds for agencies that are not following the federal guidelines.

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When we look around the state and we look at the sizes and types and amount of subcontracting of both your construction work and your engineering-related work that has a dollar of Federal Highways' money in it, so we call that federally funded. And we take the -- all of the firms out in the marketplace, large and small prime contractors, subcontractors, firms that do both, firms that work around the state or just in one portion of the state and look at the types of work that they do, we match up the sizes, locations and types of your contracts, and what we have in terms of the contracting community, we -- and we look at who's either DBE certified or could be DBE certified, our calculations are that 4.5 percent of your Federal Highways funded contracts might go to minority and women-owned firms that are either DBE certified now or could be DBE certified. And that's your base figure calculation.

The step two adjustment would be, hey, is that number affected by discrimination at all. (Inaudible) for discrimination could it be higher. One of the things that we identified is the economic downturn in Nevada. Really, it hurt everybody and we had -- in sitting down with interviewing contractors, it was pretty amazing that some of them were still in the business and many weren't in business. And we've heard lots of stories about contractors who did not make it through the economic downturn, and it's not entirely over for them.

But the downturn affected newer, smaller businesses more severely than well established businesses that may go back generations or very large. And it disproportionately had a negative effect on minority and women-owned firms. And we saw the availability from our 2007 study to our 2013 study, cut the availability almost in half of minority and women-owned firms. And this is on a relative basis, so it was -- you still had many minority and women-owned firms out there, but there -- the size of contracts they were bidding on and their capabilities to do bigger projects had been severely affected by the economic downturn, the lack of access to capital, prime contractors keeping more of the work and not subcontracting out as much, and being squeezed out of the market.

So when we took all of the information that we had available, we thought that you could support going to Federal Highways with a higher goal than the 4.5 percent, because of all these negative things that happened to the minority and women business contracting community during the economic

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downturn, as well as other factors that disproportionately, negatively affect minority and women-owned firms. The number is not a magic number, but in the range of 7.5 percent. We thought in the report -- we reported to you all that that would be supportable and in congruence with the federal regulations about how you set a goal.

That's important because then you say, okay, what kind of programs do we need to hit 7.5 percent or get close to 7.5 percent. And so the goal that you set is not -- is not a hypothetical thing, it's a very real thing and very important. It also sets a statement to NDOT, you know, how serious are you about trying to increase the participation of minority or women-owned businesses in your contracting.

As I mentioned before, you then need to project -- this is, again, a federal regulation, project a proportion of the overall goal that you expect to meet through neutral means, and perhaps that's going to be 100 percent. Florida is a state that's one example of trying to do all of -- meet all of the federal DBE annual goal through neutral means. Most other -- nearly all other states have some kind of race or gender-conscious program like DBE contract goals. When we look at how well you've done in the past, and one of the things the USDOT asks you to look at, you attain about 1 percent DBE participation when you've had no DBE contract goals in place, and you have not met your DBE goal in past years.

If we look at some of the new firms that have been certified, we think that number could be higher. One of your largest WBEs that has traditionally not been DBE certified just got DBE certified after our study was over, so we didn't count them as a DBE in the study, but we know they are now. So you could probably project higher than 1 percent, and you also have a small business program that you have in place now trying to implement a lot more technical assistance for small businesses as well as the small contracts program and a lot of change in contracting procedures.

There's some things here on the neutral measures that I'd like to point out to you, because it goes beyond NDOT and it affects what the State of Nevada needs to do. Some of the disadvantages for minority and women-owned firms and small businesses in general may be written into state statute. And I'm going to have a portion of the -- before I end to point out some of those that you might want to take a hard look at and see if maybe NDOT itself

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cannot solve this issue, but there may be disadvantages that is affecting small business participation in general, disproportionately affecting minority and women-owned business and their ability to grow that you would actually need to go back and into state statute to fix.

Very quickly, I mentioned that we did the 2007 study for NDOT, so we had the data that showed about 8 percent participation of minority and women-owned firms, and including firms that were certified as DBEs or not. You had the DBE contract goals program in place for almost all of that time period. And from 2007 to June of 2012, which was the study period for our study, we found 5.2 percent minority and women-owned business participation. So it's falling. In part that's due to very difficult economic conditions for most of that time period, and part of it's due to not having DBE contract goals for some of that time period.

I might mention that we did that study, the extension of the DBE program to stated funded contracts, that wasn't part of our data set, that's going to be going forward. This information will be very useful for you as you operate the state program on state funded contracts.

With the court decisions in this area and with the federal regulations, you don't group minority and women-owned firms as one monolithic group. And what we find as disadvantages for, say, white women-owned firms that often -- or sometimes has a husband or a father or a brother or someone else in the business, some of those challenges are different and gender discrimination is different than race or ethnicity-based discrimination, and what we're finding as results for minority-owned firms. So because of the court decisions, because of the federal regulations, we actually did disparity studies, if you will, for each minority group and white women-owned firms that are presumed to be disadvantaged under the federal DBE program.

For African-American, Asian-Pacific American, Subcontinent Asian American and Native American-owned firms, there was nearly no utilization of those firms and NDOT contracts during our study period. Combined it was .1 percent. Those groups make up a smaller portion of the overall base, perhaps, but there is substantial disparity for each group. And in the court decisions there's kind of a bright line at, hey, if you can get to 80 percent of where you should be in terms of -- you don't need to have parity, but if you can get within 80 percent of where you should be, that may be something

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that you need to work on, but it's not a substantial disparity. Well, there was substantial disparities for each one of these groups.

A little bit different story for Hispanic American-owned firms, did much better than other groups. Quite a sizeable contracting base for Hispanic American-owned firms in total received 2.2 percent of the contract dollars. But we saw in the most recent two-and-a-half years a substantial disparity also for Hispanic American-owned firms. And we were almost watching the effect of the economic downturn have a more substantial negative effect on Hispanic American-owned firms in the latter part of that downturn than in the first part of the downturn.

White women-owned firms -- so for women-owned firms, minority women are included with each minority group. White women-owned firms we looked at separately. White women-owned firms received 2.9 percent of contract dollars. This was about double what you might expect based on the availability for the different types and sizes of contracts that we examined. There were no disparities overall for DBEs. There were no disparities for WBEs in the prime contracting level or if you looked at different time periods.

But I do want to point out that even though it doesn't account for much of the total dollars, extremely low participation of white women-owned firms or minority firms in your engineering-related contracts. It's .3 percent. So around the country that's about as low as you could find on engineering-related contracts for an agency such as yourself. It's definitely an area that we have talked about putting more focus on and opening up those opportunities and doing a better job of implementing the federal DBE program on your engineering -- your professional services-related work.

And there's a lot of -- a lot of things that you may not have done in our study period, the 2007 through 2012 study period, that you're starting to do now. Opening up more of those opportunities, competing more of those opportunities, and we need to -- we've encouraged you to take a look at -- looking at the diversity of the consulting teams that come in for those types of contracts.

So you'll need to take this information into account when you make decisions on how to implement -- operate the federal DBE program in

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Nevada. With similar sets of facts, other states in the western part of the country have said -- they've asked for a waiver and said we'd like to implement the federal DBE contract goals program and it's for the following groups. And it may not include white women-owned firms or it may not include a particular other group. So that's an NDOT decision for the immediate future.

I wanted to point out a few things that -- and as part of the disparity study, we got enough information on it to say this could be a problem. We don't know that it's definitely, you know, we can't quantify how much of a problem it is, but we know that on its face there's certain things in state law that disadvantaged newer businesses and small businesses, businesses that are less well capitalized. One of those is the prequalification requirements.

So the State of Nevada is somewhat unusual around the country in that you get a contractor's license that's not just for a particular line of work to say, hey, I'm an electrician, I can do electrical work. The State Contractors Board will set the maximum size of a contract that you can bid on, and take into account a lot of experience and financial factors that are, you know, identified in state law to set that maximum bid limit. If you're small, it's almost a catch 22. It's hard to get big unless you have that experience, but you can't get that experience unless you have a bid -- a license that gives you a bid limit to take on that size of contract. Same thing with earnings and trying to build a balance sheet to be able to show the financial strength to do the bigger jobs. It's very difficult to do that if you have restrictions on the size of contracts that you can bid on.

So we have a potential issue in state law around the State Contractors Board prequalification process, not related to what types of work you can do, but related to what size of contract you can bid on. This flows through to NDOT, so NDOT is affected by any limits that the State Contractors Board sets on firms and if minority and women-owned firms tend to be smaller, newer, at a disadvantage, especially at a disadvantage in accessing the financial markets, then you may be perpetuating the effects of that discrimination through what's in state law about restricting the size of contracts that firms can bid on, and that then affects NDOT. NDOT has its own prequalification process that has the potential to have some of these same negative effects on contractors. The state law affects both primes and subs.

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So we would urge you to take a look at that. We'd urge you to take a look at the state local preference bid law, because it may be that that's a bid law that advantages local large firms, not local small firms. You need to pay a certain amount of taxes. You need to be in business a certain number of years to take advantage of this local bid preference. That's not on the Federal Highways contracts. That's on the state funded contracts. But that, again, is something that may be written into state law in a way that was not intended to disadvantage small businesses, which means minority and women-owned firms, but it may potentially have that effect.

NDOT may need some additional tools such as set asides or bid preferences to encourage the use of small businesses for small construction contracts. On these informal contracts, 250,000 and below, about 25 percent of that work went to primes that were minority and women-owned, which is very different than the chart I showed you overall. So if you can unbundle contracts and as much as you can do that and let minority and women-owned prime contractors compete on the same basis as large firms, because the Las Vegas Pavings of the world won those small contracts as well, that is a good way to encourage the participation of minority and women-owned firms and level the playing field for those firms. It may be that you want to take even more steps and say, you know, for certain contracts we have enough of a pool of NBEs and WBEs or DBEs or other small contractors -- certified small contractors that we want to restrict bidding to those firms.

Very quickly, there's many other recommendations in the report for NDOT to consider to remove barriers to small businesses and to DBEs. We wanted to touch on two other things quickly before we go into next steps. The over concentration issue is real. We heard from people in our interviews that if you're a -- not a DBE trucking firm that you may be shut out of quite a bit of work. We think that that is a valid statement and that you should closely monitor that, and there may be some ways to not get all your DBE participation from trucking. And it's, you know, it's almost 50 percent of your DBE participation comes from trucking now, and that's really not the intent of the program. That flies in the face of the federal DBE program.

And then finally this is -- your operation of the program here at NDOT is really rebuilding. It's almost rebooting now. And when we observe that you don't have the staff and training and information systems necessary to effectively operate the program, you've made some changes in leadership in

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that area, you're seeing some growth and capabilities, you have a plan for a new information system to be able to more closely monitor the DBE participation and minority women business participation.

But this is not a program that does well. It needs a lot of attention and investment. I wanted to let you know that the Director has been very involved from day one on this project, especially dealing with our external constituencies and the external stakeholder group. That leadership is uncommon and around the states and federal DBE program area and I think that will help a lot. But this is something that needs quite a bit of attention. It's not building roads, but it is contributing to the equity of how those dollars are spent -- the state and federal dollars are spent in Nevada.

Very quickly, and then I'll -- again, I'm available for as long as you like for questions. The full disparity study is now posted on www.ndotdbe.com, which is the website that we created almost on day one of the disparity study. So it's [ndotdbe.com](http://www.ndotdbe.com). The NDOT is developing a similar document called a proposed goal, DBE goal that will perhaps be public within a week. Both of those are draft documents. We're looking for as much public comment as possible on this. We take the public comment very seriously. We're going to have two public meetings in October on this and doing a lot of outreach to get people, excuse me, to come and give their opinions and diversity of opinions on how NDOT should be implementing the DBE program. And then we'll put that public input, perhaps change some of our recommendations based on it and put into a final report that'll be available in November or early December. And then this will help you have the goal and the operating portions of the program for the next three federal fiscal years, 2014 through 2016. Again, raced through that and I'm available to answer any questions.

Sandoval:

Thank you very much. And this is a lot of information. I suppose from a Board perspective then we need to wait to get the -- all of the public input that you said is coming in the next few months. But I'm trying to understand how we can, as a Board, take action on this and implement things to improve our situation here, similar to this matrix that we just approved. I want to make sure that I know how we're doing on a meeting-by-meeting basis to be hitting these goals and what we need to do or what we can do as a Board to improve, you know, our statistics and how we do as a state with regard to these DBEs.

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So, Rudy, and I want to compliment you, you know, with your being a big leader on all of this. But, you know, we get these reports and you -- Mr. Keen, you've done a tremendous work and service for the state, but I want to make sure that it doesn't just stay as a report that we, as a Board, can have some suggestive action items steps so that we can start to take action. So I don't know if there's really a question in there because we need to wait to -- for you to finish your work.

Keen: You probably don't need to wait on some of this stuff. And looking forward to what might be possible legislation that I mentioned, which is really -- Rudy is a fantastic leader of NDOT, but isn't responsible for amending state legislation. And it may be...

Sandoval: Well, he kind of is. I mean, that's -- well, as a Board, I mean, the executive branch and there's a legislator here as well, that, you know, we have a certain amount of bill draft requests and this Board participates in the development of those bill draft requests, and I'd rather have those sooner or later. And I know Assembly Woman Bustamante Adams would like to be aware of what we can do so that we can be at the forefront and not wait until the last few months before legislative session start -- or begins. This is the time to start doing this work. And so if there are action items that we can take now, I'd like to have those. I'm not saying right this moment...

Keen: Mm-hmm.

Sandoval: ...but as these next meetings -- as we go into the fall, that we can know what to do. Now, one other question on -- we talked about the minority-owned businesses and the women-owned businesses. Where do the veterans-owned businesses fall in this?

Keen: So they're actually a different -- for you to have a veterans-owned business program, it's easier to defend in court. And what we were setting is the federal DBE program, and veterans are not part of the federal DBE program. But if you were to, in some states, have looked at veteran-owned businesses on your state funded contracts, for example, that is a rational basis test for the -- I'm the want-to-be attorney for the attorneys in the room, but they'll know that if you -- there's a rational basis test. NDOT has a much easier time defending that type of decision in court than having a race-based program which is nearly unconstitutional. It's the one step removed from

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being unconstitutional. But you need all of this. This disparity -- you don't need a full disparity study to have a veterans business program. That was not something we studied in this assignment. I think you probably have a lot of the raw data to be able to go back and (inaudible) whether that would be something that NDOT would want to do or not.

Sandoval: Yeah. And I'm not trying to distract from what we're trying to do, but I don't want to go to court. I don't want to be in court. I want to be ahead of the curve. And so as I sit here today, I would, you know -- Rudy, we can work with you, but I'd like to know what steps that we can take now in the absence of legislation. You talked about unbundling. That was something that sounded interesting to me in terms of the way that the bids are presented. But just some short-term action items and long-term action items that we can start to consider as we have our Agendas moving forward to the fall and into next year. But I don't want to wait...

Keen: Right.

Sandoval: ...and you said that. You know, I don't want to wait until all of those things that you've suggested on the Board are done. If there are things that we can do now and be proactive, I think I speak for the Board when I say that. Madam Controller.

Wallin: Governor, to kind of follow up on that. Maybe, you know, something that the Board should be looking at maybe on a quarterly basis is where are we at in hiring DBEs and, you know, what percentage of our contracts are going to that. And, you know, when we get that report, maybe we can talk about were there areas where we could have maybe unbundled and how can we unbundle or making the smaller ones available or, you know, that might -- then we're focusing on it and that's a start before the legislation.

Sandoval: Well, and there's a bit of a conundrum here, and I'm sure Member Savage can comment on this, and Member Martin, because they're our contractors. As you talked about those limits at the State Contractors Board, well, those limits are in there for a reason as well, so that you don't have some of these small companies overextending themselves and then not able to perform the work. And I don't know how we fix those things or try to harmonize them, I guess is the word I'm looking for. But those are things we need to explore.

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Keen: And very quickly if you don't mind, we don't have definitive conclusions on whether it's out of balance or what that proper new balance would be. We know it's an issue, and so there would be some additional work that would involve AGC and the contractors as well as small businesses, not just minority and women-owned businesses, but all small businesses to take another look and make sure that that process is transparent. Because one of the parts of the feedback we wanted to give you from the community, it's not necessarily transparent about, especially in the Contractors Board, what that process is and whether you would ever want to appeal that decision that you thought was unfavorable to you or unfair to you.

So that's something that would -- if you were going to start something now to be able to take action on it maybe six months from now, that would be one where you want to drill into that and get a lot more opinions than we got as part of this disparity study on this. But it may be that you have a system where you're small and you're going to stay small because that's the way the law is written. Now, some people have been able to get beyond that barrier, but with tremendous difficulty in getting financing, and I can't underestimate that or overestimate that. It's especially difficult for minority women-owned firms, and it's not just your business finances. As you all know in the contracting community, it's your personal finances. If you lost a home in this downturn, that may live with you, and that's affecting your ability to go in front of the Contractor's Board and some of the information they may be looking at.

So it's a very serious issue, and it affects the growth of your business base in Nevada that you may be putting some limits on that growth that you may not intend.

Sandoval: And then my last question and I'll turn it over. Is Nevada good at making sure that there's an awareness out there that if you are a minority-owned or a woman-owned business that there is a qualification process? And do we need to get that message out there that perhaps there are some that would otherwise be eligible, but have not gone through that qualification process?

Keen: You'd have different answers on the construction side and the engineering side. On the engineering side -- and, again, I'm reporting what people told us. They said, you know, if we could just get in front of the NDOT staff, we've not been part of this. And if you look at the results, .3 percent

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utilization, you know, less than one-half of 1 percent utilization, that's extremely low. And they will say, you know, big firms get this work. They rollover the work. We can't get in the door for this engineering-based work, but we're very qualified and we want to break down those barriers.

I think some of that may be unfair that they're not quite understanding the process at NDOT, but it's a legitimate perception. And I think NDOT probably has to go well, you know, do a whole lot to change that perception in the community that you're just shut out of the work here and it goes to the big boys that have always gotten the work.

Sandoval: Well, and that's something that we could do right now. I would imagine that we could have some type of a public workshop and invite everybody to know what the process is so that these entities -- or these businesses can come in and know what the rules are, because it may be an improper perception on both sides. I mean, I'm sure you would have a response if there was a business out there that says we can't even get in the door. All they do is look at the big guys. And...

Malfabon: And, Governor, one of the recent events that you attended and supported was that business outreach event in -- both in Las Vegas and in Reno area. And we set up booths at that, and we have ongoing events that we try to participate, give presentations to different business groups on how to get their foot in the door and how to get certified as a DBE, not -- as Mr. Keen mentioned, not every minority firm is DBE certified. To count towards achievement of the goal, they have to be certified, but they can still do business with NDOT even without that certification.

Sandoval: I guess -- like I said, I think it's probably a fair question is that they simply don't know how to get in front of -- get in the game and have an opportunity to bid on these things before NDOT. So I'm not sure what that looks like as I sit here right now, but we ought to explore something and provide that opportunity. I wouldn't imagine it would be that difficult to identify these potential businesses and give them a notice and have them all come in here and in Southern Nevada and let them know this is what you have to do.

Keen: So that's the engineering side of it and that's where your participation has been lowest. On the construction side, your operating DBE contract goals now, and it's been relatively new. It's only been since 2010 that Federal

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Highways came back to you said, okay, you can implement your DBE contract goals. And it took a while to then get that into the process, so it hasn't really been that long. And the prime contractors have perhaps gotten used to not having goals and not having, you know, not making a real -- it's called good faith efforts, not making a concerted effort to develop the subcontracting team that they want to have on their projects that are DBEs and resisting a goal that may be set.

We heard a lot of information around the state that we just think your goals are too high, your project goals are too high. I mean, your project goals are, in fact, in some cases, quite a bit smaller than they may be in surrounding states. So part of that is an education process and, you know, meet and greet and, hey, you know, can't you use this DBE, can't we get this firm that hasn't been certified to be DBE certified. (Inaudible) leadership from NDOT to say, no, we're serious about the implementation of the program. We're not going to always look the other way if you haven't met a DBE contract goal or your good faith effort to process to try to meet that goal has been weak.

We're very serious and you may lose a contract over it, because there's somebody else who's bidding on it who may be very serious about the responsibilities to NDOT and to the DBE community and have done a great job of incorporating those subcontractors into their construction team, and they're not winning a bid and they -- by maybe a very thin margin and losing it to someone who is not serious about trying to fulfill this part of NDOT's requirements.

Sandoval: Questions or comments from other Board members? Member Savage and then Member Fransway.

Savage: Thank you, Governor, and thank you, Mr. Keen, for your presentation. I think it's very clear that the Department needs to improve, and I believe that along with this Board and the Director and his staff that we will improve, and we're going to take a proactive stance. And understanding the parameters, I think, was one of the questions I had regarding achieving the goals relative to the proportionate opportunities that are there. And I think along with what the Governor said as far as campaigning and advertising to the people that need to be educated as to what opportunities exist with NDOT needs to occur. So my question specifically would be Keen came up

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with the 4.5 percent, then we jumped to 7.5 percent as a recommendation. And I wasn't clear how that 3 percent was determined, number one. And it can be answered as a follow-up. This is just something I think that I have to understand in my own mind.

And with that being said, the engineering companies, the contractors that are NBE, WBE and DBE that actually exist in the State of Nevada to bid some of NDOT's work. I don't know if there's a list of qualified contractors, certified individual companies that can be -- what am I trying to say, can be entertained to offer their submittal of proposals for engineering and contract bids.

Keen: Very quickly in response. First of all, if you look at the contracting and engineering community and all of the ancillary supply and subcontracting disciplines, one out of every four firms is minority or women-owned. So it's a tremendous headcount, if you will, availability. And if you've got all your contractors in the room and we, you know, we've interviewed, you know, hundreds and thousands of different contractors, one of our questions is were you minority-owned, are you women-owned, and one out of four said yes.

Savage: For the State of Nevada?

Keen: For the State of Nevada. And that's the same it was in our 2007 study. So that has been pretty constant. The real -- why do you have a 4.5 percent base figure? Well, two reasons. One is about one out of five of those firms is DBE certified. And a lot of companies say why bother or it's too difficult or they just haven't seen the reason for it, so that's a communications issue.

Savage: Mm-hmm.

Keen: A few are too large to be DBE certified...

Savage: Mm-hmm.

Keen: ...not very many, but a few have graduated from your program. The big difference between the 25 percent headcount availability and a 4.5 percent base figure is those firms have not done big projects. They don't do large paving projects. And if you look at where your dollars are, you know, more than two-thirds of the dollars, maybe as much as 75 percent of the dollars, is

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a prime contractor doing paving or doing highway construction. And these may be \$10 million, \$20 million, \$30 million projects. They were not NBEs and WBEs that we identified that now, today, do that level of work, do that size of project or maybe are in that discipline. They're much more concentrated in the subcontracting trades and don't do projects of that size. So it's that 25 percent -- it's down to 4.5 percent when you match up the size and types of prime contract and subcontract opportunities, and your -- and your contractor base out there.

We took that into account. The coming -- the going from 4.5 up is following what's in the federal regulations known as different factors to perhaps make a step to adjustment. And, basically, we don't want to have our goal be affected by, you know, perpetuate the effects of discrimination if there is discrimination interacting in the market. And so you look at are there barriers to entry for minorities and women that are different than for white men. Even getting into business, are there barriers to growing, are there barriers to getting money, access to capital or bonding. And we were able to demonstrate through quantitative analyses and our interviews that there were a number of those barriers and that an upward adjustment is reasonable to meet the federal regulations.

The exact number is really an NDOT decision. We reported that 7.5 percent is supportable. That could be a different figure, but that's one of the methods that we looked at really reflecting the dramatic -- made an impact the downturn had on NBEs and WBEs is to almost split the difference between where that community was in terms of this dollar weighted capacity-based availability figure and the 4.5 percent to shoot a little bit higher than current availability. And that's -- we've documented that in the report. It's quite a complex analysis. There's many different factors involved. Ultimately, that's a policy decision for NDOT to then go to Federal Highways and say we're proposing this.

Savage:

Okay. And I thank you, Mr. Keen. And during your research when you spoke to the different individuals throughout the state, the bonding issue with the financial stability that we have intact with our Contractors Board determines the level of what the contractor financial commitment can be towards a project. Was that taken into consideration as to the different levels of projects that these potential vendors, contractors or engineering companies might be able to submit a proposal?

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- Keen: Yes. We asked -- we talked with each contractor or engineering firm and all of the information is from those interviews with them. We said what's the largest prime contract or subcontract that you've bid on in Nevada in the last five years. And we based -- we said, okay, if you've bid on something of that size or actually done work of that size, we're going to take that kind of size class of projects as what you're available for and then anything smaller than that. So Las Vegas Paving, it was any contract in Nevada. For a new small contractor and maybe only projects of \$100,000 or less that we -- when we were looking at the NDOT work, we would count them as available for and then dollar weight the results to see what kind of your expected value for minority and women-owned firms might be.
- Savage: So that correlation was taken into account?
- Keen: Yes.
- Savage: Okay. Thank you. Thank you, Governor.
- Sandoval: Member Fransway.
- Fransway: Thank you, Governor. And thank you for your presentation. Did I hear you say how long DBE has been in effect?
- Keen: Yeah, the DBE program in some form goes -- or NDOT's been implementing some form of that since the 1980s.
- Fransway: 1980s? Is it somehow an extension of affirmative action?
- Keen: I think a lot of people would put it in the class of affirmative action, because you're -- if you implement it on a race and gender conscious basis, it's the same as saying, well, we want to give points towards hiring a certain type of person or (inaudible) college admissions or any of that stuff. So under the law, a lot of the legal decisions that are around affirmative action are very similar to the court cases related to DBE in the contracting area.
- Fransway: Okay. And you mentioned that the public scoping period will go through or up to October of this year?
- Keen: Right. We're going to have those two public meetings. That's only two examples of the opportunity people have to comment on the report. We

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encourage people to give us stuff in writing and then we're -- the close of that will be early November.

Fransway: Okay. So the State of Nevada, can we not tailor the DEB [sic] with some sort of a waiver if we go there? What I'm saying is I don't want to take what's intended to be an equalizer and turn it into an advantage. And I would like to certainly get some heavy buy-in from the contracting community in the state and without the state -- outside the state. And so I'm expecting to have that buy-in through the scoping process. And ultimately I believe that this Board will somehow take some sort of action to do what we need to do to comply with federal law. But the ultimate goal certainly should be to make it equitable and to take into consideration the traveling public and the cost to the traveling public. So I guess maybe I'm just speaking out loud now, thinking out loud, but I'm very interested in the short-term process as how it relates to public comment.

Keen: And we're going to be seeking as much public input as we can get. And we certainly have heard from folks who say, you know, forget about the federal DBE program. We want things to be as least expensive as possible. And to the extent that any of this increases your cost, we don't like this or, hey, this ought to be -- you know, a federal DBE program is fine, but this, you know, this other point of view. And I think those -- I appreciate those perspectives. We've encouraged those comments. The bottom line for NDOT is you need to be -- to get Federal Highways money, you need to be implementing the federal DBE program and that means certain things. So it's not entirely -- you know, you have a lot of range of policy options and implementing the federal DBE programs, certainly balancing objectives at NDOT and all of that. But ultimately you do need to implement the program to receive federal funds, and there's a number of regulations that define how you do that.

Malfabon: And, Governor, if I may add. In our way of doing business at the Department is to work collaboratively with our contractors through AGC and other means. The construction industry has a working group with NDOT, not -- independent of the Construction Working Group from the Board, but NDOT senior leadership from the Director's Office meets on a regular basis with contractors both from Northern and Southern Nevada to discuss these types of issues, construction issues, talk about the work program and some of the findings that maybe we're seeing.

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One of the items has been the DBE program and the small business element of the DBE program. What that means is that NDOT can have a small business goal, not a DBE goal and a small business goal, but one or the other on a federal aid contract. And we talked about how we're going to implement the small business portion. The other side on the professional services, we work with the ACEC, which is the Consulting Engineer's Council, and they've been interested in that issue of small business -- smaller firms getting work as well. So we work in a relationship that fosters communication, gets their input, ultimately affects how we contract out for DBEs and small businesses in our both professional services and construction contracts.

But I think that what we need to do is to provide a regular update to the Transportation Board on here's the projects that went out. And as we implement starting October 1st with the state-funded contracts having DBE goals, kind of have a regular -- maybe a regular report on the old business on what was the goal, what did we achieve at bid date, why did we award this if it was less. Or you can see also one thing that we're going to try to do better at is tracking achievement in real time during the construction process, so that we know they're meeting the goal that they said that they would with that subcontractor or subconsultant, so that the Board is more informed on a regular basis on achievement of goals as well as looking forward to the projects that are bidding out and have substantial amount of work available for DBEs to participate in.

Sandoval: Any other questions or comments on this Agenda item?

Martin: Yes, sir, I have a couple.

Sandoval: Member Martin.

Martin: Mr. Keen, your report is very, very clear and very concise, but I think that it's missing a couple of points that I'd like to bring up. You talk about the monetary limit on the licenses as being a barrier because the State Contractors Board assigns a monetary limit to a license when it's issued -- when a new license is issued; is that correct?

Keen: That's one of the things that was reported to us, and on its face appears that it could be a barrier. I think it merits more investigation.

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Martin: Were you aware that the State Contractors Board customarily issues one-time increases and limits if you write a letter seven days before the job bids and they will issue a one-time increase in limit to allow a subcontractor or a contractor license for, let's say, \$100,000 to bid a \$200,000 project? Were you aware of that?

Keen: Yes, and we know that there's that waiver process, and then there's almost an appeals process if you don't like what your monetary limit is. And the contractors that we spoke with, I would say, there's both limited understanding of those waivers and perhaps some reluctance to go to battle with the contractors licensing -- or the Contractors Board. Again, that may be unfair to the Board, but in -- and, again, this disparity study wasn't about the licensing process, so I don't have definitive answers for you on whether this has a discriminatory effect or not.

But I do think that it's different than other states. We all know that the difficulties that bonding presents to small businesses in general, and we think minority and women-owned firms in particular, this is an extra layer. You're going to still have the disadvantages that the bonding limits have, but you ought to take a look to make sure you're not reinforcing those effects either through NDOT's prequalification process or the Contractors Board.

Martin: Okay. I'm not -- I didn't understand that last statement.

Keen: So you -- we're not suggesting that you do away with bonding in the State of Nevada. I mean, bonding -- if you didn't have monetary limits at NDOT or you didn't have monetary limits as part of the contractor's licensing, you still have bonding requirements, which we are not proposing that you entirely eliminate bonding requirements, so anybody can bid on anything of any size. They don't need to have a bond for it. They don't need to have a license of that monetary limit. There are, you know, reality needs to weigh in here, and I think that may be your point, that there is some flexibility in the Contractors Board's process.

The issue is enough people told us that, A, it's a bit of a mystery how these decisions get made and, B, because of their financial limitations that they're not able to do the size of project that they believe that they could do, and we have data on the size of minority and women-owned businesses and the

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average age of minority and women-owned businesses. Any monetary limits by the Contractors Board, whether they're well intentioned or not, that has more of a negative impact on the ability of minority and women-owned firms to grow their businesses than it does of other firms.

Martin: And there -- and by those monetary limits or doing away with them you increase the liability for the general contractors that employ them; is that not correct?

Keen: Well, it depends on how they handle bonding also. So I think this is, again...

Martin: Right.

Keen: ...a balance. I've done two disparity studies for Caltrans. They certainly -- without this monetary limit in the State of California licensing law, there certainly were many barriers having to do with size of businesses and ability to get bond and get financing, finance a job, get paid on time to be able to float a job. A different system does not make these problems go away, so I certainly acknowledge that. I'm wondering if that perhaps has one more extra weight on the backs of a small contractor that's new, and those contractors are disproportionately minority and women-owned contractors.

Martin: But not any more so than anybody else applying for a license.

Keen: We didn't find any evidence that minorities -- or we didn't have enough information to determine one way or the other whether there was enough subjectivity that your race and gender of your ownership had anything to do with the license that you got. What we did hear is, "I'm small. I have poor financial history." And we have evidence of discrimination in the housing finance market -- housing mortgage market in Nevada that -- very clear evidence that minorities were treated differently than non-minorities in Nevada in getting home mortgages. Well, that's one indication that it's not a level playing field. That ability to build up equity in a home or your personal finances carries over into the business finance as well, and it carries over into what type of monetary limit you get either in NDOT prequalification or the Contractors Board.

You can't eliminate the infusion of the effects of discrimination into systems when you go back to housing or the ability to buy a home and what type of

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financing you're able to get, or whether you had an opportunity for advancement as you came through the ranks of the industry. We documented those disadvantages, and I don't know that the federal DBE program anticipates that any state will come up with a program that fully remedies all of those barriers for minorities and women that are inheriting the system. This is a -- this is one thing that Nevada does differently than other states, and we wanted to point it out as something that perhaps it's something you want to take a hard look at.

Martin: Then the other point that you made was the bidder's preference.

Keen: Yes.

Martin: You understand it just takes \$70,000 worth of material to pay taxes on \$70,000 worth of material to make that qualification period point?

Keen: I also thought that there was some years involved. I'd have to -- I don't have right in front of me, but in terms of the requirements it looked like there appeared to be a minimum size and a minimum length of time in business in Nevada to be able to get that local bid preference.

Martin: There is years involved in it, but it's \$70,000 worth of expenditure that you pay tax on to get you the qualification.

Keen: Okay.

Martin: And the other side, by not having that, the way I feel about it anyway, especially from a small business, and I'll go into that in a minute, when you eliminate that, then you open up Nevada small business people for a huge amount of competition out of California, Arizona and Utah by firms that are probably a whole lot better financed than what they are. This bidder's preference thing, I think if you talked to any contractor in the world will tell you that it works to the advantage of a Nevada resident, not to the disadvantage.

Keen: Oh, I'm sure that they -- I would agree with you on that point. What we wanted to suggest that you take a look at is whether it's crafted so that the smallest businesses that are trying to get, you know, trying to step up on the ladder or newer businesses that they weren't put at a disadvantage compared to other firms in Nevada (inaudible).

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- Martin: Okay.
- Keen: We understand that you don't want to open this up to -- it's not a local bid preference if it's available to out-of-state firms. And again, this is...
- Martin: Yeah, one of the things that -- I'm sorry, go ahead.
- Keen: Excuse me. We recognize that this doesn't affect your Federal Highways contracts. The local bid preferences...
- Martin: Yeah.
- Keen: ...are not allowed under federal aid projects. This is on the slice of work that's state-funded only.
- Martin: Yes, sir, I understand that. One of the things that I do -- I have been doing a significant amount of federal work, and I was just mentioning to Catherine here that we're doing a \$139 million project at 29 percent -- at 29 Palms California for the Marines that's 75 percent DBE. That was our goal and we met it. In other words, of the \$139 million, 75 percent of that was out to DBEs. And so it's not an impossible thing to attain it. And also one of the ways we got awarded that project is we set that goal for ourselves, and we got additional points in the award of the job for that, similar to what a bid preference deal would be. So that might be something we take a look at statewide in our awards.
- Keen: I wanted to -- I didn't have enough time to go over everything I wanted to say this morning. That's something I definitely wanted to touch on. The success of the program for you all really is how well it's embraced by the contracting community. And the AGC was definitely involved in our process, in our interviews. A mentor protégé program, for example, would be best, we think, best implemented by resurrecting what the AGC had in Nevada in the past, and working one on one with -- you don't -- you don't have that many large contractors in the state. Working one on one with the large contractors and say, please, we have leadership from the top of the State of Nevada that we are serious about this. We want to do this in a sensible way. You know, whether there's a goal on a project or not, can you help us meet our overall objectives of leveling a playing field and involving some groups that haven't been involved traditionally in contracting or

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engineering projects. And help us do what we are -- we as an agency and a state have as one of our objectives.

When you do that, you're successful. When you're constantly -- and you had a great example of -- that hopefully the NDOT people can use when they're talking to some of the contractors that say we can't meet a 3 percent goal or we can't meet a 5 percent goal. You can if you are planning ahead and developing your project team and a way to do that. You probably didn't do that overnight. That probably took a lot of work and a lot of preplanning to get to 75 percent. Working hand in hand with the contracting and engineering communities is the only way to have a successful program.

Cortez Masto: Yeah. Governor, this is Catherine. If I may I have a couple of questions and some comments. First of all, two public meetings are scheduled. Do you have the dates for those public meetings to go over this -- the findings in the report?

Keen: Yes, it's October 22nd at District 2, and District 3 will video conference in for that, October 24th at RTC offices in Las Vegas. I believe both meetings start at 4:00 p.m. They're an open house where people can come in, give comments. We'll be giving short presentations on what the disparity study was about, rotating basis, and then we have, I think, a three-hour window for anyone to be able to come in, learn more about it, but hopefully give their comments and describe their experiences in business in this industry.

Cortez Masto: Thank you. And so just a couple of comments because -- first of all, let me say thank you to Rudy for this report, and it's so important, and it really identifies what needs to be done here in Nevada. And I think hearing from the Board members, hearing from everybody about the environment, I think we can't stop here and we need to move forward. But let me...

Martin: Agreed.

Cortez Masto: ...let me just put something in everybody's mind, because it seems to me the genesis of this report was interviewing by the Keen Independent Group. You interviewed a lot of the minority-owned businesses and women-owned businesses in the marketplace because that's where you started with your analysis. And the perception that I'm getting that you got from that particular marketplace is really identified on Page 3, where you say, "There's evidence of disparity and this includes evidence of a good old boy

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network in Nevada.” Whether that is true or not, the perception by the smaller group of minority-owned businesses is that it exists. And so for that reason I think it's going to be incumbent upon us not only to reach out to the traditional groups that Rudy identified that we work with, whether it's AGC or whether it's some of the engineering professional associations that we work with, because if those minority groups had an in or are already working with those groups, they wouldn't have that perception.

So I think I would like to see, Rudy, and maybe you're going down this path, when you build this collaborative working group or whatever you're going to call it, instead of using -- I guess along with using the traditional associations, whether it's AGC or the professional engineering, whoever it is, that we figure out a way to pull in more of these minority-owned businesses, or reach out to them to have them a part of this collaborative process, because I think part of what we need to do is change that perception.

Because I guess my first question that I -- after reading this report was when you talked to these minority-owned businesses and you're saying there's a lot of them that don't have the certification, is it they don't have the certification because they don't think they're going to get the jobs in the first place from NDOT, and that's why they don't take the time to go through that process? Was there any of that uncovered in your report?

Keen: Yes.

Cortez Masto: Okay. And so that to me tells me that there's a perception we need to change. And by making it collaborative beyond the traditional groups I think that's going to be helpful. I would also reach out to the legislators. We've got an assembly woman here already obviously concerned about -- enough about this issue to address it. I would reach out to the chairs of the transportation on the Senate and Assembly. Bring them in. Start having a working group now that we can really focus, I think, on three areas. Understand why it's occurring here, what -- and then that would be the first one. The second one would be what DBE goal works for NDOT in the existing environment that we have here in Nevada. And then three, developing the policies and guidelines to achieve the goals that we set. I mean, that, to me, I would like to see because it is going to take us time to

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get the information we need and develop the goals to be prepared if we have to go into the next legislative session.

It's fantastic that we already have Keen involved in this, has done the survey. They can provide -- continue to provide technical assistance to us if we need to move forward. But that would be my recommendation I would like to see to know that there is an existing working group. It's broad. It's collaborative and we're really focusing on some of the issues that we are identifying here in this report. So thank you. Thank you for the report. Rudy, thank you so much for your continued involvement and concern about this issue. I really appreciate it as the Director of NDOT, your personal involvement in this. So thank you.

Malfabon:

Thank you, Madam Attorney General. And I would say that in the past one of the lessons that we learned from the previous disparity study was that a lot of the folks didn't understand how it was done, what goes into it, what the outcomes are. So that when we had our public meetings last time a lot of people were confused about what a disparity study was and how it's performed and what we were trying to say to both prime contractors, subcontractors and internally at NDOT. We learned from that lesson and we formed an internal and external stakeholder working group that was getting apprised of what the progress was, what -- the basics of a disparity study, what is it, how do you do it, so that we could communicate with some legislative leaders.

And I wanted to, again, thank Assembly Woman Irene Bustamante Adams. She was at every one of those external stakeholder meetings. Assembly Woman Deena Neil was also present for several as well as State Senator Mark Manendo. But I think that -- I don't think that Irene missed a single one of those. I think she was there interjecting, at least taking that forward during the session and having the other bill that she sponsored on state-funded contracts having a DBE goal.

We also want to thank the Federal Highway Administration Division Administrator Sue Klekar, her assistant Paul Schneider, and the Civil Rights Program lead, Kevin Resler, for their efforts in working with our Civil Rights Officer Yvonne Schuman. All of them, especially Yvonne and Kevin worked very hard with Dave and his team on the study and on the

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DBE program and elevating the communication and communicating the goals of the program.

We will look at continuing having this external group which is comprised of certified and noncertified firms as well as key leadership from the legislature. Also invited and had some prime contractors present at some of the meetings. So we want to get this group on an ongoing basis, I think, and keep it involved in the process, keep it involved in how we're doing and discussing any types of recommendations or even possible legislation that could help us to achieve our goals at the Department of Transportation.

Sandoval: Any further questions or comments? Member Fransway.

Fransway: Yes, I heard you mention scoping meetings in District 1 and 2, and I didn't hear anything about 3.

Keen: We're planning to have folks be able to participate from 3 through video conference on this -- on the October 22nd date. And certainly if anybody wants to call us, send comments in from throughout the state. What we find is sometimes it's difficult for anybody to attend one of these meetings. We encourage any kind of written communications, and that is important information for us throughout the study.

Fransway: Okay. I don't know whether District 3 should -- I don't know whether it's equitable to have District 3 involved by video conference. This is an important issue, and I think that perhaps an effort should be made to visit somewhere in District 3 to involve those folks in rural Nevada at a one-on-one basis. I don't know how hard that would be for you to do that, but...

Keen: That's simply an NDOT decision, and I want to assure you up to this point those folks have been involved. We've done interviews with people in that district. You know, people say there's not a large business community or contracting community. Well, we sure talked to a lot of folks. And in both analyzing the availability of firms, we found minority and women-owned firms out in the district. And we got comments from people. We did in-depth interviews with people. So I want to assure you up to this point we have involved everybody from rural Nevada, as well as the urban areas of Nevada.

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Fransway: Okay. So you're comfortable that there has been a rural perspective then?

Keen: Yes, very much so.

Fransway: Okay.

Keen: And if we had another hour I could tell you the rural perspective on this, which is different than the urban perspective, and it applies the federal DBE program as well. So I think a lot of your work is in rural Nevada, and this program has to work there and meet the needs of those communities as well as urban area.

Fransway: Okay. I would be interested in hearing that and the staff has my phone number.

Keen: Good.

Fransway: So thank you. Thanks, Governor.

Sandoval: Are there any concluding remarks? As I said I -- is there anything that we as a Board that you would suggest that we do between now and our next meeting and next two meetings?

Keen: Well, just to sum up, you have this kind of parallel process of NDOT producing a proposed goal that will be out for public comment at the same time the disparity study will be out for public comment. So we are hoping that anyone commenting on the disparity study will also take a look at the proposed goal and methodology and how NDOT intends to meet that goal that's the sister document that will require Federal Highways' approval. And then we'll bring back all of this information.

Again, I don't think that anything that you would want to take a look at -- further look at for possible legislation next year would need to wait. You certainly would want to be informed by all of the comments that may come in, but you don't necessarily need to wait to further probe some of those issues.

And, again, I hope I gave the context for some of the recommendations correctly, where we identify these as potential issues that may need state action that would change state law. Even if you're only going to look at NDOT prequalification processes that may require changes in state law, and

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that if you're going to do that, and you're going to do that quickly, you should start looking at it now. We don't have all the answers there, and there's many more people who will want to give opinions on that that were - - then were involved in the disparity study.

So we think those are possibly ripe areas for removing some barriers, but you need to do that work to see if that -- how that could be accomplished or if you'd be sacrificing other important objectives by making any changes.

Sandoval: What I would suggest then, Mr. Director, is that we have an item on the Agenda so that we're moving, we being the Board, in a parallel manner to what's happening with the Keen study.

Malfabon: We will, Governor.

Keen: Thank you very much.

Sandoval: Thank you.

Keen: And on behalf of the whole team, thank you for the opportunity to do this important project for you, and we look forward to learning more from the community before we give you a final report.

Sandoval: Thank you very much.

Malfabon: Thanks, David.

Sandoval: That brings us to Agenda Item No. 8, briefing on Tahoe Transportation District projects.

Malfabon: Thank you, Governor. One of our partners up at Lake Tahoe, Carl Hasty, is going to present this item, kind of give the Board an overview of the Tahoe Transportation District and its projects that are on the horizon.

Hasty: Good morning, Governor, members of the Board. My name is Carl Hasty. I'm the District Manager for the Tahoe Transportation District. I'm actually going to tag team this with our Project Manager who's been responsible for the lead here on the 28 Corridor. So we're here to briefly update you on some of the things that have been going on in Tahoe, kind of what we've succeeded at doing here working together.

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This has been an effort including the district of 13 different agencies. And you are all familiar if you've been up to the lake with the Highway 28 Corridor, a very popular and scenic drive. It's also a heavily used corridor, as we'll get into some of the statistics on that. And for years has had a real issue in terms of resource management complicated by jurisdictional ownership and the uncontrolled access that happens on the part of the public who want to come and enjoy this place. And so the issue is related to safety, to erosion, to water quality, to access to prime recreational and scenic vistas and views and locations has really been a challenge for Lake Tahoe.

We've been successful over the last number of months of working with NDOT and other bunch of state agencies like state parks and state lands and the courts and NHP and the forest service to address what can we do here and how can we all work together and what solutions are offered up. You may have heard and have seen what we've experimented with in terms of working with state parks and introducing a shuttle to San Harbor from Incline Village. It's been very successful. This is the second year of having that shuttle operate. It's been very successful and the public has been very warm to receive it. It has helped us to get some of that dangerous on-highway parking off of there. And that's the type of thing that we want to see happening up and down the entire corridor, as well as build bike trail, as well as get some of the parking off here. So we'll get into some of those details.

This approach has been very workable and is very promising for other areas at Lake Tahoe. We also have bundled as a consequence the types of project activities that need to happen in there including erosion control, getting that parking off, et cetera. Bundled them and applied for grant dollars and leveraged a large amount of money in order to be competitive for that, and we're very optimistic that we may be hearing some good news on that. In so doing, we worked with Rudy and Bill to have NDOT take the lead on that grant application, and we will be hearing, I hope, this month of where we're at on that.

This approach then we look to use in other places around the lake. Zephyr Cove is another area that's very problematic when it comes to that on-highway parking. We're also interested in getting a bike trail to that. We're working with NDOT right now and a CMAR project of extending the bike trail from South Shore to connect to Round Hill Pines Resort. That'll

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be happening and concluding here this fall. That has already translated into a very promising bid process for the Round Hill Pines Resort, which is a four service concession. And they received seven proposals on that, which is by far exceeds what they typically get when they do that. Very exciting proposals that are looking at substantial dollars. And what they reported to us at the game changer on making that such an attractive bid was the bike trail coming to that.

So for Tahoe recreation and the bike trails and things like that coming into play, our economic development as I've mentioned here before and the types of improvements that we're projecting here for the Highway 28 Corridor will make it a much more pleasant experience for the visitor and a much more protective situation for the environment there both on land and the lake. With that I'd like to turn it over to Derek Kirkland who's, again, been the Project Manager for this project.

Kirkland: Thank you, Mr. Governor, members of the Board. I'm going to run through a quick presentation on the 28 Corridor. Randy Jackson who's a sergeant with NHP gave a quota as we started this process over a year ago. He said it's about -- it's about chaos versus management. And what we're trying to accomplish with this plan is really more of a management strategy. How do we get people to the areas they want to be to in a safe manner, not have them using the highway as a sidewalk as you can see in the photo on the page.

The limits of our corridor study were basically from Crystal Bay all the way to the 28 junction with U.S. 50. There are some different segments within there. There's the community segments of Crystal Bay and Incline which we kind of worked with them a lot. They've already had a lot of plans for theirs, so we didn't really want to recreate the wheel on this one. It's more so looking at existing plans that have been created over the last 20 years, combine them all into one document, do kind of a gaps analysis, and kind of move forward with one strategy that all of these agencies can get behind and we can all work together to leverage our resources.

One important statistic is the 2.6 million vehicles annually that travel through the corridor. That's a large amount of vehicles. And we've kind of -- just in the state parks, lands and forest service lands alone over a million people that are recreating there annually. So you can imagine on a peak

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summer day as we've all seen it that's a lot of motorists and a lot of people trying to access the corridor at once. And in looking at some of the NDOT road safety audits for the highway and looking at NDOT statistics, over the last six plus years the fatalities rates have actually gone -- dropped significantly statewide. However, the fatality trend in this corridor has actually increased over that same period, so definitely look into some of these solutions to try to get that number to go back down as well.

582 paved spaces in the corridor, 530 of those are actually found in San Harbor. So as you can see there's only 50 other paved parking areas within the corridor for folks to try to find parking during the peak season. During the peak season there's -- at any time there could be 600 plus vehicles driving around looking for those 50 parking spaces which creates a lot of illegal U-turns in the highway, a lot of unsafe areas for pedestrians.

In this photo, you can actually see where there's a -- state parks have built a formalized trail down to Hidden Beach, yet there's still a guardrail that blocks access to that. So not only do you have someone getting dropped off on the highway, you have them trying to cross traffic and hop over a guardrail with their little kids. Very unsafe. Also creates a lot of social trails, and state parks forest service land management agencies really want to get people on safe formalized trails, limit some of the erosion issues that come along with the socialized trails and just basically chaos versus the management statement.

Shoulder parking has increased 170 percent over the last 11 years, which is pretty substantial. And based on the trends and what we've continued to count, that looks like it's going to continue increase as this corridor gets more popular. Again, some more challenges. San Harbor is the largest park in this area. Usually, in the morning time it creates huge backups. Part of the plan addresses some use of technology. Instead of going with the historic fee booths where they collect money right at the entrance, usually causes a lot of this backup is getting people into the park, let them park and then hop out of their cars and go pay at a parking kiosk, basically moving the queue from the park -- or from the highway into the park. We have been working with state parks on that, and they are definitely open to some of the suggestions that have been coming from the various stakeholders through this development of the plan.

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We're looking at this plan to help us identify some opportunities in the corridor. These five main topics are all interrelated, and every solution that was recommended in this plan definitely looks at all of these options and opportunities. As you can see in this picture here we identify the recommendations that came from the various agencies. You can see the proposed park and ride lots at both ends of the corridor. Really what the recommendation was, was to -- it's probably not going to be feasible to operate transit year round, but higher (inaudible) is going to come in the peak summer season. By having the park and ride lots, it allows people to park before they drive down the corridor, use that transit service to get to their destinations. We have various transit stops within the corridor, and then really looking at the shoulder season parking counts which we collected last October, and plan for about 250 spaces total on the corridor, which is about our shoulder parking counts during the off-peak season time. So that we're not -- the goal of this is to give people the same level of access if not safer, improved access.

But there's a lot of -- a lot of these areas further south are very remote destinations, and the other thing we looked at was capacity. CRPA has done some capacity studies and San Harbor did a big capacity study. So we developed ranges for each of these -- the famous beach locations, with the goal being we want to provide parking to accommodate their existing use. We don't want to take an area like Secret Harbor that's typically a more remote location and turn it into a San Harbor, because there's two different experiences that people are looking for. So we're really keeping that in mind, and in keeping the corridor so that everybody can enjoy it the way they like to enjoy it, but give them that safe access.

The bike trail has become a big piece of that as well. As we build some of the off-highway parking areas, it's really connecting those nodes and those beaches and the recreational opportunities through the -- through the bike trail, so people can still move around, but they can do it safely off highway.

So, again, the recommendations, use of transit during peak times with park and ride lots at both ends of the corridor, especially south U.S. 50. There is an opportunity to create somewhat of a visitor's center. I know CRPA is interested in working with us to keep the boat inspection facility there, so not only does it become a park and ride lot, but it becomes somewhat of an attraction and amenity for people to use. So while they're waiting for their

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bus, they can learn about Tahoe and get their boat inspections. They can enjoy the state parks facilities as well.

And then as far as the shoulder -- we're looking at relocating the shoulder parking. So, again, we want to accommodate people. We don't want to take away their access. That's not the goal of the plan. And transit plays a huge role in that. As Carl had mentioned with the East Shore Express Transit Service last summer we actually doubled our -- I should say this summer we actually doubled our ridership from Incline to San Harbor compared to the first year. So we did over 20,000 rides this summer, so very successful. People have given us nothing but positive feedback about it. We've made it very convenient for people, so, you know, they still have their same level of access to San Harbor, if not better, because they get dropped off right at the visitor's center, the beach. They've said that they'd rather do that than have to park on the shoulder. And the only reason they typically parked on the shoulder in the past was that is the only option they had once the park closed. So we were able to, with that pilot project, come up with a way and kind of change their behavior and give them a safer way -- give them a safer alternative into the park.

We're also looking at providing some emergency pullouts and 11 viewpoints. One popular thing is for visitors who come to the lake, they really want to drive around and enjoy the scenery of the lake. We want to give them those viewpoints, give them their photo opportunities with 20 minute parking where they can pull safely off the highway, enjoy it. It's an interpretive sign opportunity to educate them about the lake as well.

And with emergency pullouts there's really -- there's a lot of maintenance activities that go along throughout the corridor. So give the emergency vehicles, the maintenance vehicles, give them an opportunity to kind of get out of the traffic and do what they need to do, or if someone has a flat tire, needs to pull over for some reason, they can do that safely out of traffic. Again, the connectivity of the bikeway plays a huge role in this of giving people that alternative. Creating the true multimodal corridor and giving people alternatives to drive in their car and looking for spaces.

We're looking at this plan as more of an implementation plan rather than just a plan that the agencies end up putting on the shelf. We have a whole chapter on implementation. And what it does is identifies a variety of some

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of the different projects that are created by the different agencies, and how the agencies with overlapping projects can work together to implement the projects at the same time opposed to everybody kind of doing their own thing and missing out on great opportunities to leverage resources and funding. This highlights the projects that we submitted as a cooperating agency with NDOT for the Federal Lands Access Program. Perfect example, NDOT has an erosion control project plan from San Harbor to the forest service lots at the Carson City line.

We're looking at working with NDOT to put in some of those -- put in some of the parking improvements, putting in some transit stops with that. Another example is Incline Village. GID has to replace some sewer pipe which is currently within NDOT's right-of-way. It makes it hard for them to maintain. They would prefer it to be on the forest service property out of the right-of-way. So we're working with them to -- they could put the -- put the new line outside of the right-of-way and pave a bike trail over the top of it which would also serve as access to those sewer pipes, so everybody gets a win out of one project. And then, again, on -- as a priority four is looking at some various opportunities with NDOT with forest service on projects that we can work together on; bike trails, road control projects, more parking, transit stops, visitor's centers.

And, again, it was just the -- it was -- this process has taken over a year, but it's been a great experience working with all the agencies. And I truly believe that with the completion of this plan, we have a commitment from 13 agencies, and we've all worked together, and I think we're going to show the public how this plan can be a benefit to the State of Nevada, as well as Lake Tahoe. And with that I will be happy to answer any questions.

Sandoval: Questions from Board members? Member Savage.

Savage: Thank you, Governor, and thank you, Derek. I have two questions. First of all, that last slide with the priority, that was not in our packet.

Kirkland: Okay.

Savage: If you could please...

Kirkland: Pass it around.

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- Savage: ...make a copy and pass it around later we'd appreciate that. And then secondly there was a note here regarding the FLAP, acronym FLAP, the Federal Lands Access Program application. The application identified a FLAP request of 25 million with almost a 50 percent match of 24 million?
- Kirkland: Yeah.
- Savage: The 50 percent at 25 is...
- Kirkland: Yeah, the total project cost for all these is estimated at about 50 million. So we came up between, you know, SQ-1 funds, funds that NDOT had identified for some of their water quality project. IVGID has a substantial amount of money for their sewer pipe already. Washoe County has been willing to participate with some of their Washoe County 1 funding. It actually came up to about almost a 50 percent match to what we were requesting, which meant out of the 50 million, we only needed to put in a federal funding request of 25 million.
- Savage: So that's 100 percent match?
- Kirkland: Yeah. It's 50 percent of the total project.
- Savage: 50 percent. Okay. Gotcha. Thank you. Thank you, Governor.
- Sandoval: And so you've got this federal application in now for this grant. When do you expect to hear on that?
- Kirkland: I believe sometime next week. And we do have Matt Ambroziak with Central Federal Lands Highways who's going to be up visiting some of the Tahoe projects this week. So I don't...
- Sandoval: Who's that? Oh, you're -- are you the decision maker?
- Ambroziak: I am not.
- Sandoval: Well, put in a good word for us, would you? And that's interesting because I hadn't thought about this before, but that queue that happens outside of San Harbor, that's famous for decades. And it seems like such a simple fix, and I know that state parks needs to be involved in that. But it's -- you know, I hate to say it because I get a hard time for it, but there has to be an app for that. Because I was in Oakland and they had a thing you'd park in a

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parking space and you could pay -- you could download this thing in seconds and pay for your spot and be done with it. And you'd have electronic enforcement I would imagine and it seems like it would really solve a lot of issues. So I would hope that that's maybe something that we could explore between now, we're toward the end of our season, and the opening of the new season next year. So I'm not sure if we need to get together with Leo or the head of state parks and those folks, but that's something I would think we can do now.

Kirkland: Yeah, I think we'd agree. And that was kind of our goal was to start working on that right away.

Sandoval: Okay. So I'll visit with those folks to see...

Kirkland: Okay.

Sandoval: ...where we are. But that's pretty much a unique situation in the state because I don't know if there's a backup anywhere else.

Kirkland: Yeah, from my understanding from talking to state parks I believe that is pretty much the only case where they have that -- this kind of congestion issue.

Sandoval: And it's your hope, essentially, along that entire route is to have new lots where people can park and then they would catch that shuttle bus and go to their preferred destination.

Kirkland: Correct. And when the transit wasn't operating we would have enough parking, and with the bike trail to cover people to still have their access to that area without having to park on the shoulders.

Sandoval: And what is the cost to jump on that shuttle now?

Kirkland: Currently, it's \$3 with reduced fares for children, seniors and disabled. And we try to come up with -- we found statistics that there's about 3.8 people per car going to San Harbor. So at that cost it was pretty equivalent to what they would have paid to drive their car in if they had a family of four.

Sandoval: Mm-hmm.

Kirkland: So...

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- Sandoval: I think the issue also is I would imagine carrying the drinks and the towels and the chairs and all those things, so those buses accommodate those things as well?
- Kirkland: Yeah, we actually took the first three seats out of the bus and mounted some racks in there so they could put their coolers and lawn chairs and so...
- Sandoval: Okay. Further questions? Member Fransway:
- Fransway: Thank you, Governor, and thank you for your work on this project. I think it's very, very important to the state.
- Kirkland: Thank you.
- Fransway: Is the federal grant contingent upon local match or is it going to rely on the 100 percent match from the locals after the fact?
- Kirkland: Once we find out if we're shortlisted for that grant, we will have to work together, the same agencies working with NDOT to identify the, you know, the actual cost of these projects. And, really, I'd have to sit down and identify the match, so the match will be a requirement to provide to that grant.
- Fransway: Okay. So obviously you must already have an application with those resources. For instance, question one, Nevada?
- Kirkland: Correct.
- Fransway: Okay. Good luck.
- Kirkland: Thanks.
- Fransway: Thanks, Governor.
- Sandoval: You're welcome. Anyone else?
- Cortez Masto: Governor, it's Catherine. Just a follow up on Commission Fransway's question. SQ-1, is that the -- is that the funding that comes from the issuance of the general obligation bonds that passed in 2010?
- Kirkland: Yeah, I believe so.

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- Cortez Masto: Is that a confident yes or...
- Kirkland: Yes. Yes.
- Cortez Masto: ...it was a -- yeah. All right. Thank you. And then how much -- do you have a breakdown how much would each be contributed by the state, Washoe and Incline Village, for their -- that portion of the 24 million?
- Kirkland: Yeah, I do not have that in front of me. I know the Washoe County funds were approximately 1 million. I believe the State Question 1 funds were 3 to 5 million. I don't know exactly. And IVGID has close to 20 million they've got identified for theirs. So they're putting a large portion into this for their sewer project, so...
- Cortez Masto: All right. Thank you.
- Sandoval: Madam Controller.
- Wallin: Thank you. I love this report here and I too would like a copy of that slide. What's the timeline on all of your priorities here, 1, 2 and 3?
- Kirkland: You know, it's really going to be dependent on the federal grant that we have out there. You know, we're hoping to get it done within a five to seven-year program is what we've laid out in this map. I know IVGID is looking for 2015 start time on their project. I know we've been working with NDOT on erosion control which is targeted for 2015. Our first priority, the bike trail from Incline to San Harbor, the environmental documents should be coming out publicly pretty soon, and that's going to be ready to go to construction by 2015, as well. So pretty aggressive timeline, but, again, it's -- you know, it's going really be dependent on the funds that are available, so...
- Sandoval: Anyone else? Thank you.
- Kirkland: Thank you.
- Sandoval: Agenda Item No. 9, old business.
- Malfabon: Thank you, Governor. We have our standing items under old business, the report of outside counsel costs on open matters and the monthly litigation report. As we've mentioned before, we are proceeding with the request for

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qualifications on getting a -- casting a net for more firms, legal firms, hopefully Nevada firms that are capable of assisting us on some of these outstanding legal issues that are typically requiring a lot of effort in order to either determine whether to go to court or to negotiate equitable settlements for the state.

Regarding Items A and B then, Dennis Gallagher, our Chief Counsel is available to take any questions on that. Also included in your packet is the fatality report, and it's good news to see that the trend -- now, this is a little bit dated information from the report of August 26th, but it was showing that compared to same time last year in late August that we were 10 fatalities lower this year than we were last year. So that's a good trend to continue.

Sandoval: Questions from Board members? Member Savage and then Member Fransway.

Savage: Thank you, Governor. Just a comment, Mr. Director and staff on the campaign for the zero fatalities. I was at the ball game at University Nevada Reno and Davis, and very, very present -- every concessionaire, every vendor had a little button. There was a nice booth set up. And I just want to compliment the Department and the campaign that I think their reaching out to the public was very evident at Saturday's festivities. Thank you, Governor.

Malfabon: Thank you. I know that I was there, and I received a pledge card from one of the people helping to get people situated on their -- to get -- direct them to their seats. And I saw the booth out there and very highly visible. I think that that's part of our goal to get that message out there, get that brand known across the state.

Sandoval: Thank you. Tom.

Malfabon: And we won.

Fransway: Thank you, Governor. And I'm glad that that's well received. I'm just wondering, Rudy, where are we in relation to the revised list of our pay for legal counsel?

Malfabon: Dennis.

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- Gallagher: For the record, Dennis Gallagher, Counsel to the Board. Board Member Fransway, it should go out this week. It's being routed around for all the appropriate signatures.
- Fransway: Okay. Thank you.
- Gallagher: Actually, if I could follow up on one of the items Mr. Director mentioned. I think he used the phrase, "Hopefully they'll be Nevada firms." If I might elaborate on that, they will be Nevada firms.
- Sandoval: So it won't be -- I guess it could be, but will it be one of these -- let's say I have an 800-member firm in New York and I want to send one of my associates out to Las Vegas. Does that count?
- Gallagher: They'll certainly be entitled to express their interest in it, but one of the factors for the selection process is not only going to be experience in these types of cases, but experience in the 8th Judicial District...
- Sandoval: Okay.
- Gallagher: ...with these types of cases.
- Sandoval: Excellent. Board members, any further questions or comments with regard to Agenda Item No. 9? All right. Thank you. We'll move on to Agenda Item No. 10, public comment. Is there any member of the public here in Carson City that would like to provide comment to the Board?
- Malfabon: Governor, I wanted to make one mention that I neglected to mention in the Director's Report, was that we are going to do a train the trainer class for traffic incident management program, the TIM program. And that program is really focused at trying to clear incidents, when we have a crash on a highway, we want to get that cleared off as soon as possible to get traffic rolling again. And we're going to have two one-and-a-half day courses in September, the 14th and 15th in Reno, and the 17th and 18th in Las Vegas.
- And that's a good train the trainer program to get the basics out there for not only NDOT, but also other agencies that deal with traffic incident management. Obviously, we work hand in hand with our public safety agencies such as Department of Public Safety, NHP and the sheriff's offices

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and such throughout the counties and the cities. But I just wanted to put a plug in for that, train the trainer, two classes in those dates in September.

- Sandoval: All right. Thank you. Any public comment in Southern Nevada?
- Martin: None here, sir.
- Sandoval: Thank you. We'll move on to Agenda Item No. 11, adjournment. Is there a motion for adjournment?
- Wallin: Move to adjourn.
- Martin: So moved.
- Sandoval: Member Martin has moved for adjournment. Madam Controller has seconded the motion. All in favor, please say aye.
- Group: Aye.
- Sandoval: Motion passes unanimously. Thank you, ladies and gentlemen. Great meeting. We are adjourned.



Secretary to the Board



Preparer of Minutes