

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

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

Sandoval: Good morning, everyone. I will call the Department of Transportation Board of Directors Meeting to order. I understand that Member Fransway is participating telephonically. No? He hasn't called in yet. All right. We'll commence with Agenda No. 1, which is to receive the Director's Report. I understand the Director is going to be making his presentation from Las Vegas.

Malfabon: Yes, Governor. Thank you. I'm down here in Las Vegas. It's not as chilly as up there, but it is cold for Las Vegas. And the reason that I'm down here, Governor and Board members, is to -- later this afternoon we will have our IFC work program request related to Project NEON and the \$100 million of bonds that will be issued to purchase right-of-way on that project. So I'll be able to attend in person for that important presentation.

On the federal level, attended a transit summit in Reno last week. And Senator Reid spoke at that summit, and he mentioned some things that were worth mentioning here. They have negotiations on the budget going on currently between Congressman Ryan and Senator Murray. And they're getting close to having a deal on the budget for some of those issues that have been affecting transportation as well. One of the big dates that's coming up is January 15th as far as the debt ceiling limit, when that issue comes up, so hopefully they get this budget deal worked out before that so we don't have another shutdown.

One other thing that's worth mentioning that the Senator said was that earmarks which are currently not allowed by Congress may return again. They might call it something different, but currently some of that

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discretionary money is available to the administration, so the USDOT Secretary of Transportation kind of doles out some of that as grant funds. And what Congress would like to see is that returned back to their opportunity for earmarking certain dollars toward real projects in their home states. We definitely, because of some of the benefits that we've received over the years, like to see that return.

Moving on, Governor and Board members, on I-11 you'll see a list of stakeholders that we provided in the old business item of today's packet. But we continued having communications with other stakeholders and with other states on I-11, and we'll have Sandra Rosenberg sometime in the first quarter of next year kind of give another update on how that I-11 study is going. It's jointly funded by ADOT and NDOT.

I mentioned Project NEON, one of the things that I also wanted to mention about that project is that our TIFIA request, that's a federal loan program. We wrote basically a letter of intent to the program, and now we're entering our second stage of that TIFIA loan program. This TIFIA loan will actually be taken out by the private partner, but NDOT starts the process. So we're pleased to report that we're entering the second stage of that. And it will require us to do something like a Fitz Rating on this funding scenario using TIFIA for the project.

Sandoval: Before you move on, Director, I just wanted for the record that Member Fransway is participating by telephone from the Winnemucca District Office. Member Fransway, can you hear us loud and clear? We can hear him, but I don't know if he can hear us. Tom, can you hear us? Rudy, will you ask him if he can hear from Southern Nevada?

Malfabon: Okay. Member Fransway, can you hear us?

Fransway: Hello, Governor.

Sandoval: All right.

Krolicki: It's really cold in Winnemucca.

Sandoval: Yeah. Hey, Tom, we have a bit of a delay here. But can you hear us loud and clear?

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- Fransway: I don't know how loud, but fairly clear, Governor. It's 26 below in Winnemucca this morning.
- Sandoval: Wow. Well, you got us for sure. All right. At any time that you can't hear any part of the presentation, please let us know.
- Fransway: Okay. Thank you.
- Sandoval: Stay warm. Rudy, will you proceed, please?
- Malfabon: Thank you, Governor. I'll stop complaining about the 36 degrees down here. And continuing on with Project NEON, last week we had a public meeting that was well attended by the public. And comments in the media reports were very positive, but wanted to mention that one of the key points that was made was that the property owners are relieved that the project is going forward. They're relieved to know that NDOT is going to be doing what it needs to do to acquire their property, relocate businesses and such. So we've been doing a little bit under Phase 1, but as Phase 3 and 4 advance, it's really critical that we do receive that IFC approval this afternoon to proceed.
- Sandoval: Rudy, may I ask a question? Is there any confusion out there as to which parcels are going to be purchased and which are not?
- Malfabon: There shouldn't be, Governor. As we contact the property owners, we let them know what we're going to be acquiring. So recently in the last about a month or so we established what we are acquiring for Phases 3 and 4. We did have some discussion about whether we would take a partial take on a property or take the full take if a later stage of NEON was going to take their property. And we decided it's best to just take it all at one time if it makes sense. So the property owner should know as we contact them specifically what we are asking for as far as relocations as well as property takes.
- Sandoval: And I ask that question only because I've gotten some communication that there was some confusion as to the status of some of those parcels and whether they were going to be purchased or not. And so it left an individual or individuals wondering what was going to happen.
- Malfabon: Yes, Governor. As I said, we did have what's called a right-of-way setting which was approved by our Chief Engineer, Assistant Director for

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Engineering, John Terry. So that was fairly recent, so it could've been a couple of months ago they were uncertain. But after that right-of-way is set, they'll know for certain what we're going to acquire.

Fransway: Governor, can I butt in?

Sandoval: You may. Go ahead, Tom.

Malfabon: Go ahead, Member Fransway.

Fransway: Yeah, I'm -- just to let you know, I hear the Director fine, but I'm having a problem hearing the Board.

Sandoval: Okay. Tom, can you hear us now?

Fransway: Better, yes.

Sandoval: All right. It's just a volume issue.

Fransway: Okay. Thank you.

Sandoval: All right. Go ahead with your questions, Tom.

Fransway: No question.

Sandoval: Oh, all right. Mr. Director, please proceed.

Malfabon: Thank you, Governor. Another thing to note, Board members, is that we recently had a pedestrian fatality on Blue Diamond Road. The Director -- I'm sorry, the Division Chief for Safety Division at NDOT is going to join me at a neighborhood meeting tonight to discuss this. I had a conversation with the Clark County Public Works Director, Denis Cederburg, about this. It's in the area between Buffalo and Durango have traffic signals on Blue Diamond Road. And this young woman had tried to cross an unsignalized intersection at Cimarron on Blue Diamond Road. And she was struck and unfortunately was killed in this accident.

We understand also that there was a fatality further up the road at El Capitan this last weekend, so traffic safety is a huge issue on this corridor. It's high speed, a lot of development has occurred over the year, so a lot of folks turning out of the side streets and trying to make left turns.

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So we're proceeding with doing a study on whether a signal is recommended at this corner of Cimarron -- the intersection of Cimarron and Blue Diamond. So we'll report back to the Board as far as some of the actions that we will take to improve traffic safety on Blue Diamond Road at the next Board meeting.

Along the same vein of traffic fatalities, I reported last month about the work zone fatalities that occurred on that project and on I-80 in District 3. What we found out was that the traffic was stopped, the driver of the car involved in the accident or in the crash veered off to the right and that's when she struck the workers that were working on sealing the concrete pavement. So it's really an issue of driver inattentiveness. But what we've directed our Safety Division to look at is what countermeasures can we include in our construction projects so that we can avoid these types of fatalities.

And in this case it was a moving operation, probably would look at a device that's known as a truck mounted impact continuator, so that could follow with the workers as they move down the road. But we're also going to consider any kind of positive barriers. There's a type of barrier system that's mounted on wheels that can be moved quite quickly, and then kind of set in place, and it would protect workers. There's also what's called intrusion alert systems that set off kind of a siren or a warning if somebody gets into that work zone. And it allows the workers to get off the road or get out of the way of a vehicle that shouldn't be in that work zone. It triggers that system.

So we are looking at alternatives to try to improve traffic safety on our construction projects. And some measures we can put in place very quickly. We just have to look at where it makes sense to include those as bid items that the contractor would provide on the contract.

Fransway: Governor, it's Tom.

Sandoval: Go ahead, Tom.

Fransway: Just something that came to mind that may or may not be warranted, and probably wouldn't be real expensive, is to add some signage to the current speed limit signs in the construction zones that say that it's 55 miles an hour, for instance, strictly enforced. And that may or may not have an impact on

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people. It certainly would me. Anyway, I just wondered if that may be a suggestion.

Sandoval: Rudy, do we have that signage, do you know, where it says fines doubled and strictly enforced, those types of items?

Malfabon: We do. In advance of work zones, Governor, we have the double fine signing as a standard inclusion in our work zone traffic control devices.

Sandoval: And then I've seen historically signage as you're a few miles out warning that there's a construction zone ahead and that things -- the speed limit will be reduced. Was that signage there as well?

Malfabon: Yes, it was, Governor. In this case, the driver was simply not paying attention. And as I mentioned, there was a whole group of vehicles in that lane that were paying attention that were stopped for the construction. And the driver was not paying attention and that's what caused the crash.

Sandoval: Tom, does that satisfy your question?

Fransway: Yes. I am aware of the double penalty that it's strictly enforced. If there's a method to let them know that we will enforce it, then that might help, but it might just be what's already there may be the best we could do.

Malfabon: Thank you. Continuing on, Governor and Board members, the RTC of Southern Nevada has invited NDOT to participate in a tour of the Phoenix Metro area to look at their light rail system. The RTC is looking at what opportunities there are for mass transit in Las Vegas, working in concert with the Convention and Visitors Authority and business owners down here. It's going to be a possibility of looking at bus rapid transit routes or light rail system to address some of the issues, not only with tourism, but moving folks that desire mass transit around in the city in Las Vegas. So we appreciate their offer to host that tour.

I wanted to also mention just a thanks for the district maintenance folks that really worked hard in all parts of the state that had these storms go through the last few weeks. Our maintenance folks really worked hard to keep the roads passable all hours of the day, on the weekends. It was quite a storm that hit this last weekend. And we did have our tow plows out there operating on the interstate. District 2 had their tow plow operating for I believe the first time recently as well. And those seem to be working

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efficiently and allowing us to plow more snow at one time with one operator operating those tow plows. But just a shout out to those maintenance folks that really worked hard. I know that, Governor, you're aware of that issue and that event in Ely when there was folks kind of stranded on the road when there was a lot of snow. And our maintenance folks and highway patrol troopers took care of that situation and got those people out safely after some time of delay.

Governor: You know, and I appreciate, Mr. Director, your bringing that up because there were 50 to 60 people or vehicles that were stranded, I believe, it was between Ely and Pioche, and they had no way to get out. In fact, the weather was so extreme that they had to use snow mobiles to get to those people to bring them gasoline so that they could keep their cars on and keep themselves warm. So the combination of public safety and NDOT made a tremendous difference. And, you know, I don't know the specific individuals that were involved, but I know that I can speak for the entire Board when I convey my appreciation and thanks for their going out in the most extreme conditions possible and making sure that all those people were safe. And to a person, no one was harmed, they all got out safely and it worked out extremely well given the circumstances. So I appreciate your bringing that up.

And also just as a side comment, I was out by Gabbs yesterday and there were a couple NDOT trucks out there. And the roads were perfect. And so I don't know who the crews were that were out there, but those roads even in the most remote places in Nevada were clear. And it's very important to those commuters who live in Gabbs or maybe Ione or even Berlin, for those state employees who have to go to the state Ichthyosaur park or the ghost town there who are employed out there are able to get in and out of their safely. So I think that the NDOT crew should be commended for their hard work and doing such a great job.

Malfabon: Thank you, Governor. And I would like to apologize for not being there in person for this, but we wanted to thank the Attorney General for her seven years of serving on the Transportation Board. In appreciation we wanted to acknowledge that done some great work for us. We thank you for your support, Madam Attorney General, and wanted to present you with a little token of our appreciation in the form of a plaque and a mounted photograph of one of the important projects that you helped deliver during your tenure,

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and that was the Hoover Dam bypass bridge. So with that, if possible, Governor, I just would appreciate it if the Attorney General could say a few words. And really we'll miss you and we wish you the best in your final year as Attorney General.

Cortez Masto: Thank you. Thank you. First of all, this is incredible. You know, it's been an honor to be on this Board, Rudy, and to all of the NDOT employees here. You know, I have, believe it or not, worked with the Department of Transportation since I worked with Governor Miller, and have worked with many of the directors, many of the employees. I've always been so impressed with the professionalism and the output in the work that is done by the Department of Transportation. It is incredible. I think quite honestly a lot of people across the state do not realize everything that goes into the day to day work that you do protecting our highways and byways and the bridges. And I want to thank you for the opportunity to actually be able to sit on this Board and get to know all of you, participate with you, learn from you. It's been an incredible experience. I will miss it. However, I will have my attorneys still keeping me up to date in what's going on, keeping you guys in line.

And let me just say, because I think it's been public the individual who's going to replace me, correct, Governor? So Tom Skancke is going to be an incredible asset to this Board. I've known Tom for a number of years. I know him not only personally but professionally in what he has done across this country with respect to transportation issues. And he will be a positive asset. So thank you for this incredible photograph. I've been trying to get a photograph of this for -- and so now I know what you have to do, you have to actually leave the Board to get the photograph. But thank you. It's been fantastic, and I will enjoy watching you guys in the future and then working with you through my attorneys. Thank you, Rudy.

Malfabon: Thank you, Madam Attorney General.

Sandoval: And if I may, I also wanted to personally thank the Attorney General for her distinguished service to this Board, as well as the state. I know that your input has always been extremely valuable and has made a huge difference with regard to, you know, the direction of this Board. It's a lot of years of committed service and I know that you've always been very focused on insuring that we have the best transportation infrastructure in the country. So I thank you for everything that you've done. You're very welcome.

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- Malfabon: We have one last announcement and then I'll conclude the Director's Report. Keeping in line with the -- oh, you're going to do the photo. Sorry.
- Fransway: (Inaudible) Winnemucca. I'm having some trouble hearing the Board. I hear Rudy just fine. Okay. Thank you. Bye.
- Sandoval: All right, Rudy. Go ahead.
- Malfabon: Okay, Governor. So this is -- the last bit was in the theme of being the end of an era, we wanted to announce that someone else is going to be leaving next -- at the end of January of '14, Scott Magruder, our PIO, is going to be retiring. So we'll definitely have a sendoff for him, but just wanted to mention that too that we're going to miss him.
- Sandoval: He's an institution. How many years has he been here? Do you know how many years of service Scott has?
- Malfabon: I think that he's...
- Sandoval: I can't believe he's not even here today either.
- Unidentified Male: I believe it's...
- Unidentified Male: It's 27 years, Governor.
- Malfabon: Yes, he bought a few years of time, but we're going to miss him and his sense of humor. And that concludes the Director's Report.
- Sandoval: Thank you, Mr. Director. Any questions from Board members? Then let's 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 member of the public in Las Vegas that would like to provide comment to the Board?
- Malfabon: None here, Governor. I would like to acknowledge that Assemblywoman Irene Bustamante Adams is present here for a later item.
- Sandoval: All right. Then we'll move on to Agenda No. 3, November 13, 2013 NDOT meeting minutes. Have the members had an opportunity to review the minutes, and are there any changes? If there are none, the...
- Krolicki: Governor, I'm sorry.

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- Sandoval: Oh, go ahead.
- Krolicki: Governor, I just have one. On page 37, my second set of comments, instead of diffuse bonds, if we can change that word to defease D-E-F-E-A-S-E. It means to pre-refund escrow monies. So we're defeasing bonds. Only that change, Governor. But there are no other comments or edits. I would move for approval of these minutes with that one change, please.
- Sandoval: The Lieutenant Governor has made a motion to approve the minutes with the change of Page 37 of diffuse to defease. Is there a second?
- Wallin: Second.
- Sandoval: Second by Madam Controller. Any questions or comments on the motion? All in favor say aye.
- Group: Aye.
- Sandoval: Opposed no? Motion passes unanimously. We will move on to Agenda Item No. 4, Approval of Contracts Over \$5 million.
- Malfabon: Thank you, Governor. Assistant Director Administration Robert Nellis will cover this item.
- Nellis: Governor, members of Board, good morning. We have on contract under Attachment A on Page 3 of 13 for your consideration. This project is a slope flattening and construction of passing lanes on U.S. 95 north of Winnemucca, from 1.4 miles south of the junction of State Route 795 to 1.5 miles north of State Route 140 in Humboldt County. The Director recommends awarding the contract to Granite Construction Company in the amount of \$7,616,616. Does the Board have any questions?
- Sandoval: Questions from Board members? If there are no -- and does that complete your presentation?
- Nellis: Yes, sir.
- Sandoval: All right. If there are no questions, then the Chair will accept a motion for approval of the contract as described in Agenda Item No. 4 with Granite Construction Company in the amount of \$7,616,616.
- Fransway: So moved.

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- Sandoval: I thought that was appropriate that you make that motion, Tom, given it's a Humboldt County project. So we have a motion for approval by Member Fransway. Is there a second?
- Wallin: Second.
- Sandoval: Second by Madam Controller. Any questions or comments on the motion? All in favor say aye.
- Group: Aye.
- Sandoval: Opposed no? Motion passes unanimously. We'll move on -- does that complete Agenda Item No. 4?
- Nellis: Yes, sir.
- Sandoval: All right. We'll move on to Agenda No. 5, Approval of Agreements Over \$300,000.
- Nellis: Thank you, Governor. There's one agreement under Attachment A on Page 3 of 6. This is for outside legal counsel to represent and advise the Department in the Project NEON imminent domain condemnation matter. This is with Chapman Law Firm in the amount of \$453,650. Does the Board have any questions for us on this item?
- Sandoval: My only question, are we within schedule in terms of the attorneys' fees that we've paid? Do you follow me? I mean, have we paid this out faster than we thought we were? Or is there going to be more money associated with legal fees with this project?
- Nellis: Dennis, would you like to take that one?
- Gallagher: For the record, Dennis Gallagher, Chief Counsel from the Attorney General's Office. Governor, we anticipated NEON a number of matters that'll come before the Board for condemnation due to the large number of commercial and industrial properties that may be affected. We're preparing an overall budget depending on what the IFC may do later today, as to whether or not the project is accelerated. This is a not to exceed contract, and as they all will be, and on this particular one it is a bit higher given the nature of this particular property. We're dealing not only with the property owner, a bankruptcy, a number of tenants, and so this one may be a little

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more expensive than some of the others that you may be seeing in the upcoming months.

Sandoval: And when you say not to exceed, what if this goes crazy and...

Gallagher: Then we'll be back before the Board asking for increased contracting amounts as we've regrettably had to do on some in the past. But hopefully you're going to see these contracts once and that we won't be back seeking an amendment. But I suspect there may be one or two that get to be very hotly contested and we'll incur significant legal fees. However, I should add too that the Department working with (inaudible) partners will be submitting a number of these contracts for federal participation.

Sandoval: I just want a little clarity because when we say not to exceed, that's just this amount here.

Gallagher: Yes.

Sandoval: It's possible that this law firm could come back and seek additional monies in the event that the fees and costs exceed this amount.

Gallagher: That is correct, Governor:

Sandoval: Any other questions from Board members? If there are none, the Chair will accept a motion for approval of the agreement with the Chapman Law Firm as described in Agenda Item No. 5.

Wallin: Move to approve.

Sandoval: Madam Controller has moved for approval. Is there a second?

Cortez Masto: Second.

Sandoval: Second by the Attorney General. Any questions or discussion on the motion? All in favor say aye.

Group: Aye.

Sandoval: Opposed no? Motion passes unanimously. Thank you very much. We will move on to Agenda Item No. 6, Contracts, Agreements and Settlements.

Nellis: Thank you, Governor. There is one contract under Attachment A on Page 4 of 8 for the Board's information. This project is to install intersection safety

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improvements including solar flashing stop beacons, transverse rumble strips and advance stop ahead signs on various intersections throughout District 2. The Director awarded the contract on November 8, 2013 to Diversified Striping Systems in the amount of \$479,629.79. Does the Board have any questions on this item for us?

Sandoval: There are no questions. Please proceed.

Nellis: Thank you, Governor. There are 26 executed agreements under Attachment B starting on Page 6 and ending on Page 8 for the Board's information. Most of these are right-of-way access agreements. Does the Board have any questions on any of these 26 items for us?

Sandoval: Member Savage and then the Lieutenant Governor. Member Savage.

Savage: Thank you, Governor. Robert, on Item 24 for HDR Engineering I noticed the time extension through 12/31/18. Can you tell me what the Department has expended to date dollar-wise for that \$3.8 million number?

Nellis: Certainly. Allow the Assistant Director John Terry to answer that. Thank you.

Terry: I apologize. We'll have to follow-up with an exact amount, but I know we are still well under the 3 million amount not to exceed, but I can follow-up with more exact amount. So this is an agreement that's been going on for years, involves bridge design and other aspects. I can follow-up with the exact amount expended, but I don't think anybody here knows it right off the top.

Savage: Thank you, Mr. Terry. I understand the concept. I was just curious about the actual amount.

Terry: We'll follow-up with that.

Savage: Thank you, Governor.

Sandoval: Mr. Lieutenant Governor.

Krolicki: Thank you. And that Contract 24 goes out to 2018, just for that duration the pricing seemed fair. But I'm sure he did marvelous work and I have no challenge. It just seemed to be a high number. On Item 26, the very last item, you know, for someone serving as an expert witness in a

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condemnation case, I just -- \$70,000 just seemed a lot to me. Could you just explain the scope of that, to get up to that kind of a number, please.

Gallagher: Yeah. Yes. Again, for the record, Dennis Gallagher, counsel for the Board. This figure is somewhat higher. The engagement deals with the Railroad Pass Casino that is being impacted by the Boulder City Bypass. The particular analysis will go to the claimed lost revenues that the property owner is claiming due to the project and the changes of ingress and egress. Since it's an ongoing casino operation, it's a little bit more complicated than other businesses that we've dealt with. The contract will cover both the financial and valuation analysis as to the potential impacts that the project will have on this property, including potential of lost revenue. This fee includes not only the written report which will be prepared and shared with the landowner as part of the litigation process, but also anticipates that the individual will be required to testify in court. And typically in these contracts the individual have two rates, one for writing the report and two for testifying. Again, Lieutenant Governor, as the previous contract, this is a not to exceed dollar amount. We hope that we won't need to expend anywhere near this.

Krolicki: And how is that rate built into not to exceed; on an hourly basis?

Gallagher: Yes, Lieutenant Governor. These are hourly basis for what it takes them to prepare the written report, and an hourly basis for preparing for witness -- as a witness and testifying.

Krolicki: Okay. Thank you.

Gallagher: You're welcome.

Sandoval: Any other questions with regard to Agenda Item No. 6? This is an informational item. If there are no questions, we'll move on.

Nellis: Okay, Governor. That concludes the items under Agenda Item No. 6.

Sandoval: Thank you very much. Agenda Item No. 7, Public Auction, which disposal of NDOT owned underground water rights located within the former Dry Lake Rest Area in Clark County, Nevada.

Malfabon: Thank you, Governor. The Dry Lake Rest Area is no longer in existence, and we wanted to basically auction off or sell off the water rights associated

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with that former rest area. As the Board will recall, we actually are doing a project in this area of I-15. You approved the construction project, but this is an unrelated matter associated with selling off the water rights.

Sandoval: Thank you, Mr. Director. I thought there was a bit of an irony in this Agenda item given it was the Dry Lake Rest Area and that we had still water rights. But the estimated fair market value is \$19,500?

Malfabon: That is correct.

Sandoval: All right. Board members, any questions with regard to this Agenda item?

Fransway: Question, Governor.

Sandoval: Yes, Member Fransway.

Fransway: Okay. Thank you, Governor. I'm just wondering if -- there must be a well head and underground well, and I assume that there's power and probably a pump in the hole. And I'm wondering if those improvements and personal property were included in the \$19,500 appraisal.

Malfabon: Governor, I think our Right-of-Way Chief might be there to respond, but I believe that when we -- I think that we still have to abandon the well, so we pull out the pump and cap it with concrete. I'm not sure that we -- that remains in place. Paul?

Saucedo: Yes, thank you. Paul Saucedo, Chief Right-of-Way Agent for the record. Yes, Board Member Fransway, that well will have to be capped and removed. So the improvements actually don't have any value in place.

Fransway: Okay.

Saucedo: Okay.

Fransway: So I assume that there's power to it obviously.

Saucedo: Yes, sir.

Fransway: Okay. You answered my question. Thank you.

Malfabon: And just for the record, this is Rudy Malfabon, that was Paul Saucedo, our Chief Right-of-Way Agent for the minutes.

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- Sandoval: Any further questions from Board members? If there are none, the Chair will accept a motion to approve the public auction as described in Agenda item No. 7.
- Savage: So move.
- Sandoval: Member Savage 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.
- Sandoval: Opposed no? Motion passes unanimously. We'll move on to Agenda Item No. 8, Direct Sale, disposal of NDOT property located along a portion of State Route 160 east of Cameron Street in Clark County, Nevada.
- Malfabon: Yes, Governor, when we widened Blue Diamond Road, we acquired this parcel in 2005. And we received a request in February from the adjacent property owners to consider declaring this property a surplus. We've appraised the fair market value at \$330,000, and this is before the Board for approving disposal of this property.
- Sandoval: And the purchaser or purchasers have agreed to pay the \$330,000?
- Malfabon: Paul Saucedo, could you respond to that?
- Saucedo: Yes, Paul Saucedo, Chief Right-of-Way Agent for the record. Yes, Governor, that's true. They have. They have signed a tentative agreement.
- Sandoval: All right. I just -- and I don't mean this in jest, but it's nice to see that somebody agrees with our appraisal amount.
- Saucedo: Yes, sir.
- Sandoval: All right. Any other questions from Board members? Okay. If there are no questions, the Chair will accept a motion for approval of the direct sale of the NDOT property as described in Agenda No. 8 in the sum of \$330,000.
- Wallin: Move to approve.
- Sandoval: Madam Controller has moved to approve. Is there a second?

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- Krolicki: Second.
- Sandoval: Second by the Lieutenant Governor. Any questions or discussion regarding the motion? All in favor please say aye.
- Group: Aye.
- Sandoval: Opposed no? Motion passes unanimously. We'll move on to Agenda Item No. 9, Update on Vehicle Miles Traveled and Consideration of Request to Join the Western Road Usage Charge Consortium.
- Malfabon: Thank you, Governor. Last month during the Board meeting in the Director's Report I reported about this opportunity that we wanted to join this consortium. And we wanted to bring it before the Board for your consideration. Our Director of Performance Management Division, Aladdin Khan, is going to present this item.
- Khan: Good morning, Governor and Board members. I thank you for the opportunity to provide you information on this item. I will just start with the quick update on the West Coast Coalition. They're calling it the consortium basically. So what is this consortium? This is primarily a voluntary pooled funded study. That is we bring information from this Coalition members and not necessarily -- it does not really focus on -- or actually we're not obligated in any way or shape or form to follow whatever other states are doing. Every member state is basically free to continue their own studies in whatever shape or form they feel is good for their state.
- The current membership -- this effort was started actually a year and a half ago by Washington and Oregon primarily. We were also part of the discussions with them, but not as actual members. As of now there are four members primarily, and we could be one of them, that would be five total. California, Texas, Washington and Oregon. The focus right now is on the West Coast members, and eventually it might grow, but right now this is just a West Coast effort.
- On November 13 the Oregon DOT had a meeting which was attended by 17 DOTs. Those DOTs are in addition to the member actually. There was Idaho, Utah, Florida, Minnesota, Colorado and 10 other DOTs. Most of them showed significant interest in continuing this effort to find a solution to the funding problem that we have today.

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What are some of the key benefits of this Coalition? Primarily we are looking at achieving economies of scale and leveraging the limited dollars that the members can contribute to get answers to some of the questions out of (inaudible) interest. Another key important element is information sharing and lessons learned from the Coalition.

We will share policy discussions and experiences among members, but obviously there will be no obligation on any of the member states to follow direction from the Coalition. And this will give us a voice in the national debate because there is a lot of discussion going on. Senator Blumen (sp?), he is actually right now proposing a bill to consider VMT as one of -- funding for the VMT in the next transportation bill to finally charter funding mechanism.

The administrative structure of this Coalition is there is a board of directors leading the effort, and there's steering committee of (inaudible) state designee, a working group and there may be some consultants helping with that effort. And they develop a work plan and then continue to get answers to some of the questions.

The budget for this Coalition is 25,000 per state. A majority of that money will go to the travel costs and meetings. There will be four quarterly meetings and one annual meeting. And there will be limited dollars remaining, around 72,000, 71,000 for research on a limited scale. The cost breakdown of those 25,000 is shown here. It goes to meeting room rental, coffee, lunches and travel reimbursement for one staff for those four meetings.

Do we have any other (inaudible) studies right now? Yes, we do. There are currently nine. Of them, the NCHRP is the National Cooperative Highway Research Program. That's the biggest one. It's almost close to \$4,000. And then we have eight other (inaudible) studies. So this could be one of those additional (inaudible) study there.

As I mentioned, this Coalition participation, this Coalition, does not obligate any of the members (inaudible) policy of other implementation aspects. Members are free to determine how they wish to implement road usage, charging systems or the mechanism that work best with it for their state. And it's voluntary participation.

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The current status of this, NDOT had -- we had shown some interest to join the Coalition, but we haven't signed any documents, papers or agreements with the Coalition. And that's all I have, if you have any questions.

Sandoval: Questions from Board members?

Martin: I have one, sir.

Sandoval: Yes, Member Martin.

Martin: The existing NDOT or the pooled fund studies, you list out nine other organizations. Are we a member of any of those organizations?

Khan: Actually I don't have the answer for that. I got this from the Research Division, but we can get you the information after this meeting.

Sandoval: I mean, that's a good question, because from reviewing the minutes, I mean, part of the point of bringing this item on the Agenda was that the our participation in consortiums with regard to VMT I was hoping would be a Board decision and not an executive decision. And I wasn't aware that we were already participating in nine others.

Malfabon: And I could clarify that, Governor. This is Director Malfabon. Those pooled fund studies are funded through the research program, so it's normal for the research program to participate in these kinds of studies so that -- we get requests from NCHRP and from AASHTO, the organization of all the state DOTs, to kind of pull our research funds into these kinds of efforts. This is unique for this VMT study because it's a consortium of states that are focused on a particular issue, whereas those are more related to the research program at a national level.

Sandoval: Well, perhaps I'm anticipating Member Martin's question, but if we're already involved in nine, why do we need a tenth?

Malfabon: Governor, it is -- as Mr. Khan had mentioned, it is an issue that we are doing our own study on, but we feel that it's beneficial for the state for the cost that is significant, but we believe that we're going to get a lot of benefit out of participating in the Oregon consortium to see what they're finding out in their state, what they're developing in terms of the vehicle miles traveled as an alternative to the gas tax. And we just think that it will be money well spent, and that's why we're bringing it to the Board.

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- Fransway: Governor, it's Tom.
- Sandoval: Before I go to you, Tom, I want to make sure that Frank has had all his questions answered.
- Martin: Well, I guess the pointed question here, these other nine, are any of these other nine studying the VMT?
- Khan: No, they're not.
- Martin: It's you specifically?
- Khan: No, they're not. Actually most of them are research related topics like highway safety (inaudible) activity and concrete consortium, so the funding is not an element that they're considering or studying any of those pooled funded studies.
- Malfabon: Governor, we will provide at the next Board meeting more detail on these pooled fund studies, the nine that were mentioned. But you'll see that they're typically related to technical issues of high design or high traffic safety, not associated with this road user charge issue or VMT.
- Sandoval: Okay. And I appreciate the clarification, because I thought there was an implication that all of these were studying VMT.
- Martin: As I did as well, Governor.
- Malfabon: I'm sorry for that confusion.
- Sandoval: Yeah. Let me -- again, I want to make sure that Member Martin has had all his questions answered. Then Member Fransway, and then I'll go to Member Savage.
- Martin: I'm good, sir.
- Sandoval: All right. Member Fransway.
- Fransway: Thank you, Governor. I am -- I've seen it and I remain a big fan of the concept of collaboration and sharing information through cooperating partnerships. I believe that this particular subject is vitally important to the future of transportation, not only in this state, but in the west and throughout the country. I believe that it needs extensive research. I also believe that methods of interstate revenue sharing will be a real challenge to us. And we

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need to figure out how we can build and maintain the state to state transportation and the commerce that flows.

So I believe that we should seek other input. I certainly expect to have results as being a part of the partnership. I look at the budget and I see \$54,000 going to travel and 71,000 going for limited research. I'm wondering if we do join that the conversation should arise as to whether the states should fund their own travel and we put the 25,000 and ultimately the 125,000 into the cause at hand.

So what I would be supportive of is joining the Coalition for one year and having a report or analysis come back by the Board to the Board sometime around November of 2014 to evaluate the progress and whether we need to continue to be involved. Those are my comments.

Oh, one other thing, am I right to assume that the 25,000 will come from Federal Highway Administration funds?

Khan: Yes, sir. We are using the SPR dollars for that participation.

Fransway: Okay. Those are my comments for now, Governor.

Sandoval: Thank you.

Malfabon: Just to clarify, Governor, that the amounts that Member Fransway was referring to are the combined, so total for all the states in the consortium, not an NDOT expense.

Fransway: It's 25,000 to join, correct, Rudy?

Malfabon: Yes, Tom, that's correct.

Fransway: Okay. I think it's money well spent if we can get the results and have the input that Nevada needs to provide in this important issue.

Sandoval: Thank you. We'll move to Member Savage.

Savage: Thank you, Governor. I too believe in collaboration, but at this juncture with the VMT study, which is a major study, it's very important for our state, and along with the other states in the union. So prior to the commitment, I would like to know specifically what other VMT studies the Department has committed to at this point, dollar-wise. I thought I remember University of Nevada Reno VMT study. And I'd like to know if

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there are other studies out there that we have committed to financially. Thank you, Mr. Khan.

Khan: Yes, sir, if I may. We have an existing VMT study right now going on that is only focusing on Nevada's needs moving forward, because we are geographically a different state compared to Oregon. We are a great state. We have a lot of tourists. And those elements are not considered in many other studies. We have UNV and UNR. Actually we split it into two phases for management purposes. They are leading the efforts to come up with those solutions that we have on the table.

And I can provide you a quick scope of work of the elements there including the studies as well, which includes the impact of out of state visitors, privacy concerns, the cost of administration, implementation issues, overall implication of this on NDOT's revenue as we move forward when we keep Project NEON in mind, like 100 million will be going that direction. So if VMT will return -- or an alternative funding mechanism is put in place will be an implication to NDOT and then the statewide revenue job creation growth. All those elements are included in this, but that's not part of the Coalition. It's specific to Nevada and our needs moving forward. And I can get you exact dollar amounts.

Malfabon: This is Director Malfabon. To add to that, that item will actually -- that contract with the universities is before the Board next month, so we'll present that in January.

Savage: Okay. So what dollars has this Department committed to, to this point on VMT studies, other than this proposal discussed right now?

Khan: I can give you a ballpark number. It's close to. But we have approximately 1.1 -- it'll be around 2.8 million total at the end when the study is done by 2015.

Savage: And have we already committed to the University of Nevada Reno and Las Vegas? I thought we had in a prior agreement. Or is that to come up in January?

Khan: As I said, we have two elements of this. One is with the University of Nevada Reno. That is already committed. And the other one is with University of Nevada Las Vegas. Because initially when we started this effort three years ago, we wanted to finish it by 2015, but then there were

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administrative delays of the agreement, delayed everything. So when that agreement signed, we split that into two phases for the management and (inaudible) project implementation. And the next one will come to the Board in January as Rudy mentioned.

Savage: Okay. So I'm sorry to be a little thick here. But we are -- we have already committed to the University of Nevada Reno and Las Vegas; is that right, Mr. Khan?

Khan: Yes, that's right.

Savage: And during those studies, is it the students that do that studies -- do those studies or is it a pass through to a subconsultant?

Khan: No, actually we have a team of experts that includes four, five experts, strategic guys from the national and local consulting firms. And the universities -- two universities that have professors from the economics department, electrical and computer science department, civil engineering. It's a group of around 20 to 25 experts on each panel there helping to implement the study. And there are students as well, that they're for the data collection and demonstrative type of work to reduce the cost of the study.

Savage: So the answer to clarify would be the University of Nevada personnel along -- both staff as well as student body?

Khan: Yes, sir, and some consultants as well.

Savage: And outside consultants?

Khan: Yes.

Savage: Okay. I wasn't sure. I'd like to know the outside consultants involved in that. Thank you, Mr. Khan.

Khan: Sure, absolutely.

Savage: Thank you, Governor.

Sandoval: Mr. Lieutenant Governor.

Krolicki: Thank you, Governor. Director Malfabon and Mr. Kahn, and other folks involved, a great staff anticipates the needs of a Board and gets the

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information before the time is right for things, so I appreciate what you're doing. I appreciate you focusing on your niche of worrying about the transportation infrastructure for the state. I mean, you're doing exactly what you're supposed to be doing. So my comments are not meant to be negative, but they're contrarian. And I think I mentioned some of this at our last meeting, and perhaps that's one of the reasons why we've brought it to the Board's attention.

I'm just wondering, policy should be driven at the Board level or the legislative level or, you know, and I just feel like I'm chasing staff on this one. And I say that in no pejorative way. I mean, you're anticipating needs. There's no question that we need more resources in transportation infrastructure. I get it. I understand it. But I still feel this approach is difficult. And I'm not afraid of information, bring it on all day, but I just don't get how you are able to implement such a policy interstate, not using it, I'm delighted to see it in your paragraph, not using GPS sources and things like that.

And I really do appreciate the summary on the first page. I'm comfortable with the summary. I turn to the next page though and this really is, you know, being driven in a direction. This is not innocuous. We don't know where this is going to go. It says, "Members, our interest and collaborative research and development of a potential new transportation funding method and would collect a road usage charge, RUC, from drivers based on actual road usage." So if this where this is going to go, I'm not comfortable. I think we'll get information from the folks who are driven, so to speak, to chase this project.

I'll be curious what Washington and Oregon and others, what their conclusions are. But at this point, Governor, and with all due respect to staff and understanding their needs -- tremendous needs for infrastructure, funds for maintenance, new construction, I'm not comfortable pursuing this. And I'm not sure why we as a Board would wish to pursue and sustain this policy. I feel like the conclusion's already reached and we're just trying to give cover to higher taxes. And I think there are other ways to do this that are far wiser. Thank you.

Sandoval:

Madam Controller.

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Wallin: Thank you, Governor. I think I have -- I can understand where the Lieutenant Governor is going on this and stuff. And I don't think it's a foregone conclusion. I think that this is something that Nevada should participate in because we have such a high volume of visitors. Our needs and our transportation here is a little bit different. All right. And so if the federal government were to go and say, "We can't use gas tax dollars to fund, we need to go to vehicle miles traveled," I think Nevada should be at the table here being part of this discussion so our needs are addressed. If the federal government decides to go and say, "This is what we need to do --" because I really think that before anything happens, it's going to be the federal government coming down to go and say that this is how it's going to be done. I don't think states can go and say, "Well, we want to do it this way." I just don't see that happening. But I think to not participate in this for the small amount of dollars would be a big mistake. So I think that we should -- to be part of the dialogue. And I don't think it's a foregone conclusion because I think it's the feds that would drive that decision. My personal opinion. Thank you.

Khan : If I may, sir.

Sandoval: Yes, sir.

Khan: Lieutenant Governor, sir, to come to your point, that's absolutely well taken. The consortium, obviously Oregon has legislative authority to look at those things in much more depth, the actual VMT fee. We don't have that authority. The study we are conducting right now is not even focusing on raising the taxes or discussing the structure of the VMT. We are looking at what will be the potential implementation aspects of if this system were to become at the national or the state level. The policy direction, the study cannot even focus or discuss or talk about the policy. That question will come to the policymakers and elected officials at the end of the day once we have the data available. So the focus is just to research all the components, the questions that have not been answered over the last 10 years.

Krolicki: I just feel like I'm being an accomplice to something that I'm not comfortable with at this point. If we were to say no or not to proceed in joining the consortium, what information would not be available to us at the end of this process?

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Khan: It's obviously the Board's direction and your -- if we feel like we don't really want to be part of the Coalition, I think with Director Malfabon and the Board you make the decision and we don't really have to follow that. We thought and we still think that the 25,000 being leveraged will give us more information that we don't have access to at this point in time, especially if these 17 or 16 other states (inaudible) at that national level that put in a transportation bill and the language and considering their needs. I saw the transportation bill language they put in right now for potentially the (inaudible) studies, and Oregon is like 90 percent of the things are geared unfortunately to them, because they are considered the tourist bureau. They're just taking the lead on it. And if we don't have -- that's my concern is if we don't have a voice in those discussions, who knows what direction they will take in all the other states.

Krolicki: But you just said to Member Savage that we have a -- we're in this for about \$2.8 million I think. And so it's one thing to ante up \$25,000 just so you have a seat at the table. And in many ways I get that. But, I mean, a several million dollar investment to pursue a track to secure additional fees through VMT, I mean, I think that's a pretty expensive due diligence process, and it puts some skin into the game from NDOT and, again, I will stop at this. But I'm not comfortable as a Board member supporting this concept at this time with really -- I appreciate the report we've seen, but I still feel there's very little information, and I still don't feel like there's legislative buy-in. I've not heard from the regional transportation folks. Governor, I don't know from your executive branch leadership standpoint. I still think this is a much more profound pivot than we're making it today. And if we're talking about this, does that lock us into a contract next month if that's when it comes back? But I'm not prepared to move forward at this time. But thank you.

Fransway: Governor?

Sandoval: Yeah, just a moment, Tom, I'll come to you, but I have a couple comments that I'd like to make. Is that all right?

Fransway: You bet.

Sandoval: Okay. Thank you. Now, and I also keyed in on some of the language that was prepared in our summary, and we have the Nevada study, which you described, which sounds like we're already moving forward, that that

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contract was entered into without input of this Board, and the contract that's coming next month will just be a continuation of a contract that was already approved with the university system. But having said that, I mean, here it says, "The Nevada study does not include using any devices in the car, nor does it include any sort of GPS tracking, and it does not advocate for VMT fee, and is not intended to discuss raising taxes, fees or generating additional revenue."

This consortium we're going to join says that member -- or you're seeking for us to join, it says, "The members are interested in collaborative research and development of a potential new transportation funding method that would collect a road usage charge," which I'm not sure how that's different from VMT, "From drivers based on actual road usage." So we're talking, at least from what I'm reading, polar opposites on what studies we're participating in. And this one that we're seeking to join seems to be an Oregon -- I'm trying to think of the kindest way to put this, an Oregon agenda with regard to VMT, because it -- based on what I've heard before is Oregon is all in when it comes to VMT. And you've heard the Lieutenant Governor who has reservations, is putting it kindly, with regard to going that VMT direction.

So, you know, given what the representation is to the Board with regard to what the study is that we've already approved and is ongoing with our universities and does not include these things that I've just labeled, and given what -- at least appears to me what the agenda is for this consortium, I'm not comfortable in putting money towards something that will achieve an end that seeks to do something that is the opposite of what our study is doing right now.

So correct me if I'm wrong, but I just feel like we would be contributing toward an end that I don't think this Board has been fully briefed on and is prepared to make a policy decision on.

Khan:

If I may, sir. You're absolutely right. The study that we are pursuing, it does not include any black box, any GPS, any devices. We are looking at if there's a way of self-reporting mechanism or if there is the myriad of options that we have raising tax -- other options like we will have a summary of all the possible solutions without going this direction of putting black boxes in the car or GPS or tracking or privacy, big brother. Those things we are not pursuing. On the other hand, the Coalition objective is

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they're using technology, so you're absolutely right in that direction that there could be two diverging things going on, and I understand that, absolutely.

Sandoval: Yeah. Would it be more appropriate for us to wait to hear what the findings of our own -- we've all agreed and you've said that Nevada is unique. I mean, we have these wide open spaces, two major metropolitan areas on each side of the state, so we have a Nevada centric study that's going on. Would it be better just to focus on that and see what the outcome of that is versus joining this consortium that is talking about things in states that are much smaller than ours and have much different geography and topography and urban areas?

Malfabon: Governor, if I may interject, this is Director Malfabon. I believe that one of the benefits of the joining the consortium is to -- you have several other states there talking about their perspectives. Because this is -- as the Controller had observed, it's really going to be a national issue. We definitely need to study what it means to Nevada. And it isn't -- there's plenty of time to come I believe before the policy issues are going to be debated at the legislative level, at the national level. It's just something that we want to see as a trend in place of to replace the current method of charging cents per gallon of fuel.

But I think that we would benefit by hearing other states' perspectives. It's not just Oregon, but some other states that probably think more in terms of how we feel in Nevada about protection of privacy and not raising taxes, the effect on businesses. We definitely want to hear all those perspectives too, and I think that we would benefit by joining the consortium to get those perspectives as we join the round table discussion. I know that Oregon is quite different from Nevada, and I think that joining the consortium would be the right thing to do compared to the expense of joining.

Recognizing, Governor and Board members, that definitely the issues facing Nevada and the policy discussion is going to take place, it's quite different, we want to know through the advancement of the Nevada studies what the issues are and bring that back to the Board in a much more detailed presentation. But one thing to point out is the Nevada studies started several years ago, and it was -- what Mr. Khan is referring to that's going to come next month is actually the phase three of the study, so there's been two

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phases that have occurred over the past few years with the university and with NDOT's consultants.

So I think that there is confusion about what this means. Definitely it's not to make a wholesale change in policy or to adopt a policy. It's really to just investigate and study.

Sandoval: Mr. Lieutenant Governor.

Krolicki: Rudy, I appreciate that. Mr. Khan or to Director Malfabon, I ask the question, what is it that we are not going to be getting if we were to not join the consortium? I mean, we can go read newspapers from Oregon and see what they're all saying if this is a listening tour. If we're there to engage, I'm not sure the policy direction you all are receiving from the Board and other leadership and interested parties here in terms of injecting information into the debate in Nevada's perspective. I mean, I'm not sure that Nevada has a perspective to engage in this conversation.

So, again, I appreciate it. You're doing vision things and long-term planning which is your obligation, but a Board member, at least this one, needs to step back and take a broader approach. And I just don't think this moment is right to go forward. Maybe next year when I get a pretty picture like this and there will be someone else sitting in this seat, you'll have someone who thinks differently. But at this point, it is what I believe. Thank you, sir.

Sandoval: And I guess a question, because again it appears to me based on the summary we have there is an agenda for this multistate group, and that is to develop a funding method that would collect a road usage charge from drivers based on actual road usage. What is the difference between a road usage charge and vehicle miles traveled?

Khan: It's the same thing, sir.

Sandoval: Yeah, so I don't know if it's a good idea, at least for me, I can only speak for myself, but not the other Board members, you know, I don't know if I want to join a consortium that has one result in mind, which is to develop a road usage charge, when we have an absolute opposite study that's going on and exploring all the other alternatives that's being conducted right by our own universities.

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Krolicki: Governor, I don't know if there are other conversations, but I feel that there needs to be far more input from interested parties, those with skillsets and experience in this area. Again, I appreciate the staff doing a lot of this work, but I would move to table this item and that no further action be taken at this point in time by NDOT to move forward into this consortium, but I would move to just table this motion.

Sandoval: Yeah, and before I accept your motion, I know Member Fransway had sought to speak. Member Fransway, do you still have comments or questions?

Fransway: Yes, Governor. Thank you.

Sandoval: Please proceed.

Fransway: You know, our heads cannot be in the sand on the fact, and I say fact, that the revenue stream is not keeping up with the cost. We all know that. And somehow we're going to have to deal with the unpleasant task of revenue changes. VMT is a new concept, certainly for the State of Nevada and I believe for most of the nation. And I feel that we need to be involved in knowing what's going on around us, because I think that -- like the Controller said, I believe that there's going to be an effort from the feds to deal with this. And I think that we need to be proactive. And we just sold water rights for nearly 20,000. And to me \$25,000 could be involved in this consortium is very viable, and I think what we need to do is seriously consider joining it for one year and bring it back to the Board with a report by November probably of next year and find out if -- what's been accomplished.

We have our Director who feels it's -- and, Rudy, I don't want to put words in your mouth, but what I'm hearing is that you feel it's a worthy expenditure. And I think that we should listen to him and try it for one year. Thank you, Governor.

Sandoval: Thank you, Member Fransway. Any other questions or comments from Board members? There is a pending motion to continue this matter...

Krolicki: Yes.

Sandoval: ...until...

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Krolicki: There wasn't a second to the motion, so let me just -- and, Tom Fransway, you're one of my mentors and I respect so much of what you say. This isn't about money for me. It's about policy.

Fransway: I'm sorry, I lost you, Governor.

Krolicki: Oh, I'm sorry. Tom, I was saying nice things about you, so I won't repeat them. But, this is not about the \$25,000. It's about a policy. It's about buy-in. It's joining forces with some folks who I believe have an agenda that already has a destination and clear mind, and it's about arranging facts to accomplish that and to give them, you know, some cover, if you will. I would love to hear from the Regional Transportation Commissions. I would love to hear from the effected parties. I've been on the receiving end of some VMT conversations in the last legislative session. I can't submit or convey that they were positive in nature. So before I'm comfortable voting \$1 into this consortium, I would love to know more.

So with that being said, I would move that we postpone this item for staff to work with the Governor's Office or this Board, and I'm happy to be a part of a working group. But just to package this thing together so we have a much better understanding of the information and the view of our community before we sign in. I don't think if we don't approve it today, if we reconsider it in January or February, I think we'll still be at that table listening to what they're saying. But I would move to postpone this item from today's Agenda.

Fransway: Governor.

Sandoval: Yes, Member Fransway.

Fransway: Okay. Thank you. I appreciate your comments, Lieutenant Governor, you know that. I would support that, but I don't want to table it indefinitely. I think you mentioned the first part of next year, and by then we should get the input from the RTCs and various entities that we need, and I would support that, but I don't think we should delay it for a long period of time.

Sandoval: All right. First, thank you, Member Fransway. Is there a second to the motion?

Savage: I'll second the motion, Governor.

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Sandoval: Yeah. All right. Now I will take questions or comments. There's a second by Member Savage. I'll be supporting the motion because not only do I want to get the input from the respective Regional Transportation Commission experts, but I'm really curious to see what we're getting from UNR, from the university studies as well. And if we're approving the third part of a phase of three phases, I'd like to know what we have learned from the first two phases. And that likely I would expect come before we approve phase three on this.

So, you know, Member Fransway, I agree with you that it shouldn't be an indefinite postponement, but I do believe that we need to have some Agenda items that will include some of the locals' perspectives with regard to the RUC or VMT or whatever you want to call it.

Fransway: Okay. When can we expect that input, Governor?

Sandoval: Well, I think it's premature to say today. I think there would be a contact made to both the Northern and Southern Nevada Regional Transportation Boards and their representatives, and anybody else throughout the state. This is an issue that is going to touch every driver in Nevada.

Malfabon: Governor, I just wanted to mention, and General Manager Tina Quigley from the RTC of Southern Nevada has been present and heard the discussion, so she's aware that we'll be requesting some input for the next Agenda in a future Board meeting to discuss this issue.

Sandoval: All right. Well, good. We already have a head start.

Khan: May I say, just one last thing is one of the major elements of our study is reaching out to the key stakeholders, which includes the ACLU, the Taxpayers Association, the counties, the NACO, RTCs, FSWA, all the partners. We have done some of that outreach, but not to the level that everybody's onboard yet. And that will take some time, so I don't think we will be able to get the information in January, but maybe in the next few months when we complete that public outreach and get their input and feedback in the process, and then we will be able to present the information to you.

Sandoval: Okay. I think that underscores the need for the Lieutenant Governor's motion is that there's still a lot of outstanding questions as well as entities

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that perhaps need to be contacted. Any other questions or comments?
Okay. All those in favor of the motion, please say aye.

Group: Aye.

Sandoval: Opposed no? The motion passes unanimously and we will wait to -- you know, I guess what I'll ask is an update -- another update next month where we are with regard to gathering the information and then when we'll have a meeting whereby we'll schedule a presentation as to what's going on with the UNR studies and the outreach to the other interested parties.

Khan: Yes, sir.

Sandoval: All right.

Fransway: Governor?

Sandoval: Yes, Member Fransway.

Fransway: We may even -- through Rudy we may even invite some of the other states to give their input and what they do, and then I would certainly be interested in that, what they expect.

Malfabon: We will reach out to them.

Sandoval: All right. Thank you. Agenda Item No. 10, Possible Approval of Triennial Disadvantaged Business Enterprise Goal for Federal Fiscal Years 2014 through '16.

Malfabon: Thank you, Governor. We have our consultant, David Keen, is going to present this item. But as you recall, in September we talked about the draft disparity study, to basically finalize that study and adopt a triennial goal for our Disadvantaged Business Enterprise Program, which is for minority and women-owned type of firms that do construction work and professional services for the Department. Mr. Keen.

Keen: Thank you very much. I want to make a very brief presentation and then be available for any of your questions. When we spoke with you in September, we had published a draft report, and that was made available to the public. We had -- we talked about some public meetings that we were going to do. Those were held. And I'm reporting on the combination of what happened at those public meetings, other comments that we got, some additional

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information that we had before we finalized the report, and our information on what the overall goal for DBE participation that you should consider -- might consider at NDOT.

So I'm going to -- if you can make that full-size, I'll speed through this. This is the same slide you saw in September discussing the purpose of a disparity study. NDOT is required because you receive federal dollars to implement the federal DBE program. A disparity study helps you implement and operate that program in a way that hopefully you would be able to survive any legal challenge, which a number of states in the western part of the U.S. have faced. USDOT recommends that especially for western states that you conduct these -- regularly conduct these types of studies.

So what is -- since we spoke with you on September 9th, we made -- on September 9th we made the report available to the public. Quite a bit of reaching out to business owners, other individuals and the public to ask -- to let them know that the study was available for their review. I ask for any comments that they might have, and urge them if they would like to attend meetings in Las Vegas, Sparks, and then we videoconference to Winnemucca, Ely and Elko. We held those public meetings on October 22nd and 24th.

Both Las Vegas and the Sparks meetings and the meetings in person were very well attended. We had a number of business owners, minority and women business owners, large majority owned firms and Trade Association Chamber representatives attend, give comments at those meetings, and then post those meetings got other emails, mail comments and comments via phone. Also we were able to since September 9th sit down with Federal Highway representatives for Nevada, go through the information and actually refine some of the analyses based on some of their suggestions.

And so that led to a slightly different overall DBE goal that's in the report for you all to consider. And there is -- you might recall, there are two parts to that goal. There was a base figure and then a step two adjustment. And it was fine tuning the step two adjustment that was then reviewed and I believe, I may be mistaken, but approved by the Federal Highways person that we were working with. And we have incorporated that new information, all of the public comment information as well as the new

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calculations of the overall DBE goal into a final report, which you will receive shortly.

Most of the information in the draft report is the same. The information that we received in the public meetings was very consistent. With all of the outreach and interviews we had done around the state, what we got was, you know, I think there's value in actually having folks be able to review that information, see it in writing and then be able to comment on it and expand on that information. So I was very pleased with both the participation of the public and the quality of the comments -- thought that went into the comments that we got, and so we were able to put those into the report for you to have documentation that supports the actions that you may choose to consider as you implement the program in the future.

So this slide is almost exactly the same way as you saw it on September 9th. The base figure of 4.5 percent which is the level of DBE participation including some minority and women-owned firms that might be DBE certified that are not today that you can outreach to to encourage them to be DBE certified. That's the level of DBE participation that you might expect given the current availability of currently certified DBEs and those that are potentially certified as DBEs. And that's identical to the information in the draft report and what we presented to you on September 9th.

The federal DBE program and the federal regulations require that anyone implementing the program consider not just current availability but some -- but four factors, but for any barriers to businesses forming, any barriers to businesses being successful in the local marketplace, what might you expect DBE participation to be if there were a so-called level playing field. And that is something that did change from the September 9th presentation, and our draft report we now take it -- our two step adjustment or step two adjustment is actually spelled out in two steps. It's in the same range as what we had in the draft report and our presentation to you previously, but we actually spell out those calculations, about a one -- a little bit more than a one percentage point increase in two different stages of adjustment to go from 4.5 percent base figure up to a 6.98 percent overall DBE goal. And, again, that was reviewed with Federal Highways and we believe that that will be acceptable.

So that is the change based on a little bit more information that we had on September 9th, and then sitting down with Federal Highways and getting

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their reaction to what was in the draft report, their recommendations of some things they'd like to see and then refining that, coming up with the 6.98.

And then a slide that you also saw before on September 9th, you'll need to project how much of that overall goal is to be met through what are called neutral means, small business programs, the type of DBE participation you would get if you didn't have any DBE contract goals at all, and the information that -- again, this is unchanged from the September 9th information. In the past you got about 1 percent DBE participation when there were no DBE contract goals, and NDOT has not met this overall DBE goal in past years. So the information that we have in the report suggested that you would need to consider something like the DBE Contract Goals Program, which is on the state to decide whether or not you're going to implement that program, and then have your -- have that be reviewed by Federal Highways. The information in our report is very consistent with you continuing a DBE Contract Goals Program for your federally-funded federal aid contracts, and that some of your participation would be met through neutral means, your new small business program, but others might be met -- other participation might be met through a DBE Contract Goals Program.

So I've tried to make this very brief since we spent quite a bit of time on this at the September 9th meeting, and welcome any questions.

Sandoval: All right. Thank you, Mr. Keen. And will you for my benefit, so your previous recommendation was 7.5 percent?

Keen: Well, it was, the reporting that the information was consistent when we put it all together, in the range of 7.5 percent, yes.

Sandoval: And now the recommendation is 6.98?

Keen: The information presented with a little bit more new information and breaking it down in a way that Federal Highways wanted to see, that was their recommendation to us, you get to a figure of 6.98.

Sandoval: Okay. Now, is that 6.98 -- because you've talked about that we would survive a legal challenge and that believe it will be acceptable. Is that 6.98 the minimum figure that you're recommending?

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Keen: There is no minimum or maximum. And, again, this is an overall goal long-term, you know, look at it on an annual basis, not a specific contract. You might set DBE contract goals higher or lower or at zero depending on the particular contract. There are no guarantees with surviving legal challenge. As I described to you, I was the author of the report for Caltrans that helped them survive legal challenge, and their goal was considerably higher. Their methodology however -- you know, California's a different state. The methodology that we're using here is very consistent with the methodology that the Ninth Circuit reviewed and helped Caltrans defend its program. So we believe this is the best possible approach with the best possible information.

Sandoval: I guess what I'm trying to get it is so you're telling us 6.98, I don't want to be (inaudible) legal challenge. I don't want to have to go all the way to the Ninth Circuit to find out that it took (inaudible) because in the mean we'll have spent hundreds of thousands of dollars to prove our point one way or the other. But you're also saying this is the number, 6.98. Is that...

Keen: And that's the number...

Sandoval: ...the correct understanding for me?

Keen: Yes, that's the number based on the federal regulations. So we're -- the federal regulations spell out this base figure and step two adjustment process. The federal regulations when you're making a step two adjustment indicate the factors that you are to look at, which we have done, so we're very much in accordance with the federal regulations. And the federal regulations have been upheld. And we implemented this approach following the federal regulations in that Caltrans study.

So my answer is two part. One is did we make this up out of thin air? No, this is what the federal regulations say. And they give specific examples of, hey, when you're making a step two adjustment, look at this factor and perhaps adjust it just for in this way, which we have done. So I think that helps the defensibility.

Sandoval: I guess where I'm going is -- and I think you said last time you were here that you're an expert witness and...

Keen: Yes.

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Sandoval: ...you've testified in many pieces of litigation.

Keen: And if I'm at all evasive, it's because of that training, so sorry about that.

Sandoval: No, which is fine, but I guess I don't want us to be vulnerable to a legal challenge. What would be the nature of the challenge if somebody were to take this to court?

Keen: You know, there's states being challenged all over the country right now for many reasons. One is we talked about I believe at September 9th that some particular subcontracting trades believe that they're unduly burdened by the federal DBE program, that you meet all the goals through trucking, for example, you meet all the goals through a particular subcontracting trade. And there's a challenge in Minnesota right now that's exactly that. Well, that doesn't have anything to do with the overall DBE goal. That has to do with how they're implementing the program, and it really helped prime contractors that are trying to meet their goals. And that's proceeding. We don't have any more information on that case today than we did on September 9th.

So we're going to get more guidance on this. There's as many ways of challenging the operation of the program by a state or local entity that's implementing the program as there are a way for people to be aggrieved. And some of them attack the specific issue that they're aggrieved about. Some of them also attacked all of the other basis of the program. So the overall DBE goal is one of the areas that you could be attacked, but there are many more and...

Sandoval: No, and I get that piece. I'm just trying to focus on what we're approving today. And would -- is there a potential that somebody would challenge us saying 6.98 is too high or too low? Or should we -- where would be the most -- the biggest potential for a challenge?

Keen: And you can be challenged that it would be too low. There have been lawsuits brought by minority contracting groups that say, hey, you know, we don't think you're aggressive enough in these types of programs. My answer to you very simply is given the legal challenges around the country, given the guidance from USDOT and my experience defending these types of programs in court, we believe that you can't do any better than this. This is following very specifically the federal regulations for setting a goal. And

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there is no safer place than this particular number or we would've recommended it. So this is in my best judgment something that is supportable for you to consider, and I don't know how to put degrees of risk around would you be safer with another number than another number. I think the refinement that went -- that happened between September 9th and what we're presenting to you today is a step in the right direction in terms of something that based on Federal Highways' review is something that is perhaps more defensible than what we brought you on September 9th.

Sandoval: Okay. Because that -- it does the beg question, and I'm not being argumentative, I just want to tease all these things out, is that somebody could say, "Well, wait a minute. You were at 7.5 and now you're at 6.98. You've come down."

Keen: And it's not coming down. It's more precisely quantifying how you get to a number, which I think, again, makes it more supportable. I think it was good feedback that the Federal Highways gave us. We also have full participation for fiscal year 2000 -- for the last fiscal year, federal fiscal year, which we did not have at September 9th. And that information is now in the report. That actually figures into the step two adjustment as well.

Sandoval: And in your public meetings, did you have any objections to the...

Keen: We've looked through all those comments, so it was much more about how the program is implemented rather than what the overall goal is. And we got a lot of input on, you know, you haven't been achieving your goal, so it doesn't matter what you set your goal, it matters what you actually do and how you do it. So I think those were the nature of the comments.

Sandoval: And that's on NDOT, not, you know, in terms of making sure that we do -- or NDOT does everything that it can do in order to meet the 6.98 percent goal.

Keen: Yeah, that was the nature of a lot of the comments that we received.

Sandoval: Okay. All right. Further questions? I'm going to go to the Attorney General and then the Controller.

Cortez Masto: Yeah, Governor, I think just a follow up. So what you're saying is that this is not an arbitrary number that we just picked out, that would not really withstand any legal challenge. What we've done here is really due diligence

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and analysis, backed it up, really determined what's appropriate for our market here in Nevada with this number, and that will help us withstand any legal challenge. Is that what you're saying?

Keen: That's correct.

Cortez Masto: Okay. Thank you.

Sandoval: Madam Controller.

Wallin: Okay. This is just -- I don't know if NDOT will answer this or you can answer this, but in our materials that we had, we have a 6.97 percent goal. And then also in the materials, and this is why I'm confused here, it said that FHWA accepted the adjusted goal of 6.97 percent. So my first question is, is it 6.98 or 6.97 that we're approving? And, two, is that statement, FHWA accepted it a true statement or not?

Keen: So let me go into the 1/100th of a percentage point difference, is in my conversations, the sequence of events is September 9th the information that you all received, Federal Highways received at that point, and the public could look at that. And there's some discussions of what should the step two adjustment be that we've had -- that NDOT has had with Federal Highways. In some of the spread sheets you get to 6.97, and some of the spreadsheets you get to 6.98, and it's a rounding difference. I think the 6.98 is where our spreadsheets get us. And the -- I'll defer to NDOT to answer the question about exactly what has been -- how formally has this been accepted.

Wallin: Okay. So we would be approving 6.98 then?

Keen: That's what's in our report. I don't know that...

Wallin: Okay.

Keen: ...you know, that would be my recommendation. I don't know if you have any further insights on this.

Sandoval: I think what the Controller is referring to, in the memo to the Board there's 6.97 percent figure that is recommended, and, again, this is important and I want to make sure that we get the number right. That's why I was using the 6 point -- your figure of 6.98.

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- Keen: Correct. And it's as simple as rounding, and as you share draft information with Federal Highways, you know, and I pointed this out to NDOT, I said, "You know, I don't -- I think it rounds to 6.98, not 6.97." And so I don't know how difficult it's going to be to have it go back with Federal Highways and say, "No, it's not 6.97, it's 6.98," and have them say, "Sure, rounding error, that makes sense, and you're okay."
- Malfabon: And this is the Director, Governor and Board members. As Mr. Keen had mentioned, when we prepared the Board packet, the materials that were provided to us had 6.97, and subsequently they found this little rounding issue, so it's acceptable to the FHWA to have 6.98. And we confirmed that with their program manager for the Civil Rights Program.
- Sandoval: If you'd respond to the Controller's second question, which is whether the federal entities have accepted the 6.98.
- Keen: And, Rudy, you have better information than I do on this.
- Malfabon: Pardon me, I was just at a side bar. Could you repeat that?
- Sandoval: We just want verification that the federal entity involved has accepted the 6.98 percent figure that's recommended today.
- Malfabon: Is there a representative from Federal Highway Administration in the audience in Carson City?
- Unidentified Male: Yes.
- Klekar: This is Sue Klekar, Federal Highways.
- Sandoval: Sue, if you'd come to the mic, please.
- Klekar: Good morning, Sue Klekar, Federal Highway Administration, Division Administrator. And, Rudy, I believe we have. Last I heard was 6.97.
- Malfabon: Yes. And, Sue, what I received was basically a marked up copy of the attachment from Kevin Resler, the program manager at FHWA, so that's where the -- I believe the 6.98 must've been in there, but I'd have to confirm with Kevin. That was a -- I thought that I had the latest and greatest when I put -- when we put the 6.97 together, but then subsequent to that, Sue, I saw the email from Kevin.

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- Krolicki: But, Governor, are we debating whether or not to make motion for 6.9 or 6.975?
- Klekar: To make the adjustment -- we asked the same thing. Sue Klekar again. We asked the same thing. And to make any variation, you have to have a reason for it. And so, you know, it's like what the figures show and if there's no reason to make any -- I mean, even a 1/100th of a point, then you don't make it.
- Sandoval: Well, it sounds like precision is key here and...
- Klekar: And the -- yes.
- Sandoval: And so we've got...
- Keen: See, I actually have numbers (inaudible).
- Sandoval: Okay.
- Keen: I think this is simple. Here I'll take the mic back.
- Klekar: Okay.
- Keen: Okay. If I -- sorry, but we -- to make this precise, we have a 4.5 percent base figure. There's two adjustments to it. One is adjustment for current capacity, and it's basically looking at your past DBE participation and a median of that past DBE participation, comparing that with your base figure, and taking half of the difference. When you take half of the difference and say 1.08 percentage point increase from your base figure. In some of the previous spreadsheets that I saw that I was able to check, that figure was not rounded correctly. So when you add 1.08 and 1.40 to 4.50, you get 6.98. So your question of defensibility, it would be nice if we had a table where everything added up correctly to 6.98, and I would request that Federal Highways accept that answer as sufficient to approve 6.98.
- Malfabon: Thank you.
- Klekar: Did you want me to...
- Sandoval: We absolutely want you, Sue.
- Klekar: Okay. Not having seen these, I'll take your work for this. We'll go with the 6.98.

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Keen: Yes. Thank you.

Klekar: Sue Klekar.

Sandoval: All right. Further questions or comments from Board members? Now, I understand there was -- first, there was a submission that was to be made; is that true, Mr. Hoffman?

Hoffman: Yes, Governor. For the record, Bill Hoffman, Deputy Director. There were folks that want to comment on this item I think before the Board voted, so I would put that back in the Board's hands.

Sandoval: All right. Are there any interested parties? Yes, yeah. Yes, sir. If you'd come and identify yourself.

Keen: And I'm still available for any other questions.

Copeland: Governor, Board members, for the record, I'm Richard Copeland. I'm a resident of Las Vegas, Nevada. I'm a minority contractor. I'm the largest minority business owner in Nevada. I'm here representing myself and my business and the National Association of Minority Contractors who have a chapter in Las Vegas, and I'm representing this chapter.

I want to acknowledge you all for taking on this and taking it seriously. We and myself feel comfortable with the goal that's been established. As David said, it's in that not meeting of the goal year after year and the systematic exclusion of companies of color from the mainstream of the economy is really unacceptable. And it's incumbent I feel upon this Board to address that and to use some of the race specific remedies that are in the report to achieve those goals.

When you look through the study as presented, between Native Americans and African American business owners, they receive less than 1/10th of 1 percent of the (inaudible). That's atrocious. I mean, how can a community pull itself up -- the underutilized communities pull itself up by its boot straps without having access to the (inaudible) DOT spend. That's a half a billion dollars, some round number, 400, \$500 million a year spent, and we are systematically excluded from participating in those revenues. It has devastated our communities. And I feel leadership is necessary from this Board to instruct (inaudible) DOT to find -- and I'm available to help. I

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have some solutions that we've utilized around the country, to help achieve these goals.

And so it's how you contract, it's how you break up the bid packs and how you instruct (inaudible) DOT staff that there's consequences for not achieving the goals. So I wanted to go on record in support of the goals as stated. But I do want -- I would like to ask this Board to put some teeth into that and have some better results for our communities. Thank you.

Sandoval: Thank you, Mr. Copeland. Mr. Director, is there anyone present in Nevada that wanted to testify on this matter?

Malfabon: Yes, Governor. Assemblywoman Irene Bustamante Adams wants to address the Board. I'm going to move the microphone to the podium.

Sandoval: Good morning, Assemblywoman. Please proceed.

Bustamante Adams: Thank you. Thank you. I also would like to say that I'm here on part of -- behalf of the contractors that live in my district and Assembly District 42. And I do also support the recommendation that has being put forth before you for the 6.98 percent. And I also do agree that it's not the setting of this goal that's the issue, it is in not achieving that goal that is the problem I think here in Nevada. And it has been an issue and continues to be. And I think that it will take the leadership of this Board to make sure that that is addressed. Because all Nevadans should share in the revenue that is being brought into this state and not for just a selected group. And those that are pursuing the issue of making sure that there is inclusion, that those individuals, contractors, those primes be recognized for their efforts.

But on behalf of my contractors and my district, I would like to see that those -- when the goal is set for a project that there is attention paid to the fact that if it is changed, why was it changed and not met. And so thank you for allowing me to make those comments.

Sandoval: Thank you, Assemblywoman Bustamante Adams. And I guess I would ask the Director to comment on that, how this Board can be confident that we're doing everything we can to meet those goals.

Malfabon: Governor, one of the things that we mentioned in the Director's Report was that we've implemented the DBE goals on state funded programs as well as the federally funded program. We anticipate that we're going to give some

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training to our contractors on what's good faith effort. And that is how we assess the efforts used by the contractors and service providers to meet the goals that NDOT establishes on our contracts. We feel that it's necessary to provide some training so that everybody understands what we're looking for, because we don't want to just provide a simple checklist that a contractor or a service provider can just check off and try to just get, you know, kind of underneath the -- or below the goal that we had established. We want people to use every means possible to meet those goals, so we want to train them on how we do this analysis to determine whether we're going to award to a contractor that didn't meet the goal. And it's quite complex, but we want to -- we feel that providing that training to contractors and service providers is one way to establish our method and communicate that to them so they understand.

The other thing is that we have a process -- administrative process for appeal. If we determine that -- or one of the recipients of federal funds determines that they're not going to award because of lack of good faith effort, then there is basically another member that's involved in the Unified Certification Program that can review our good faith effort analysis. Because where NDOT does it in support of the other -- the cities or counties that are recipients of federal funds that don't have the DBE staff, we do that good faith effort analysis on their behalf. And basically because they don't have an adopted program approved by the Federal Highway Administration, they rely on NDOT's program. So this is more than NDOT. This is also the sub-recipients of federal funds, the counties and the cities across the state. The RTCs typically have staff. And the airports that receive FAA funds have staff that do these DBE programs, so they have the ability to do that type of analysis themselves. But the counties and cities don't typically have staff for this purpose.

The other thing is that we will continue to discuss with Federal Highway Administration about how goals are achieved in Nevada. We do see that a lot of contractors tend to use trucking as a basis, and there is some discussion to be had there about the use of trucking and whether it's an overconcentration to meet the goal. We want to see more diversification to companies that actually perform work, not just do the trucking services on a contract. But we also recognize that on some of our basic overlay projects, paving projects, trucking is usually the best method that contractors use to achieve the goals. Also suppliers of asphalt cement, the delivery of the

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asphalt cement, there's a certain allowance by the FHWA on how much gets counted on suppliers towards achieving the goal.

But we want to see more diversification. And we want to have those kinds of discussions with FHWA and then bring that -- if there's a policy change, we want to bring that back to the Board for your approval if we were going to change anything on -- addressing overconcentration in the trucking area to meet the goals.

Hoffman: Governor, if I may.

Sandoval: Yes.

Hoffman: Bill Hoffman, for the record. Sue Klekar would like to make one small clarification I believe.

Klekar: Yes.

Hoffman: Okay. Thank you.

Klekar: Okay. Sue Klekar again with Federal Highway Administration. Just wanted to let you know that this is like a preliminary acceptance of the figure, but we have not approved it yet. Approval will come after a comment period, which is still underway on the goal. Then we wait for a submission from NDOT. Then we get the submission. That must go to our legal counsel for sufficiency review.

Sandoval: So you didn't want to be pinned down today.

Klekar: It's our process and, again, we have to follow the process to...

Sandoval: No, understood. I have complete respect for that. Yeah, understood.

Klekar: Just wanted you to understand the process.

Sandoval: I do have a question for the Director, and then I'll go to the Attorney General.

Cortez Masto: Governor, I'll just make a comment. It would be nice maybe in the future meaning we have an update on not only whether there's been approval by the Federal Highway Administration, but at some point in time possibly quarterly updates on accomplishing the goal, and kind of the report to be

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figured out by staff. I know I'm not going to be here next year, but I know that's something Commissioner Wallin would want to see, right?

Wallin: Commissioner?

Cortez Masto: I mean, Member Wallin, receiving the reports. I think that would be...

Wallin: Yes.

Cortez Masto: ...beneficial just so that they know this is an important issue for the Board.

Sandoval: Yeah, I think that's a great recommendation. And also, Mr. Director, is there -- when you say you go out and train the contractors, is there a process by which they have to show that they've received that training before they're eligible to bid on a project?

Malfabon: No, Governor, they're not -- it's not mandatory training. But one thing that we do is to coordinate with our construction industry, we have regular discussions about any kind of issues related to the DBE program. And one of the things that we also are going to do is to get better track. Right now it's a process that we look at before we award a contract as far as the commitment to a certain percentage goal. But we're going to do better at tracking the actual payments to the DBEs during the contract so that we can report during and at the end of the contract what we actually achieve. Because that's part of the issue too is to not just committing to a certain, but seeing what we actually achieved after -- during the contract and after the contract is completed, so that we can take action in real-time to correct any kind of deficiency in achieving the goal.

Sandoval: All right. Any further questions or comments from Board members? Then if we would for sure make a note of the Attorney General's recommendation first that we have confirmation of Federal Highway's approval of this after the comment period, and official approval, and that we at least at a minimum get a quarterly update with regard to the contracts that we approved and that that DBE goal that we're going to adopt today is being met or the proper efforts are being undertaken to meet that goal.

Malfabon: We will do that, Governor.

Sandoval: So, Board members, if there are no further questions...

Gallagher: Excuse me, Governor?

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- Sandoval: Yes.
- Gallagher: For the record, Dennis Gallagher. After the meeting started this morning, Governor, we received written comments submitted by Mr. Kenneth Evans, President of the Urban Chamber of Commerce. He has requested that his written comments be made part of the record. And I will provide his letter to the secretary. And if you'd like I can summarize his comments. On behalf of the Urban Chamber and its members, they're supporting the establishment of DBE goals for the triennial period delineated by fiscal year 2014 through 2016. He previously testified at the disparity study and provided official comments at the public meeting held at the RTC building in Las Vegas. So those comments are already a matter of public records. Mr. Evans goes on to say that his concern is that we establish DBE goals that are as ambitious as possible, potentially 10 to 12 percent to enable our members who are currently in future DBE certified firms to fully participate in NDOT projects as much as possible in the foreseeable future.
- Sandoval: Thank you, Mr. Gallagher. And we'll make that letter part of our record. Any other questions or comments? If there are none, the Chair will accept a motion for approval of the Triennial Disadvantaged Business Enterprise Goal for federal fiscal years 2014 through '16 at the rate of 6.98 percent.
- Wallin: So moved.
- Sandoval: Madam Controller has made a motion for approval. Is there a second?
- Krolicki: Second.
- Martin: Second.
- Sandoval: Second by the Lieutenant Governor. He barely beat you to it, Mr. Martin. Questions or discussion on the motion? All those in favor, please say aye.
- Group: Aye.
- Sandoval: Opposed no? Motion passes unanimously. We'll move on to Agenda Item - - and thank you very much for the presentation there. Mr. Keen, thank you if you're still in the room. There you are. Agenda Item No. 11, Old Business.
- Malfabon: Thank you, Governor. The standing items on old business are outside counsel costs on open matters which is Part A. Part B is the monthly

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litigation report. And Dennis Gallagher, our Chief Counsel to the Department from the Attorney General's Office, is able to answer any questions on those two reports.

Sandoval: Any questions from Board members? All right. If there's no question with regard to outside counsel or litigation, why don't we move on to 11C. Mr. Director.

Malfabon: Okay. Governor and Board members, unfortunately you'll see that the trend of lower fatalities compared to last year has been reversed. The latest information that I got from dated December 3rd was that we were two fatales higher this year than we were a year ago. The materials provided in the packet at that time we were four higher. But I know that we had a fatality on Blue Diamond Road that I had mentioned over the weekend, and also I saw -- when that storm hit before the weekend, we also had a fatality on the eastern side of the state. So definitely a lot of work for the Department to do in concert with the law enforcement, educators and emergency responders to drive these fatales down. We're going to keep doing our best to drive these numbers in the proper direction as part of our Zero Fatalities Program.

And then on the Item D, I wanted to make some points of clarification on the presentation on fuel tax indexing. Member Fransway had brought up the fact of the availability of this method to other counties. And I wanted to clarify that when I was talking about the fuel tax indexing measures in Washoe and Clark, there is also this alternative available to the rural counties, but it's related to Consumer Price Index, not the Producer Price Index, which has been implemented in Washoe and Clark. Washoe I believe does both, CPI and PPI indexing. In Clark it's related to the Producer Price Index. But it is available if a county commissioner wanted to adopt it and they would get this portion of the indexing to the county. So I wanted to clarify that.

The other issue was that the current -- the Lieutenant Governor had asked the question about the rates, and the rates were established in the law. And they didn't refer to them specifically as the federal portion or state portion of the tax or county portion. They only talked about cents per gallon. So the actual rates are defined in Nevada's legislation. But the -- what I neglected to present to the Board was the tax rates for fuel tax for diesel, propane and methane, so I provided those here.

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And that pretty much is the clarification that I wanted to present to the Board on that issue of fuel tax indexing.

Sandoval: Any questions from Board members? Then let's move on...

Fransway: Just a comment, Governor. I just wanted to thank Rudy for his follow-up on my questions. Thank you, Rudy.

Malfabon: You're welcome, Member Fransway. Moving on to the item of -- you recall that our project manager for the I-11 study, Sandra Rosenberg presented to the Board, and the question was asked who are the stakeholders, and so a list is provided here of the -- quite a lengthy list of stakeholders that are keeping apprised of this Interstate 11 study jointly between NDOT and ADOT. And that concludes the old business, Governor.

Sandoval: Lieutenant Governor has a comment.

Krolicki: Not to be -- I mean, this is a significant list and it's clear that research and outreach has been done, but not to be a stickler, but just to make sure. For example, it has the Governor's Office in Nevada on there, but I don't see the Governor's Office on Economic Development. I'm assuming that means that they are attending these meetings, but just clarification on something like that. And Nellis is listed, but the Department of Defense is not listed. The National Security Site is not listed. I see Department of Energy is. But I'm just not sure how far down that goes, and I just want to make sure. We have many cities, many counties, but NACO and League of Cities, I assume that outreach was made to them. And it went out and just who has actually responded.

I see McCarran Airport on there, but I don't see any of the other airport or aviation authorities. And from an economic development tool, not to be biased here, but that still is going to be critical. The Nevada Association of Airports and airport directors I think would be a wonderful outreach, if it's not already been made. But, again, thank you. I see the effort, but I just want to make sure that we're completely (inaudible) in those areas. Thank you.

Malfabon: Thank you for those suggestions, Lieutenant Governor. We'll check with our program manager to get those folks apprised too.

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- Hoffman: And then, Governor, Bill Hoffinan. John Terry has some information on Agenda Item No. 6. Member Savage had asked about -- he had information on Agreement No. 25. And John Terry has that information.
- Terry: I said I would follow-up. Staff was able to get us the information. Expended to date on the Agreement, this is Item 24 of the HDR Agreement, is \$2,307,733. I would like to point out that U.S. 95, 215 interchange is an important project to us, and we're breaking it into a phase that we are hoping to deliver next year, and this is associated with that.
- Savage: Thank you very much, Mr. Terry.
- Sandoval: Board members, any further questions or comments with regard to Agenda Item No. 11? We'll move to Agenda Item 12, Public Comment. Is there any member of the public here in Carson City that would like to provide comment to the Board? Is there anyone present in Southern Nevada that would like to provide comment to the Board?
- Martin: No, sir.
- Sandoval: Move to Agenda Item 13. Is there a motion for adjournment?
- Martin: Governor, I need to make one statement first.
- Sandoval: All right.
- Martin: Recently during one of the snowstorms and so on I was traveling Ely, Elko, Pioche, and I utilized the state website to keep track of the highway conditions. What I didn't understand even after serving seven years on this Board or six years on this Board is the amount of information that is on NDOT's website that's available for everybody. And the highway condition reports are spot on. Every place I went, every time I looked on the internet and looked at that particular highway, the conditions were exactly as they were portrayed. And more importantly, they're updated every 20 minutes is what I discovered. So I wanted to thank Rudy and his staff for having such a useful tool. I just wished it was better marketed.
- Sandoval: They put a weather station in the back of your truck.
- Martin: That must be it.

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Sandoval: Thanks for hauling that thing around. And, Mr. Director, I -- yeah, I agree with Member Martin is -- but is there a way to get the word out there with regard to, you know, how effective the site is?

Malfabon: We definitely can, Governor. And I know that this is the important time of the year where people do check when they're going on those trips on the highways, especially during the winter, and (inaudible) useful also during the construction season for any kind of delays related to construction. But we'll do some marketing efforts better and report back to the Board on how we're doing on that.

Krolicki: Governor, if I may, and on a serious note, but you're talking about outreach and the marketing. I still receive considerable amount of feedback about perceived disparities and funding between north, south and different places of the state. And we had talked about concerted outreach or maybe even editorial boards, but I really do think it would be important, if it's not already done, but the information that was presented at the last meeting or two meetings ago about, you know, exporting of fuel tax, those kind of things, but I hope that there is an effort underway to really reach out to the thought leaders so people really understand the different members here and the number of miles of roads in Southern Nevada and Las Vegas versus the entire state. I mean, there just -- there needs to be a perspective on this and I hope that's being done.

Sandoval: Right. My understanding, Mr. Director, is that you've already met with the editorial boards of the major publications or newspapers in the state.

Malfabon: I met with the Las Vegas Sun editorial board and the Las Vegas Tribune Journal editorial board and presented them with some information. I think another opportunity comes up when we bring before the Board the next facts and figures booklet. You may recall about a year ago that you approved the previous one, and that's a good venue or opportunity to communicate this issue. We also will be meeting with the RTCs statewide to discuss a better reporting system so that it is more transparent as far as where the money is going, to which projects and which areas of the state.

Krolicki: Thank you. That's perfect.

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Sandoval: Okay. Before I accept a motion for adjournment, again, I wanted to thank the Attorney General for her service to the Board. One more hand I think is very appropriate.

Fransway: Governor?

Sandoval: Yes, Member Fransway.

Fransway: I just wanted to join you in thanking the Attorney General for her service. It's been my pleasure to work with her over the past few years. And I certainly wish her well and stay in touch. She's been an asset to the State of Nevada on this Board. Thank you.

Sandoval: Thank you. All right. Do you want to make the motion to adjourn, Madam Attorney General?

Cortez Masto: So moved.

Sandoval: Okay. The Attorney General has moved to adjourn. Is there a second?

Fransway: Second.

Sandoval: I'll give it to Member Fransway. All in favor say aye.

Group: Aye.

Sandoval: Opposed no? Motion passes. The meeting's adjourned. Thank you very much, ladies and gentlemen, and happy holidays to everybody.

Malfabon: Thank you, Governor.



Secretary to the Board



Preparer of Minutes