

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

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

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

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Sandoval: Good morning, ladies and gentlemen. I'd like to welcome you to the July meeting of the Board of Directors for the Department of Transportation Meeting. Can you hear me loud and clear in Southern Nevada?

Martin: We can, sir.

Sandoval: Great. And I hope everyone had a great Fourth of July weekend, and we're back to it now. So we'll begin with Agenda Item No. 1, which is presentation of retirement plaques to 25-plus-year employees.

Malfabon: Thank you, Governor. Apparently, I'm not sure if any of them are present. But I'm going to go through the names and years of service. First, Dennis Taylor, who is the head of the Transportation Multimodal Planning at NDOT, retired with 21 years of service. Todd Montgomery was Assistant Construction Engineer in the Construction office here in headquarters, retired in April with 25 years of service. I don't see him here, although I did go to his retirement party. Bradley Hunt, who is a Maintenance Supervisor I, in Beatty, out there in District I, retired recently with 25 years of service. Hanigan Carpenter, who was an Electrician I on the Reno Maintenance Traffic Crew, retired in May with 22 years of service. John Koster, who is a Professional Engineer, Roadway Design, 17 years of service, retired in May. And William Schworer, Highway Maintenance Worker III in Cold Springs District II Maintenance, 20 years of service, retired in June. So I wanted to give them a round of applause for their years of service.

Sandoval: I wish they were here, because I know that I can speak for all the Board members that we personally thank them all for their years of service as well

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

as their commitment to the people of the State of Nevada. So if you'll pass that on if you see them -- you probably won't, already you're...

Malfabon: I might see a few of them.

Sandoval: Okay. All right then. Let's move on to Agenda Item No. 2, presentation of awards.

Malfabon: Thank you, Governor and Board members. First, there is one that's not in the packet, but I wanted to take care of that first. It was the American Public Works Association Nevada Chapter, and we have two chapters in Nevada, Southern and Northern Chapter. We have representatives from the Northern Chapter here, Joy Guinn and Darren Schulz, who are going to talk about the award and why NDOT was selected.

Schulz: Good morning.

Sandoval: Good morning.

Schulz: Darren Schulz, for the record. I'm the President of the Nevada Chapter of APWA. And I just wanted to start off by saying I wanted to thank the NDOT for their support for APW over the years. Your numbers have went down recently, so if you want to encourage more people to be members...

Malfabon: Well, there you go.

Schulz: ...that'd be great. We have luncheons every month and a couple of conferences every year, and Joy's going to go on and talk a little bit about our -- the award that you're getting.

Guinn: Good morning. Thank you for having us here today. My name is Joy Guinn. I am with Nichols Consulting Engineers and I am a Director for the State Chapter for APWA. And one of my responsibilities this year is to recognize outstanding projects throughout the State of Nevada. And through that, we have a project of the year award. We present the awards twice a year. In the spring are the categories that are \$10 million and less in construction, and then in the fall we recognize the projects that are over \$10 million in construction.

This year, at our spring conference, I was thrilled to see we had nine nominees for our project of the year, and one of them was a NDOT project. And it was for SR 431, the water quality improvement program. And Tyler

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

They came and did a wonderful presentation in which we, out of a panel of three judges, selected NDOT to win that award for environmental projects \$5 million to \$10 million in construction. So if Tyler and Matt can come can come up and receive their award.

Malfabon: If we could, Governor, we'd like to do a photo opportunity with the Board. Julie, if we could just have them go with the Board members, I guess, on the -- yeah.

And the next two awards are related to the same project, although they're different awards, they're actually for the same purpose. This is for the West Mesquite Interchange Design-Build Project, a very innovative project we used accelerated bridge construction on. We had the design-build team of Horrocks Engineers and W.W. Clyde was the contractor on it. And using the design-build method really opened it up to innovation.

The Partnering Award, though, was from very -- a very prestigious award from AGC, Associated General Contractors of America, the Marvin M. Black Excellence in Partnering Award. This is the second time that NDOT has won this award. And both occasions it was for a design-build effort. So a lot of teambuilding and partnering goes into these types of projects, because we hand over the project at a certain preliminary design stage, and the contractor and their designer work together to finish that design and construct it, often saving a lot of time because they can start construction while it's -- the other future stages are being designed.

So I wanted to honor the team that worked on this project, starting with the - - if there's representatives in Las Vegas, we want them to approach the -- for a photo opportunity in Las Vegas, at the same time as the group up here. Just to mention, the Project Manager for NDOT was Adam Searcy, and our Resident Engineer was Martin Strganac. If any of them are present, if they could come up top. And, I think, Tom Stevenson, is he also the -- is this an RE, Tracy, is he present?

Unidentified Female: Director, both Martin Strganac and Tom Stevenson are here, so we've got a little stage set up for them to get their photo op.

Malfabon: Okay, great. We can take a photo op with the group down in Southern Nevada, while the group up here gets a photo as well. And any representatives from the design-build team, either that worked for W.W.

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

Clyde or Horrocks Engineers as well. Because it's an AGC Award, it's really on behalf of that design-builder team. So I wanted to acknowledge them, if there's any present up here in Carson City or in Las Vegas.

So the -- just a little bit of background on the project. We had -- our designer that assisted us was HDR on the delivery team. And they worked in concert with the construction with project management and design to basically have delivery of a very successful project, received a lot of national attention. We had other DOTs represented for the bridge slide that occurred overnight, a very amazing thing to see for the public, too. They probably didn't even -- people driving through there didn't realize that -- how much effort went into that just to open it back up the next day on an important interstate.

So with that, anybody up here that was -- is Adam around or -- he's not here today, so let's do the photo opportunity in Las Vegas. Unfortunately, we have the awards up here, so we'll Photoshop them in. And I wanted to acknowledge Mary Martini's efforts, too. She's very good at getting the teams together whenever there was any kind of issues, getting with project management and the design-builder. Thank you, Mary, for your efforts on this successful project.

Sandoval: Before you proceed, Mr. Director, I just, personally, on behalf of the Board, wanted to congratulate everybody involved with this project. You truly make Nevada proud and a great representation of the Nevada Department of Transportation. Thank you.

Malfabon: Thank you, Governor. The next award to mention is the American Society of Civil Engineers, Truckee Meadows Branch, Outstanding Achievement in Civil Engineering for the I-580 project. We worked together with our consultant, CH2M Hill, for an outstanding civil engineering project on I-580. It opened in the summer of 2012, eight and a half miles, six lanes of freeway from South Reno to Washoe Valley. As everybody up here knows, it's really a timesaver and also a safer facility to use in getting between Carson City and Reno.

I don't have all the names that were -- a multitude of people, other than CH2M Hill and NDOT, obviously the constructor of that project. But we wanted to acknowledge their efforts in this ASCE Award. That's a great project to use, as I've said. And although there's some concern with that

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

North versus South issue, I think that it shows that it's a very good facility and a much safer facility than the freeway that was, I mean, the highway that was through the valley there, that had some fatalities over the years.

Next contract is -- I mean, award is the AGC, Nevada Chapter, Sensitivity to Environment, History and Culture for projects more than \$5 million for the same project, I-580 freeway extension project. And this award is given for consideration and recognition of the environmental, cultural and historical sensitivity. The AGC, Nevada Chapter, also had the Meeting the Challenge of a Difficult Job Award, a project more than \$5 million for the I-80 design-build project. And Granite Construction did a great job in the -- through the heart of Reno on this project, really doing the construction under traffic was significant. They came up with some innovative means to handle traffic during construction, and actually came up with some great ideas that improved flow of traffic through that corridor. So I wanted to acknowledge Granite Construction's efforts and partnership with our team. Jeff LaRud was the Project Manager on that project, did a great job on the I-80 design-build project.

The International Partnering Institute, another project for the Sapphire Level of Northbound 395 Improvement Project. This was through partnering, working with stakeholders, weekly team meetings and project walkthroughs. They quickly identified any opportunities, issues and had a full public-outreach plan that helped make the public aware of any travel-related impacts. The project was substantially completed five months ahead of schedule. So we acknowledge the International Partnering Institute Award, there for -- Sapphire Level for that Northbound 395 project. I believe that that was Jim Gallegos was the Project Manager on that one and Granite Construction was the contractor.

Another one from the same institute, Sapphire Level for the Moana Lane Diverging Diamond Interchange. Adam Searcy was the Project Manager on that, and Granite Construction did a great job of working in concert with the Q&D project that was under RTC that had to tie together on Moana Lane with this Diverging Diamond Interchange. Anybody that drives through that interchange can attest that it is a unique interchange, but it really is well set up so that you can't really take the wrong path when you enter into that. But people are getting the hang of that. It is the first Diverging Diamond Interchange in Nevada, and it's working quite well with traffic flow.

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

Another AGC Nevada Chapter Award, Contractor Innovation for a Project more than \$5 million for that same project. One thing to mention is because of that Construction Manager at Risk method of delivery on this project, it saved a lot of time. We could order the long-lead items with the Board approval of that two-phase construction contract, and it was open in only 70 calendar days. And that's pretty much amazing to see that type of level of effort by the contractor, and just everything meshing together to deliver a great project. The project also won the Caesar Chavez Day Union Project of the Year for Granite Construction. And that is an annual event that they have. You know, just pleased to mention that Moana Lane Diverging Diamond won another award there.

Also, the Western Cooperative Test Group gave the Department superior quality and highest measure of participation for the materials testing -- the material sample testing of performance-grade binder. And what performance-grade binder is, is basically the asphalt cement that's mixed with the aggregate to make hot-mix asphalt. And it's performance grade because they've developed it to withstand extremes in temperature, load stresses from the traffic. And our two asphalt labs, we have labs that do the testing of the asphalt in the Materials Division here, and they insure the highest quality of asphalt materials on all State roads. Use of quality material with the most efficient lifestyle costs and material recycling are priorities of the labs. The labs were recently recognized for superior quality and breadth of asphalt-binder testing by the Western Cooperative Test Group. The Group shares innovative techniques to improve blacktop and the standardized testing of asphalt material, all to enhance the use, safety and value of asphalt roads across the West. So I wanted to acknowledge the efforts of our Material Sample and Testing Group, particularly the asphalt labs that work every day with this material and make sure that we receive the quality on the roads.

With that, wanted to acknowledge, is anyone -- oh, Reid Kaiser from Materials Division is here, so stand up, Reid. I wanted to acknowledge the efforts of your staff and Materials Testing, particularly with asphalt. Thank you. With that, that concludes the awards portion.

Sandoval: Thank you, Mr. Director. Any questions for Board members on this Agenda item? We will move on to the Director's Report.

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

Malfabon: Thank you, Governor and Board members. As you saw, Governor, this weekend when you flew down to view the damage to the Mount Charleston Fire and the activities that were in place to try to get that fire under control, the State plane is operational again. Marcus Thomason was recently rehired by NDOT. We are very pleased to get him back. He was probably the best pilot we've ever had in service of the Department. In mention of the flight operations, obviously, his goal is to make sure that he achieves the cost savings by flying our contingency of engineers and staff to Las Vegas on a daily basis, so that we can save those costs compared to the commercial airline costs.

The mention of the Mount Charleston Fire, I wanted to acknowledge District Engineer Mary Martini's efforts and her staff in working with the public agencies that are working to contain that fire. Apparently it's about 15 percent contained right now, so it's still a huge amount of work to do. And we're assisting by providing fuel to those public works -- public agencies' vehicles from our maintenance station.

The other thing to mention, on the federal level, Anthony Foxx was sworn in as U.S. DOT Secretary of Transportation recently. He had mentioned that safety is his first priority, and I'm pleased to hear that. And the Board will be receiving a presentation on Nevada's safety efforts later in the Agenda.

Also on the national front, I chaired the meeting of the Standing Committee on Highway Traffic Safety. There were representatives from Nevada present at that meeting. We did a joint meeting this year with the Subcommittee on Traffic Engineering at the national level. So it was good for us, because traffic safety and traffic engineering are usually tied very closely at the hip, as well as working with other groups. It was good to have a joint meeting. And also, we heard a lot of good things, recognizing Nevada for our safety efforts. And you'll hear about those later in the Agenda item. But I just wanted to acknowledge that they've, AASHTO and the states that were present at the meeting, view NDOT and Nevada as a leader in the safety efforts that we've implemented.

The Veterans' Affairs issue came up recently from Senator Heller's office. I wanted to mention that we will be working directly to respond to Senator Heller's office, but we came up with a solution that we think will work. It had to do with when veterans are getting reimbursement for travel to a

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

veterans' hospital or clinic, they have to work through the VA, and sometimes there's road closures due to weather or due to other restrictions, and they have to take an alternate route. So the VA takes the direct route, looking at map software from the internet such as Google Maps, and sometimes a veteran has to take a more circuitous route. So we're going to work directly with the VA and Director of Veterans' Affairs, Caleb Cage, for State of Nevada, to make sure that our solution is implemented and that it's workable, doesn't add a lot of administrative costs, a very simple solution. And we'll, as I said, respond to Senator Heller's office on that issue.

On the legislative front, we've got a lot of work to do in implementation of some of the legislative requirements. Obviously the groups in engineering will handle the Construction Manager at Risk requirements and the reporting requirements there that deal with the future elimination of the Sunset Clause that NDOT will be under. But we will be allowed to continue using the Construction Manager at Risk process for procurement. On the planning side, they'll be responsible for dealing with the getting together with the local agencies in road relinquishments and road transfers, bringing that policy forward to the Board for your approval.

And the Administrative Services Group and Civil Rights Group will work together on DBE implementation on State-funded contracts. There's a limited number of State-funded contracts. Most of our State funds are used to leverage the federal funds. But we'll work closely between those two groups to come up with a process that doesn't add a lot of administrative cost to implement that DBE requirement. So a lot of other work to be done, and I'll report to the Board back or bring stuff for the Board approval on any policies that have to be enacted, such as the sponsorship of rest stops and rest areas requirements. We'll bring that to the Board for your approval on how we propose to implement that.

Recently, in the news, you might have seen in the media report about the Reason Foundation gave an annual highway report, Nevada was ranked 16<sup>th</sup>. And they looked at pavement condition, urban traffic congestion, deficient bridges, unsafe narrow lanes, traffic fatalities, total spending per mile on State roads and administrative cost per mile. We're staying about what we were last year. I think we might have dropped down one place. But they look at a lot more than what we report on bridge or pavement condition. As

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

you saw on another media report a month ago, we were actually tied for first or second for the bridge condition. So a lot of these things have to be taken in context and look at the factors that they use to rank. But the point is, at least we weren't losing any ground from last year's report on that Reason Foundation report.

Our budget has been established for fiscal year '14, and we worked closely with different divisions within the Department and the District Engineers to understand what went into building their budget. A lot of the Directors' office staff came in after that budget had been submitted, but we came up to speed as far as what the needs were and saw that we had to make some cuts. Between our budget requests and what was submitted, there was a lot of additional requests. And often we have to look at what our commitments are, what we have a responsibility to deliver on a daily basis and then what we would like to do in the future as far as providing additional service, and have to establish our budgets in that manner.

So we'll watch our budgets closely, Governor and Board members, and stay within those budgets. We might be taking some recommendations forward to shift some funding around, because we feel that we probably need a little bit more money in the operations section. And we're trying to see what -- a lot of times the operations section of the budget is dependent on weather. We had a, fortunately and unfortunately, a good kind of mild winter. But for water, it's not so good. And you see some of the after-effects of that with brush fires and forest fires. But we'll stay on top of that and keep the Board apprised of any kind of budget swaps that we would go to Interim Finance Committee to do.

Project NEON, we're moving ahead with that. We'll have formal presentations on a quarterly basis. You had the big presentation last month, as you approved going forward with that procurement. We have an industry meeting scheduled on July 25. And a lot of the meetings set up with the Interim Finance Committee are coming up. So we'll meet directly with the individuals on the Interim Finance Committee, explain the project to them, explain this financing scenario that we've received Transportation Board approval for, and let them know that eventually we'll come formally to the IFC Committee as a whole to request the bonding and the funding, financing for the project. We'll also be working closely with the Treasurer's office and the Bond Council for the State.

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

We also will be meeting directly with the City of Las Vegas to hammer out the terms of an agreement, because there's a lot of local streets affected and local property affected. We wanted to talk about what we're building and what, in the future, the City of Las Vegas will construct in support of future phases of Project NEON.

Presently the utility relocations are proceeding. Much of that was approved recently, in the last month, by the Board to -- we have contracts with utility companies either for engineering or construction, and you'll continue to see those in the months ahead.

Regarding Boulder City Bypass Project, which is also called the future I-11 project, since Assembly Bill 413 was passed, we expect that Clark County Commission -- Board of Commissioners will vote in August on enacting the fuel-tax indexing. But as I reported previously, the RTC of Southern Nevada is looking at giving the Department some funding out of that to support our Phase 1 project, and they're looking at funding their Phase 2 project, over \$330 million estimate, I think, for that project. So \$300 million of this additional fuel-tax revenue to support Phase 2. We're going to be working closely to make sure that our schedules tie together on delivery of Phase 1 and Phase 2, so they're completed around the same time.

We have a -- on the -- another thing to report is that they are, the Boulder City Phase 2 project, which the RTC has responsibility for, they're looking at perhaps an operations and maintenance component on that project, because the legislature, when they gave them the authority over that phase of the project, they asked for some innovative public-private partnerships to be considered in that. So the RTC is considering operations and maintenance. NDOT understands that at some point it might -- it should become a State facility, an Interstate 11. So we'll be working closely with them on oversight and hammer out an agreement on who's responsible for what. Often, when -- similar to the beltway construction in Clark County, NDOT oversees the fabrication of girders and some elements that are fabricated offsite. And we have a role to play in oversight during construction phase, as well as design oversight.

And we also will be looking -- because of the issue with eminent domain, which will be covered later, and the impacts of the PISTOL initiative on State law and the State constitution, we're going to be looking for additional

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

legal support. And we will issue a request for proposals, so they'll be kind of casting a broader net for any kind of legal support that's needed for these eminent domain cases. And Dennis Gallagher will cover that a little bit later, more in detail, as he covers the eminent domain issues and the impacts from PISTOL. And that about covers the Director's Report, Governor and Board members.

Sandoval: Thank you very much. And, question, backing up a little bit on that sponsorship of the rest stops. Do you have any idea when this Board will receive the proposed -- proposals?

Malfabon: I think that it's going to take us about -- by the third month I think that -- I think that we should have it within two to three months, we should have the proposed method of implementation. We are going to model it after the Sponsor-A-Highway. It could be sooner than that, Governor, but I like the idea that we heard from the Board members previously about, maybe, levels of sponsorship and you see that sometimes when there's sponsors of certain events. There's the platinum sponsor or diamond sponsor and gold, silver. And we'll work that out and bring that for Board approval, and then start advertising and announcing that and getting it out there to the possible sponsors of this.

We've enjoyed a lot of success on our Sponsor-A-Highway Program. We see a lot of the Zappos signs. And I think there's a lot of good community partners out there that are willing to get some credit for offsetting some of our costs on operating these rest areas and rest stops.

Sandoval: You know that I'm a little eager, only because our Sesquicentennial celebration begins October 31 of this year, and I was hoping that we could coordinate those sponsorships for the beginning of the improvements on the rest areas consistent with that celebration, which is going to be for a year and there are going to be 150 different events statewide. And I thought there'll be a great opportunity for tourists as well as Nevada residents to enjoy those rest stops as they participate in these various events.

Malfabon: That's a good idea. And I think that we could meet that schedule to try to get it to the October Board meeting, so we'd have it in place before the Sesquicentennial celebration starts on October 31.

Sandoval: Yeah, it takes a while to learn to say Sesquicentennial.

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

- Malfabon: Sesquicentennial.
- Sandoval: No, I had trouble myself. And I also wanted to compliment the work that's going on at Elko on those tunnels. I traveled through there recently, and it looks like it's moving along extremely well.
- Malfabon: Thank you, Governor. And that is a Construction Manager at Risk project with Q&D and the crew there from District 3. So thank you.
- Sandoval: Any other questions from Board members with regard to the Director's Report? Then we'll move on to the public comment portion of the Agenda. Is there any member of the public here in Carson City that would like to provide public comment to the Board?
- Fransway: Governor?
- Sandoval: Yes, Mr. Fransway?
- Fransway: As a member of the public, I would like to say that I had the opportunity to travel the improvements of Highway 50 between Dayton and Silver Springs, and what a difference a month makes. It's a beautiful project and I think that the public is well served by that project, so...
- Sandoval: Thank you. Is there anyone in Southern Nevada that would like to provide public comment to the Board?
- Martin: No, sir.
- Sandoval: Thank you. We'll move to Agenda Item No. 5, approval of June 10, 2013 NDOT Board of Director Meeting Minutes. Do any of the members have any changes to the proposed minutes?
- Cortez Masto: Governor, I have just a few corrections.
- Sandoval: All right.
- Cortez Masto: Page 60 of the minutes, I guess the last -- second to last paragraph, where I'm speaking and it states, "I just assume that there's some sort of language in there that protects the State from them trying to come back after the State." It should read, "If there is a failure to perform by the contractor." And then the only other one is page 64, "I appreciate the Board's

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

indulgence," although I like your diligence as well. But it was "indulgence." And that's it.

Sandoval: Member Savage.

Savage: Thank you, Governor. Two minor corrections on page 52. Five lines down, "I would really like to see the contractor," not "contract to." It should read "contractor." And on page 76, six lines from the bottom, after Mr. Kaiser, should read, "Mr. Dyson." That's all. Thank you, Governor.

Sandoval: Do any other Board members have any changes to the proposed minutes? And do we have all those changes marked?

Hoffman: Yes.

Sandoval: All right. If there are no further changes, Chair will accept a motion for approval of the Board of Director's Meeting Minutes for June 10, 2013.

Martin: So moved.

Wallin: Move to approve.

Sandoval: We have a motion by Member Martin, second by Madam Controller. Any questions or discussion on the motion? All in favor, please say aye.

Group: Aye.

Sandoval: Opposed, no? Motion passes unanimously. We will move on to Agenda Item No. 6, update on United States EPA audit and NDOT storm water program.

Malfabon: Thank you, Governor. Steve Cooke, who is our Chief of Environmental Services, is going to cover this Agenda item.

Cooke: Good morning, Governor, members of the Board. My name's Steve Cooke. I'm the Director of Environmental Services Division here at NDOT. I'm here to provide you a brief summary of our EPA audit as well as our MS4 Permit, which is administered by NDEP.

So we'll start off with a summary. Since our last face-to-face meeting with the EPA in August, 2012, we've been in contact with the EPA on a two to

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

three month basis, giving them updates about how we're implementing our MS4 Permit. We're being proactive in this approach. Rather than waiting for the EPA to come back and dictate to us what we need to be doing, we're showing them that we are moving ahead with implementation of our program. I failed to provide on this slide, but we've also been meeting quarterly with the NDEP to discuss our program and any other water quality permit aspects. I appreciate their input. They've been very insightful in providing us great guidance on how to proceed.

We've been short staffed on the water quality work, and we're working right now to get three new people in place. One individual will be placed in each of the three districts. We do anticipate some enforcement action from the EPA, possibly as soon as the end of this year. They haven't provided much guidance back to us. It's been kind of a one-way point of communication. We've provided information to the EPA. They have not responded back with them. We do know that the audit was turned over to the Enforcement Division several months ago.

Arizona DOT, they had their audit about nine months prior to ours. And in April this year, they were administered a consent decree. So we suspect that we'll see something possibly the end of this year, if not, early next year.

Malfabon: And, Governor, I wanted to mention that we're thankful for your approval of using vacant positions for this effort, and also mention that Director of Conservation and Natural Resources, Leo Drozdoff, has been helping us to be a liaison also with U.S. EPA with his contacts.

Cortez Masto: And, Governor, I just have a quick question. So with respect to the penalties, is it remediation that's required and/or are there civil penalties that can be assessed as well? Do we know?

Cooke: We don't know. There's a probability there will be a fine as well as some sort of consent agreement stating that we need to complete our mitigation measures by a certain timeframe. Rather than wait for them to tell us, we are moving ahead actively in pursuing those mitigation measures.

Cortez Masto: Okay. Thank you.

Sandoval: You know, and I'd like to see if we can get some type of communication with Region 9 of EPA so we're not flying blind here. I feel like I don't want

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

to get to this -- get a letter in the mail, when perhaps maybe there's some other mitigation measures we can be taking. So I'm happy to make a phone call to the Director of Region 9 to see if we can get a little bit more information as to what's going on.

Cooke: I think that would be very helpful. Thank you.

Sandoval: Because I think I share the Attorney General's concern that we don't know, as you said, maybe a consent decree, it could be a fine. And we don't know how much and the degree of what the penalty will be, if any. So I -- as I said, it seems like, if it's been almost a year since the -- we had contact with EPA or the meeting, that they should help with a bit more specificity with regard to what's going on.

Cooke: No, your input would be very helpful.

Sandoval: Okay.

Cooke: No, and I just had -- I should have connected it, because I just spoke with the acting EPA administrator, and I'm sure he -- he asked me if there's anything that -- any questions that he could answer. So now I'll take him up on that.

Malfabon: And we have a lot of things that we've enacted and the Board has approved that substantial contract last month, so we definitely have a -- at least a story to tell EPA about what efforts we have implemented in the year since we met with them directly.

Sandoval: Any other questions or -- why don't you finalize your presentation?

Cooke: Sure. One other item I wanted to mention on this is we're pursuing hiring a consultant to help us implement our program. That's to help speed up our process, build, implement momentum, because we go through an audit cycle every five years. And our next audit will be 2015, which is essentially, in my opinion, around the corner.

I want to change gears here and talk about our MS4 Permit. MS4, as it's typically called, is an acronym for Municipal Separate Storm Sewer Systems. It's essentially a system of conveyances. It allows us to discharge storm water from our facilities, and this would be statewide. All DOTs are -

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

- have one of these permits. And I've looked at the permits for CalTrans, Arizona and Hawaii, and a lot of the components that they have under their permit are the same components that we have. So they have kind of a blanket of requirements that everybody needs to follow.

The MS4 is authorized under the Clean Water Act, and it's permitted under the National Pollutant Discharge Elimination System, which regulates point discharges in waters of the U.S. We have an individual permit, and that covers all of our facilities within the State.

Our permit has five components. I won't go through these, but I want you to know Item No. 3, it has 23 subparts, and that's the component of our permit that requires the most involvement in terms of labor and time. These are some of the items that are under Item or Part No. 3. It's fairly extensive and laborious. The first item, we have to go out and identify and locate all of our culverts within the State that are 36 inches or larger. We have to locate them and identify them using GPS so we can build a map showing where all these discharge points are, so we can use them to help regulate potential pollutants into the waters of the U.S.

We have to develop three storm water programs; one for the public awareness, one for NDOT employees and one for contractors. We have to develop an illicit discharge detection elimination system. Develop facility pollution prevention plans for all of our facilities within the State of Nevada. We have to conduct annual maintenance facility inspections, develop a water quality focus use application program for herbicides, pesticides and fertilizers. We have two existing manuals. We have to update those. One is our design manual and one's our construction manual. They both deal with water quality. And we have to develop a maintenance facility.

In order to do this, we're proposing to hire a consultant. Back, late this year, or actually in 2012, we issued an RFP. And early this year, we evaluated them. These are the six entities who submitted an RFP. After we reviewed them, we selected Stantec Consulting Services, and we initiated negotiations with them in March. The initial cost estimate was a little over \$6 million. And after five rounds of negotiations, we agreed to the scope and cost of \$4.365 million. The proposed agreement is for a duration of four years.

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

And I want to switch gears now, once again. Back in May, Member Fransway had asked about EPA and their expanding their definition of waters in the U.S. and how that might impact our operations here at NDOT. The EPA is looking to use different methods and types of criteria for expanding what they consider waters in the U.S. That's the criteria they use to determine where their jurisdiction lies. So they're looking to expand their jurisdiction. To me, it partially makes sense. We have to protect our waters. It's a valuable resource, more so here in Nevada, being that it's such a dry state. But the implications to NDOT will be is, more of our projects will require more permits -- water quality permits, and that'll take more time. So it's likely some of our schedules for our projects will be extended. And that concludes our -- the presentation.

Malfabon: And, Governor, this was in concert with Item No. 3 on Agenda Item 8 for approval of agreement. So we wanted to give you the presentation and allow the Board to ask any questions to Steve in clarification of the contract as well.

Sandoval: Questions for Mr. Cooke? Member Fransway.

Fransway: Thank you, Governor. And thank you for your response to my concern last meeting relative to the proposed changes in the Clean Water Act by changing applicable to waters of the U.S. And, Governor, I want to compliment you on your decision to contact District 9. And I hope that you will ask that question of where that's at, because I am very concerned that it is indeed an administrative change that will usurp congressional action. And I believe that it's very serious not only for the State of Nevada, but for all 50 states. So, anyway, thank you for keeping an eye on that. And I'd appreciate any updates coming to the Board. Thank you, Governor.

Sandoval: Member Savage.

Savage: Thank you, Governor. And thank you, Mr. Cooke. One question, did the Department of Transportation engage an outside consultant for the EPA services during the years of 2010 and 2011?

Cooke: Yes, we did. We used an outside consultant to help update our storm water management manual. We needed to have that updated as part of our MS4 Permit.

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

Savage: And who was that consultant?

Cooke: That was Stantec Consulting.

Savage: Stantec? Thank you.

Sandoval: Further questions from Board members? Thank you very much.

Cooke: Thank you.

Malfabon: Thank you, Steve.

Sandoval: And if you -- Mr. Cooke, if you could give me a one page primer on dates and some of these issues that you just described, I can have that as a reference when I speak with Mr. Blumenfeld. Thank you. Agenda Item No. 7, report on the Department of Transportation's efforts to reduce traffic fatalities.

Malfabon: Thank you, Governor. Ken Mammen and Traci Pearl from the Department of Public Safety are going to jointly give this presentation. I just wanted to thank Traci for her coordination and efforts with NDOT, a very close partner in driving down Nevada's fatalities. Ken is the acting Director of the Safety Division, and take it away, Ken.

Mammen: Thank you, Rudy. Good morning, Governor, members of the Board. For the record, I'm Acting Chief Safety Engineer, not Director, but I'd like the promotion. That'd be nice. Thank you, sir.

Today we're here to give you an overview of what our efforts are currently, to date, to reduce traffic fatalities on all of our roads. I'm going to give you a brief overview of the fatal information as to date. And I'm going to give you an emphasis on, basically, Clark County and interstate routes. I'll also talk about pedestrian fatalities. And then I'll give you an overview of our current program and what we're doing from NDOT's side to reduce fatalities. With me, today, is Traci Pearl. She'll be talking about what the Office of Traffic Safety will be and what their current efforts are.

Currently, this is an old slide, you've seen this one before. Chuck Reider presented this when he gave the annual report. And, of course, it has the numbers. The dash line is our rolling average. That's the one we use to track where we're currently at. The top line, the dash line, or the dotted line,

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

is our trend line where we like to set our goal. That's our goal line, actually. So you can see we're well below that goal line. And we've had a 40 percent reduction in fatal crashes since 2006. And as you can see, in 2009, we've kind of hit a small plateau. We expect ups and downs in the numbers, and that's why we use that five-year rolling average.

I took the liberty to break the information out as to interstates. I think, Governor, you had a question on -- to the interstates. And this is interstate routes only, and then local roads, and then the blue, of course, is NDOT maintained roads. And the interstate is basically about 15 percent of our crashes. And the local roads are about half. So State routes and local roads were almost evenly split on fatal crashes. And these numbers pretty much hold true from 2011 to 2012. They don't really change a whole lot, still about 15 to 16 percent on the interstate and almost half on local roads.

This is pedestrian fatalities. As you can see, the trend lines in Clark County almost follow identically the total fatalities. So we can see that the pedestrian fatalities actually drive some of the numbers down in Clark County. And, unfortunately, we don't have 2012 demographics yet for the fatalities, but for 2011, we had 50 fatalities. Out of those, 17 involved impairment. Out of those 17, 10 were driver impaired, 6 were pedestrian, 1 was both.

And right now I want to thank my staff who helped pull this information together at the last minute and put these slides together for me so I didn't look like a complete, total nerd engineer. I was going to show some tables, and they said, "No, don't do that. Just show some good graphs."

As you look at these, what you see here is the fact that a lot of our fatalities are from the age of 46 on up. That's almost 70 percent of our fatalities. And, again, there's a high number of those that are -- 13 of those involved impairment.

Going on to what we are doing currently for Nevada for our Department of Transportation, we get about \$21 million a year from MAP-21 to spend on our projects and our programs. We're spending about \$3 million of that hiring consultants to run our road-safety audit program, doing some design services for us. The Zero Fatalities Campaign, you see the bling on the tables, this is some of the outreach we do. We pass this stuff out and get

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

some awareness up to get the word out on Zero Fatalities. We also use the consultants to rollout the Highway Safety Manual, to implement that as a guide for NDOT and local users.

We give support to the Office of Traffic Safety and about \$2 million every year for their behavioral aspects. And Traci will be speaking about that in a few minutes. We spend about \$1 million, plus or minus, on railroad crossings, upgrades, all the signals and lights and everything. So every year we go out and do a diagnostic review on a third of our crossings, and from that we come up with some projects and programs to update these things. We spend about \$15 million a year on systemic programs. \$11 million of that goes into shoulder widening, slope flattening, center-line rumble strips, cable median barrier. We look at, you know, medians of less than 50 feet for cable.

We spend about \$2 million a year on systemic improvements statewide for the flashing yellow arrow, as you might see those down in Vegas. We're almost done in Vegas. We have some of the harder projects to do yet, ones that involve right-of-way (inaudible) we have to put new poles in. Those are a little bit longer. But all the easy-picking ones where we can update the signals, we have done that or are going to be done next year. And we spend about \$2 million doing mitigations at local intersections. This is, here, just an idea of blocking off the left-turn motions, which reduces crashes.

This is the high-crash map for 2012 for Las Vegas area. As you can see, they're everywhere. They're just -- crashes are everywhere. So looking at the inset, what we'd like to do in the future, and I think, Governor, you had a question on Kietzke Lane Safety Management Plan and why we're spending so much money on that. We've been kind of reactionary. We look at the high-crash locations and we try to come up with mitigations. And what we're trying to do -- and Kietzke Lane was our prototype project to look at -- instead of looking at spot locations, we're looking at a corridor, and doing a corridor plan to improve everything. So as you look at the map, like Sahara, we're going to try to take point A to point B, Valley View to Eastern to come up with a project that addresses all the issues through that for safety. That'd be ADA, signals, striping, signs, everything. And that's what the Kietzke Lane Management Plan's doing for us.

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

And I'd like to stress that we have to look at all the roads, not just State routes. We are responsible for all those crashes on all roads, and we're able to spend federal dollars to mitigate those crashes. So, hopefully, that answered your question on the Kietzke Land Management Plan. Okay. And with that, I'm going to turn it over to Traci who's going to talk about Traffic Safety's efforts.

Pearl:

Hi. For the record, Traci Pearl. I'm the Division Administrator for the Department of Public Safety's Office of Traffic Safety. We work hand-in-hand with NDOT, but we work from the behavioral side of the aspect and they work with the engineering side of the aspect. Jim Wright is the Acting Director and serves as the State's Governor's Representative for Highway Safety. Every state has one per the Highway Safety Act of 1966.

Our office is a grants office. We're one of the few offices in the Department of Public Safety that don't have sworn personnel. We apply for traffic safety grants from the National Highway Traffic Safety Administration and then sub-grant those to locals and nonprofits throughout the State to mitigate traffic crashes, to change behavior of bad driving.

Our funded grant projects must be evidence based. They must exhibit a proven counter measure. And they must align with the Strategic Highway Safety Plan Program areas and emphasis areas. That's come a full circle, and ten years ago, when I was in this business, the federal government wanted us to have innovative projects. And we've done a 180 to where everything is data based. If it's not data based or proven, it's not funded. So money is being spent well.

We've been onboard with the Strategic Highway Safety Plan or the statewide plan since 2004 with NDOT. We pretty much co-sponsor that. And we are basically a ying-yang with NDOT. Like I said, they're engineering, we're behavioral, and we complement each other on our strengths and weaknesses.

The Zero Fatalities media campaign has been going on for -- it's in its second year now. That is a joint campaign between our office and NDOT. And using -- fortunately, we have the same media contractor for both of our departments. That helps a lot. And I'm going to show you some examples

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

of those public service announcements and TV ads and such from that campaign.

Every year we have to create a highway safety plan, which is we're telling the government this is what we want to spend that grant money on and this is who we're awarding it to and this is what we're doing with it. We just had to complete that plan for next federal fiscal year, as of July 1<sup>st</sup>. It can be found online on our website, and I will get that information to the Board. And, of course, anything about Zero Fatalities in Nevada is also on the zerofatalitiesnv.com website.

Joining forces is one of our star programs. HVE means High Visibility Enforcement. We started a pilot of that in Nevada in 2001 and 2002, where the law enforcement agencies in Nevada work multi-jurisdictionally on certain problems in their local areas. For instance, you might see a Click-it or Ticket seatbelt enforcement campaign in May in Fernley, and it involves the Lyon County Sheriff's office and the Nevada Highway Patrol, and Washoe County might be over there with them. And so they join together, they work overtime events, they look at the data where they're having traffic problems in their jurisdictions and conduct those enforcement events. And at the same time we have commercials and radios and TV and messaging going out saying, "You will get ticketed if you're not wearing a belt," or "Don't drink and drive," or those messages. These are the five areas we focus on with the High Visibility Enforcement. They're all in tandem, again, with the Strategic Highway Safety Plan.

Since 2009 we've aggressively put a lot of federal money and earned -- into earned and paid media, where they're -- earned media being press conferences, safety fairs, outreach. We get a new story because of adjoining forces, High Visibility Enforcement event, that kind of thing. Hopefully, you have seen our commercials, and if not, it's because you're not the target market that we're trying to hit.

I have some samples of public safety announcements, current and recent, this year. This is, "Marker Face." This just ran for July 4<sup>th</sup> impaired driving.

(Playing Public Safety Announcement)

*There's no shame in being the designated, sober driver. Plan ahead and don't drive impaired.*

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

Pearl: When I ran that by my Director, he said, "I don't get it." And I said, "Respectfully, sir, you're not the target market." And he said, "Are you calling me old?" I said, "No, I'm not. No." But the target market for drinking and driving is males, males, males age 25 to 34. So that appeals to them. Oh. It's okay. This next one is "Walking Wife." It's a pedestrian safety commercial.

(Playing Public Safety Announcement)

*Do you see the face of someone you love in every pedestrian? You should, because every pedestrian is important to someone. Watch out for each other on our roads and make zero fatalities your goal. Drive safe, Nevada.*

Pearl: This message is double. Obviously someone -- a pedestrian is someone you love or can be someone you love. And it also has the driver making eye contact with the pedestrian and back and forth, which is the message we're trying to get. Look and make sure the driver sees you and make sure you see the driver. And this last one is called, "You're Dead."

(Playing Public Safety Announcement)

*You're dead. You're dead. You're dead. You're dead. It's just a figure of speech, until you let it become a reality. Make zero fatalities your goal. Drive safe, Nevada.*

Pearl: So we have general Zero Fatalities messages. We're saying, you know, don't drive impaired, look for pedestrians, et cetera. And then we have specific ones focused on a specific problem area like the impaired driving or pedestrian safety. So that's just some examples of what we've done recently. Again, this is a major partnership with NDOT and we appreciate any feedback that you have on that. And we also appreciate the Board's support for this very important campaign. Thank you.

Mammen: We have a little bit more information. We have some contacts and some links for more information. If you're interested in more information, you can always contact Traci or myself. Contact information is provided. It'll be in the packet that Holly uploads.

Some takeaways that Tom wanted to make sure that you shared is we did have -- we have had a 40 percent reduction in fatals since 2006. And we're using the systemic approach to reduce fatalities, where we're actually going

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

out and being proactive instead of reactive. So a lot of our projects that you'll see will be like shoulder widening and slope flattening, where we know we have a certain characteristic of the road that causes serious injuries and fatalities. So those are the things that we'll be working on.

So with that, we'll open up for any questions.

Sandoval: I have a few. How long has that media been playing or been out there?

Mammen: A lot of those just started. The one, the, "Marker Face," is brand new. And you all have your little kits there, you've got a pen and a little doodle pad, so you can actually have some ideas to mark up, if you ever have the need. But that just started. And some of the others are just brand new, too, as well. Those are the new, current media that we have.

Sandoval: And I guess that's going into my next question is, what is the theory for why we've plateaued?

Mammen: That's a good question. I'm not sure why. When we get the answer, we'll let you know. But we do expect ups and downs in the numbers. And, hence, again, that's why we use that rolling average. And I think when we hit this marketing campaign as heavily as we have in the last year or so, moving forward, we're going to get more visibility with the campaign. And the more visibility we get, the more the numbers will change in the perception of the bad driving behaviors. And hopefully, with that, plateau will start going back down again in the next couple of years.

Sandoval: And you moved a little fast through some of those slides, but what was the proportion between the pedestrian and -- pedestrian and fatality versus vehicle, on vehicle fatality?

Mammen: As a percentage?

Sandoval: Yes.

Mammen: Do you know that off the top of your head?

Pearl: I do. Pedestrian fatalities are about 17 percent. Motor vehicle fatalities are about 44, 45 percent.

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

Sandoval: And then perhaps it's because it's reported more in the media, it just seems like there have been more pedestrian fatalities than historical.

Pearl: That came to our attention in early January, especially in 2012 and early first half of this year, Clark County and Carson City County have experienced some, not only pedestrian fatalities, but unusual ones. There's been some hit-and-runs at night. The one driver in Vegas who drove up on the sidewalk with the people sitting outside eating, those kind of things. So when those type of things occur, and they weren't necessarily planned, our joining forces program and our media program, we sit down with them and say, "We need to do something about X." And so we created the, "Walking Wife," and ran the pedestrian campaign in April and May. And between that and the High Visibility Enforcement, to me, that is what's really brought down the fatals in the last ten years, is making it visible that it's not acceptable, that you will get cited for whatever you're doing wrong. And just like drunk driving took 30 years to become socially unacceptable, now we're trying to make distracted driving and cell phones socially unacceptable.

Sandoval: And you anticipated my next question. Do you -- have you looked statistically about the number of citations we've had for texting while driving and how is that going?

Pearl: I only have access to NHP's. They've issued about 12,000 in the last two years. And fortunately a very small percentage of those are second and third-time offenders, with the height of the fine.

Sandoval: Mm-hmm. And then I don't know if you have this -- the answer to this question, but Director Malfabon, in his Director's Report or in the awards, talked about I-580 and the relationship between -- or the fact that we've had -- had had fatalities on 395. And I'm not aware of any fatalities on I-580. So do we know, perhaps, how many lives we've saved in this one year's time, based on historical experience?

Mammen: Actually, Governor, we've actually got a study going on currently to analyze both the existing road and the new 580 road from a crash analysis standpoint. And we will actually have some of those information for you maybe in next Board meeting or the Board meeting after that. But we have UNR actually looking at all that.

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

Sandoval: Thank you. And I don't want to jinx anything, but my understanding is that we have not had a fatality on I-580 since it opened. Is that accurate?

Unidentified Male: Correct.

Mammen: That is accurate. I do not believe we've had a single fatality up there.

Sandoval: All right. I have no further questions. Madam Controller?

Wallin: Thank you very much for your presentation. This is great and I like seeing the two agencies working together. So I applaud you for that, because it's a little hard to do one side and not the other side. Ken, you mentioned that NDOT's responsible for all safety on all roads, even those that we don't own and stuff. And one of the things that I noticed, especially driving around Las Vegas, is crosswalks that, especially like on Maryland Parkway south of Tropicana, you can't even see the lines. And at night it's dark there and a lot of times you don't see the people. And I know, myself, driving on that road a few times, it's -- I know that people might be there, so I'm paying attention, but it's kind of dangerous. So are you guys also looking to make sure that the striping and that people do see the crosswalks and stuff? Because I know people are kind of unaware, just here on, what, Stewart Street where you've got the little blinky light, and you push it and cars still whiz by you there. So what are you doing for that?

Mammen: That's an ongoing maintenance issue. And, yes, we do look at that. When we do a road safety audit, we look at all the striping issues and recommend that they be updated or upgraded. Unfortunately, down in the Vegas area, you know, with the heat, it does wear out the striping much faster. And for the crews to get out there and maintain those, it just -- it's a cycle that they have to go through. And I know that each of the agencies down south are all strapped for cash as well, so I know they push their limits as much as they possibly can, unfortunately.

Malfabon: And also, to add to that response, Madam Controller, the RTC of Southern Nevada actually sponsored a study on that issue, because of the heat and the road oils, they get a build-up even on newer crosswalks down there. They get that black discoloration over a very quick period of time. But it is something that we, as Ken mentioned, our maintenance forces try to stay on top of that on a regular cycle. It's just that they -- there's just so many crosswalks down there that are not the Department's. Even keeping on top

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

of the Department's State routes, it's really tough to stay on top of those and prevent that discoloration that happens from the tires and the road oils in Las Vegas.

Sandoval: Member Fransway.

Fransway: Thank you, Governor. I did see one statistic on one of your graphs as it relates to pedestrian fatalities, and that was the gap of gender as it relates to numbers of fatal incidents. And it seems as though males is way up there. Is there a reason for that? Has there been any study into why that is a fact?

Mammen: Do you have any basic information on that? I have some, but not a lot.

Pearl: I have some, but not a lot as well. It's males, unfortunately, traditionally are more aggressive and more risk takers and end up being our main focus for changing behavior, whether it's impaired driving or pedestrian safety or such. And as you might have noticed, too, about half of our pedestrian fatalities are impaired. It's definitely an urban problem, Washoe County and Clark County, 24-hour towns, 24-hour alcohol. We tell them not to drink and drive and then they go walk and drive. So we don't really have a good answer for that yet, but we're working on it.

Fransway: Okay. I suggest that maybe it might be a target for you. I understand that males may have a thicker skull, but it doesn't count when it meets the pavement or a bumper, so...

Mammen: One thing I will mention, Member Fransway, is that we also have another study going on in Vegas where they're going to put cameras up and -- thematic cameras up and take videos of pedestrians walking on some of our heavier traveled routes and monitor it for a period of time to see the activities of pedestrians and vehicles, so we can get a better understanding of what's actually going on. Because we can theorize that people are just wandering out in traffic, but are they actually darting out in traffic? Are they just -- are they distracted out in traffic, or what? So we do have a study going on that will help us understand some of the behaviors.

Fransway: Thank you.

Sandoval: Any other questions? One more, and you had that map with all the locations of the -- where we've had those accidents. You know, obviously, in

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

Southern Nevada, we've got some pretty wide streets with some higher speed limits. Is there more incidents of the pedestrian accidents there, because it takes a while to get across that street and you have cars traveling at a greater rate of speed?

Pearl: Absolutely. The majority is probably about 70, 72 percent of the pedestrian fatalities occur in Clark County. And you're absolutely right, it's because of the multiple-lane roads, the average speed is 45 miles per hour, so they're going 55. A lot of folks, including pedestrians, don't understand that a legal crosswalk doesn't necessarily have to be painted. It's just -- it could be an intersection between two traffic signals. That's a crosswalk by definition. So that's the education we try to put out there as well.

Sandoval: And I've always wondered about this, but those buttons actually work, don't they, when you -- when you're at an intersection?

Mammen: Sometimes.

Sandoval: I mean, again, I've always wondered.

Malfabon: Only press it once, Governor. It actually doesn't jump any faster.

Mammen: They don't work faster if you push them more than once (inaudible). As long as they're maintained, they should function, yes.

Sandoval: All right. Any further questions? Thank you very much. That was very informative.

Malfabon: I just wanted to add a few things, Governor. And Traci hit on it, is one thing that I learned as the Chair of the AASHTO Standing Committee on Highway Traffic Safety is the importance of the behavioral side. And as an engineer, I kind of had to be educated about that. We will have to continue on shifting a portion of our safety funds to that effort, although we had the legislation changed that corrected the open-container law in Nevada, to get it compliant with the national standard. Because of the fact that it doesn't take effect until October 1<sup>st</sup>, that was after the deadline that the federal government had for the Department to enact that law. So it's just one more year of shifting some additional funds over to the -- that effort, will continue.

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

And what it is, is a shift from the regular projects to the safety projects, and a portion of that is going to the behavioral side as well. But it is worthwhile. It does actually pay great benefits for the cost. And you can see some of that in the ad campaign that's been very successful, as we've done some polling on recognition of that ad campaign. A lot more people are getting more -- are recognizing that Zero Fatalities message. So it is getting out there and being understood and heard.

Sandoval: Thank you. And in all seriousness, those buttons, I mean, I think sometimes people get impatient, because they don't feel like it's responding. And then, perhaps, they are more willing to take a risk because they want to get across the street, and perhaps it's not responding. So that -- I know I've experienced that myself. So that's why I asked the question. All right. Then we'll move on to Agenda Item No. 8, approval of agreements over \$300,000.

Malfabon: Governor, I wanted to mention, as Bill is approaching the podium there, that there was a error on the payable amount on No. 3. We had discussed the storm-water management program consultant. And it is a new agreement, so those columns should match up, the original agreement amount and the payable amount. It's just that it's a multi-year agreement. I think they just split it up into what would be paid out in the first year or approximately, so that was an error. Those numbers should match. \$4.365 million should be in both of those columns. And take it away, Bill.

Hoffman: Okay. Good morning, Governor, Transportation Board Members. Bill Hoffman, for the record, Deputy Director. I'm still filling in for the Assistant Director of Administration. So this Agenda Item No. 8 is fairly straightforward. There are three agreements this month that we're seeking approval on. The first is an update to the 2007 Southern Nevada High-Occupancy Vehicle Plan and to evaluate Phase 1, HOV, or High-Occupancy Vehicle Short-Term Priorities for Implementation for Project NEON in Clark County. The second one is design services for the removal and replacement of 16 escalators at the Tropicana pedestrian bridges in Clark County. And the third, as Rudy noted, there was a correction. You should be looking at the July 1<sup>st</sup> Board memorandum, not the June 27<sup>th</sup> version. The July 1<sup>st</sup> should have the updated amount of \$4.365 million, and those are services to assist the Department with implementing the MS4 Permit Storm-Water Program. So those, Steve Cooke presented on that a little

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

earlier and actually gave a little bit of detail on the firms that competed for that and that had submitted RFPs. So with that, I'll just open it up for any questions.

Sandoval: Questions from Board members?

Malfabon: Governor, I wanted to mention that on the design services for the pedestrian bridges at Tropicana and Las Vegas Boulevard, that, as we go forward in requesting the remaining funding from the Las Vegas Convention and Visitors Authority, that we will ask that they reimburse the State funds used for the design effort as well.

Sandoval: If there are no questions, the Chair will accept a motion for approval of the agreements over \$300,000, as described in Agenda Item No. 8.

Wallin: Move to approve.

Sandoval: We have a motion for approval by Madam Controller. Is there a second?

Cortez Masto: Second the motion.

Sandoval: We have a second by Madam Attorney General. Any questions or discussion from Board members? All those in favor, please say aye.

Group: Aye.

Sandoval: Opposed, no? The motion passes. I don't see Mr. -- or Member Martin in the room, so will you mark him as absent from the vote? We'll move on to Agenda Item No. 9.

Malfabon: Bill Hoffman will present this item, Governor.

Hoffman: Okay. Again, for the record, Bill Hoffman, Deputy Director. Contracts and agreement settlements, for informational only. The purpose of this item is to inform the Board of construction contracts under \$5 million, awarded between May 21, 2013 to June 17, 2013; also for agreements under \$300,000 that were executed between May 21 and June 17 of this year. And then to inform the Board of settlements entered into by the Department, which were presented for approval to the Board of Examiners between that same timeframe.

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

So to start off with, construction contracts under \$5 million, we do have two. And there was an addendum or an updated corrected version, so, again, you should be working off the July 1, 2013 Board memorandum, not the June 27 version. So the first of the contracts that were awarded that are under \$5 million is Contract No. 800-13, it's the project for demolition, asbestos and hazardous material abatement for 12 parcels along I-15 corridor for Project NEON in Clark County. The Director awarded the contract on May 22, 2013 to Baldwin Development, LLC, in the amount of \$972,972. The engineer's estimate for that was \$2.221 million.

Malfabon: And that is the correction, Governor and Board members, that provided -- I mean, required us to give an update, as the engineer's estimate was an error in the first packet.

Hoffman: The engineer's estimate in that -- in the contract number that I just listed was also an error, too. But those two were corrected in the July 1 version. So that was the first project that was awarded.

The second was Contract No. 3542. And that is a bridge rehabilitation project on multiple bridges on I-80 in the Verdi area. So there were -- there was work done to repair the bridge deck spalls, delaminations, replace bridge joints and so forth. The Director awarded the contract on June 4, 2013 to Q&D Construction in the amount of \$1.33 million. The engineer's estimate was \$1,648,940.36. So are there any questions on the contracts awarded?

Sandoval: Only on question one, for me. There's a substantial gap between the amount of the bid and the engineer's estimate.

Hoffman: Right. Well, I might be -- I don't know exactly why that is. If I could guess, it would be that the DOT, with transportation projects, we're not experts in the demolition area. So this was building demolition, and there were some high-risk items, hazardous material and asbestos that was involved. So we might have priced that, probably, a little bit higher. Again, I'm just guessing, but we can certainly get word back to you, to the Board, on why there was such a large gap. But, just offering up, that would be what I would suspect.

Malfabon: That typically is the case, Governor, with asbestos abatement. We do sample the buildings that are going to be demolished, but we kind of put a

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

factor in there to -- just to make sure that we have enough budget in there to do the demolition with the appropriate abatement measures on asbestos.

Sandoval: Any other questions from Board members?

Martin: Yes, sir.

Sandoval: Member Martin?

Martin: There's a \$266,000 gap between Baldwin and NCM. Is that any concern to the staff?

Malfabon: Member Martin, it is significant. However, since we're -- we have to award to the apparent low bidder, in this case, that's what we're recommending to the Board. And in that case of contracts, if there is an issue, then we can look at the -- any kind of legal terms of the contract to basically end the contract with them and look at those scenarios. Typically, we've been in the situation before, infrequently, in the past with contactors that give a low bid. And they may end up losing money on the project. But we have controls in the legal contract that protect the State in those instances.

Sandoval: Does that satisfy your question, Member Martin?

Martin: Well, kind of. It just seems to me like it's -- maybe be easier to anticipate these issues rather than depending on the legal process, because we all know how well that works for us.

Sandoval: You know, and that -- you've basically touched on what my concern was as well, is that we get a nice, low bid, but I don't want to see a lot of change orders in the future.

Hoffman: Right.

Sandoval: So we'll keep a close eye, I would imagine, on this contract.

Hoffman: Yeah, we'll keep a close eye, Governor.

Sandoval: Any other questions? Do you have anything else, Mr. Hoffman?

Hoffman: Not on those two, but if I could just continue down. So we still have, under that same item number, agreements under \$300,000. So that's the list, pages

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

-- I think it starts on page 16. But that's the table of agreements under \$300,000. And I just would open it up for any questions on any of those.

Sandoval: While we're back on Agenda Item No. 8, Member Martin, you had stepped out of the room when I took a motion. And, Mr. Gallagher, is it -- am I allowed to go ahead and ask him if he would have voted yes on that, so he can be included in the record as a vote one way or the other?

Gallagher: Governor, you could certainly do so, but the motion has already carried and passed. So, well, Board Member Martin may appreciate the courtesy, it's not necessary, but it would allow for a new -- reconsideration of the same motion.

Sandoval: Would you like me to open that vote back up so you can be recorded as having voted on that matter, Member Martin?

Martin: No, sir. It's not necessary from my end. I had already reviewed this stuff prior to coming into this meeting and I was comfortable with the items.

Sandoval: All right. Thank you. Board members, do you have any questions with regard to the other information contained in Agenda Item No. 8?

Hoffman: Well, I'm sorry. If I said Agenda Item No. 8, I apologize. That was a misstatement. I should have said Agenda Item No. 9. Sorry about that.

Sandoval: Right. Agenda Item No. 9.

Hoffman: And also, we're on agreements under \$300,000 under Agenda Item No. 8 -- 9, 9.

Sandoval: Now, wait. Now, you've got me confused here.

Hoffman: I don't know why I've got 8 in my mind.

Sandoval: Because No. 9, we have for...

Hoffman: No. 9, yes.

Sandoval: ...contracts, agreements and settlements. I mean, we've already taken a motion on Agenda Item No. 8. So are you on 9?

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

- Hoffman: I'm on 9. I was just -- what I was doing was just walking -- in the Board memo, there's three sub-categories. It's construction contracts under \$5,000, agreements under \$300,000 and settlements. I was just taking each one of those in order, to see if you had specific questions. I just wanted to make sure you had every opportunity to go through each of those sub-items.
- Sandoval: Member Savage.
- Savage: Thank you, Governor. Mr. Hoffman, on line item number 30 and 32, I'm reading those as time extensions only. And as you know, I've asked this question in the past, but if there are any dollars associated with the time extensions, it's an expectation to provide those dollars at the same time; is that correct?
- Hoffman: Yes, Member Savage. That is correct. These are just time extensions. And if we do have amendments that are for an increased cost and it does take the total cost for that over \$300,000, then they do come before the Board. Yes, sir.
- Savage: But the timing -- my whole point is the timing is -- that if there is a dollar amount change, it should reflect at the same time as the extension of the date.
- Hoffman: Yes. Yes, sir. Yes.
- Malfabon: And in response to Member Savage, the dollar amounts were previously amended. In each of those cases, there was a previous amendment to increase. So you'll see the payable amount increase, but these current ones before the Board are the time extensions, not related to increased cost.
- Savage: That's why I saw that. I thank you, Mr. Director. Thank you, Mr. Hoffman.
- Hoffman: Sure.
- Savage: Thank you, Governor.
- Sandoval: Any other questions from Board members with regard to Agenda Item No. 9?
- Fransway: Governor?

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

- Sandoval: Yes, Member Fransway.
- Fransway: Thank you, Governor. First of all, number three. Could you explain what the terminology "down and out" means?
- Saucedo: Member Fransway, Paul Saucedo, for the record.
- Fransway: Sounds like a boxing match.
- Saucedo: Well, it's actually -- it's in regards to removal of the service, of the power service. And that's in anticipation of a demolition. And so that's for a particular property. So they'll actually -- the power company will come in and actually remove their equipment, the meters and things of that nature, and disconnect the power, so that the demolition can move forward.
- Fransway: Thank you.
- Sandoval: And for the record, that was Paul Saucedo.
- Fransway: Mr. Hoffman?
- Hoffman: Yes, sir.
- Fransway: Number 14.
- Hoffman: Fourteen. Yes. I have that circled on my...
- Fransway: That is a substantial reduction in monthly air rent -- charge. And I -- can you explain that?
- Hoffman: Yes. Well, actually, I'd like Mr. Paul Saucedo to explain that.
- Saucedo: Thank you, Member Fransway. Paul Saucedo, Chief Right-of-Way Agent, for the record. When we -- we have to reevaluate leases every -- I think it's every five years. And when we do that, we have an appraisal done. And in this situation, when the appraisal was done, the appraiser came back with a lower per month rent. And I think that may be due to recent commercial values, you know, being lower than they were back then. I know, in this particular instance, the area also decreased a little bit. Initially, when the original appraisal was done, they included the entire area. This is for a -- for the Sparks Nugget, and it's a building underneath I-80. They actually lease

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

a space underneath I-80. I think, in the new lease that was done, they actually removed the area of the pillars and things of that nature, so reduced the rentable space to the Sparks Nugget to just include what they were actually using. So between that and probably the lowering of the commercial values, you get a substantial decrease in the value.

Fransway: Okay. So the bottom line, that's determined by appraisal.

Saucedo: Yes, sir.

Fransway: Okay. Thank you.

Sandoval: Any more questions with regard to Agenda Item No. 9? It's an informational item, so we will not be taking a motion. Do you have anything else, Mr. Hoffman?

Hoffman: No. No, I don't. Thank you, Governor.

Sandoval: Thank you very much. Agenda Item No. 10, overview of condemnation process, inverse condemnation claims, including Article 1, Section 22, of the State Constitution, PISTOL.

Malfabon: Thank you, Governor. Dennis Gallagher, Chief Deputy, AG, will present this item to the Board.

Gallagher: Good morning, Governor, members of the Board. For the record, Dennis Gallagher, Chief Counsel. It was suggested to me this morning that perhaps I'm violating a Board policy, because I do not have a PowerPoint. So my apologies.

The concept of the state or a sovereign taking private property for public use has been around at least since the time of the Romans. However, the concept or the name, "eminent domain," is of far more recent origin. Grotius, a 17<sup>th</sup> century legal scholar and philosopher, is believed to be the person who came up with the phrase. Now, Grotius does sound like he might have been a Roman, but he was a Dutch philosopher/legal scholar. And he described it in the power of the government to take private property for the greater good, but that the owner of the property should not bear the consequences of the loss of the property without some sort of compensation. The underlying principle is that it's unfair for government to force an

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

individual property owner to give up their property without payment. And all those who benefit, the citizens, should bear the cost of compensating that property owner.

I did think about taking the Board through the history of eminent domain from the 17<sup>th</sup> century, but out of deference for your time and respect for your sanity, I'm going to fast-forward it to the present. The just compensation clause is found both in the United States Constitution, contained in the Fifth Amendment, and Nevada's independent, but similar just compensation provision in Article 1, Section 8 of the State Constitution. And it simply provides, very briefly, private property shall not be taken for public use without just compensation having been first made or secured, except in the case of war, riot, fire or great public peril, in which case, compensation shall be made afterward.

For my purposes today, I'm going to use the phrase "taking clause," when I refer to the rights and obligations of NDOT and in the context of the eminent domain cases. I'm also going to use the term "eminent domain," "condemnation," and "takings," interchangeably. Under Nevada law, eminent domain proceedings are considered to be special judicial proceedings. The basic ground rules for eminent domain proceedings are set forth in Chapter 37 of the Nevada Revised Statutes.

I'm going to take a little time at the beginning of this presentation to describe the fundamentals of condemnation action and explain the difference between a direct condemnation action and an inverse condemnation action. I'm going to briefly describe what I believe to be is the legal framework that's been established in the United States Supreme Court and in the Nevada Supreme Court through decisions they have rendered. A brief timeline explaining the procedures NDOT follows before filing an eminent domain action will be discussed, followed by a basic timeline of how a condemnation case works its way through the State court system. The final part of this presentation will be a summation of the people's initiative to stop taking of our land, commonly known as PISTOL, which became effective in 2008.

First, I'll start off with the direct condemnation case, because perhaps it's the simplest, or at least most straight forward. NRS Chapter 408 gives NDOT the power to exercise eminent domain for road and highway

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

purposes, to acquire private property for those purposes. If a property is needed for a project and it cannot be obtained through negotiation with the landowner, NDOT has the authority to come before this Board to ask for a condemnation resolution authorizing initiation of a legal proceeding to condemn the property that's needed for the project. In a direct condemnation action, NDOT identifies the property it needs for the public use. And within NDOT, this identification happens after the project has been designed.

Once a design has been determined, NDOT holds a meeting called the right-of-way setting to identify what privately-owned property it needs to acquire in order to build and complete the project. Once there's been a right-of-way setting, NDOT hires an appraiser to determine the amount of fair compensation that should be paid to the landowner for the taking of their property. Once the appraisal is received and reviewed by NDOT, a right-of-way agent provides the appraisal -- the appraisal to the landowner. Oftentimes the landowner agrees to the just compensation amount determined by the appraiser and the agreement is reached. So NDOT receives its land in exchange for the payment of compensation.

But sometimes NDOT cannot reach an agreement with the landowner over the amount of compensation that is fair both to the landowner and to the taxpayers. In those cases, again, after coming to the Board for a condemnation resolution, we file a complaint in State court and ask the court to enter an order condemning the property so that NDOT can use it. When that happens, what NDOT is really doing is admitting that it's required to pay just compensation for the property. And usually the landowner agrees that NDOT has the right to take the property. The sole issue that remains to be determined either by a judge or a jury is the amount of compensation that should be paid. In some instances, the construction project requires that the entire parcel owned by a particular landowner is needed for the project. That's what's referred to as a total take. In other instances, the project may only require a portion of that property, and that's what's referred to as a partial take.

In a total-take case, NDOT pays the fair market value of the property as of the date of value, which is the date the condemnation complaint is received by the landowner. The property is valued on that date for the amount the appraisers estimate the property would sell for on the open market between

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

informed parties dealing at an arm's length with each other. These cases are relatively straightforward. NDOT hires an appraiser to evaluate the legitimate uses to which the property could be put. If the landowner does not agree to that value, typically they hire their own appraiser. And then the negotiations start. As negotiations reach a settlement, the settlement is presented to the Board of Examiners for its approval, because it's a settlement of litigation at that point. If negotiations are not successful, the trial focuses on the simple issue of which appraiser's estimate of value is most reasonable.

Partial-taking cases are a little bit more complicated. In a partial-taking case, the first step is the same as a total-takings case. In other words, the determination of the fair market value of the entire property is made. But then additional steps must be taken to determine what compensation should justly be paid to the landowner.

Probably the best way to explain this might be an example. Imagine a ten-acre vacant parcel zoned for residential development. NDOT needs to acquire two of those acres for a freeway interchange. The landowner will lose two acres through condemnation and keep eight acres after NDOT's taking. The first step in the evaluation analysis will be value the entire ten acres on an open-market sale to, let's say, a residential homebuilder. Let's say, for example, the land is determined to be worth \$10,000, or, excuse me, \$100,000 per acre, or the total parcel cost would be \$1 million. Since NDOT is taking two acres valued at \$100,000, NDOT would owe the landowner \$200,000 for the land taking. That is called the "value" of the take.

But the analysis does not stop there in these partial-taking cases. The next step is to examine whether the NDOT interchange in our example adds any value to the remaining eight acres, or does it somehow damage the value of the remaining eight acres? If the NDOT project, as construction, damages the remaining eight acres, the landowner is entitled to what's called severance damages. Severance damages can be caused by many factors. There could be a loss of reasonable access to the remaining eight acres in our example. There could be a drainage problem caused by the construction of the freeway interchange. There could be local zoning regulations that are triggered by the smaller size, now, of the property available for development. Whatever the issue is, that is something the appraisers need to

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

consider to determine whether or not severance damages should be paid to the landowner.

But sometimes a project can both damage a property, but also benefit. Using our example, let's assume the landowner would have had the severance damages of \$200,000. But let's also assume that the freeway off-ramp will increase the accessibility of the remaining eight acres, so the property that was worth \$100,000 an acre is now worth \$120,000 an acre. That special -- that benefit is called a special benefit, because the \$20,000 increase per acre would make the remainder of the property \$160,000 more valuable on the open market. So in our example, NDOT would get a credit, if you will, of \$160,000 credited against the severance damages of \$200,000, and only owe \$40,000 for the property.

One other area that we sometimes deal with is referred to as a "temporary construction easement." Sometimes NDOT only needs the property during a construction phase. It may be that it needs the property in order to construct some of the improvements, the roadways, the drainage ditch, a slope that supports a roadway. For this, NDOT pays the property owner what, in essence, is a fair rental value for the property for the duration of time that the property's needed by NDOT.

So to summarize, in a direct-taking case, NDOT pays the landowner the fair market value of the property that's being permanently acquired for a highway project. In a partial-taking case, if there are severance damages caused, the property that will remain in private ownership after construction, NDOT must pay the amount of those damages, after being credited for any increase in the fair market value that's a result of the construction of the highway project. In addition, NDOT basically pays the rent for temporary construction easements to property owner. Those are direct-taking cases. As of May 15, we have 19 direct-taking cases, all in Clark County, the vast majority of which are related to either Project NEON or the Boulder City Bypass.

Now, you've heard many times the phrase inverse condemnation. I'm going to briefly walk you through what that is. Until the current recession, inverse condemnation claims against NDOT were extremely rare. We have recently seen a number of lawsuits brought against NDOT in which the landowners have claimed, through various allegations, that NDOT acted in a manner

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

which appropriated their property for public use, but that NDOT did not file a direct condemnation actions. This is an inverse condemnation claim.

As Board members are keenly aware, the planning process for a highway project is very complicated. It involves the federal government, lengthy environmental studies, the participation of local entities and utilities and, certainly, budgetary constraints. The public is kept informed through many public hearings in which input to various alternatives are reviewed, received, discussed. NDOT has a duty to keep the public informed every step of the way, from the time the project is first envisioned until final plans are in place. This massive effort, in some cases, often can take longer than ten years.

We all recognize that land values in Nevada peaked sometime a few years ago, 2007, 2008. Two NDOT projects were in the planning-design stage during those years, Project NEON and the Boulder City Bypass. Some landowners have filed inverse condemnation claims against NDOT alleging that because of NDOT's public announcements, the hearing process and other activities, that their property was inversely condemned, and they're seeking a date of value back at the height of the market. While in these cases the landowner has a heavy burden of proof to show that NDOT took actions that constituted a taking, they're trying to, again, tie their date of valuation to the height of the market.

And NDOT's approach in these cases is very different than in the direct actions. In the direct actions, if you recall, NDOT basically says, "We admit, we're liable to you. We just may disagree over what is just compensation." In an inverse case, NDOT is defending itself and its actions, taking the position that it did not take the property, and that no taking took place, therefore no compensation is due the landowner. NDOT relies on Supreme Court precedent here in Nevada that says, "Mere planning is not a taking in the State of Nevada."

And the stakes can be very, very high in these cases, because if a landowner does, in fact, prove that NDOT's actions constituted something beyond mere planning and constituted a functional acquisition or taking of their property, they're entitled to just compensation. They'll also argue, then, that NDOT must also pay their cost, their attorneys' fees. In addition, they'll argue they must pay interest on the value of the property at prime, plus two,

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

compounded daily. So in some cases, it's quite possible that adding all that up would far exceed the value of the underlying property. That's why we really fight hard in these inverse claims, because the stakes are so high.

Cortez Masto: (Inaudible).

Gallagher: Actually filed, I believe ten, Madam Attorney General, and probably at least another half dozen to a dozen that have been threatened to be filed. We're seeing, in some cases, as we now move forward with the direct eminent domain actions, that the landowner is filing a counterclaim based on an inverse condemnation theory. So it, you know, ups the litigation value a little bit.

A couple of general legal principles on these taking cases. The Nevada Supreme Court has held that inverse condemnation cases are the functional equivalent to a direct condemnation. So what that means is the provisions of Chapter 37 of NRS applies. And as you may recall, one of the provisions in Chapter 37 is that these matters are deemed a special proceeding and get a priority in the courts. And the courts have typically set these matters for trial within two years of the filing. That is so different than all other civil litigation, which typically takes four to five years to go through the process. What that means is the cases are in a consolidated or accelerated discovery process.

The discovery, especially in the inverse condemnation claims, are extreme by way of an extreme example, a request to NDOT to produce every piece of paper, every electronic file that deals in any way, shape or form with Project NEON. I don't even know the number of documents that, you know, that will require a response to. Plus, not only the staffing to collect the documents, then there's the issue of reviewing the documents for privilege, et cetera. These are very large cases and very time intensive.

If you'll remember, though, the underlying principle in all takings cases is the landowner should be paid an amount that puts him back in the same financial position he or she would have been in had their property not been taken. In other words, the landowner should be made whole. However, just as the landowner shouldn't have to sustain a unique burden because their property is needed for a highway, the taxpayers should not have to shoulder the burden of paying a landowner a windfall value for that property. The

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

legal process in eminent domain action is designed to determine what compensation is "just" to the landowner and to the taxpayers.

Now, in a direct takings action, if the landowner and NDOT can't agree to just compensation, this Board will pass its condemnation resolution. Shortly thereafter, my office will file a complaint in the district court for eminent domain. Typically, if we need the property right away, we will make a deposit with the court with the appraised value for that property. That allows us to ask the court for immediate occupancy to commence the project that it's needed for. If we don't need the property right away, we don't have to file that amount with the court at that point in time.

The complaint, once it's filed, is served on the landowner and anyone else who a title search indicates may have an interest in the underlying property, which oftentimes includes utilities with their easements. The landowner usually files an answer agreeing that NDOT has eminent domain authority to take their property, but what they're asking is for the judge or a jury, if requested, to determine the amount of just compensation. Thus, as we proceed in the litigation, you have one set of appraisals versus another set of appraisals, and it becomes the battle of the appraisers. Which does the fact finder, be it the jury or judge, determine?

Anecdotal evidence would suggest that in some cases, juries don't understand the fine art of appraisal, since it's not a science, and some might dispute that it's a fine art. But I will defer to the appraisers who are licensed in this State. But there are huge differences of opinion in some of these cases, just huge. And the anecdotal evidence would suggest, at least in a couple of jury cases, that the juries were inclined to split the difference. That's a reality that, you know, we must -- we must face. Judges, on the other hand, generally display some other theory other than just cutting the baby in half.

Sandoval: Mr. Gallagher, may I ask a question?

Gallagher: Of course, sir.

Sandoval: Sorry to interrupt. When you file your cases, do you seek to waive jury, or do you -- which approach do you take?

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

Gallagher: Different lawyers have different theories. Generally, we -- the State does not ask for a jury.

Sandoval: Thank you.

Gallagher: The trier of fact, be it the judge or jury, will hear testimony when we go to trial from engineers, consultants and appraisers and render their verdict for whatever they feel is just compensation. The landowner is entitled -- additionally entitled to interest on what the award is. And the amount of interest will depend on when or if NDOT deposited with the court its appraised value and how much higher, perhaps, the fact finder determines is just compensation. I'm not aware of any case where the fact finder came in at a lower dollar amount than the appraisal for the State.

The landowner also seeks to recover reasonable costs associated with the litigation. Those include expert witness fees, depositions fees. And then the judge hears arguments from both sides as to what the interest and cost award should be and will include those amounts in the order of condemnation.

Once the payment is made, after Board of Examiner approval, title to the property is transferred to NDOT. Now, if NDOT believes that a condemnation award was the result of a serious error of law, NDOT will file an appeal with the Nevada Supreme Court. Such an appeal can take 12 to 24 months to work its way through the court process. The filing of an appeal by NDOT is something that is extremely rare and is only done if something really egregious happened at the lower court.

Earlier this year, however, NDOT filed a petition in the Nevada Supreme Court seeking an extraordinary writ of prohibition or mandamus in a district court case involving an inverse condemnation claim where the district judge found a taking had occurred back in, I believe, 2007. NDOT filed a writ with the Supreme Court, ask -- arguing that, based upon the evidence, NDOT did not acquire this property back in 2007. Last week, the court ordered the landowner to file an answer to our application for a writ. So we're encouraged by that.

Which now brings me to the exciting world of PISTOL, which we've said, we say it sometimes like an expletive. It was a significant change in Nevada law. It was the result of the initiative, a voter initiative that passed both in 2006 and 2008, and became law in 2008. The People's Initiative to Stop the

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

Taking of Our Land, I mean, and then commonly referred to PISTOL. It's something we have to live with.

One of the major causes for PISTOL's adoption was a U.S. Supreme Court case, I believe it was from Connecticut, where the U.S. Supreme Court permitted the city to take private land and transfer it to another developer, because this other developer was going to redevelop this certain area. And the city's view was it was going to enhance tax revenues, it would help clear up a blighted area of their city, et cetera. Well, about the same time as that decision, there was a case out of Clark County, Nevada, involving the Pappas family, who owned property in downtown Las Vegas that was acquired and then given to the -- or transferred to the Fremont Street Experience in order that a garage could be built on it. There was a lot of public outcry to both of those questions. And the landowner's bar, in particular, was the prime mover behind PISTOL, and funded it and argued it. And, ultimately, the public approved it, and it became effective in 2008, like I said.

While NDOT doesn't engage in redevelopment projects, such as the one at issue in the Pappas case in Las Vegas or the U.S. Supreme Court case, there are provisions of PISTOL that have a direct impact on NDOT. For example, when NDOT needed to widen a portion of Warm Springs Road in Las Vegas, it acquired Nevada Energy utility easements on the north side of the road in order to widen it. Well, in order to assist Nevada Energy relocate those easements, as it acquired -- NDOT acquired property on the south side of the road, it acquired property for the Nevada Energy easement so it could move its transmission lines from the north side to the south side.

NDOT filed a condemnation complaint to acquire those easements. And NDOT argued that those easements -- or that particular easement was needed for public use, because NDOT couldn't widen Warm Springs without providing a replacement easement for Nevada Energy. However, based upon PISTOL, the landowner is challenging NDOT's right to condemn its property, so that Nevada Energy could have an easement for its transmission lines. The district court denied the landowner's objection, and the widening of the road and the relocation of the utility lines has been completed.

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

However, the landowner has now filed a writ in the Nevada Supreme Court, alleging that PISTOL prevented NDOT from acquiring that easement on behalf of Nevada Energy, because it viewed Nevada Energy as a private person. And it also challenges the district court's finding that PISTOL -- that, under PISTOL, the landowner had the right for a jury determination that it was a public use.

On the same day last week that we received notification from the court, the Supreme Court, that our writ apparently had found its way of some merit in that the property owner was ordered to answer it, on that same day, minutes apart, we were ordered to respond to the landowner in this case on Warm Springs. So we will proceed, obviously, on both cases. This is the first time, at least in recent memory, that I can think that NDOT's had two matters pending before the State Supreme Court.

Now, the key provisions of PISTOL impacting NDOT are as follows. Public use does not include the direct or indirect transfer of any interest in property from one private property owner to another. That's the issue in the case involving Nevada Energy that I just mentioned. A landowner, under PISTOL, is entitled to a determination by a jury that the taking is for a public use. That's also an issue in the Nevada Energy case.

Another impact of PISTOL, all appraisals by the government must be given to the landowner prior to an occupancy order. PISTOL also requires property to be valued at its highest and best use. PISTOL defines just compensation as the sum necessary to place the property owner back in the same monetary position as if the property were never taken. Just compensation includes compound interest, reasonable costs and expenses actually incurred. This particular provision of PISTOL, in my opinion, has provided landowners a motivation to bring inverse condemnation claims to push back the date of taking so that interest will begin to run at the earlier date and accrue on a compound basis, which the court must determine, but the landowners' attorneys argue must be compounded daily.

Fair market value under PISTOL is defined as the highest price for the property would get on the open market. The property, which is condemned, must be used within five years of the entry of the final order of condemnation. If not so used, the property owner has the right to purchase it for the price he sold it -- he or she sold it for. This provision may, in fact,

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

be in violation of the code of federal regulations. No cases have gone before the State Supreme Court interpreting these provisions of PISTOL, not yet anyway. At some point in time I anticipate that a number of them will.

I should also point out, too, there was -- I believe there was a voter petition in 2010 to amend PISTOL. One of the amendments would have taken that 5-year provision that I just mentioned and changed it to 15 years, which is the provision that's currently provided in the Nevada Revised Statutes. However, the petition in 2010 failed.

The final provision of PISTOL that impacts is the provision of the property owner shall not be liable to the government for attorneys' fees and costs in any eminent domain action, no matter what. Even if -- even if the property owner acquires, excuse me, gets an award that's less than the amount that NDOT put in, NDOT is not entitled to seek its costs and fees from the property owner. So the settlement incentive is taken off the table. The contrary argument is the government has unlimited resources and property owners don't. I'll leave that to the public to decide.

But, thank you for your time and attention for this very broad 35,000-foot view of this little process that NDOT deals with. And, you know, Paul Saucedo from Right-of-Way was up earlier and his people. You know, they work very, very hard trying to make sure that these actions don't make it to my office. And I'm very much appreciative of that. However, I do anticipate, both with NEON, particularly NEON, we will have a number of condemnation actions that will come before the Board, because I don't know that the negotiations that are currently underway in Right-of-Way will be successful. And, of course, we have all those threats of inverse condemnations, and I expect more of those.

I would like to take this opportunity, if I may, Mr. Chairman, to introduce the Board to Laura Fitzsimmons, who's here. Laura is, in my opinion, the most -- the preeminent eminent domain lawyer in the State of Nevada. She has a long and successful career representing landowners. And I don't want to put words in her mouth, but she agreed to assist us in formulating a legal strategy, understanding the plaintiff's bar a little bit more, and she's actually defending the State in a couple of actions. And we're very grateful to have her. The deputies -- my deputies that work directly with her think the world of her. And contrary to popular belief, when she agreed to work with us and

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

came into the building, the building still is standing. I'd be happy to entertain any questions any of the Board members may have.

Sandoval: Thank you, Mr. Gallagher. And good morning, Ms. Fitzsimmons, and we're glad you're on our side. And we look forward to working with you. One other question, procedurally, Mr. Gallagher, are there judges who these cases are generally assigned to, or are they assigned randomly?

Gallagher: It's a random assignment.

Sandoval: Has there been any kind of discussion similar to the construction defect litigation, whereby we might want to have specific judges who volunteer to take these kind of cases so that there's that -- because this is such a complex area, that those cases would be assigned to a particular department?

Gallagher: We've had some of those discussions, but have not yet gone to the eighth judicial district court to see about perhaps the creation or appointment of a condemnation court.

Sandoval: It just seems that that would be ripe for conversation now, given your anticipation of these multiple cases and the evolution of Project NEON.

Gallagher: Mm-hmm. And as the Board knows, with the build-out for Project NEON, you know, Phase 6 is estimated to be completed in 2025?

Unidentified Male: Yeah.

Gallagher: About? So, yeah, I think we're going to have a steady flow of litigation, Governor, throughout. Especially as we move forward in these next phases.

Sandoval: So would that conversation occur with the chief judge in the eighth judicial district?

Gallagher: I believe it would, sir.

Sandoval: Thank you. Any further questions from Board members? Mr. Martin, do you have any questions?

Martin: No, sir.

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

Sandoval: Thank you very much. That was very informative. Did you see the balls on the bottom of the screen? They look like lottery balls.

Gallagher: I missed that. Did anybody else see that? Because I didn't. Thank you.

Sandoval: Thank you very much.

Gallagher: Mm-hmm.

Malfabon: Thank you, Dennis.

Sandoval: Agenda Item No. 11, old business.

Malfabon: Thank you, Governor. Standing items of report to the Board, we have the report of outside counsel costs and open matters, the monthly litigation report and the fatality report.

In the fatality report, I'm pleased to report that at least the fatalities compared to this time last year, or at least on the day of the report, which was July 1, that we were a bit lower than these fatalities last year, in comparison.

I also wanted to echo the appreciation for Ms. Fitzsimmons' efforts on the Boulder City Bypass Project and educating NDOT, not just the right-of-way, but also the engineering side, on how to approach projects differently to mitigate these types of challenges under PISTOL. And also kudos to the Attorney General's staff in Las Vegas that have been very good at handling these cases. You saw, previously, the settlement in the Iovino case that went to the Board of Examiners for -- previously for approval. But they're very hard working and very educated on the process and, unfortunately, have a lot more to get through. But it is kind of the nature of the business nowadays with our projects is that we definitely impact landowners that are adjacent to these projects, and we have to deal with these situations as they come up. Any questions for the old business reports? We have the staff available to respond.

Sandoval: There are none.

Malfabon: I wanted to add, Governor, that Mr. Gallagher is going to proceed with a request for proposals for casting that net for outside counsel on these matters, recognizing that we do have a lot of legal attorneys on staff, both

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

in-house and that we've hired externally. But we see, as he had mentioned, a lot of cases coming up.

Gallagher: Governor, if I may, it's been some time since the office has gone out and solicited interest from the bar. And so we thought this would be a good opportunity to do it, to see who's interested, what resources are available as we move forward. I'd also like to mention, with the approval of the Attorney General, we had a vacancy in our office here in Carson City. The General approved the relocation of the position to Las Vegas, because that's where these cases are all coming up. And so I'm pleased to inform the Board that today is the first day for the individual who was hired to fill that position. And he, like his colleagues down there, will be dedicated almost full time, or exclusively, to litigation.

Sandoval: Thank you. Any other questions on Agenda Item 11? Agenda Item 12, public comment. Is there any member of the public here in Carson City that would like to provide public comment to the Board? I see none.

Malfabon: Governor, I'd mentioned that we have conducted the interviews for Assistant Director for Administration. We interviewed nine applicants. We received over 20 applications and very good, qualified applicants. And hopefully by this time next month we'll have somebody in place.

Sandoval: All right. Thank you. Is there any public comment from Las Vegas?

Martin: No, sir.

Sandoval: I'll close the public comment portion of the Agenda. Agenda Item 13, adjournment. Is there a motion for adjournment?

Martin: So moved.

Sandoval: Member Martin has made a motion for adjournment. Is there a second?

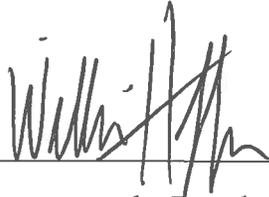
Savage: Second.

Sandoval: Second by Member Savage. All those in favor, please say aye.

Group: Aye.

Minutes of Nevada Department of Transportation  
Board of Director's Meeting  
July 8, 2013

Sandoval: Motion passes unanimously. Thank you, ladies and gentlemen. This meeting is adjourned.



Secretary to the Board



Preparer of Minutes