

**Meeting of the “Blue Ribbon Task Force”
to Evaluate Nevada Department of Transportation Long Range Projects
December 2, 2005**

Chairman Peckman called the meeting to order and then took attendance. Member Woodbury, Member Mayer, Member Ellison, Member Vilardo, Member Russell, Member Madole, Member Cashman, and Member Murphy were present in Las Vegas. Member Capurro and Member List were participating by video conference from Carson City. Vice Chairman Goodman, Member Ralenkotter, Member Porter, Member Geeser, Member Skancke, Member Dini and Member Landreth were absent from the meeting.

1. Approval of Minutes from the October 27, 2005 Task Force Meeting – Action Item

Director Fontaine requested that the Task Force defer approval of the minutes from the October 27 meeting due to some technical difficulties with the recording.

Chairman Peckman asked if any of the members had an issue with deferring the minutes until the next meeting and hearing none went to the next agenda item.

2. Nevada Department of Transportation Response to Questions Arising from the October 27, 2005 Task Force Meeting and Discussion of those Responses, Including the Following: – Discussion Item Only

- **List of Individuals who were Recommended or Expressed Interest in Serving on the Task Force as an At Large Member**
- **Amount and Disposition of Nevada’s Rental Car Tax**
- **Bond Payments for Current Projects**
- **Nevada’s Ranking in Motor Vehicle Fuel Taxes**
- **Impacts of the “Nevada Property Owner Bill of Rights” Initiative Petition**

Director Fontaine explained that there was a list of individuals that were considered for as at-large members included the information binders. The next question had to do with the amount and disposition of Nevada's rental car tax, which brought in approximately \$25.5 million to the general fund last fiscal year. Amendments to the legislation authorize both Washoe and Clark Counties to charge an additional fee of up to 2% and it's my understanding that Washoe County did start charging that 2% fee in 2004 and collected approximately \$286,000 in fiscal '04. And that Clark County has not implemented the fee. Staff has prepared a power point presentation to address the question regarding bond payments for current projects. But basically, NDOT's current bonding program is going to be in total \$1 billion. We sold the bonds with the most recent bond sale being last October and we issued \$200 million then. These bonds are being used to accelerate construction of six super projects. We will discuss the total impact. The previous bonds were sold with bond insurance. The bonds do carry very high ratings on their own because of the security behind them. And most bonds today, higher rated bonds. But they've got a very favorable rate.

Director Fontaine went on to explain that there was information included in the binders that indicate Nevada's ranking in terms of the various motor vehicle fuel taxes. He indicated Nevada had the 5th highest combined federal, state and local gas tax and the 14th highest combined federal and state gas tax. Nevada also has the 12th highest

combined federal, state and local diesel tax and 6th highest combined federal and state diesel tax. Nevada has no local diesel tax. The last item he wanted to address was the Task Force's interest in the impacts of the Nevada Property Owner Bill of Rights initiative petition and how that might impact NDOT projects. A copy of the initiative Petition is the last page under Tab 2.

He continued to explain that it is our understanding that the petition was initiated to address perceived government abuses in the taking of private property, including the taking of private property for redevelopment such as was the subject of the recent US Supreme Court ruling in the case of *Kelo vs New London*, which upheld the City of New London, Connecticut's controversial condemnation of private property for redevelopment. NDOT is not in the redevelopment business. NDOT's Board approves condemnation of private property for the uses and purposes set forth in state law which are directly related to highways. NDOT must also comply with pertinent federal law in this respect. NDOT's record in eminent domain is very good. For example, NDOT acquired over 200 single family residences for the US 95 widening project currently under construction in Las Vegas. Only one was under eminent domain, and that was settled before it went to trial.

Of the 14 sections which seek to amend the Nevada Constitution, arguably only 2 sections address private property taken for redevelopment.

I'll highlight a few of the sections of the initiative. Section 2 would prohibit the direct or indirect transfer of private property from one private party to another. This could preclude NDOT from exchanging surplus property for needed right-of-way on a project, thereby increasing the cost of the project.

Section 4 sets out two requirements that must be met before the government can take occupancy of private property. First, the government must give all appraisals to the property owner. A requirement of giving appraisals before discovery would work a disadvantage to the government and taxpayers of the state because there is no requirement that a property owner who disputes such appraisals turn over his appraisals or to even have appraisals. Such a property owner could dispute the state's appraisals without any legitimate basis. A property could also "reverse engineer" the state's appraisals to come up with a higher value for the property. Second, the property owner would be entitled to a jury determination as to whether a use is a "public use." This could delay projects.

Section 6 excludes governmental offsets from being considered as an element of value, while at the same time requiring that the property owner be placed in the same position monetarily as he would have been in had the condemnation action not occurred.

Section 7 redefines "fair market value" to be the highest price the property would bring on the open market. Current law provides that just compensation is measured by the fair market value of the condemned property. There is a substantial difference between fair market value and highest price in that highest price would include outliers or properties sold well above market rates due to unusual circumstances.

Section 8 uses broad language to define taking to include any government action resulting in substantial economic loss to private property. The possibilities of actionable

conduct are unlimited and could lead to claims for compensation due to loss of view or loss of business during road construction.

Section 10 permits the landowner only to preempt a judge or justice from hearing the case. Current law allows either party to preempt a judge.

Section 11 requires government to sell property taken in eminent domain back to the original owner if it is not used within five years for the original purpose for which it was taken. The section also provides that the property is sold back to the previous owner at the original price. The landowner would be allowed to use the money paid by the government interest free and without any adjustment for inflation on the value of money. Additionally, the landowner would reap the benefit of the appreciation in land value without having paid any taxes on it during its appreciation or having tied up any financial investment in the property. Also, this would hamper NDOT's ability to acquire advance right-of-way for major projects. Advance right-of-way acquisition was critical for completing some of the Department's super projects currently under construction.

Section 12 denies attorneys fees and costs to the government for having to litigate eminent domain cases, but still keeps them for property owners. Under current law, if a deal cannot be reached either part can make an offer of judgment. If an offer of judgment is not accepted by the other party and the court proceedings returns a value lower than the offer of judgment, the other party may be liable for court costs and attorney's fees. This is fully the discretion of the court, and have typically been awarded only in those cases where it was obvious that the non prevailing party was unrealistic and thus required the other party the time and expense to go to trial. This would remove one of the most effective measures for settling cases, as there would be no downside in going to trial. It would virtually guarantee that eminent domain cases will go to trial.

While he can not give exact cost estimates of the impacts of the initiative petition, there is no doubt that it will increase costs and certainly add delays.

The powerpoint slide shows the list of 10 super and mega projects we presented to the task force at the last meeting. The total estimated cost of these projects is \$4.8 billion. A significant portion of those costs are for right-of-way. At this point, our estimate is a fourth of those costs are for right-of-way. It is possible that if this initiative is approved, that certain projects will not be built because the right-of-way will simply be too expensive.

Member Madole asked about bonding scenarios. It seems that the demands are so great that you can't get everything done that people want, so isn't it more likely that every time some bonding authority becomes available that it will have to be utilized.

Director Fontaine responded that these future super and mega projects cannot be built without bonding of some type.

3. Approval of Future Task Force Meeting Dates and Locations – *Action Item*

Director Fontaine stated that it was suggested at the last meeting that we try to schedule future task force meetings in advance and rotate the meeting locations. The option that seems to work best is the fourth Thursday of the month starting at 1:30. The schedule being presented is January 26 in Carson City, February 23 in Las Vegas,

March 23 in Las Vegas, April 27 in Elko and May 25 in Las Vegas, if necessary. All of these meetings will be video conferenced between Las Vegas, Carson City and Elko and the Department will provide transportation when necessary.

Chairman Peckman suggested that we keep an agenda that is doable in two hours and plan on three hours for discussion during the meetings.

4. Discussion and Possible Action to Hire Independent Consultants to Provide Technical Assistance to the Task Force – *Action Item*

Director Fontaine recommended that the Task Force hire a consultant, specifically Tom Warne and Associates to conduct the high level independent analysis for the Department's future super mega projects that we presented at the last meeting. So this would include a review of projects each of the projects purpose and need and cost estimate, order of magnitude cost estimate. They would also review NDOT's bridge and pavement preservation program and also provide other information regarding what other states are doing with transportation funding and other transportation funding issues nationally. Mr. Warne is nationally recognized as a transportation expert, recently has been specializing in transportation funding. We request your concurrence and we would execute an agreement with Mr. Warne and he would present this information starting in January.

Member Ellison asked about the total budget for the engineer and how it would be funded.

Chairman Fontaine responded that the estimate is between \$50,000 - \$60,000 for the analysis and it would be funded out of NDOT's capital improvement budget. At this point, we're simply recommending your concurrence.

Member Vilardo asked about the scope of work and after some discussion, it was apparent that the scope of work was inadvertently left out of the Task Force's binders.

Chairman Peckman suggested that this item be deferred and asked that staff would copy and distribute the scope of work to the Task Force members.

5. Presentation by the Nevada Department of Transportation on Project Planning, Development and Implementation; Interstate – 515 Corridor, a Case Study – *Discussion Item Only*

Deputy Director Susan Martinovich gave a presentation on the process of the planning stages of a project all the way through to maintenance of the project once it is completed. She then used a Interstate 15 as an example of this process.

6. Presentation by the Nevada Department of Transportation on Projected Future Levels of Service on Nevada's Freeways – *Discussion Item Only*

Deputy Director Susan Martinovich briefed the Task Force on current and project levels of service on Nevada's highway system and shared four maps of peak hour volume versus capacity for the Las Vegas Valley for 1990, 2000, 2005 and 2025.

Chairman Peckman asked about the scope of work for Tom Warne that was distributed during Susan's presentation.

Director Fontaine explained there are basically four tasks. The first one is to do a high level review of the impacts of the proposed super projects and mega projects. The second task would be to review cost estimates of these projects and again this is to evaluate whether our cost projections are reasonable and based on reasonable assumption. The third task would be to do a presentation on public private partnerships for transportation projects. The fourth task is to evaluate the Department's pavement and bridge preservation program.

Member Vilardo asked if Mr. Warne would be making presentations to the Task Force.

Director Fontaine responded that the either Mr. Warne or his associate, Dwight Bower, who is the former head of the Idaho Department of Transportation would be making the presentations.

Member Russell asked if this task force did not exist, would the Department be funding this group, or a group like it to independently evaluate the work that has been done to date.

Director Fontaine responded that moving forward with this project because it's so large and so underfunded, he believes that an independent high level analysis of where we're headed is something that we would probably want to do anyway on a project by project basis.

Member Cashman asked if the Department had ever used Tom Warne in this capacity before.

Director Fontaine responded that the Department had not.

Member Cashman made a motion for approval to hire Tom Warne and Associates. He likes the idea of an outside individual looking in see if there's a whole different perspective of what's going on.

Member Vilardo seconded the motion.

Mr. Cashman asked if the Task Force has the authority to make this decision.

Director Fontaine responded that NDOT has administrative authority to enter into contracts.

Chairman Peckman asked for further questions and then asked for a vote. He received 11 votes to the affirmative and no votes in opposition and declared the item passed.

7. Presentation by the Washoe County Regional Transportation Commission on Projects and Programs – Discussion Item Only

Director Fontaine explained that the Regional Transportation Commissions have the responsibility of planning and delivery of street and highway projects as well as the

operation of transit systems. The Executive Director of the Washoe County RTC, Greg Krause, will make a presentation. Following that, Jacob Snow, General Manager of the RTC for Southern Nevada, will make a presentation. We appreciate them both being here and providing the Task Force with a review to their program and what they do.

Greg Krause, Executive Director of the Washoe County RTC, provided a brief overview of their program and highlighted some of the challenges. A copy of his power point presentation is attached.

8. Presentation by the Regional Transportation Commission of Southern Nevada on Projects and Programs – *Discussion Item Only*

Jacob Snow, General Manager of the Regional Transportation Commission for southern Nevada, stated that he wanted to provide insight into their role and how they work for the Nevada Department of Transportation in setting which transportation priorities and how to implement them. He then discussed the RTC's plans for transit in Southern Nevada.

9. Presentation by the Nevada Department of Transportation on the Fiscal Impact of Increasing Existing State Highway Fund Revenue Sources – *Discussion Item Only*

Director Fontaine stated that Russ Law, Chief of Operations Analysis, is going to follow up on some of the questions raised at the last meeting.

Russ Law referred to the charge regarding potential highway fund revenue from existing sources. He wanted to explain what's happened with increased existing taxes and specifically going to address only the current major highway fund sources, the primary sources both federal and state taxes are essentially fuel taxes and vehicle and registration fees primarily. He concentrated on those two and then address some questions that Ms. Vilardo raised at the last meeting about trends in the fuel taxes and vehicle fees versus population roles.

Member Vilardo requested that a future meeting, could the Task Force have a presentation regarding the developments on the TASC initiative that's supposed to be filed and how that potentially might impact funding. She also wanted to know if the information presented at the meeting was available on-line.

Director Fontaine responded that the Department had just established a website for this Task Force. It's a link from NDOT website at nevadadot.com.

Chairman Peckman asked for further comments from any of the Task Force members in Carson City or Las Vegas.

Member Ellison asked if the Department had documented traffic increasing or decreasing in the last couple of years due to Indian gaming.

Director Fontaine responded that we do have traffic counts for I-15 and I-80, but he does not have those with him. He thinks that it is fair to say that traffic counts continue to increase, but there is no way to know what is the reason for the traffic.

Chairman Peckman asked for public comment from Carson City or Las Vegas and hearing none asked Director Fontaine if there were any further items that he wanted the Task Force to address.

Director Fontaine responded that there was not.

Chairman Peckman declared the meeting adjourned.