

**Meeting of the “Blue Ribbon Task Force”
to Evaluate Nevada Department of Transportation Long Range Projects
February 23, 2006**

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

1. Approval of October 27, 2005 and December 2, 2005 Task Force Meeting Minutes– *Action Item*

Director Fontaine explained that the minutes from the October 27, 2005 are ready to be acted on, but the agenda incorrectly listed December 2, 2005 rather than January 26, 2006, so these can not be voted on at this time. Staff recommends approval of the October 27, 2005 minutes and will bring the January 26, 2006 minutes back for approval at the next meeting.

Vice Chairman Goodman made a motion for approval of the October 27, 2005 minutes and **Member Vilardo** seconded the motion.

Chairman Peckman received 15 votes to the affirmative and no votes in opposition and declared the item passed.

2. Nevada Department of Transportation Responses to Questions Arising From the January 26, 2006 Task Force Meeting and Discussion of those Responses– *Informational Item Only*

Director Fontaine explained that at the last meeting that staff was asked to look at a number of issues and this agenda item is to respond to those.

A. How does the Nevada Department of Transportation (NDOT) Decide to Utilize Concrete Versus Asphalt Pavements?

Director Fontaine continued that the first item had to do with how the Department makes the decision between using concrete or asphalt. There are many factors considered, for both new highway construction and reconstruction. These include design life, availability of funding, environmental concerns such as noise, right-of-way, safety, design, cost for construction, traffic control during construction, as well as life cycle costs. Some other factors considered are continuity, location and specific site conditions. Conservation of natural resources is also a consideration, whether the amount of mineral aggregate can be reduced. Individual circumstances have to be considered.

B. Does Section 2 of the Proposed Tax and Spending Control Petition Initiative Apply to NDOT?

Director Fontaine stated that staff had concluded that under section 5 of the petition initiative, it would exclude federal funds and other money from the State Highway Trust Fund that are designated for public highways. Joe Ward, Chief Deputy Attorney General, specifically reviewed the other provisions of that petition issue with NDOT and he has concluded that NDOT would not be exempt, and would be subject to requirements to have both voter approval to issue bonds. The public would have to vote on any tax increases or any new taxes that could be for highways. There's a copy of Mr. Ward's memo included in your board packets.

Member Vilardo stated that her office in Carson City had reported that the judge said that the description needed to be rewritten. The description is flawed, so it will be rewritten and provided to Senator Beers on Monday. If Senator Beers agrees with the rewrite, there will be another hearing scheduled for next Friday. The Senator will attest to that next Friday morning, once he's assured that the description accurately reflects what's in the initiative. Senator Beers is then free to refile with the corrected description and that the 30 days challenge will not be applied so that he can go out immediately and start collecting signatures.

C. Does the December 2, 2005 U.S. Supreme Court Ruling that States have the Power to Tax Fuel Sold on Indian Reservations Affect Nevada.

Director Fontaine explained that this item has to do with December 6, 2005 Supreme Court ruling regarding states having the power to tax vehicle fuel on Indian reservations and whether or not that affected Nevada. Basically the Supreme Court held that imposing a tax on non Indian fuel distributors, reservation transactions did not violate an important interest balancing test. Russ Law reviewed this issue and concluded that the issue is tribal Sovereignty and whether or not governments negotiated in good faith with the tribe. In Nevada, the State has done a good job in that regard.

D. Have Eminent Domain Cases Increased NDOT's Legal Expense.

Director Fontaine stated there was a question at the last meeting regarding the Department's operating budget in regards to legal costs. The Department pays for legal representation by the Attorney General's office as well as outside counsel. There is also the legal cost of acquisition of right-of-way for the projects. As far as the apparent decrease in our budget from 1.7 to 1.6 million. The initial explanation was that it had to do with some salary savings and what we since found out is that the cost allocation is not necessarily based on FTs or billable hours. It's based upon an overall cost for the Attorney General's office and then divided by the approved method for charging various clients for legal services. So NDOT doesn't pay for particular attorneys, even though we have an assigned attorney, we don't pay for a particular attorney in the Department of Transportation. He asked Joe Ward, Chief Deputy Attorney General, to address the right-of-way acquisition cost.

Joe Ward, Chief Deputy Attorney General, confirmed that eminent domain case legal expenses have increased. From the year 2000 to today, NDOT has expended just over \$2 million pertinent to eminent domain related matters. Over all, \$2.5 million have been expended on outside legal fees and costs. Expenditures have been fairly consistent in

non- eminent domain matters since 2000, but the eminent domain costs have steadily increased and skyrocketed in 2004. There has been a tremendous increase in referrals by the NDOT Right-of-Way Division to the Legal Division of cases requiring condemnation. Right-of-Way has needed to acquire additional pieces of property to accommodate the five super projects. In order to accommodate these super projects and various other major projects there has to be land acquisition. As long as the State continues to grow, as long as the projects continue to surface necessitating land acquisitions, this trend will continue.

Member Skancke asked about lawsuits on eminent domain and the fact that we can not pre-purchase rights-of-way under the Federal Highway Administration, what about the Commission coming up with a recommendation to the Legislature that the pre-purchase of rights-of-way be allowed if state funds are used. He thinks that there's some coordination that can be done with local governments as well as through the Department to look at acquiring an appreciating asset.

Director Fontaine responded that advance purchase right-of-way would be discussed in detail later in the meeting. One of the important aspects of that Property Owner Bill of Rights Initiative is that it would preclude us from acquiring advance right of way. The reason is under that petition initiative, if you acquire right-of-way by eminent domain you have to use that right-of-way or that property within 5 years, if you don't, you have to offer it for return sale to the original property owner at the original purchase price.

E. What is Nevada Law Regarding Public Private Partnerships and Design-Build for Implementing Transportation Projects?

Member Russell asked requirements on public-private partnerships for the Department, as well as design-build projects.

Director Fontaine responded that the Department of Transportation has no explicit authority to enter into public-private partnership whereby the private partner would receive some return on their investment through a user fee. We have entered into a number of public-private partnerships on projects where the private sector was either in whole or in part to provide funding for a highway project. For example, the Las Vegas Motor Speedway Interchange, where the developer provided funds for the entire construction cost for that project. The Department, through construction administration, participated in that process and assisted them in the permitting. We have had similar arrangements with other developers. Federal law does authorize design-build projects, but state law authorizes the Department to use this method if the project cost does exceed \$20 million and meets the other necessary criteria. We have not yet entered into any design-build contracts, but are in the process to use this method for the widening of I-15 to Craig Road, which is the first of the next ten Super Projects.

Member Skancke asked if toll roads are allowed in Nevada?

Director Fontaine responded that the statutes are silent on that matter and since there is no authority, he believes that it would be difficult to get a toll facility without specific authority. However, there is no prohibition in statutes either.

F. What is the Status of Advanced Right-of-Way Acquisition for Highway Projects?

Director Fontaine explained that the Department generally does acquire right-of-way once we have the right-of-way setting. The setting is usually done between 30% to 60% design of that particular project. On federally funded projects, we generally wait for the Record of Decision (ROD) or Finding of No Significant Impact (FONSI) if we're doing environmental impact assessment study. There are provisions that would allow the state to acquire right-of-way in advance of the right-of-way setting or even a ROD or FONSI. The most recent example of the State acquiring right-of-way in advance of a Record of Decision on an EIS was the US-95 widening project. We used state funds to acquire right-of-way before we had Record of Decision on that project. There's always the risk in the environmental process that your preferred alignment is the one that's ultimately not selected for whatever reason. In that case, you may have bought a right-of-way that you can't use. But, as far as state law is concerned, the Department has authority to acquire right-of-way for present and future needs for highways.

G. How are Costs of Traffic Delays Calculated?

Director Fontaine explained that in the most simple terms, the cost of travel delays are really based on average vehicle travel delay times and the amount of traffic that's actually effected so you get a total daily time of delay for all the affected vehicles. What you do is multiply that by 365 days a year and then you can breakout the types of vehicles that are affected, commercial or passenger vehicles. Then we multiply that by some values and for commercial traffic, the multiplier is \$24.71 an hour, which is the average hourly value of commercial vehicle labor and benefits and then for the passenger vehicle, we multiply that by \$8.30 which is 50% of minimum wage rate without benefits. This traffic delay calculation does not include any external costs resulting in a reduction. This is just a very easy way of trying to determine the loss.

H. Is there a Salary Differential Between NDOT and Private Firms and Local Governmental Entities?

Director Fontaine stated that the last item had to do with salary differentials and the issues regarding the proposed projects and work program and whether or not NDOT will be able to implement this program given the fierce competition for technical people, engineers and other people to come work for the Department. Department staff contacted the State Department of Personnel and obtained the latest salary survey for 2004. There were a number of disparities, to name a few: Maintenance worker II, which is sort of a journey level maintenance worker which probably several hundred in the department is 30.8% below market, at the top of our state salary range. Highway equipment mechanics is down 32.6% below the market, again the top of our state salary wage. Right-of-way II's were found to be 35.4% below market. Engineering Technician III's, 34.85%. Engineering Drafters were listed at 37.8% below market. Registered professional engineers, these are the engineers that have licenses that pass all the exams and residency requirements and Staff II Associate Engineers, they are not registered but are one step below those that are, 36% below market value. All of these NDOT jobs are not difficult to recruit for, but a lot of them are, including the engineers and planners, for some of those positions we can under fill with lesser experienced people, who are going to

require longer period of training to become more proficient. There are certain jobs that we can't under fill because they require licensure.

Based on our records, we estimate the 20% of all of our employees are going to be eligible to retire in 5 years and 40% in 10 years, many of these employees are managers and supervisors. The Department is trying to be aggressive in terms of mentoring programs to expand our work force, career growth and so forth. We have a summer internship program where we have 40 or 50 engineering students from UNR and UNLV work with us for the summer. We also have a program where we introduce transportation and civil engineering concepts in to high schools and middle schools. We're just trying to do whatever we can to develop our work force for the future.

Member Vilardo asked if this was strictly a statewide wage comparison or was it a compensation comparison, which included benefits?

Marilyn Yezek, Chief of Human Resources responded that it was a compensation comparison, including all benefits.

Member Goodman commented that he finds some of these statistics hard to believe given his own experience. He just wants to make sure that we are comparing apples and apples.

Member Cashman agreed that he would appreciate further research into this and define the word "market" in the survey.

Director Fontaine responded that staff can look at this further detail and bring it back to the Task Force.

3. Presentation of the Purpose, Need and Cost Projections for the Nevada Department of Transportation's Proposed Super Projects and Mega Projects – *Informational Item Only*

Director Fontaine stated that the Task Force had recommended that the Department hire a consultant to review the super projects and provide information on public private partnerships. Tom Warne, who is a nationally recognized expert in this area, is going to provide an overview of the mega and super projects with respect to their purpose, need, cost and methodology to determine these projects.

Tom Warne stated that after reviewing Nevada's program that it was clear that Nevada has absolutely staggering transportation needs throughout the State. It is also clear that the sooner that the State move towards resolving those transportation needs, the better off it will be. He reviewed ten projects, seven in Clark County and three in Washoe County. He is going to go through the analysis process and summarize the findings of consequence. Basically, they looked at the concept report, the planning documents on the project, and the environmental documents that are associated with these projects. Then they continued with the purpose and need in the traffic studies, which are related. They looked at project justification, cost estimates and whether these projects could be phased.

The state prepares environmental documents on behalf of the federal government and on those that they reviewed, they found that nationally accepted standards of practice were followed. The documents that are in process right now also seem to be following that same pattern. Their conclusion was there's no material problems or issues related to the preparation of the environmental documents. This is important because that's an important step to move forward and building projects as you go forward in putting them out for construction.

As far as purpose and need in the traffic studies and then the cost analysis, Dwight Bower would cover this portion.

Dwight Bower, of HW Lochner, explained that he had reviewed the purpose and need documents. Some of these were in the beginning stages and others were complete. They found the purpose and need for each project, which is required by federal law. The primary purpose for each project was congestion relief. He then explained the current Level of Service, as well as the projected Level of Service. They also reviewed the cost estimates on all ten projects. These are not detailed project estimates at this point. Their conclusion was that the current cost estimates were general in nature and that is typical at this time. These project estimates would also likely change as more details become known. All projects are done on their own, there is not a uniform methodology used for cost estimating, but there is no national standard either for uniform cost estimating either. This is the state of practice and is the way most projects are done. Each project's cost estimate is prepared in a different way. They use similar thought processes, similar technology to do it, but each one is done differently. We also found that the back up information varied from project to project which is to be expected because of the state of completion of the process for each project reviewed.

Tom Warne stated that they also looked at project sequencing and phasing and what projects can be delayed or what parts of projects could be delayed and which ones could be built sooner than others. They approached this from strictly an engineering and construction management stand point. They concluded that each project generally has some elements that could be built-in the near term. The simple message is that Nevada has an opportunity to build part of each of these projects, which have some value from a mobility stand point investing some early dollars to bring some relief in anticipation of probably very large dollars being spent. They suggested that the State move forward as quickly as possible with right-of-way acquisition and to identify a comprehensive construction phasing plan.

4. Continuation of Overview of Public Private Partnerships for Implementing Transportation Projects

Tom Warne continued with an overview of public private partnerships for implementing transportation projects. One mechanism is toll roads where private companies have come in and done things that were in their interest and there was a derived benefit. A private company needs to have return on investment and the toll is a revenue stream that does that. A State can solicit or offer unsolicited proposals for a company to come in, either at the request of the Department of Transportation or unsolicited. The company then puts a project together and proposes it to the state DOT. Public private ventures tend to be more about legal terms than financial terms than they are about engineering because of the complexity of the projects. The engineering and building of

the road itself is actually the most straightforward part. It's more of a matter of dealing with the finances. So, the selection process focuses on that, it's actually rather complex. The idea of tolling may be more difficult on existing facilities.

There are several different funding sources like private capital, private net, and sometimes state funds are involved or state debt. Sometimes there's federal money, federal money can come in any number of avenues. There are also federal financing tools, like bonds a special instrument that are available to states. TIFIA loans are a very interesting vehicle, which involves a delayed pay back period of 10 years and you can get this delayed if you negotiate with the federal government. Often times it is a combination of several funding sources. He also went over the critical components of a comprehensive development agreement, which must have definite parameters.

There is evidence that shows people are willing to pay a premium to not be in congestion. HOT lanes are the example of that, and you're seeing that happen more and more. The concept if HOT lanes or FAST lanes when there is a choice given seems to be a practical option and now it is all done by transponder. These can only be used where there is new capacity.

5. Presentation and Discussion on Projected Annual Revenue Shortfalls and Potential Revenue Sources – *Informational Item Only*

Director Fontaine explained a spreadsheet that looked at some different funding scenarios and wanted to go through some theoretical bonding scenarios for these projects. The assumption is that the Department would bond at least \$3.8 million or more to cover the shortfall because the shortfall is a result of the mega projects and the super projects. Unless there was some way to raise the \$3.8 million over the next 8 years, which would be a significant amount of annual revenue, it's assumed that you would opt to bond for the \$3.8 million shortfall with a 20-year bond.

It's also assumed that the bond for the annual revenue requirements would be averaged annually and that we would have some funds - but in reality the bonding or debt service would initially rise as you bond over period of time, peak, and then start to decline. Just for discussion purposes today, we're going to assume we would bond equally every year of the program and then pay those bonds. We considered three possible scenarios, again if we assume we're going to bond the \$3.8 million the first scenario is the 8-year program that is we would actually construct and complete in the 8-year period all the projects that we talked about, the mega/super projects. If we stretch that program out to 13 years, after we look at some phasing requirements, the bottom line is you can see where the \$3.8 billion line falls for each of those three scenarios. And the first column representing how much additional annual revenue would be needed to support the \$3.8 billion bonding program either an 8-year program, a 13-year program or 18-year program.

The Department is aware that phasing and refining of the cash flow would be critical. This is not a recommendation, but an informational item only. These are options only, not recommendations.

Russ Law, Chief of Operational Analysis, explained some of the potential revenue sources. About 80% of NDOT's work is funded by vehicle tax and fuel fees. There are other states that pool their general fund money and their state highway fund money

together, so it's indiscernible whether they use property tax or other means to finance their highways. The current rate of gasoline tax is 17.65 cents per gallon, but the projected fiscal year 2008 there's one penny per gallon, in other words \$11.8 million for each penny. Fuel tax, gasoline and diesel fuels, termed as special fuel includes alternative fuel, like compressed natural gas and propane, are relatively minor. Vehicle fees, registration fees, and by the way those fuel tax go back on those that are not be changed since 1992 is the last increase at the state level. Vehicle fee, registration fee was last increased in 1991. Passenger vehicles are \$33 per vehicle. The big rigs pay about \$17 per thousand pounds to register, a big one of those is \$1,306. Title fee is \$20 per vehicle and driver's license \$20. Overweight permits are for those double and triple trailers are an extra \$60 per thousand pounds. The other sources here, we basically took every major source of tax that Nevada had at the state level and then we through them. He continued with some of the other taxes used as revenue sources.

Member Vilardo asked if the Chairman would be receptive to concentrate almost solely on revenue or funding at the next meeting. If the Task Force did this, one of the things that she would want to propose is a redirection of revenue. One in particular is that a percentage of state surplus go to the Department of Transportation for the Highway Trust Fund. While this may not be consistent, it may allow for some right-of-way purchases, engineering, soil studies, etc. that may have to be bonded for otherwise. She also asked if the Department had water rights and what value those had.

Chairman Peckman asked the other members of the Task Force if there were some other items that they would like additional information on. He wants to make sure that they have all of the information before the debate begins.

Member Skancke stated that by 2015 the Federal Highway Trust fund is doing to be \$1.3 trillion in debt based on the current gas tax situation in America. We cannot continue to rely upon the federal government for the percentages that we're getting today. He thinks the solution will be some type of usage fee rather than the traditional gas tax. Also, according to studies done by the Federal Highway Administration, the US Chamber of Commerce and some other organizations, the federal trust fund is going to be bankrupt by 2008. We are at a time in history where gas tax is becoming obsolete. It no longer solves the problem. Nevada is facing is now with a \$3.8 billion deficit and we're looking at property tax and gaming tax and other things that may be available to solve the problem. It is important that the projects be identified that qualify for some of the non-traditional types of funding mechanisms.

Russ Law stated that the federal portion runs about 28% of the funding listed in the Facts and Figures book and it has dropped as low as 20% within the last eight years and in those years we issued bonds.

6. Public Comment

Chairman Peckman asked for public comment from any of the locations and hearing none, declared the meeting adjourned.