



February 17, 2011

Attn: Jeff Patten
Kevin McLaury, Division Administrator
Federal Highway Administration
585 Shepard Way
Helena, Montana 59601

Subject: Categorical Exclusion Concurrence Request
Project Name: RR Grade Separation Livingston
Control Number: 7247000

Dear Kevin McLaury:

This submittal is a request for FHWA concurrence that the proposed subject project meets the criteria for classification as a Categorical Exclusion (CE) under the provisions of 23 CFR 771.117(d). The proposed action also qualifies as a CE under the provisions of ARM 18.2.237 and ARM 18.2.261(1) (Sections 75-1-103 and 75-1-201 MCA). A copy of the project vicinity map is attached.

The City of Livingston, in cooperation with the Federal Highway Administration (FHWA) and the Montana Department of Transportation (MDT), is initiating a Categorical Exclusion (CE) for the RR Grade Separation Livingston project. The project is located in the City of Livingston in Park County and will entail construction of a new railroad underpass connecting Star Road / Front Street with Highway 10 / West Park Street. The proposed undercrossing site is located approximately 0.7 miles west of the Highway 10 / West Park Street intersection, immediately east of the point where Fleshman Creek crosses the railroad and Highway 10. The purpose of the project is to provide an additional grade-separated crossing within the City of Livingston in order to enhance connectivity and provide greater emergency vehicle access and expedited response times to serve the growing northwest sector of the city.

The proposed project is located within the following legal description in Park County:

Township	Range	Sections
2S	9E	14, 23

The proposed project would involve lowering the Star Road grade below the existing railroad tracks and extending the roadway to form a tee-intersection with Highway 10. The profile of Highway 10 would also be lowered to tie into the new connection with Star Road. As part of the project, Front Street would be realigned to form a tee-intersection with Star Road and the Star Road / Sunrise Drive intersection would be eliminated. Highway 10 would be widened to accommodate an eastbound center left turn lane and a westbound right turn lane at the intersection with Star Road, while the Star Road leg would also include center left and right turn lanes. The Star Road / Highway 10 intersection would be designed to be able to accommodate future signalization. Two existing culverts conveying Fleshman Creek beneath Highway 10 and

the Voyich ditch would be replaced and the existing culvert at the Livingston Ditch Water Users Association ditch crossing would be removed as part of the project.

The proposed typical road section for all streets within the project includes 12-foot through lanes and 14-foot turn lanes. These lane widths exceed the minimum MDT Urban Design Standards and meet the City of Livingston Urban Design Framework Master Plan design criteria. A normal crown of two percent will be used on all streets. Bicycle lanes will be provided on reconstructed sections of Star Road and Front Street; Highway 10 will include a six-foot shoulder within the reconstructed limits, providing opportunity for bicycle use.

All practicable means to avoid or minimize adverse social, economic and environmental impacts from the proposed project have been adopted. Potential impacts and proposed mitigation measures are summarized in the following tables. Table 1 includes expected permanent impacts. Table 2 includes expected temporary impacts associated with construction activities. The subsequent sections provide additional information related to social, economic and environmental resources that may potentially be impacted by implementation of the proposed project. Potential direct and indirect impacts described in each subsection include expected permanent impacts of the facility. Temporary impacts due to construction of the facility are discussed in a separate subsection.

Table 1: Summary of Potential Permanent Impacts and Proposed Mitigation

Resource	Potential Impact	Proposed Mitigation
Land Use	Negligible increase in traffic volumes in the region and no direct or indirect land use impacts other than the acquisition of a minor amount of right-of-way.	No mitigation is required or proposed.
Farmland	Conversion of approximately 1.6 acres of Farmland of Statewide Importance to non-productive use.	Because the total point value of the farmland conversion is less than 160, under the provisions of 7 CFR 658.4(c)(2), no further consideration for protection or mitigation is required or proposed.
Social	Improved access and connectivity for the travelling public and for emergency responders.	No mitigation is required or proposed.
Environmental Justice	The proposed project will not have a disproportionate adverse impact on minorities or low-income populations.	No mitigation is required or proposed.
Right-of-way	Approximately two acres of new right-of-way would be required throughout the project area. The project would impact a single building located in a Neighborhood Commercial zone that is currently used for storage; no impacts to residential or farm buildings are anticipated. The front yards of some residential parcels would be minimally impacted.	Privately owned lands needed for right-of-way would be acquired in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and Uniform Relocation Act Amendments of 1987. Compensation for right-of-way acquisitions would be made at "fair market value" for the "highest and best use" of the land. Driveways, sidewalks, and mailboxes would be replaced as appropriate and retaining walls would be installed to accommodate the new roadway grade as needed.

Resource	Potential Impact	Proposed Mitigation
Utilities	No long-term impacts to utilities are expected.	No mitigation is required or proposed.
Economic	Greater access between portions of the City of Livingston and a secured access route for emergency medical providers.	No mitigation is required or proposed.
Air Quality	No permanent impacts.	No mitigation is required or proposed.
Noise	No permanent impacts.	No mitigation is required or proposed.
Water Resources/ Water Quality	The two existing culverts conveying Fleshman Creek under Highway 10 and the Voyich ditch would be replaced with a single new culvert, impacting up to 157 feet of Fleshman Creek. The Voyich ditch would be modified and the existing culvert at the Livingston Ditch Water Users Association ditch crossing would be removed. Water quality impacts are anticipated to be minor.	Impacts would be mitigated in compliance with the USACE Montana Stream Mitigation Procedure, as needed. Stream mitigation measures would be coordinated with FWP, USACE, and DEQ, as appropriate. Impacted irrigation facilities would be perpetuated in consultation with facility owners to minimize impacts to agricultural operations. Mitigation of water quality impacts caused by stormwater runoff and erosion would be achieved through engineering controls such as grading, revegetation, design of culverts/ditches, and the use of Best Management Practices.
Wetlands	Impacts would range from zero to 0.005 acres depending on the degree of skew of the proposed culvert conveying Fleshman Creek.	Wetland impacts are not anticipated to exceed 0.10 acres; therefore, no compensatory wetland mitigation is proposed at this time.
Vegetation, Wildlife, and Aquatic Resources	Vegetation would be removed along the route of the proposed new roadway. Permanent impacts to terrestrial wildlife species in the project area are expected to be minor. Impacts to Yellowstone cutthroat trout could result from the increase in impervious area.	MDT would re-establish a permanent desirable vegetation community in areas disturbed by the proposed construction in accordance with 7-22-2152, and 60-2-208 MCA. To minimize adverse permanent impacts to Yellowstone cutthroat trout, the new culvert would be designed using stream simulation methods.
Threatened/ Endangered Species and Habitats	The proposed project will have "no effect" on the Canada lynx, gray wolf, grizzly bear, or their habitat.	No mitigation is required or proposed.
Wild and Scenic Rivers	No wild or scenic rivers exist in the project area.	No mitigation is required or proposed.
Floodplains	No impacts to floodplains are anticipated.	No mitigation is required or proposed and a floodplain permit will not be pursued.
Railroads	A new two-track railroad bridge will be constructed on a tangent alignment to support existing MRL train traffic. The proposed structure is a 120 foot three-span bridge, with one span over a three-lane roadway.	No mitigation is required or proposed.
Pedestrian/ADA	The project would result in an improvement in ADA, pedestrian, and bicycle facilities in the project area.	No mitigation is required or proposed.

Resource	Potential Impact	Proposed Mitigation
Pedestrian/ADA	The project would result in an improvement in ADA, pedestrian, and bicycle facilities in the project area.	No mitigation is required or proposed.
Historical/ Cultural Resources	The project will modify a short segment of the Voyich ditch and remove an existing culvert. The project will result in No Adverse Effect to the ditch.	Mitigation measures will be coordinated with the Voyich ditch owner. The ditch will be perpetuated and will continue to be used for its historic purpose.
	The project proposes to lower the grade of Star Road to pass beneath the Northern Pacific Railroad. A new railroad bridge will carry the existing railroad line in its existing location over the new segment of Star Road. The project will result in No Effect to the railroad.	No mitigation is required or proposed for the Northern Pacific Railroad.
Hazardous Materials	No impacts.	No mitigation is required or proposed.
Visual Resources	Impacts to visual quality of the proposed project area are expected to be negligible.	No mitigation is required or proposed.
Parks, Recreation, Section 4(f) Properties, Section 6(f) Properties	FHWA has determined that the project will have a de minimis impact on the Voyich ditch and that the project will not result in a Section 4(f) use of the railroad.	Mitigation measures will be coordinated with the Voyich ditch owner. The ditch will be perpetuated and will continue to be used for its historic purpose. No mitigation is required or proposed for the Northern Pacific Railroad.

Table 2: Summary of Potential Temporary Construction Impacts and Proposed Mitigation

Resource	Potential Impact	Proposed Mitigation
Traffic	Minor, short-term temporary inconveniences to the traveling public.	A traffic control plan will be developed as design proceeds. Traffic will be maintained during project construction; access will be provided.
Utilities	Multiple conflicts with utilities are expected; temporary, short-term interruption to utility services may result.	Contractors will cooperate with utility owners in the removal and rearrangement of utility facilities to minimize interruption to utility service and duplication of work by the utility owner. Notification of service interruptions due to these relocations would be the responsibility of these utility line's owners.
Economic	Minor, short-term beneficial effects on the local and regional economies due to construction activities.	No mitigation required or proposed.

Resource	Potential Impact	Proposed Mitigation
Air Quality	Minor, short-term, localized adverse air quality impacts due to fugitive dust emissions.	MDT Standard Specifications require that the contractor comply with applicable state and federal air quality rules, which may require use of dust suppression and emission control measures to minimize short-term impacts related to construction dust and equipment usage.
Noise	Minor, short-term, localized adverse noise impacts due to construction equipment.	MDT Standard Specifications require compliance with applicable laws, regulations, and requirements contained in the contract regarding noise pollution.
Water Resources and Water Quality	Short-term adverse impacts on water quality due to potential for erosion and sedimentation.	MDT design and construction specifications require temporary water pollution control measures to minimize potential effects of construction activities. Mitigation of water quality impacts caused by storm water runoff and erosion would be achieved through engineering controls such as grading, revegetation, design of culverts/ditches, and the use of Best Management Practices. MDT and its contractor will adhere to applicable conditions including CWA 404 Permit requirements, SPA124 Notification Process. The contractor will obtain authorization under the construction General Storm Water Discharge Permit from DEQ and will prepare and adhere to their Storm Water Pollution Prevention Plan (SWPPP).
Wetlands	Construction activities near surface waters have potential to have a short-term adverse impact on wetlands due to potential for erosion and sediment.	Throughout construction, avoidance and minimization measures will continue to be employed where practicable. The contractor will adhere to applicable conditions including CWA 404 Permit requirements and MPDES Permit conditions.
Vegetation, Wildlife, and Aquatic Resources	Disturbed areas created during construction could increase potential for erosion, sedimentation and weed infestation. The potential land and water erosion could impact water quality and/or create temporary habitat and vegetation loss. Construction may temporarily displace wildlife, migratory birds, and aquatic species due to human-related disturbance, and could result in individual wildlife mortality primarily to those species with limited mobility and/or those that could be occupying their burrows or nests at the time of construction. Temporary impacts to Yellowstone cutthroat trout could occur during replacement of the two culverts under Highway 10 and the Voyich ditch.	The contractor will be required to revegetate disturbed areas as described previously. Construction techniques and BMPs such as temporary erosion control measures and construction timing restrictions or other suitable mitigation measures would minimize impacts to terrestrial and aquatic resources. Provisions preventing contractors from removing structures and vegetation during nesting season will be utilized and fish passage will be maintained during construction by re-routing Fleshman Creek through a temporary diversion.

Resource	Potential Impact	Proposed Mitigation
Railroads	Train operations will be temporarily rerouted while a new two-track railroad bridge is constructed on a tangent alignment.	As required by MRL, train operations will be maintained during construction using phased construction. The phased construction will allow train operations to continue on one track while the bridge is constructed to support the out-of-service track. This phased approach avoids an expensive “shoofly,” or detour, of the railroad to maintain train traffic during bridge construction. Also as required by MRL, bridge bents or piers supporting the railroad structure will be protected with concrete roadway barriers if immediately adjacent to the roadway or subject to impact from vehicles.
Historical / Cultural Resources	Previously unknown historical or cultural materials may be unearthed during construction.	In the unlikely event that archeological or historical artifacts are encountered during construction, MDT Standard Specifications require the contractor to immediately stop work and notify the Project Manager of the find.
Hazardous Materials	Previously unknown hazardous materials may be encountered during construction.	MDT Standard Specifications require any hazardous materials discovered, generated, or used during implementation of the Preferred Alternative to be handled and disposed in accordance with applicable local, State, and Federal regulations.
Visual Resources	Minor, short-term, localized adverse visual impacts.	The contractor will be required to revegetate disturbed areas as described above.

1. Land Use

The project area is located on the western end of the city of Livingston. Residential areas are located north of the crossing location, while land to the south of the proposed crossing location is used for irrigated farming. Portions of the project area are zoned as Neighborhood Commercial and Industrial.

Impacts: The proposed project will not substantially increase traffic volumes in the region and will not directly or indirectly impact land use other than the acquisition of a minor amount of right-of-way. A single storage building acquisition will be required; no residential acquisitions or relocations will result from the project.

Mitigation: No mitigation is required or proposed.

2. Farmland

The 1981 Farmland Protection Policy Act (FPPA) (Title 7 United States Code, Chapter 73, Sections 4201-4209) requires that the effects of proposed highway projects be examined before acquisition of farmland.

Impacts: The proposed project would result in the conversion of approximately 1.6 acres of Farmland of Statewide Importance to non-productive use. The unavoidable impact areas are located adjacent to Highway 10 south of the proposed undercrossing location and adjacent to the existing Star Road alignment north of the proposed undercrossing location. In accordance with

the FPPA, a Farmland Conversion Impact Rating Form (attached) has been completed for this proposed project. The proposed project would result in total points of less than 160.

Mitigation: Because the total point value of the farmland conversion is less than 160, under the provisions of 7 CFR 658.4(c)(2), no further consideration for protection or mitigation is required or proposed. Best Management Practices (BMPs) would be used to limit disturbance, control erosion, and reclaim disturbed vegetation within the construction limits.

3. Social Impacts

The project area vicinity is transitional in nature, including both agricultural and residential areas.

Impacts: The proposed project is expected to positively impact social conditions by providing improved access and connectivity for the travelling public and for emergency responders. No other impacts are expected with respect to social conditions, social interaction, or community cohesion. The proposed project would not change the population growth or demographic trends anticipated for the project area. The improvements would not disrupt or separate developments in the project area.

The intersection of Star Road and Sunrise Drive would be permanently closed as a result of this project. Local residents in this area may need to identify new travel routes.

Mitigation: No mitigation is required or proposed.

4. Environmental Justice

Title VI of the US Civil Rights Act of 1964, as amended (42 USC 2000(d)) and Executive Order (EO) 12898 require that no minority, or, by extension, low-income person shall be disproportionately adversely impacted by any project receiving federal funds. For transportation projects, this means that no particular minority or low-income person may be disproportionately isolated, displaced, or otherwise subjected to adverse effects. Potential impacts are assessed in terms of property acquisitions or relocations, changes in access to employment areas, and other changes in low-income and minority communities/neighborhoods. Those other changes could include changes in the physical environment such as increases in noise levels, air pollution levels, and the presence or introduction of hazardous materials.

Impacts: The proposed project will not have a disproportionate adverse impact on minorities or low-income populations.

Mitigation: No mitigation is required or proposed.

5. Right-of-way

Existing MDT right-of-way widths on Highway 10 vary from 60 feet to 70 feet on each side of the roadway centerline, and the railroad right-of-way stretches approximately 200 feet on each side of the railroad centerline. Existing City of Livingston right-of-way widths on Front Street and Star Road are approximately 30 feet on each side of the roadway centerline.

Impacts: Approximately two acres of new right-of-way would be required throughout the project area. The project would impact a single building located in a Neighborhood Commercial zone that is currently used for storage; no impacts to residential or farm buildings are anticipated. The front yard areas of some residential parcels adjacent to Star Road would be minimally impacted by the new construction limits.

Mitigation: Privately owned lands needed for right-of-way would be acquired in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and Uniform Relocation Act Amendments of 1987. Compensation for right-of-way acquisitions would be made at “fair market value” for the “highest and best use” of the land. Driveways, sidewalks, and mailboxes would be replaced as appropriate and retaining walls would be installed to accommodate the new roadway grade as needed.

6. Utilities

A number of utilities are located within the project area, including overhead power lines and buried gas, water, telephone and fiber optic lines.

Impacts: The project is expected to involve conflicts with utilities, although no long-term impacts to utilities are expected.

Mitigation: No mitigation is required or proposed.

7. Economic Impacts

The project area is generally residential and agricultural in nature, although portions of the project area are zoned as Neighborhood Commercial and Industrial

Impacts: The proposed project is expected to result in long-term positive impacts to economic conditions by providing greater access between portions of the City of Livingston and by ensuring a secured access route for emergency medical providers.

Mitigation: No mitigation is required or proposed.

8. Air Quality

This proposed project is located in an “unclassifiable” / attainment area of Montana for air quality under 40 CFR 81.327, as amended. As such, this proposed project is not covered under the US Environmental Protection Agency’s “Final Rule” of September 15, 1997 on air quality conformity. Therefore, this project complies with Section 176(c) of the Clean Air Act (42 USC 7521(a), as amended).

Impacts: No permanent impacts.

Mitigation: No mitigation is required or proposed.

9. Noise

The proposed project will significantly alter the road alignment and therefore qualifies as a Type I project according to the 23 CFR 772 Procedures for Abatement of Highway Traffic Noise and Construction Noise. However, as detailed in the attached Traffic Noise Memorandum, Design

Year traffic noise is not predicted to exceed the MDT noise abatement criterion of 66 dBA or to exceed the MDT "significantly exceed" criterion of 13 dBA over Present Year noise levels. Accordingly, a detailed traffic noise analysis is not required according to MDT's Traffic Noise Analysis and Abatement: Policy and Procedure Manual, June 2001.

Impacts: No permanent impacts.

Mitigation: No mitigation is required or proposed.

10. Water Resources and Water Quality

Aquatic resources in the project area consist of Fleshman Creek (a perennial stream), an unnamed tributary to Fleshman Creek, and narrow riparian wetlands along the creek. Within the project area, Fleshman Creek flows south beneath the Northern Pacific Railroad through a 10.5 foot (ft) x 7 ft Reinforced Concrete Pipe Arch (RCPA), turns sharply east for approximately 200 feet, and then turns sharply south beneath Highway 10 through a 13 ft x 11 ft Corrugated Metal Pipe Arch (CMPA). The stretch of stream between the railroad and Highway 10 was previously constructed to connect the two culverts and is considered degraded in terms of habitat quality. Riparian vegetation in this stretch consists of a narrow wetland fringe and stabilizing grasses. The existing culverts are undersized for the existing flow and do not provide adequate fish passage. The existing CMPA beneath Highway 10 is elliptical and the base is raised above the streambed elevation, allowing no streambed establishment.

Approximately 50 feet south of Highway 10, the creek flows beneath the Voyich ditch through an 8 ft x 5 ft Reinforced Concrete Box (RCB) culvert. Past this culvert, Fleshman Creek leaves the project area and continues flowing south through a privately owned farm. Over this stretch, a portion of the creek approximately 2,400 feet in length has recently been restored and planted with willow stakes to encourage growth of a riparian buffer.

Two irrigation ditches are located within the project vicinity. The first runs north to south crossing under Highway 10 just west of the Fleshman Creek culvert crossing and is owned by the Livingston Ditch Water Users Association. As mentioned previously, the second irrigation ditch runs west to east directly south of and roughly parallel to Highway 10 and is privately owned by the Voyich family.

The project area is located in the Upper Yellowstone watershed. Fleshman Creek is not listed on DEQ's 2008 303(d) list of impaired waterways.

Impacts:

Lowering the Highway 10 grade beneath the railroad tracks to allow connection with the proposed extension of Star Road will require replacement of the two culverts which carry Fleshman Creek beneath Highway 10 and the Voyich ditch. As proposed, replacement of the two existing culverts with a single new culvert would eliminate a length of the degraded section of Fleshman Creek between Highway 10 and the railroad tracks ranging from 39 feet up to 157 feet, depending upon the degree of skew of the new culvert.

The proposed replacement of the two culverts conveying Fleshman Creek appears to be in conflict with the existing Voyich ditch crossing at Fleshman Creek. It is anticipated that slight ditch modifications may also be necessary to accommodate snow slopes along the redesigned Highway 10.

Due to the proposed grade modifications associated with lowering Highway 10 to accommodate the railroad undercrossing, the existing culvert at the Livingston Ditch Water Users Association ditch crossing would need to be removed.

Water quality impacts are anticipated to be minor due to the proposed scope of work for this project. The proposed project would result in a minor increase in impervious surface that would create a negligible difference in groundwater supply or quality in the area.

Mitigation:

The new culvert conveying Fleshman Creek would be designed in accordance with 23 CFR 650 Subpart B and in coordination with appropriate resource and permitting agencies. Impacts would be mitigated in compliance with the U.S. Army Corps of Engineers (USACE) Montana Stream Mitigation Procedure, as necessary, during coordination of the Section 404 Clean Water Act (CWA) Permit. Stream mitigation measures would be coordinated with Montana Fish, Wildlife & Parks (FWP), USACE, and the Montana Department of Environmental Quality (DEQ), as appropriate. The final culvert design will minimize linear impacts to Fleshman Creek to the extent practicable within physical and design constraints.

Impacted irrigation facilities would be perpetuated in consultation with facility owners to minimize impacts to agricultural operations.

Mitigation of water quality impacts caused by stormwater runoff and erosion would be achieved through engineering controls such as grading, revegetation, design of culverts/ditches, and the use of BMPs. If necessary, stormwater runoff from the new roadway would be collected and treated through the use of a pre-cast mechanical treatment system placed upstream of the Fleshman Creek outfall location.

11. Wetlands

As presented in Table 3, approximately 0.065 acres of wetlands occur in the project area. Wetland areas that may be affected by the proposed project were delineated according to the criteria and methods identified in the U.S. Army Corps of Engineers (COE) 1987 Wetlands Delineation Manual.

Table 3 Wetlands Within Project Area

Wetland Number*	Cowardin Classification	Functional Value	Area	Potential Impacted Area
3	PSS1C	II	350 sf (0.008 ac)	
4	PSS1C	II	237 sf (0.005 ac)	
5	PSS1C	II	2,031 sf (0.047 ac)	
6	PEM2J	III	232 sf (0.005 ac)	232 sf (0.005 ac)
TOTAL			2,850 sf (0.065 ac)	232 sf (0.005 ac)

Source: DOWL HKM, 2010.

*Note: Fleshman Creek and an un-named tributary have been defined as Wetlands 1 and 2 and are discussed in the previous section.

Impacts: All practicable efforts have been made to avoid and minimize adverse impacts to wetlands, including avoiding wetland areas north of the railroad tracks. Complete wetland avoidance is not possible due to the need to replace two existing culverts which carry Fleshman Creek beneath Highway 10 and the Voyich ditch. The proposed project would likely impact a narrow wetland fringe along the portion of Fleshman Creek between Highway 10 and the railroad tracks. The amount of impact would range from zero to 0.005 acres depending on the degree of skew of the proposed culvert. Final wetland impacts will be determined once the new culvert alignment has been determined. Throughout design and construction, avoidance and minimization measures will continue to be employed where practicable.

Mitigation: Wetland impacts are not anticipated to exceed 0.10 acres; therefore, no wetland compensatory mitigation is proposed at this time.

12. Vegetation, Wildlife, and Aquatic Resources

The majority of the project area is maintained as grazing land, residential lawns, or right-of-way. Small portions of natural riparian areas line Fleshman Creek north of Highway 10. Natural grasses have been replaced with grasses used primarily for stabilization, such as fescue, or by invasive grasses, such as cheatgrass. Several species on the Montana noxious weed list were found within the project area.

Wildlife habitats in the project area consist of roadside ditches, pastures, a vacant lot, and a small amount of riparian and wetland habitat along Fleshman Creek. During site visits conducted on June 7 and 9, 2010, wildlife signs, such as scat, tracks, or burrows were noted. Dozens of ground squirrel holes were observed, but appeared to be abandoned; no squirrels or scat were seen. The two features that would attract wildlife are the large black cottonwood tree on the north side of the highway and Fleshman Creek.

A beaver and a striped skunk were found dead along Highway 10 within the project area. Both were within 200 yards of Fleshman Creek. No signs of large mammals were found. It is expected that wildlife species in the project area are limited to those species accustomed to living in close proximity to humans, including deer, skunks, coyotes, raccoon, mice, and voles.

Based on a search of the Montana Natural Heritage Program (MNHP) database, six special status terrestrial species were documented within three miles of the project area, including trumpeter swan, peregrine falcon, gray wolf, grizzly bear, wolverine, and Canada lynx. No plant species of concern were identified in the MNHP data request results and no plant species of concern were found in the project area during the site visits.

The MNHP database search revealed one aquatic species of concern within three miles of the project area. MFISH lists Yellowstone cutthroat trout as resident in Fleshman Creek from mile 0.1 to mile 8.9. The project area lies within this reach of the stream; therefore this species has the potential to occur within the project area. However, FWP reports that the quality of habitat in the stream has degraded in recent years and the species diversity may have decreased. Historically, Fleshman Creek has been altered in a number of ways as a result of encroachment by the City of Livingston. In the last several years, there has been a focused cooperative effort to improve the habitat and water quality within specific reaches of Fleshman Creek. One of these projects, called the Fleshman Creek Channel Renaturalization Project, is located immediately downstream of the project site. The stream reach was last surveyed in 2009 and the fish species collected at that time included Yellowstone cutthroat trout. Migratory connectivity to the Yellowstone River is likely very limited for this reach of Fleshman Creek due to the many roads that cross the stream as it flows through the City of Livingston. The reach of Fleshman creek within the project area is currently in a very degraded state.

Impacts: The proposed project would remove vegetation along the route of the proposed new roadway and increase impervious area. Little native vegetation would be lost, though there is the potential to increase invasive vegetation in the area.

Impacts to general wildlife species in the project area are expected to be minor. There will be no significant amount of habitat lost and much of the disturbed areas will be re-vegetated with native species. The large black cottonwood tree will be avoided during construction. Permanent displacement of populations or increased habitat fragmentation would be unlikely to result from this project.

The impacts to Fleshman Creek would consist of replacing two culverts with one longer culvert, and potentially shortening the stream length by straightening the alignment. The proposed Fleshman Creek culvert design would provide fish and small animal passage by retaining substrate and allowing for the establishment of a low flow channel within the culvert. The extended roadway could potentially cause increased mortality to wildlife due to collisions with vehicles.

No impacts to terrestrial species of concern are anticipated as these species are not expected to occur in the project area due to lack of suitable habitat.

The addition of the new portion of roadway could affect Yellowstone cutthroat trout by increasing the amount of impervious area subject to stormwater runoff.

Mitigation: MDT would re-establish a permanent desirable vegetation community with respect to areas disturbed by the proposed construction in accordance with 7-22-2152, and 60-2-208 MCA. The contractor would follow revegetation guidelines developed by MDT. These specifications include instructions on seeding methods, seeding dates, types and amounts of mulch and fertilizer, and seed mix components. The Seeding Special Provisions developed for the proposed project would be forwarded to the Park County Weed Control Board for approval.

The following measures would be employed to minimize adverse permanent impacts to Yellowstone cutthroat trout:

- The new culvert would be designed using stream simulation methods.
- If necessary, stormwater runoff from the new portion of roadway would be treated prior to discharge into Fleshman Creek.

13. Threatened/Endangered Species and Habitats

In accordance with Section 7 of the Endangered Species Act (16 U.S.C. 1531 – 1543) the project was evaluated to determine the effects on plant and animal species listed by the U.S. Department of the Interior Fish & Wildlife Service (USFWS) as Threatened, Endangered, Proposed or Candidate species. Based on a review of the MNHP database and the USFWS species list for Park County, Canada lynx (*Lynx canadensis*), gray wolf (*Canis lupus*), and grizzly bear (*Ursus arctos horribilis*) may occur in the project vicinity.

The project is located in a developed residential/industrial area within the City of Livingston. The vegetation consists of a mix of grasses, weedy roadside species, grazed pastures and some riparian vegetation along Fleshman Creek. Canada lynx, gray wolf, and grizzly bear are not expected to occur in the project area due to the lack of suitable habitat and high amount of human activity.

Impacts: The proposed project will have “no effect” on the Canada lynx, gray wolf, grizzly bear or their habitat.

Mitigation: No mitigation is required or proposed.

14. Wild and Scenic Rivers

No wild or scenic rivers exist in the project area.

Impacts: No impacts.

Mitigation: No mitigation is required or proposed.

15. Floodplains

Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps for the City of Livingston indicate that no delineated floodplain or floodway exists for Fleshman Creek in the vicinity of the project. Furthermore, FEMA mapping shows the project limits to be outside of

the floodplain limits of the Yellowstone River. FEMA has recently re-mapped portions of the Yellowstone River and Fleshman Creek floodplains, although the limits of the FEMA study fall outside of the subject project limits.

Impacts: No impacts to floodplains are anticipated. Each of the Fleshman Creek crossings in the project area has been analyzed to confirm that the proposed design would not cause detrimental modifications to these drainages.

Mitigation: No mitigation is required or proposed and a floodplain permit will not be pursued.

16. Railroads

The proposed underpass location will cross under the Montana Rail Link (MRL) / Burlington Northern Santa Fe (formerly Northern Pacific) main track and west long lead track at the west end of the Livingston Yard.

Impacts: As part of the project, a new two-track railroad bridge will be constructed on a tangent alignment to support existing MRL train traffic. Star Road will be extended under the existing railroad to form a perpendicular intersection with Highway 10 in order to reduce the required bridge length and facilitate sight distance at the intersection with Highway 10. The proposed structure is a 120 foot three-span bridge, with one span over a three-lane roadway.

Mitigation: No mitigation is required or proposed.

17. Pedestrian/Bicycle Facilities and Americans with Disabilities Act (ADA)

Currently, there are sidewalks serving the residential areas to the north of the proposed undercrossing location. There are currently no dedicated pedestrian or bicycle facilities on Highway 10 or Front Street within the project area.

Impacts: As part of this project, ADA ramps, five-foot sidewalks, and five-foot bike lanes will be included in the reconstructed portions of Star Road / Front Street. Additionally, Highway 10 will include a six-foot shoulder within the reconstructed limits, providing opportunity for bicycle use. Accordingly, the project would result in an improvement in ADA, pedestrian, and bicycle facilities in the project area.

Mitigation: No mitigation is required or proposed.

18. Historical/Cultural Resources A Class III cultural resource inventory of the project area was conducted in June 2010. The investigation identified a total of five historic sites, including one artifact scatter (24PA1357), two historic residences (24PA1358 and 24PA1359), the Voyich ditch (24PA1360), and one previously recorded railroad (24PA1120). The artifact scatter and the two historic residences were recommended as ineligible for the National Register of Historic Places (NRHP). The Voyich ditch and the previously recorded railroad were recommended eligible for the NRHP.

Impacts: Table 4 summarizes the cultural resources identified in the proposed project area. On August 4, 2010, the Montana State Historic Preservation Office (SHPO) concurred with the determination that the artifact scatter and the two historic residences are ineligible for the NRHP and that the Voyich ditch and the railroad are eligible for listing.

Table 4 Cultural Resources in the RR Grade Separation Livingston Project Area

Site Number	Name/Description	NRHP Status	Determination of Effect
24PA1357	Artifact Scatter	Ineligible	NA
24PA1358	104 Star Road	Ineligible	NA
24PA1359	102 Star Road	Ineligible	NA
24PA1360	Voyich Ditch	Eligible	No Adverse Effect
24PA1120	Northern Pacific Railroad	Eligible	No Effect

Source: Ethnoscience, 2010; MDT, 2010

The project will modify a short segment of the Voyich ditch and remove an existing culvert. On December 6, 2010, SHPO concurred with MDT's determination that the proposed modifications will result in No Adverse Effect to the ditch.

The proposed project would lower the grade of Star Road to pass beneath the Northern Pacific Railroad. A new railroad bridge will be constructed to carry the existing railroad line in its existing location over the new segment of Star Road. On December 6, 2010, SHPO concurred with MDT's determination that the project will result in No Effect to the railroad.

SHPO letters of concurrence for the proposed project are included as attachments to this document.

Mitigation:

Mitigation measures will be coordinated with the Voyich ditch owner. The ditch will be perpetuated and will continue to be used for its historic purpose. No mitigation is required or proposed for the Northern Pacific Railroad.

19. Hazardous Materials

The Initial Site Assessment (ISA) prepared for the subject project in August 2010 did not reveal any issues related to hazardous materials/waste sites, hazardous waste spills, leaking underground storage tanks, active underground storage tank facilities, open/closed landfills, active/abandoned mines, or Montana or Federal Superfund Sites. Additionally, soil samples obtained at the site did not indicate any contamination detectable by visual or olfactory senses.

Impacts: No impacts.

Mitigation: No mitigation is required or proposed.

20. Visual Resources

The immediate project area is dominated by Star Road, Front Street, Highway 10, and the railroad tracks. Beyond the immediate project area, foreground views include adjacent residential development and undeveloped farmland, while mountains are visible in the distance.

Impacts: The proposed project would convert some land to paved roadway and would create a new undercrossing structure. Because this structure would largely be situated below current grade, impacts to the visual quality of the proposed project area are expected to be negligible.

Mitigation: No mitigation is required or proposed.

21. Parks and Recreation/Section 4(f)/Section 6(f)

Montana Fish, Wildlife & Parks (FWP) has verified that there are no 6(f) properties located within the project area.

Section 4(f) of the 1966 Department of Transportation Act (49 USC 303) provides for the protection of publicly owned parks, recreation lands, historic sites, or wildlife or waterfowl refuges. There are two properties in the project area that are NRHP-eligible and protected by Section 4(f), including the historic Voyich ditch and the Northern Pacific Railroad.

Impacts: This project would not affect any publicly-owned parks or wildlife and waterfowl refuges.

SHPO has concurred with MDT's determination that the project will result in No Adverse Effect to the Voyich ditch and No Effect to the railroad. FHWA has determined that the project will have a de minimis impact on the Voyich ditch and that the project will not result in a Section 4(f) use of the railroad. FHWA has notified SHPO of its de minimis finding and SHPO concurred with this finding on January 7, 2011. A Section 4(f) Impact Determination memorandum is attached to this document.

Mitigation: Mitigation measures will be coordinated with the Voyich ditch owner. The ditch will be perpetuated and will continue to be used for its historic purpose. No mitigation is required or proposed for the Northern Pacific Railroad.

22. Construction

The contractor would determine construction methods after development of the final construction plans. In general, highway construction could likely involve demolition, excavation and grading, utility relocations, and placement of pavement. Construction of the railroad bridge would be phased to maintain train operations. The south half of the bridge would likely be constructed first while trains operate on the existing west long lead track. Upon completion of the south portion, train traffic would likely then be shifted to the main track over the south half of the bridge. The north half of the bridge would then be constructed and the west long lead put back into service. Final sequencing of construction and the overall timeframe of construction has not been determined and would be based upon minimization of construction impacts, funding constraints, and coordination between MDT, the City of Livingston, and MRL. Resources expected to be temporarily impacted during construction activities are discussed below.

Impacts:

Traffic Impacts: Construction activities would cause minor, short-term temporary inconveniences to the traveling public including occasional increased travel times, detours, and temporary closures.

Utilities Impacts: A number of utilities are located within the project area, including overhead power lines and buried gas, water, sanitary sewer, telephone and fiber optic lines. The project is expected to involve multiple conflicts with utilities, but attempts will be made to avoid and minimize them, where appropriate. Temporary, short-term interruption to utility services may result.

Economic Impacts: The local and regional economies may experience some minor, short-term beneficial effects due to construction activities.

Air Quality Impacts: Construction activities may cause minor, short-term, localized adverse air quality impacts due to fugitive dust emissions from earth moving operations and combustion emissions from construction equipment.

Noise Impacts: Construction activities may cause minor, short-term, localized adverse noise impacts due to construction equipment.

Water Resources and Water Quality Impacts: Construction activities near surface waters have potential to have a short-term adverse impact on water quality due to potential for erosion and sedimentation.

Wetlands Impacts: Construction activities near surface waters have potential to have a short-term adverse impact on wetlands due to potential for erosion and sediment.

Vegetation, Wildlife, and Aquatic Resources Impacts:

Temporary impacts to wildlife may include loss of some habitat within the construction zone. Loss of nesting, foraging, and cover habitat may occur from temporary vegetation clearing. The amount of habitat temporarily disturbed is small and the habitats affected are not rare or in short supply.

Construction activities may affect individuals through noise, vibration, human activity, and construction equipment, although wildlife and migratory bird populations found in the project area are likely accustomed to periodic human disturbances due to the presence of the existing roadway, rail line, and agricultural activities. Construction activities could result in individual wildlife mortality primarily to those species with limited mobility and/or those that could be occupying their burrows or nests at the time of construction (e.g., mice, voles, young birds/eggs, frogs, salamanders, snakes, badgers, ground squirrels). More mobile species, such as adult deer, coyotes, and most adult birds, would be able to avoid mortality by moving into adjacent habitat.

Temporary impacts to Yellowstone cutthroat trout could occur during replacement of the two culverts under Highway 10 and the Voyich ditch. Earth-disturbing activities, including excavation, stockpiling, and vegetation manipulation can increase delivery of sediment to

waterways and increase turbidity in the waterway. Sediment introduced into waterways can degrade habitat and reduce primary and secondary productivity. Turbidity from increased fine sediment may disrupt fish feeding and territorial behavior. Because erosion and sediment control measures will be implemented during construction, very little sediment is expected to be released from the project site. Any small temporary increase in sediment in the immediate project vicinity is not expected to have any long-term effect on fish habitat.

Railroad Impacts: Train operations will be temporarily rerouted while a new two-track railroad bridge is constructed on a tangent alignment.

Historical/Cultural Resources Impacts: Previously unknown historical or cultural materials may be unearthed during construction.

Hazardous Materials Impacts: Previously unknown hazardous materials may be encountered during construction.

Visual Resources Impacts: Construction activities may cause minor, short-term, localized adverse visual impacts.

Mitigation:

Traffic Mitigation: A traffic control plan will be developed as design proceeds. The Manual on Uniform Traffic Control Devices (MUTCD) will be utilized to guide the application of the traffic control plan. Traffic will be maintained during project construction through the use of appropriate signing, flagging, land closures, etc. Reasonable access will be provided.

Utilities Mitigation: MDT Standard Specifications require the contractor to cooperate with utility owners in the removal and rearrangement of utility facilities to minimize interruption to utility service and duplication of work by the utility owner. Notification of service interruptions due to these relocations would be the responsibility of these utility line's owners.

Economic Mitigation: No mitigation required or proposed.

Air Quality Mitigation: MDT Standard Specifications require that the contractor comply with applicable state and federal air quality rules, which may require use of dust suppression and emission control measures to minimize short-term impacts related to construction dust and equipment usage.

Noise Mitigation: MDT Standard Specifications require compliance with applicable laws, regulations, and requirements contained in the contract regarding noise pollution. The contractor will be required to comply with all local noise restrictions and to refrain from construction activities during the period from 10:00 p.m. to 7:00 a.m.

Water Resources and Water Quality Mitigation: MDT design and construction specifications require temporary water pollution control measures to minimize potential effects of construction activities. MDT and its contractor will adhere to applicable conditions including CWA 401

Certification requirements, SPA124 Notification Process, and MPDES Permit. In-stream work would also be in accordance with the Water Quality Act of 1987 (P.L. 100-4), as amended.

Wetlands Mitigation: Throughout design and construction, avoidance and minimization measures will continue to be employed where practicable. MDT and its contractor will adhere to applicable conditions including CWA 401 Certification requirements and MPDES Permit.

Vegetation, Wildlife, and Aquatic Resources Mitigation: The contractor will be required to revegetate disturbed areas as described previously. Construction techniques and BMPs such as temporary erosion control measures and construction timing restrictions or other suitable mitigation measures would minimize impacts to terrestrial and aquatic resources. Special provisions preventing the contractor from removing structures and vegetation during the nesting season (typically May 1st to August 15th) will be utilized to avoid the direct disturbance of migratory birds. Fish passage will be maintained during construction by re-routing the creek through a temporary diversion.

Railroad Mitigation: As required by MRL, train operations will be maintained during construction using phased construction. The phased construction will allow train operations to continue on one track while the bridge is constructed to support the out-of-service track. This phased approach avoids an expensive “shoofly,” or detour, of the railroad to maintain train traffic during bridge construction. Also as required by MRL, bridge bents or piers supporting the railroad structure will be protected with concrete roadway barriers if immediately adjacent to the roadway or subject to impact from vehicles.

Historical/Cultural Resources Mitigation: In the unlikely event that archeological or historical artifacts are encountered during construction, MDT Standard Specifications require the contractor to immediately stop work and notify the Project Manager of the find. The Project Manager is required to stake the area to remain undisturbed until the significance of the site has been determined and appropriate measures are carried out.

Hazardous Materials Mitigation: MDT Standard Specifications require any hazardous materials discovered, generated, or used during implementation of the Preferred Alternative to be handled and disposed in accordance with applicable local, State, and Federal regulations.

Visual Resources Mitigation: The contractor will be required to revegetate disturbed areas as described above.

23. Cumulative Impacts

Cumulative impacts are effects on the environment that result from the incremental effect of an action when added to past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor, but collectively significant, actions taking place over a period of time. The MDT projects listed below are located within the vicinity of the proposed project.

- *Bozeman Hill – E & W* (UPN 6922; IM 90-6(127)318)

This pavement preservation project is located on Interstate-90 from RP 318.4 to 330.7. It will involve a mill, overlay, and seal and cover. The anticipated ready date is May 1, 2010.

- *Livingston E & W* (UPN 6928; IM 90-7(93)331)
This pavement preservation project is located on Interstate-90 from RP 330.7 to RP 341. It will involve a seal and cover. The anticipated let date is May 1, 2011.
- *Yellowstone R – NE of Livingston* (UPN 4790; BR 11-1(44)56)
This bridge replacement project is located on Route P-11 at RP 55.94.
- *Livingston WYE – Park Street* (UPN 5107001)
This project is located on Route P-11 from RP 53.2 to RP 53.38 and will reconstruct the intersection of Park Street and old Highway 10 in the town of Livingston. The current ready date is December 2010.

Additionally, the City of Livingston intends to construct a pedestrian trail connecting Highway 10 to residential areas north of the project area within the next five to ten years.

Although the above-mentioned projects occur in the same general area as the Livingston project in Park County, the planning, design, and construction of each project has proceeded independently. The construction of the Livingston project would not necessitate the need for improvements to other adjoining segments of Highway 10 in the area. Similarly, the construction of the other identified road projects in Park County would not require that the segment of Highway 10 in the Livingston project area be reconstructed.

Impacts: The above projects would have positive cumulative effects on safety for the travelling public.

Mitigation: None required or proposed.

24. Permits/Notifications/Authorizations

The following permits/authorizations are expected to be required prior to any relevant disturbance:

- **SPA 124 Notification:** In accordance with the Stream Protection Act (SPA) (MCA 87-5-501 – 509), a SPA 124 Notification to FWP will be required prior to any construction disturbances to the bed or banks of any stream in the project area.
- **318 Authorization:** In accordance with MCA 75-5-318, the contractor may need to request a Section 318 Authorization from DEQ for unavoidable short-term violations of state surface water quality standards for turbidity, although FWP may waive this authorization during review under the SPA 124 process. Obtaining this permit would be the responsibility of the selected contractor.
- **402 Permit / Montana Pollutant Discharge Elimination System (MPDES) Permit:** In accordance with the Clean Water Act (33 USC 1251-1376), the contractor would submit a Notice of Intent (NOI) to DEQ under the MPDES “General Permit for Storm Water Discharges Associated with Construction Activity.”

- **404 Permit and Stream Mitigation:** As required under the Clean Water Act (33 USC 1251-1376), MDT would submit a completed Joint Application to the USACE prior to discharge or placement of dredged or fill material into waters of the United States, including jurisdictional wetlands. The USACE would determine if this proposed project qualifies for a "Nationwide" or an "Individual" Permit under the provisions of 30 CFR 330. As applicable, MDT would also comply with the USACE May 2010 Montana Stream Mitigation Procedure. The need for stream mitigation would be contingent on the extent of impacts to the Fleshman Creek stream channel.
- **401 Certification:** As applicable, a 401 Certification would be obtained from DEQ prior to the issuance of the 404 Permit. The 401 Certification process is generally handled internally through agreements between DEQ and USACE.

25. Public Involvement

A public informational meeting was held on December 9, 2010. Eight members of the public attended the meeting. The meeting format included a formal presentation and an informal open house. The purpose of the meeting was to present preliminary design concepts, discuss anticipated impacts, and provide an update on the status of the project. No additional public involvement is anticipated. The public involvement plan may be adjusted if controversial issues are identified.

26. Conclusion

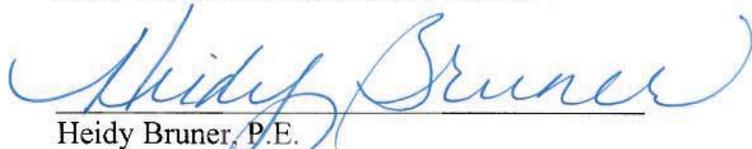
This action would neither individually nor cumulatively have any significant adverse social, economic, or environmental impacts in accordance with the provisions of 23 CFR 771.117(a). MDT concludes that this project is properly classified as a Categorical Exclusion.



Barry Brosten - Butte District Project Development Engineer
MDT Environmental Services Bureau

Date:

2/17/11

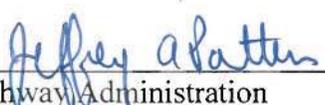


Heidy Bruner, P.E.
MDT Environmental Services Bureau
Engineering Section Supervisor

Date:

2/23/11

Concur


Federal Highway Administration

Date:

3/1/11

Attachments:

- Project Vicinity Map
- Farmland Conversion Impact Rating Form
- Traffic Noise Memorandum
- SHPO Concurrence Letters
- Section 4(f) Impact Determination Memorandum

Copies (w/o attachments):

Edwin R. Meece	City of Livingston Manager
Jeff Ebert, P.E.	MDT Butte District Administrator
Tim Conway, P.E.	MDT Consultant Design Bureau Chief
Paul Ferry, P.E.	MDT Highway Engineer
Kent Barnes, P.E.	MDT Bridge Engineer
Joe Walsh	MDT Butte District Engineering Services acting Supervisor
Robert Stapley	MDT Right-of-way Bureau Chief
Dawn Stratton	MDT Fiscal Programming Section acting Supervisor
Suzy Price	MDT Contract Plans Bureau Chief
Tom Martin, P.E.	MDT Environmental Services Bureau Chief
Heidy Bruner, P.E.	MDT Environmental Services Engineering Section Supervisor
Sarah Nicolai	DOWL HKM

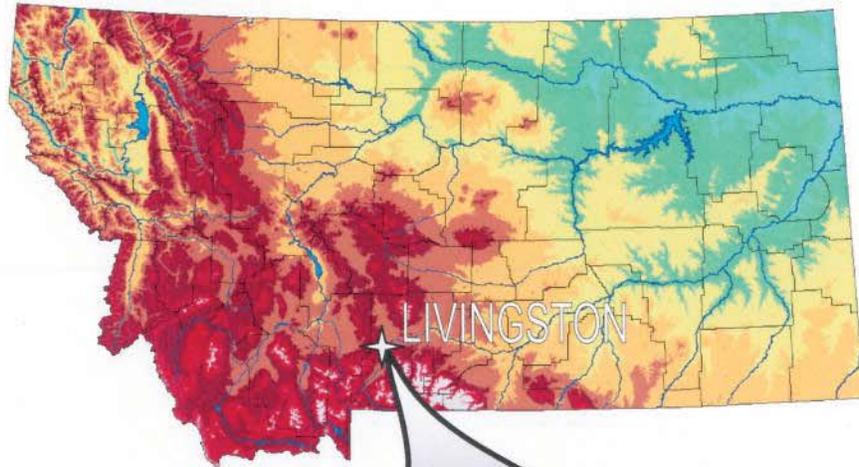
copies (w/attachments):

File MDT Environmental Services
Montana Legislative Branch Environmental Quality Council (EQC)

MDT attempts to provide accommodation for any known disability that may interfere with a person participating in any service, program or activity of the Department. Alternative accessible formats of this information will be provided upon request. For further information, call 406.444.7228 or TTY (800.335.7592) or call Montana Relay at 711.

**RR Grade Separation Livingston
UPN 7247000**

Project Vicinity Map



SECTION 4(f) IMPACT DETERMINATION

RR Grade Separation Livingston
CN 7247000

Section 4(f) was created when the US Department of Transportation was formed in 1966. It was initially codified in the US Code at 49 U.S.C. 1653(f) (or Section 4(f) of the USDOT Act of 1966). Later that year, 23 U.S.C. 138 was added. In 1983, Section 1653(f) was reworded and recodified at 49 U.S.C. 303. These two statutes have no real practical distinction and are still commonly referred to as “Section 4(f).”

Section 4(f) declares that “[i]t is the policy of the United States Government that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.”

Section 4(f) specifies that “[t]he Secretary [of Transportation] shall not approve a transportation program or project . . . requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park area, refuge, or site) unless:

- 1) there is no prudent and feasible alternative to using that land; and
- 2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

Congress amended Section 4(f) in 2005 when it enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Section 6009 of SAFETEA-LU added a new subsection to Section 4(f), which authorizes FHWA to approve a project that results in a *de minimis* impact to a Section 4(f) resource without the evaluation of avoidance alternatives typically required in a Section 4(f) Evaluation. Section 6009 amended 23 U.S.C. 138 to state:

The requirements of this section shall be considered to be satisfied and an alternatives analysis not required if the Secretary determines that a transportation program or project will have a *de minimis* impact on the historic site, parks, recreation areas, and wildlife or waterfowl refuges. In making any determination, the Secretary shall consider to be a part of the transportation program or project any avoidance, minimization, mitigation, or enhancement measures that are required to be implemented as a condition of approval of the transportation program or project. With respect to historic sites, the Secretary may make a finding of *de minimis* impact only if the Secretary has determined in accordance with the consultation process required under Section 106 of the National Historic Preservation Act that the transportation program or project will have no adverse effect on the historic site or there will be no historic properties affected by the

transportation program or project; the finding has received written concurrence from the State Historic Preservation Officer; and the finding was developed in consultation with the parties consulted under the Section 106 process.

Coordination

As discussed in the Categorical Exclusion for this proposed project, two historic NRHP-eligible properties are located within the project area. As stated in the *Guidance for Determining De Minimis Impacts to Section 4(f) Resources* (FHWA 2005), SHPO must concur in writing with the Section 106 “no adverse effect” or “no historic properties affected” determination and must be informed that FHWA intends to make a *de minimis* finding based on the Section 106 effect determination. Consulting parties under Section 106 must also be informed of the *de minimis* finding. On November 10, 2010, MDT submitted a letter to SHPO requesting concurrence with the determination of No Adverse Effect for the Voyich ditch and No Effect for the Northern Pacific Railroad. SHPO concurred with these determinations on December 6, 2010. FHWA subsequently determined that the project will have a *de minimis* impact on the Voyich ditch and that the project will not result in a Section 4(f) use of the Northern Pacific Railroad. FHWA has notified SHPO of its *de minimis* finding and SHPO concurred with this finding on January 7, 2011.

There would be no parks, recreation areas, or wildlife or waterfowl refuges that would be converted to a transportation use by the proposed project.

Proposed Action

The proposed action involves construction of a new railroad underpass connecting Star Road / Front Street with Highway 10 / West Park Street. The proposed undercrossing site is located approximately 0.7 miles west of the Highway 10 / West Park Street intersection, immediately east of the point where Fleshman Creek crosses the railroad and Highway 10. The purpose of the proposed project is to provide an additional grade-separated crossing within the City of Livingston in order to enhance connectivity and provide greater emergency vehicle access and expedited response times to serve the growing northwest sector of the city.

Section 4(f) Properties

There are two properties in the project area that are NRHP-eligible and protected by Section 4(f), including the historic Voyich ditch and the Northern Pacific Railroad. Table 1 identifies the eligibility for protection and the determination of effect for each resource. Figure 1 illustrates the location of each protected property and the anticipated impact.

Table 1 Properties Protected by Section 4(f)

Property	Site No.	Type of Structure	NRHP Eligibility	Determination of Effect
Voyich Ditch	24PA1360	Ditch	Individually	No Adverse Effect
Northern Pacific Railroad	24PA1120	Railroad	Individually	No Effect

Figure 1 Anticipated Impacts to Voyich Ditch and Northern Pacific Railroad Line



Voyich Ditch

As part of the project, a segment of the Voyich ditch approximately 800 feet in length would be modified to accommodate the new Highway 10 / W. Park Street grades. Additionally, an existing culvert conveying Fleshman Creek under the Voyich ditch would be replaced with a new culvert. Depending upon right-of-way acquisition negotiations, a permanent easement may be needed, which would result in a de minimis Section 4(f) impact.

Mitigation measures will be coordinated with the Voyich ditch owner. The ditch will be perpetuated and will continue to be used for its historic purpose.

Northern Pacific Railroad Line

The proposed project would lower the grade of Star Road to pass beneath the Northern Pacific Railroad. A new railroad bridge would be constructed to carry the existing railroad line in its existing location over the new segment of Star Road. FHWA has determined that there would be no Section 4(f) use of the railroad for the following reasons:

1. No part of the railroad facility would be permanently incorporated into the new roadway facility.
2. The temporary replacement activities would not adversely affect the railroad in terms of the statute's preservation purpose as defined in 23 CFR 774.13(d) because the duration of the occupancy would be less than the time needed for construction of the entire project and there will be no change in land ownership; the nature and the magnitude of the changes to the overall Section 4(f) resource are minimal; no permanent adverse physical impacts are anticipated and there will be no interference with the activities or purposes of the resources; and the land being used will be fully restored to a condition as good as that which existed prior to the project.
3. Lastly, constructive use as defined in 23 CFR 774.15 is not anticipated because there are no proximity impacts so severe as to substantially impair the protected activities, features, or attributes that qualify the railroad for protection under Section 4(f).



U.S. Department of Transportation

Federal Highway Administration

RECEIVED

JAN 11 2011

FHWA

MONTANA DIVISION

Montana Division

December 21, 2010

2010122307
RECEIVED
DEC 23 2010

585 Shepard Way
Helena, MT 59601

Phone: (406) 441-3900

Fax: (406) 449-5314

www.fhwa.dot.gov/mtdiv

SHPO
Jose F
FHWA
RAILROAD
Grade
Separation
Livingston
HF OF
MINIMIS
FINDING

In Reply Refer To:

HDA-MT

Mark Baumler
State Historic Preservation Office
PO Box 201202
Helena, MT 59620-1202

CONCUR
MONTANA SHPO

DATE Jan 2011 SIGNED [Signature]

Subject: *De minimis Finding*
Project Name: Railroad Grade Separation Livingston
Control Number: 7247

Dear Mr. Baumler:

By way of this letter, the Federal Highway Administration (FHWA) is notifying you of our intent to make a *de minimis* finding, for the purposes of compliance with Section 4(f) of the 1966 Department of Transportation Act (Section 4(f)), for anticipated impacts to the following resource: the Voyich Ditch (24PA1360). This protected Section 4(f) resource may be impacted as a result of the City of Livingston's proposed Railroad Grade Separation project.

In addition to Section 106 of the National Historic Preservation Act (NHPA), FHWA must comply with the provisions of Section 4(f). Historically, Section 4(f) has required that prior to approval of any federally funded highway project resulting in the "use" of listed or eligible historic properties under the NHPA; the FHWA must perform an avoidance analysis to determine whether there is a "feasible and prudent" alternative that would avoid the Section 4(f) resource.

In August of 2005, Section 138 of Title 23, U.S.C. was amended under the Safe, Accountable, Flexible, and Efficient Transportation Act: A Legacy for Users (SAFETEA-LU). Section 6009 of SAFETEA-LU provided new legislative authority to address programs and projects with minor or 'de minimis' impacts on a Section 4(f) resource.

More specifically, Section 6009(b) (2) of SAFETEA-LU states:

(2) HISTORIC SITES.--With respect to historic sites, the Secretary may make a finding of *de minimis impact* only if--

(A) the Secretary has determined, in accordance with the consultation process required under section 106 of the National Historic Preservation Act (16 U.S.C. 470f), that--



(i) the transportation program or project will have no adverse effect on the historic site; or

(ii) there will be no historic properties affected by the transportation program or project;

(B) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation if the Council is participating in the consultation process); and

(C) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

This new provision of Section 4(f) is the basis of this letter, and of the FHWA's determination of *de minimis* impacts.

***De Minimis* Determination**

The findings of “**no adverse effect**” and/or “**no effect**” reflect a conclusion that the uses identified in the attached exhibits will not “alter, directly or indirectly, any of the characteristics of [the] historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.”

MDT previously consulted with you on this proposed project and your office concurred with their determination on December 16. If you still concur with the findings of “no adverse effect” for the ditch, FHWA intends to make a finding that impacts to historic resources that would result from implementation of the subject project will be *de minimis* for the purposes of Section 4(f), as recently amended by Congress.

Request for Concurrence

The FHWA requests the written concurrence of the Montana SHPO in the above-described finding of “**no adverse effect**” and/or “**no effect**” on historic resources from the subject project. This written concurrence will be evidence that the concurrence and consultation requirements of Section 6009 of SAFETEA-LU, as they will be codified at 23 U.S.C. § 138(b) (2) (B) & (C), and 49 U.S.C. § 303 (d) (2) (B) and (C) are satisfied. Concurrence can be provided either by signing and dating this letter or by separate letter from the Montana SHPO to the Federal Highway Administration, 585 Shepard Way, Helena, MT 59601.

Sincerely,



for Brian D. Hasselbach
Right-of-Way & Environmental Specialist

Enclosure

cc: Sarah Nicolai, DOWL HKM

File: 510 bh/lw

CONCUR
MONTANA SHPO:

DATE _____ SIGNED _____

U.S. Department of Agriculture

FARMLAND CONVERSION IMPACT RATING

PART I (To be completed by Federal Agency) Date Of Land Evaluation Request **10/14/10**

Name Of Project **RR Grade Separation Livingston** Federal Agency Involved **Federal Highway Administration**

Proposed Land Use **Roadway Right-of-Way** County And State **Park County, Montana**

PART II (To be completed by NRCS) Date Request Received By NRCS

Does the site contain prime, unique, statewide or local important farmland?
(If no, the FPPA does not apply – do not complete additional parts of this form). Yes No Acres Irrigated Average Farm Size

Major Crop(s) Farmable Land In Govt. Jurisdiction Acres: % Amount Of Farmland As Defined in FPPA Acres: %

Name Of Land Evaluation System Used Name Of Local Site Assessment System Date Land Evaluation Returned By NRCS

PART III (To be completed by Federal Agency) Alternative Site Rating

	Site A	Site B	Site C	Site D
A. Total Acres To Be Converted Directly	1.6			
B. Total Acres To Be Converted Indirectly	0.0			
C. Total Acres In Site	1.6	0.0	0.0	0.0

PART IV (To be completed by NRCS) Land Evaluation Information

A. Total Acres Prime And Unique Farmland				
B. Total Acres Statewide And Local Important Farmland				
C. Percentage Of Farmland In County Or Local Govt. Unit To Be Converted				
D. Percentage Of Farmland In Govt. Jurisdiction With Same Or Higher Relative Value				

PART V (To be completed by NRCS) Land Evaluation Criterion Relative Value Of Farmland To Be Converted (Scale of 0 to 100 Points)

	0	0	0	0
--	---	---	---	---

PART VI (To be completed by Federal Agency) Site Assessment Criteria (These criteria are explained in 7 CFR 658.5(b)) Maximum Points

1. Area In Nonurban Use	15	8			
2. Perimeter In Nonurban Use	10	6			
3. Percent Of Site Being Farmed	20	8			
4. Protection Provided By State And Local Government	20	0			
5. Distance From Urban Builtup Area	0	0			
6. Distance To Urban Support Services	0	0			
7. Size Of Present Farm Unit Compared To Average	10	10			
8. Creation Of Nonfarmable Farmland	25	0			
9. Availability Of Farm Support Services	5	5			
10. On-Farm Investments	20	20			
11. Effects Of Conversion On Farm Support Services	25	0			
12. Compatibility With Existing Agricultural Use	10	0			
TOTAL SITE ASSESSMENT POINTS	160	57	0	0	0

PART VII (To be completed by Federal Agency)

Relative Value Of Farmland (From Part V)	100	0	0	0	0
Total Site Assessment (From Part VI above or a local site assessment)	160	57	0	0	0
TOTAL POINTS (Total of above 2 lines)	260	57	0	0	0

Site Selected: Preferred Alternative (Site A) Date Of Selection **10/14/10** Was A Local Site Assessment Used? Yes No

Reason For Selection:

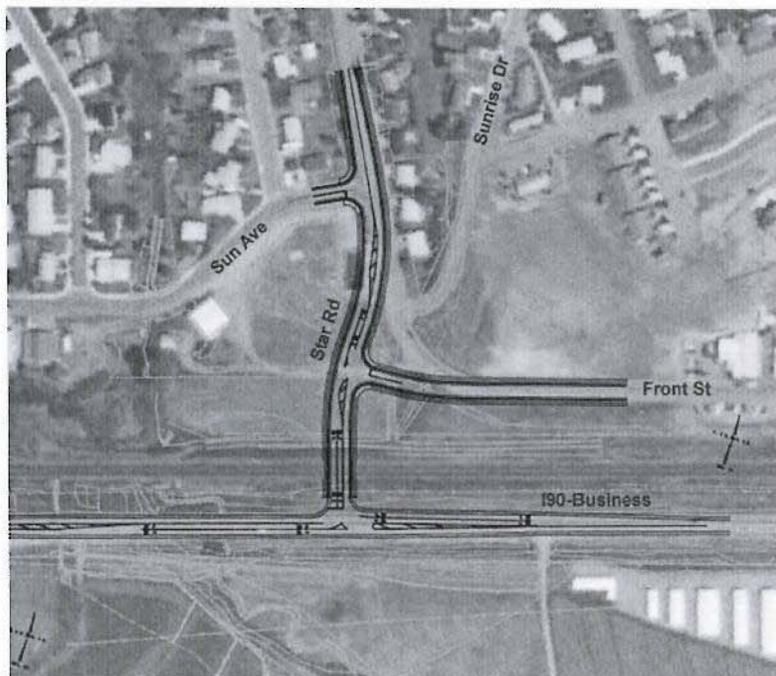
MEMORANDUM

DATE: June 30, 2010
TO: Sarah Nicolai / HKM Engineering
FROM: Sean Connolly, P.E.
RE: **Livingston Grade Separation Rail Crossing
Traffic Noise Analysis (BSA Project #10111)**

The City of Livingston and the Montana Department of Transportation (MDT) are intending to construct a railroad underpass 0.7 miles west of the Highway 10/Park Street intersection. This memo summarizes why a detailed Traffic Noise Study analysis is not required for the project.

The underpass will connect the Interstate 90 Business Route to Front Street and Star Road on the north side of the railroad. **Figure 1** indicates the proposed roads superimposed on an aerial of the existing roadways. Three residences are located south of the Sun Avenue / Star Road intersection. The residences are approximately 50 feet from the existing centerline of Star Road. Although a new extension of Star Road is proposed to the south, the residences are located along the existing segment of the road.

Figure 1: Proposed Grade Separation Project



Since the proposed roadways are new, the project does qualify as a Type I project according to the U.S. Code of Federal Regulations Part 772 (23 CFR 772) *Procedures for Abatement of Highway Traffic Noise and Construction Noise*, but a detailed traffic noise analysis is not required according to MDT's *Traffic Noise Analysis and Abatement: Policy and Procedure Manual, June 2001*. **Table 1** indicates the predicted peak pm design hour traffic volumes on Star Road according to Figures 4 and 5 from the project Feasibility Study in 2008. The Feasibility study also indicates that the speed limit on Star Road is 30 mph. As shown, the traffic volumes are predicted to more than double between 2007 and the Design Year 2027.

Table 1: Star Road Peak Hour Traffic Volume Projections

Location	Present Year 2007	Design Year 2027
North of the Sun Ave Intersection	167	530
South of the Sun Ave Intersection	285	635

Table 2 indicates the predicted traffic noise levels at a representative residence 50 feet from the Star Road centerline. The predictions were made using FHWA's Traffic Noise Model (TNM), Version 2.5 and each of the traffic volumes shown in **Table 1**. Since the area is residential, only cars were used in the TNM model.

As shown, the Design Year traffic noise is predicted to be 58.3 dBA north of the intersection and 59.1 south of the intersection, neither of which exceeds the MDT noise abatement criterion of 66 dBA. The traffic noise levels in the Design Year 2027 are predicted to increase by 5.1 dBA north of the intersection and by 3.5 dBA south of the intersection, neither of which exceeds the MDT "significantly exceed" criterion of 13 dBA over the Present Year noise levels. Therefore, no traffic noise impacts are predicted for the project, and a detailed noise analysis is not necessary.

Table 2: Predicted Traffic Noise at 50 ft from Star Road Centerline

Location	Present Year 2007	Design Year 2027
North of the Sun Ave Intersection	53.2 dBA	58.3 dBA
South of the Sun Ave Intersection	55.6 dBA	59.1 dBA