MDT **Montana Department of Transportation**
2701 Prospect Avenue
PO Box 201001
Helena MT 59620-1001

Michael T. Tooley, Director
Steve Bullock, Governor

March 18, 2016

MASTER FILE COPY

Kevin McLaury
Division Administrator
Federal Highway Administration
585 Shepard Way
Helena, MT 59601-9785

Subject: Request for Concurrence of Continued Validity of FEIS/ROD
NH 4-1(21)43
Rockvale – Laurel (2 Lanes)
CN: 4070002

Dear Kevin McLaury:

The Montana Department of Transportation (MDT) Environmental Services Bureau has reviewed the subject project, the previously approved Final Environmental Impact Statement (FEIS)/Record of Decision (ROD) for the Rockvale – Laurel corridor, current regulatory requirements, and current conditions at the project site. Based on this analysis, MDT concludes that the requirements of the National and Montana Environmental Policy Acts (NEPA and MEPA) can be met for the subject project through a Re-evaluated Environmental Impact Statement (REIS) as described at 23 CFR 771.129(b) rather than a Supplemental Environmental Impact Statement (SEIS) as described at 23 CFR 771.130. The FEIS was signed by your agency on March 24, 2009, and the ROD was signed by your agency on September 8, 2009.

The purpose of this letter is to notify the Federal Highway Administration (FHWA) that the following updated environmental information would not require preparation of an SEIS.

The proposed Rockvale – Laurel (2 Lanes) project is Phase III of the Rockvale – Laurel project that includes the reconstruction of 11.6 miles of US 212 from Rockvale, Montana, to the Burlington Northern Santa Fe (BNSF) railroad crossing near Reference Post (RP) 52.9. Phase I and Phase II, which include replacement of the BNSF underpass with a new four-lane overpass, intersection improvements at the US 212 and US 310 intersection in Rockvale, and roadway improvements that extend 1.5 miles north of the US 212/US 310 intersection, are complete or near completion. Phase III, involves construction of a new US 212 roadway alignment between the limits of Phase I and Phase II.

The new US 212 alignment is located to the west of existing US 212 within Carbon and Yellowstone Counties (Figure 1). The new alignment begins just north of RP 43 and connects back into US 212 north of RP 52 (Figure 2). From south to north, the new alignment falls within the following Township, Range, and Section numbers on the Silesia (2014) and Laurel (2014), Montana, U.S. Geological Survey (USGS) 7.5-minute topographic series maps:

- Township (T) 3 South (S), Range (R) 23 East (E), Sections 35, 26, 27, 22, 23, 14, 11, 12, and 01; T3S, R24E, Section 06; and
- T2S, R24E, Sections 31, 30, 29, 28, and 21.

In general the proposed project follows the MDT and the FHWA selected Alternative 5B – Combined West Bench (Selected Alternative) as described in the ROD. Construction activities will include clearing vegetation, grading that involves both cut and fill sections, installation of roadway embankment, and construction of a two-lane and four-lane roadway. While a combination of a two-lane and four-lane

roadway is proposed as part of this Phase, the entire roadway embankment along the new alignment will be constructed to accommodate a four-lane typical section as described in the ROD. A future build out, under Phase IV, will expand the two-lane roadway sections, constructed under Phase III, to four-lane roadway sections.

The following re-evaluation discusses new information or circumstances relevant to the development of the proposed project and ensures that current environmental requirements are addressed. The re-evaluation focuses on updated resource information, and updated impact analysis to encompass changes to environmental laws following approval of the FEIS/ROD.

The purpose of and need for the proposed project has not changed since the approval of the FEIS/ROD. As described on page 1-2 of the FEIS, the purpose and need of the proposed project is to improve safety for local and regional traffic needs, accommodate capacity needs, accommodate local circulation and access needs, and support the regional mobility of goods and people.

DESCRIPTION OF CHANGED CONDITIONS

There have been no substantive changes to the design; however a formal wetland delineation for the Phase III corridor was completed and the listed species under the Threatened and Endangered Species Act have changed since the issuance of the ROD in March 2009. Detailed descriptions of the associated changes in environmental considerations are described below.

Threatened and Endangered Species Updated Conditions.
The March 2009 Final Environmental Impact Statement (FEIS) for Rockvale to Laurel, CN 4070 addressed the species on the ESA list for Carbon and Yellowstone counties. Of those species protected under the ESA at the time, Black-footed ferret (*Mustela nigripes*), Canada lynx (*Lynx canadensis*), and Whooping Crane (*Grus americana*) are still on the list; the Gray Wolf (*Canis lupus*) has since been delisted. However, four additional species have been added to the county lists; Grizzly Bear (*Ursus arctos horribilis*), Sprague's Pipit (*Anthus spragueii*), and Whitebark Pine (*Pinus albicaulis*) in Carbon County and Red Knot (*Calidris canutus rufa*) and Sprague's Pipit (*Anthus spragueii*) in Yellowstone County (USFWS 2016).

On February 22, 2016 MDT completed a review of the potential impacts to the 4 new species added to the list with the following determinations of effect:

Grizzly Bear
Grizzly Bears are currently listed as threatened under the ESA. In Montana, grizzlies primarily use meadows, seeps, riparian zones, mixed shrub fields, closed timber, open timber, side-hill parks, snow chutes, and alpine slab-rock habitats. Habitat use is highly variable between areas, seasons, local populations, and individuals (Foresman 2012, Servheen 1983, Aune 1984); explained by the fact the species is an opportunistic omnivore with a diet of carrion, fish, large and small mammals, insects, fruit, grasses, bark, roots, mushrooms, and, occasionally, garbage.

The nearest documented individual is recorded from October 1986 approximately 19 miles to the southwest, near the historic town of Cherry Springs (approximately 6 miles due west of Bridger, MT) (MTNHP 2016). The nearest identified Grizzly habitat is located approximately 32 miles to the southwest, in the Yellowstone Recovery Area (USFWS 2007). No grizzlies have been documented nor would be anticipated in the project vicinity. Because of a lack of documentation of observation of

grizzlies or appropriate habitat in the project area, a determination of "**No Effect**" has been made for this threatened species; no conservation measures are proposed. No formal consultation with USFWS is necessary.

Red Knot

The Red Knot was listed as a threatened species under the Endangered Species Act, December 2014 (USFWS 2014). This shorebird is a long-distance migrant that breeds in the far north arctic and winters along the coastal areas of the southern US, Mexico, and Central America. This sandpiper species has been documented in Montana during migration, but does not breed or overwinter in the state. The nearest documented observation of the species is approximately 29 miles to the northeast, recorded in May 1975 (MTNHP 2016). Because of the limited stopover time this species spends in the state, lack of documented observation and lack of available foraging habitat in the project area, a determination of "**No Effect**" has been made for this threatened species; no conservation measures are necessary. No formal consultation with USFWS is necessary.

Sprague's Pipit

Sprague's Pipit is a medium to short grass prairie bird species with a preference to large patches of native grassland with moderately rolling terrain. This species is migratory, returning to Montana each April, and migrating to the southern US and Mexico by late October (Davis et al 2014). The nearest observations of Sprague's Pipits have been have been documented approximately 26 miles to the west (west of Columbus, MT) in 1996 (MTNHP 2016). While there is the potential for the species to utilize available habitat near the project area, the quality and quantity of that habitat is likely limited given the prevalence of agricultural fields and lack of extensive native grassland. Therefore, the associated activities are unlikely to affect this species. A determination of "**Is Not Likely to Jeopardize the Continued Existence**" has been made for this candidate species; no conservation measures are necessary. No formal consultation with USFWS is necessary.

Whitebark Pine

A tree of subalpine and tree-line habitat, no observations of Whitebark pine have been documented closer than 35 miles to the south, within the Custer National Forest south of Red Lodge, MT (MTNHP 2016). No individual trees are documented or anticipated within the footprint of the project activities as no appropriate habitat is available. Therefore, a determination of "**Is Not Likely to Jeopardize the Continued Existence**" has been made for this candidate species and no conservation measures are necessary. No formal consultation with USFWS is necessary.

Wetlands Update

As part of developing the EIS, the original wetland delineation was conducted in 2001. Due to the amount of time since the original wetland delineation was conducted and to ensure all aquatic resources, including wetlands, are identified, a new formal wetland delineation was conducted for the Phase III corridor. Delineation field work was conducted July 1, 2015; July 20-21, 2015; and September 21-22, 2015, within the Phase III project corridor. The delineation effort re-evaluated wetland boundaries identified by CH2MHill in 2001, identified and delineated any additional wetlands found, and identified existing waterbodies (non-wetland) within the project corridor.

During the new delineation, eight wetlands were delineated within the project corridor. This includes one wetland (Wetland 3) delineated by CH2Mhill in 2001, and re-verified by DOWL in July 2015, and seven new wetlands delineated by DOWL in July and September 2015. The new wetlands (A, C, C-1, D, E, and F) are all emergent fringe wetlands that border the larger (4 to 5 feet wide) irrigation ditches/canals within

the project corridor. Wetland 19 identified by CH2MHill in 2001 (based off aerial imagery as site access could not be obtained at that time) was reviewed and the area lacked two of the parameters required for a wetland determination (hydrophytic vegetation and hydric soils) and was therefore determined as not a wetland and removed from the identified wetland list.

Within the project corridor, the new delineation found 2.88 acres of wetland. Table 1 below provides a summary of each delineated wetland.

Table 1 – Proposed Wetland Impacts

Wetland	Station Location	Proposed Work	Hydrologic Source	Delineated Acreage	Impacted Acreage
A	97+10 LT to 103+25 LT	Realign ditch within a newly constructed channel.	Smith Ditch	0.34	0.3
	104+05	Realign ditch through new culvert.			
3	204+50 RT to 206+64 RT	No impact.	Farewell Creek and holding pond	0.36	-
B	307+47	Remove wetland through the installation of a new culvert.	Drainage 22 and high water table	0.04	0.04
	306+54 RT	Remove wetland through installation of road fill and riprap.			
C	384+25	Realign ditch within a new culvert.	White Horse Canal	0.18	0.11
C-1	429+25 RT to 429+75 RT	Place ditch within a new culvert.	Ditch 25, a diversion ditch off of White Horse Canal	0.05	0.01
D	410+29	Realign ditch within a newly installed culvert.	White Horse Canal	1.52	1.49
	411+01 RT to 466+99 RT	Realign ditch within a newly constructed channel.			
E	484+27	Place ditch within a new culvert.	Ditch 25, a diversion ditch off of White Horse Canal	0.04	0.03
F	580+30	Realign ditch within a newly installed culvert.	Mason Ditch	0.35	0.12

Wetland	Station Location	Proposed Work	Hydrologic Source	Delineated Acreage	Impacted Acreage
	580+72 LT to 584+15 LT	Realign ditch within a newly constructed channel.			
	584+15 LT	Realign ditch within a newly installed culvert.			
TOTAL				**2.88**	**2.1**

To compare wetland impacts between the proposed project and the FEIS conceptual design for the Phase III project corridor, Table 4-9 from the FEIS was reviewed. According the table, impacts to wetland 3 were completely avoided. The wetland impacts as a result of the proposed project are currently estimated as approximately 2.10 acres. Because there have been no changes proposed to the project design, MDT attributes the increase in estimated wetland impacts to be a result of a more refined design and utilization of the new wetland delineation information. At the time that the FEIS was developed wetlands were not delineated within the Smith Ditch, White Horse Canal, and the Mason Ditch. Impacts to those ditches were anticipated and quantified in the wetland tables.

The identified wetlands are considered Waters of the United States. As such the proposed impacts to these wetlands will require a Clean Water Act Section 404 Permit from the US Army Corps of Engineers. It is expected an Individual Permit will be required. Potential wetland impacts for the proposed project will be greater than 1/10 acre, which will require compensatory mitigation in accordance with applicable US Army Corps of Engineers regulations. Approximately 2.06 acres of these wetland impacts are associated with proposed impacts to irrigation ditches and canals, including new culvert installation and ditch relocation. Because the relocated ditches/canals that support these wetlands will be designed with similar hydrology and width, wetland vegetation would likely reestablish along these newly constructed channels. Of the impacted irrigation ditches/canals that have a wetland fringe (Smith Ditch, White Horse Canal, and Mason Ditch), approximately 6,376 linear feet of those ditches/canals would be relocated. With an average wetland fringe of 3.5 feet on each side of the channel, it is anticipated that approximately 1.02 acres of wetland impacts will be self-mitigated in the relocated channel sections. The remaining wetland impacts (1.08 acre) would be mitigated through credits from the MDT DH Ranch Wetland Mitigation Reserve, located in Carbon County within the Upper Yellowstone River Basin Watershed (Watershed #13). Because the mitigation reserve is located within the same watershed as the impacted wetlands, a replacement ratio of 1:1 will be used.

Cultural Resources

The original cultural resource report was conducted in 2003. The land through which Phase III of the preferred alignment traverses was primarily undeveloped with only the Nutting Farmstead and several ditches identified within the area of Potential effect (APE). The Nutting Farmstead and Free Silver Canal were determined eligible for the National Register of Historic Places and the State Historic Preservation Officer concurred in a finding of "No Effect" on May 1, 2003. The other ditches were covered under a programmatic agreement that stated no Determination of Eligibility or Effect was required for the ditches.

MDT standard procedure in areas where there are historic buildings is to update the cultural resource report to include buildings that were not old enough during the original cultural resources survey, but may have become 50 years old in the interim. In this case, other than the Nutting Farmstead, there are no buildings within the project corridor and nothing that would have become 50 years old since 2003.

Because of the situation on this segment of the Laurel-Rockvale project, update of the cultural resource survey is not appropriate or necessary.

The irrigation ditches were originally covered a programmatic agreement that stated no Determination of Eligibility or Effect was required for the ditches. Although that programmatic agreement has expired and can no longer be used on future MDT projects, the original treatment under the PA is still appropriate for historic properties that were once covered under the PA but are no longer covered. . The PA still stands in regards to the ditches and no further work is necessary.

Public and Agency Involvement

The main portion of the public involvement plan occurred during the EIS process and controversial issues have been identified and addressed in the FEIS. The public, regulatory agencies and resource agencies have been provided opportunity to comment on the project since the approval of the FEIS and ROD. County officials are aware of the project and individual contact with them is ongoing. Personal contacts with adjacent landowners explaining the work to be performed is ongoing.

Resource Category Re-evaluation Summary

The following resource categories were previously examined in the FEIS and have been re-evaluated in the context of the project as currently proposed and, where applicable, new or updated information is provided. Table 1 provides a summary of the resource category and whether a change in impact or a change in mitigation has occurred. Resource categories with changed conditions are described in greater detail above.

Table 1. Re-evaluation of Resource Categories

Resource Category	Change in impact? Yes/No	Change in Mitigation ? Yes/No	Discussion
Safety	No	No	No change to safety has occurred since the FEIS.
Land Use	No	No	No change in land use has occurred since the FEIS.
Public Lands, Parks, and Recreational Facilities-Section 4(f)/Section 6(f)	No	No	The project does not impact Public Lands, Parks, and Recreational Facilities-Section 4(f)/Section 6(f) resources. No changed conditions have occurred since the FEIS.
Right-of-Way/Services/Utilities	No	No	No additional right-of-way impacts have been identified since the FEIS. No change in impacts to services and utilities has occurred since the FEIS.
Farmland	No	No	No changed conditions have occurred since the FEIS
Social Impacts	No	No	The social conditions described in the FEIS are based on the 2000 U.S. Census decennial survey. The 2010 U.S. Census data related to population, income, and race was reviewed. There have been no substantial changes in the social characteristics within the project area since the FEIS. Any subtle changes to project area demographics would not affect the final decisions made by the ROD. No change to the social conditions has been identified

Resource Category	Change in impact? Yes/No	Change in Mitigation ? Yes/No	Discussion
			since the FEIS.
Environmental Justice	No	No	No potential impacts have been identified since the FEIS that would disproportionately impact low-income or minority populations.
Economic Impacts	No	No	No change to the economic conditions has been identified since the FEIS.
Pedestrian and Bicycle Facilities	No	No	No additional impacts to or concerns with pedestrian/bicycle/ADA facilities have been identified since the FEIS.
Air Quality Impacts	No	No	No additional impacts or concerns related to air quality have been identified since the FEIS.
Noise Impacts	No	No	No additional impacts or concerns related to noise have been identified since the FEIS.
Water Quality Impacts	No	No	No additional impacts or concerns related to water quality have been identified since the FEIS.
Wetland Impacts	Yes	No	Proposed wetland impacts are greater than the wetland impacts estimated during the FEIS conceptual design stage. The increase is a result of a more refined design and utilization the latest wetland delineation information. The change in wetland impacts would not be considered "significant" in terms of context and intensity.
Water Body Modifications and Wildlife Resource Impacts	No	No	No additional impacts or concerns related to water body modifications and wildlife have been identified since the FEIS. The project will incorporate special provisions into the final bid package to ensure compliance with the Migratory Bird Treaty Act.
Floodplain Impacts	No	No	No changed conditions have occurred since the FEIS.
Threatened and Endangered Species	Yes	Yes	The March 2009 Final Environmental Impact Statement (FEIS) for Rockvale to Laurel, CN 4070 addressed the species on the ESA list for Carbon and Yellowstone counties. Of those species protected under the ESA at the time, Black-footed ferret (*Mustela nigripes*), Canada lynx (*Lynx canadensis*), and Whooping Crane (*Grus americana*) are still on the list; the Gray Wolf (*Canis lupus*) has since been delisted. However, four additional species have been added to the county lists; Grizzly Bear (*Ursus arctos horribilis*), Sprague's Pipit (*Anthus spragueii*), and Whitebark Pine (*Pinus albicaulis*) in Carbon County and Red Knot (*Calidris canutus rufa*) and Sprague's Pipit (*Anthus spragueii*) in Yellowstone County (USFWS 2016). On February 22, 2016 MDT completed a review of the

Resource Category	Change in impact? Yes/No	Change in Mitigation ? Yes/No	Discussion
			potential impacts to the 4 new species added to the list with the following determinations of effect: • Grizzly Bear - Because of a lack of documentation of observation of grizzlies or appropriate habitat in the project area, a determination of "No Effect" has been made for this threatened species; no conservation measures are proposed. • Red Knot - Because of the limited stopover time this species spends in the state, lack of documented observation and lack of available foraging habitat in the project area, a determination of "No Effect" has been made for this threatened species; no conservation measures are necessary. • Sprague's Pipit - While there is the potential for the species to utilize available habitat near the project area, the quality and quantity of that habitat is likely limited given the prevalence of agricultural fields and lack of extensive native grassland. Therefore, the associated activities are unlikely to affect this species. A determination of "Is Not Likely to Jeopardize the Continued Existence" has been made for this candidate species; no conservation measures are necessary. • Whitebark Pine - No individual trees are documented or anticipated within the footprint of the project activities as no appropriate habitat is available. Therefore, a determination of "Is Not Likely to Jeopardize the Continued Existence" has been made for this candidate species and no conservation measures are necessary. The change in impacts to threatened and endangered species would not be considered "significant" in terms of context and intensity.
Historic and Cultural Resources	No	No	No change in cultural resource conditions has been identified since the FEIS.
Hazardous Waste Impacts	No	No	No change in hazardous waste considerations has been identified since the FEIS.
Visual Resource Impacts	No	No	No change in impacts to visual resources has occurred since the FEIS.
Energy Implications	No	No	No change in impacts to energy has occurred since the FEIS.

Resource Category	Change in impact? Yes/No	Change in Mitigation ? Yes/No	Discussion
Construction Impacts	No	No	No change in construction impacts have been identified since the FEIS.

CONCLUSION

Through this re-evaluation, MDT has determined that no substantive changes have occurred since the FEIS and ROD were signed. The environmental updates described in this re-evaluation would not affect the ability of the Selected Alternative to meet the projects' stated purpose as described in the FEIS and ROD. Additionally, MDT has determined that the impacts of these environmental updates are not individually or cumulatively significant or significantly different from those described in the FEIS or ROD. For these reasons, MDT has determined that the environmental updates would have no effect on the ultimate decision documented in the ROD and that approving this updated NEPA/MEPA evaluation would be consistent with 23 CFR 771.

Date: 3/18/2016

Tom Martin, P.E.
Environmental Services Bureau Chief

e-copies:

Stefan Streeter, P.E.	Billings District Administrator
Tom Martin, P.E.	Environmental Services Bureau Chief
Heidy Bruner, P.E.	Environmental Services Bureau Engineering Section Supervisor
Lesly Tribelhorn, P.E.	Highways Engineer
Robert Stapley	Right-of-Way Bureau Chief
Lisa Hurley	Fiscal Programming Section Supervisor
Tom Erving	Fiscal Programming Section
Suzy Price	Contract Plans Bureau Chief
Tom Gocksch	Environmental Services Bureau Project Development Engineer

Montana Legislative Branch Environmental Quality Council (EQC)
copies: File Environmental Services Bureau

TSM:tgg:G:\ESB\Projects\D5\4000\4070002\Edoc\4070002ENEISR01.doc