

RESOLUTION NO. R15-75

A RESOLUTION OF THE CITY COUNCIL CONCURRING WITH MONTANA DEPARTMENT OF TRANSPORTATION'S DETERMINATION THAT THE WEST LAUREL HIGHWAY PROJECT WILL HAVE NO SIGNIFICANT IMPACT ON THE CITY PROPERTY KNOWN AS LION'S PARK/LAUREL FISHING POND AND AUTHORIZING THE MAYOR TO EXECUTE A CONCURRENCE ON THE CITY'S BEHALF.

WHEREAS, Montana's Department of Transportation is currently developing the West Laurel Project which has been shared and discussed with City Staff and the City Council; and

WHEREAS, the proposed project will require additional right-of-way to construct that will reduce the City Property approximately 0.55 acre from the southwest corner of the City's fishing pond; and

WHEREAS, the proposed project appears in the best interest of the public since the highway crossing over the railroad will be aligned for purposes of public safety; and

WHEREAS, the minimal reduction of property will have no negative impacts on the activities currently enjoyed by the public on either the fishing pond and/or Lion's Park.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Laurel, Montana, the City Council hereby concurs with the Montana Department of Transportation's determination that the project known as the West Laurel Highway Project will have no significant impact on the City Property known as Lion's Park/Laurel Fishing Pond; and


BE IT FURTHER RESOLVED, that the Mayor is hereby authorized to execute the attached concurrence on the City's behalf.

Introduced at a regular meeting of the City Council on August 18, 2015, by Council Member Dickerson.

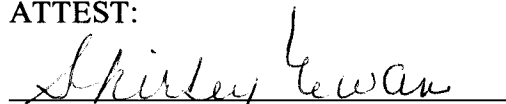
PASSED and APPROVED by the City Council of the City of Laurel this 18th day of August, 2015.

APPROVED by the Mayor this 18th day of August, 2015.

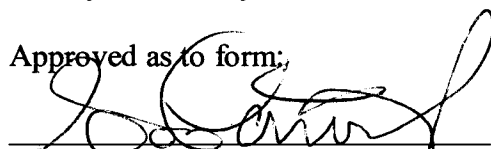
CITY OF LAUREL


Mark A. Mace, Mayor

ATTEST:


Shirley Ewan, City Clerk/Treasurer

Approved as to form;


Sam S. Painter, Civil City Attorney

R15-75 Concurrence Laurel West Highway Project

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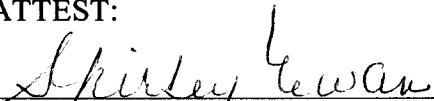
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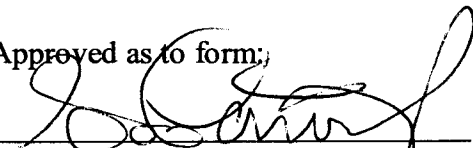
CITY OF LAUREL


Mark A. Mace, Mayor

ATTEST:


Shirley Ewan, City Clerk/Treasurer

Approved as to form;


Sam S. Painter, Civil City Attorney



U.S. Department
of Transportation
**Federal Highway
Administration**

Montana Division

July 23, 2015

**585 Shepard Way, Suite 2
Helena, MT 59601
Phone: (406) 441-3900
Fax: (406) 449-5314
www.fhwa.dot.gov/mtdiv**

In Reply Refer To:
HDA-MT

Kurt Markegard
Director, Public Works
City of Laurel
P.O. Box 10
Laurel, MT 59044

SUBJECT: *de minimis* determination for the Lions Family Park-Laurel Fishing Pond
West Laurel Project

Dear Mr. Markegard:

As you are aware, the Montana Department of Transportation (MDT) is in the midst of developing their proposed West Laurel project. The proposed project will require the acquisition of approximately 0.55 acre from the 26.8 acre parcel along the southwest corner of the city of Laurel's fishing pond. This additional right of way is necessary to improve the highway alignment over the railroad and to address the identified safety needs of the project. As part of the project, a new fence will be erected on the new right of way boundary and, with the exception of the acquisition, there should be no additional impacts to the fishing pond. Section 4(f) of the U.S. Department of Transportation Act of 1966 requires FHWA and MDT to consider the impacts of a proposed project on recreational resources, such as the city's fishing pond.

Given the proposed impacts (approximately 2% of the current size of the facility), FHWA and MDT have concluded that the proposed project will not have an adverse effect on the activities, features, and attributes that qualify the fishing pond for protection under Section 4(f). Your agreement with our conclusion will support FHWA's ability to make a Section 4(f) *de minimis* impact determination.

It is my understanding that both the public and the city were afforded an opportunity to comment on the proposed impacts and view information related to the proposed impacts in a public meeting held on January 27, 2015. Further, both yourself and the mayor participated in a Final Plan Review on June 11, 2015, where the proposed impacts to the Lions Family Park/Laurel Fishing Pond were also discussed.

The purpose of this letter is to request the City's concurrence that the proposed West Laurel project will not adversely affect the function and purpose of the city park and fishing pond, thereby allowing the Federal Highway Administration (FHWA) to make a *de minimis* impact determination.

Pursuant to the Act, impacts of a transportation project on a park, recreation area, or wildlife and waterfowl refuge that qualifies for Section 4(f) protection may be determined to be *de minimis* if:

1. The transportation use of the Section 4(f) resource, together with any impact avoidance, minimization, and mitigation or enhancement measures incorporated into the project, does not adversely affect the activities, features, and attributes that qualify the resource for protection under Section 4(f);
2. The official(s) with jurisdiction over the property are informed of FHWA's or FTA's intent to make the *de minimis* impact finding based on their written concurrence that the project will not adversely affect the activities, features, and attributes that qualify the property for protection under Section 4(f); and
3. The public has been afforded an opportunity to review and comment on the effects of the project on the protected activities, features, and attributes of the Section 4(f) resource.

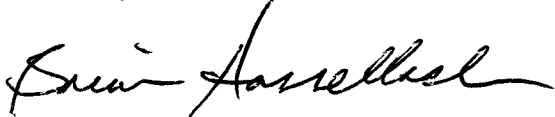
FHWA seeks concurrence from the City, via the signature block below, with MDT's impact assessment on the Section 4(f) property. With your concurrence, we will be able to conclude that the project is in compliance with the provisions of Section 4(f) of the U.S. Department of Transportation Act of 1966.

Please provide your signature below as a written concurrence of these findings and return this document to my attention at the following address:

Federal Highway Administration
 Montana Division
 585 Shepard Way, Suite 2
 Helena, MT 59601

Feel free to contact me with any questions or concerns at (406) 441-3908.

Sincerely,



Brian D. Hasselbach
 Statewide Planner, Environmental & Right
 of Way Engineer

Concurrence

The city of Laurel hereby concurs that they have consulted with the FHWA and MDT on the proposed impacts to the Lions Family Park/Laurel Fishing Pond as a result of the proposed West Laurel project and that the city concurs with FHWA's finding that the project will not result in significant impacts to the city's property for the purposes of Section 6009 of SAFETEA-LU (23 USC 138(b) and 49USC 303(d)).

By: Mark A. Mann

Date: August 18, 2015

cc: Tom Gocksch, MDT Environmental Services Bureau

CITY HALL
115 W. 1ST ST.
PUB. WORKS: 628-7496
WATER OFC.: 628-7431
COURT: 628-1964
FAX 628-2241

City Of Laurel

P.O. Box 10
Laurel, Montana 59044



August 11, 2015

Heidi Jensen, CAO

RE: Letter from Federal Highway Administration

Heidi,

I have reviewed Section 4(f) of the Transportation Act of 1966 as it applies to Public Lands with recreational opportunities as was stated in the letter sent to the City of Laurel from the Federal Highway Administration. I concur with the FHA that the West Laurel Project will not harm the use of the Lion's Family Park as presented in the plan's that were submitted to the City. These plans have been discussed at the Public Works Committee meetings and those plans have also been on the table by Council Chambers for anyone to review the plans.

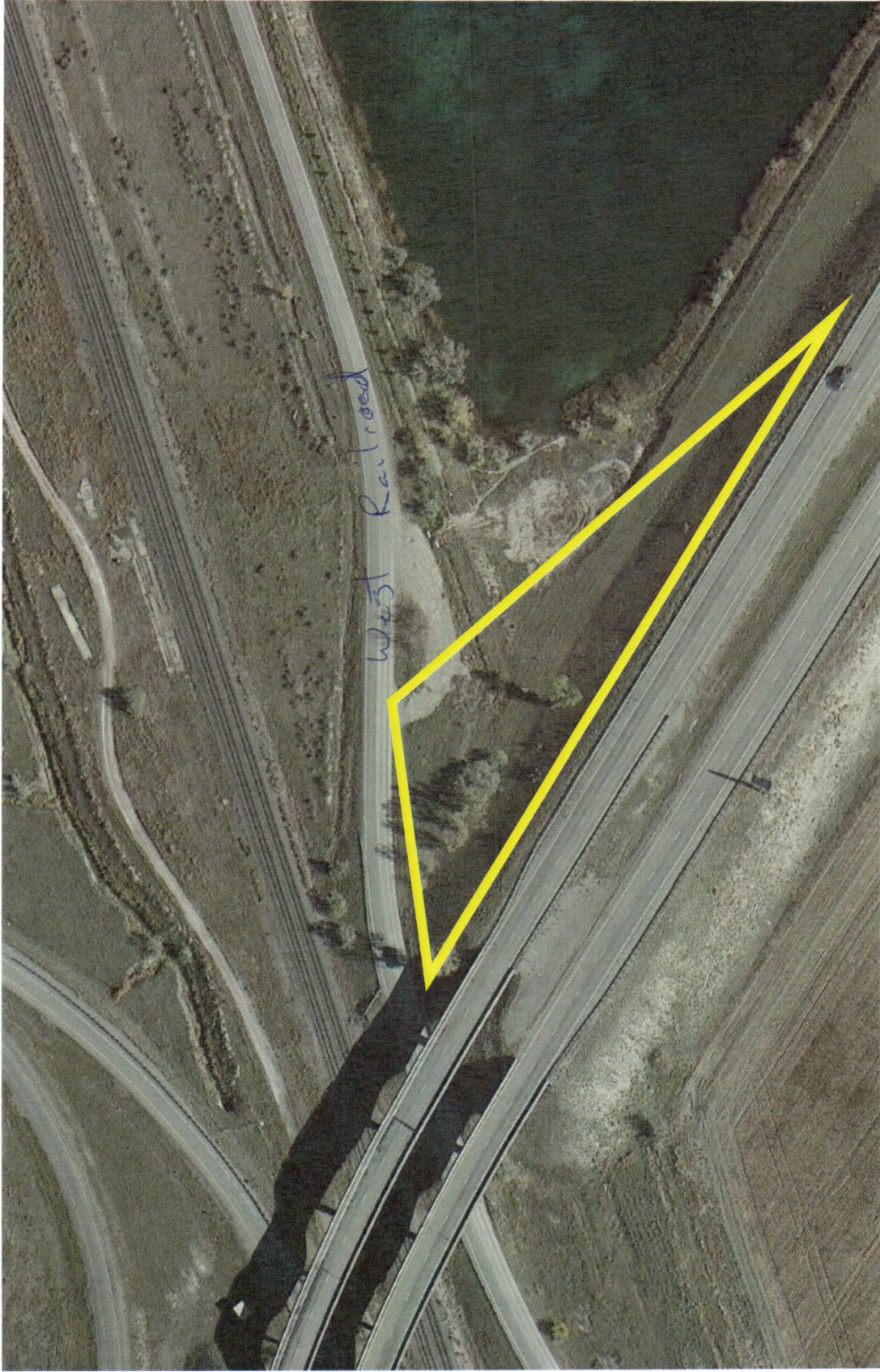
The new interchange and bridge replacement west of Laurel will need some of the City's Park land which is located at the most western portion of Lions Family Park. The needed land will be for the embankment of the new westbound bridge over West Railroad Street and the MRL railroad tracks. I have included a copy of the bridge plan sheet and also a map of my understanding of the area of land needed for the new interstate westbound bridge.

It would be my recommendation that the City Council approves that no significant impacts exists for this project.

Sincerely,

Kurt Markegard
Director of Public Works
The City of Laurel

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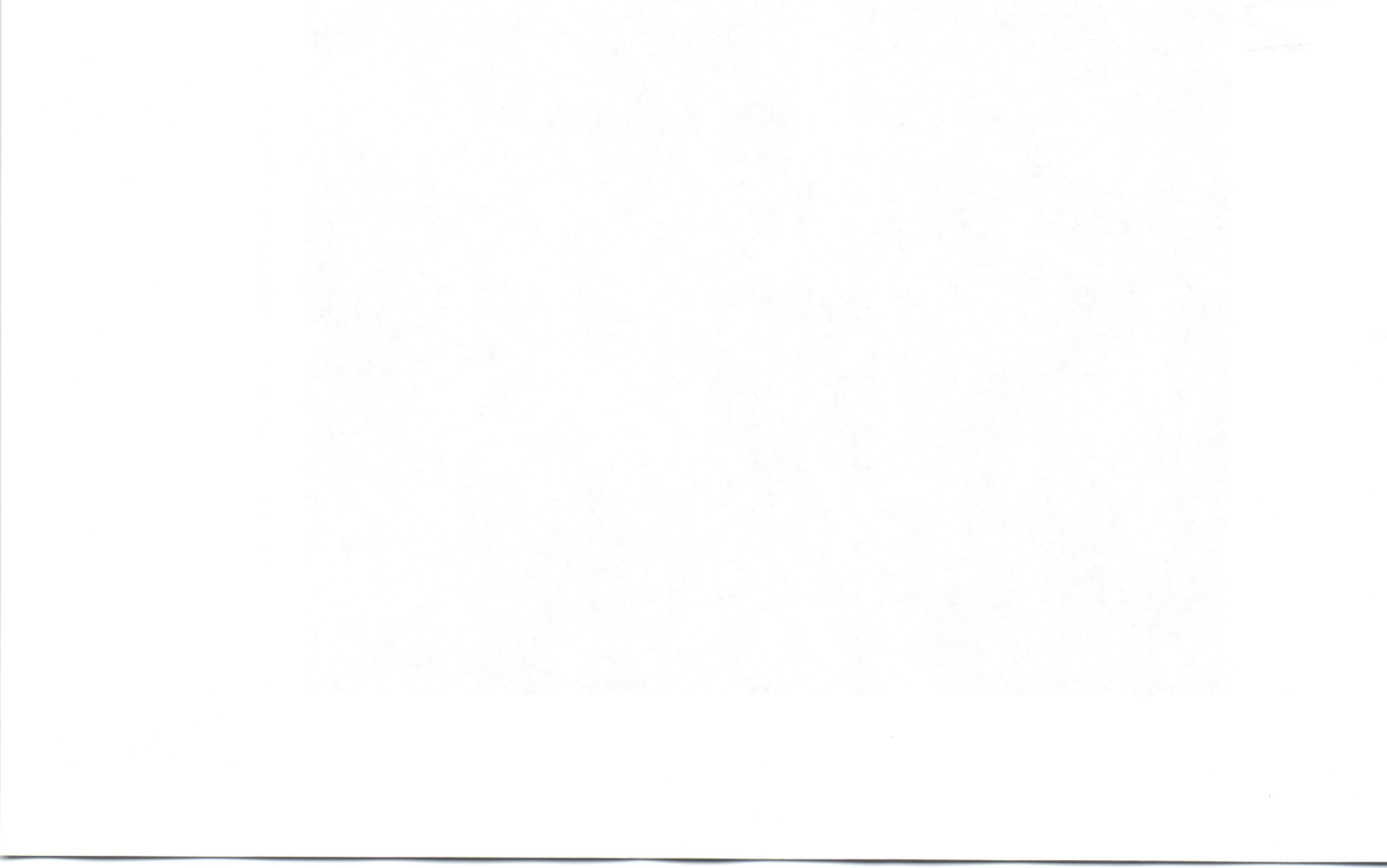


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Area that will be needed for the new interstate westbound bridge





Environmental Review Toolkit

Home	Planning and Environment	NEPA and Project Development	Accelerating Project Delivery	Historic Preservation	Section 4(f)	Water, Wetlands, and Wildlife
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Section 4(f)

Program Overview

Section 4(f) Policy Paper

Section 4(f) Programmatic Evaluations

Section 4(f) Guidance and Legislation

SAFETEA-LU Section 6009 Implementation Study

Section 4(f) Tutorial



Submit Feedback

Program Overview



Section 4(f)

The Department of Transportation Act (DOT Act) of 1966 includes a special provision - Section 4(f) - which stipulates that the Federal Highway Administration (FHWA) and other DOT agencies cannot approve the use of land from publicly owned parks, recreational areas, wildlife and waterfowl refuges, or public and private historical sites unless the following conditions apply:

- There is no feasible and prudent avoidance alternative to the use of land; and
- The action includes all possible planning to minimize harm to the property resulting from such use;

OR

- The Administration determines that the use of the property will have a *de minimis* impact.

Section 4(f) of the DOT Act of 1966 was originally set forth in Title 49 United States Code (U.S.C.). A similar provision was added to Title 23 U.S.C. Section 138, which applies only to the Federal-Aid Highway Program.

In August 2005, [Section 6009\(a\) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users \(SAFETEA-LU\)](#), made the first substantive revision to Section 4(f) since the 1966 US Department of Transportation Act. Section 6009, which amended existing Section 4(f) legislation at both Title 49 U.S.C Section 303 and Title 23 U.S.C. Section 138, simplified the process and approval of projects that have only de minimis impacts on lands impacted by Section 4(f). Under the new provisions, once the US DOT determines that a transportation use of Section 4(f) property results in a de minimis impact, analysis of avoidance alternatives are not required and the Section 4(f) evaluation process is complete. Section 6009 also required the US DOT to issue regulations that clarify the factors to be considered and the standards to be applied when determining if an alternative for avoiding the use of a section 4(f) property is feasible and prudent. On March 12, 2008 FHWA issued a [Final Rule](#) on Section 4(f), which clarifies the 4(f) approval process, simplifies its regulatory requirements, and moves the Section 4(f) regulation to [23 CFR 774](#).

SAFETEA-LU Section 6009(c) requires that US DOT study the implementation of Section 6009 and the amendments to Section 4(f) and provide two reports to Congress, the Department of Interior, and the Advisory Council on Historic Preservation. The [Phase I Report of the SAFETEA-LU Section 6009 Implementation Study](#) was submitted to them on September 15, 2010. The [Phase II Report of the SAFETEA-LU Section 6009 Implementation Study](#) was submitted to them on January 31, 2012.

For questions or feedback on this subject matter content, please contact [MaryAnn Naber](#).

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Federal Highway Administration | 1200 New Jersey Avenue, SE | Washington, DC 20590 | 202-366-4000



