

Strategies for Handling the Review of Atypical Floodplain Development Projects

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Normal Permitting Process

- **Gather general information about project**
- **Schedule pre-submittal meeting with floodplain administrator**
- **Preparation of permit application**
- **Submittal of Application/Application Review**
- **Record of decision**
- **If approved, construction of project**
- **Post-construction certification**

What Makes a Project Atypical

- Application a result of a violation
- After-the-fact permitting for emergency projects
- Complex scope of project
- Agencies with different perspectives
- Difficult personalities
- Outside influences
- Other . . .

Problems with After-the-Fact Permitting Resulting from a Violation

- Puts everyone on defense & complicates review**
- Enhanced public & political scrutiny**
- Forensic engineering**
- More expensive for client**
- High likelihood that project will have to be modified to meet requirements of regulatory agencies**
- Possibility of fines being levied**

How about seeing this picture on the front page of the newspaper? Did they have a floodplain permit?



Manhattan Finishes Work on \$650,000 Trail from Town to Gallatin River

Bozeman Daily Chronicle, 12/21/2006

Mayor says bridge to complete trail system will go in July

More Headlines

- **Logan Veteran's Fishing Park Dedicated**

Belgrade

News, May 24 ,2011

- **Facts Should Guide Agencies Concerned with Fishing Park**

Belgrade News, November

2,2011

- **EPA Orders Fishing Park to be Restored**

Belgrade News, February 21, 2012

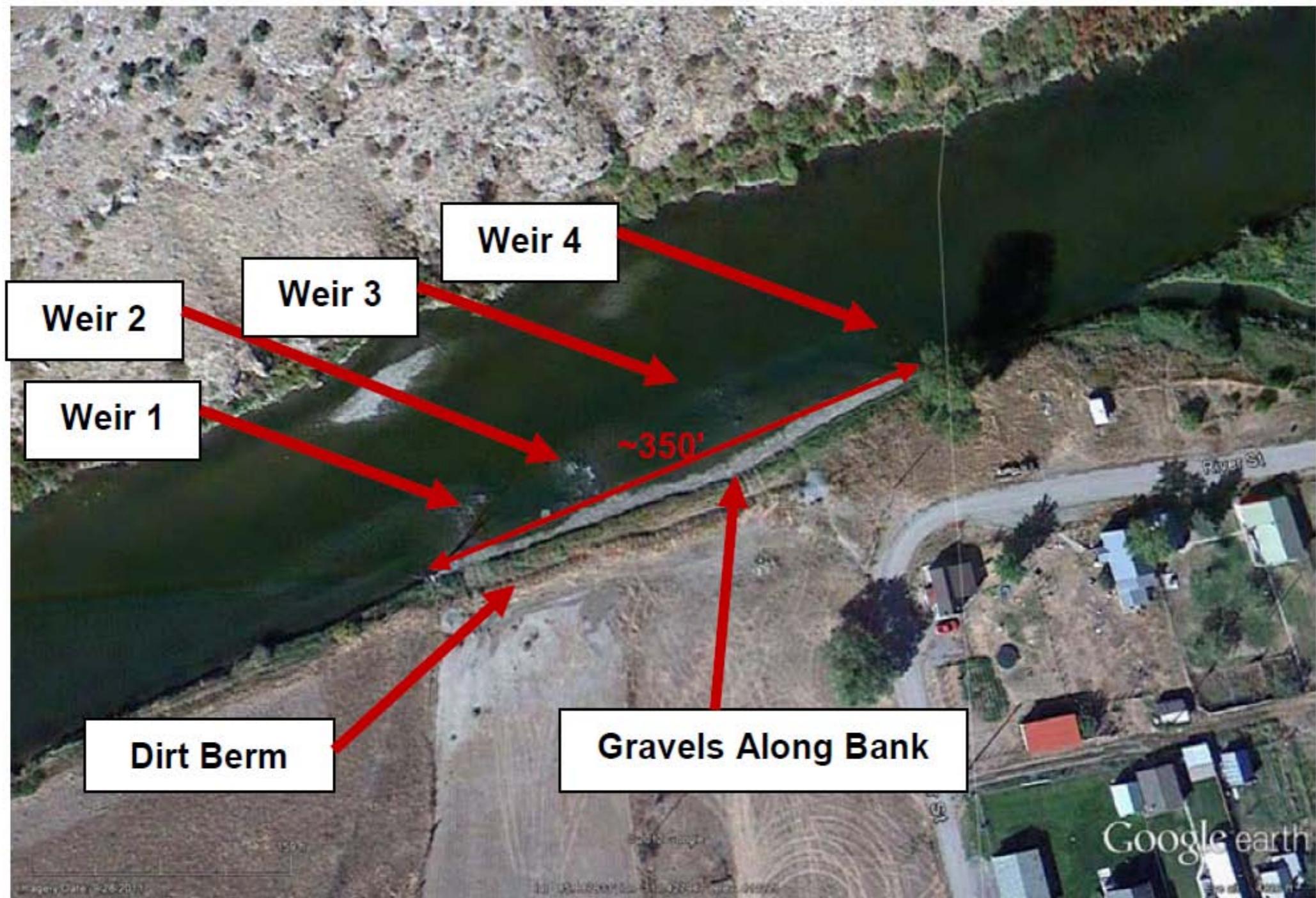


Figure 1: Aerial image taken 9/28/2011 showing unauthorized work.

Strategies for Dealing with Violations

- **Work with your legal counsel on an enforcement protocol – apply it consistently**
- **Don't focus on placing blame, but do make it a learning opportunity**
- **Focus on finding a solution and achieving compliance**
- **Demand detailed timelines from responsible party to bring project into compliance – document everything**
- **Be clear about regulatory requirements, but make responsible party demonstrate how compliance will be achieved**

“Emergency” Projects

- There are legitimate emergencies, but they are few and far between.**
- Lack of planning on someone else’s part does not constitute an emergency!**
- Work done under “emergency” provisions often has to be redone or substantially modified to meet the requirements of regulatory agencies.**
- If crucial infrastructure or structures are not threatened, often better off waiting to obtain all necessary permits.**

Loss of Access to Property & Livestock



Impacting Interstate Commerce



Bridge Collapse on State Secondary Highway



Bank Stabilization Measures



Strategies for Dealing with “Emergency” Projects

- **Have a clear process outlined in your local ordinance**
- **Explain to people that an “emergency waiver” may enable them to take some action prior to obtaining a permit, but does not exempt them from obtaining a permit for the resulting project or demonstrating how that project complies with the local ordinance**
- **Burden of proof is on the responsible party to demonstrate that an emergency existed and action was necessary, otherwise project may be considered a violation**
- **Because pre-project conditions will often have to be re-created by the engineer or consultant, it is often more expensive for the applicant to use the “emergency waiver”**

Examples of Projects with Complex Scope

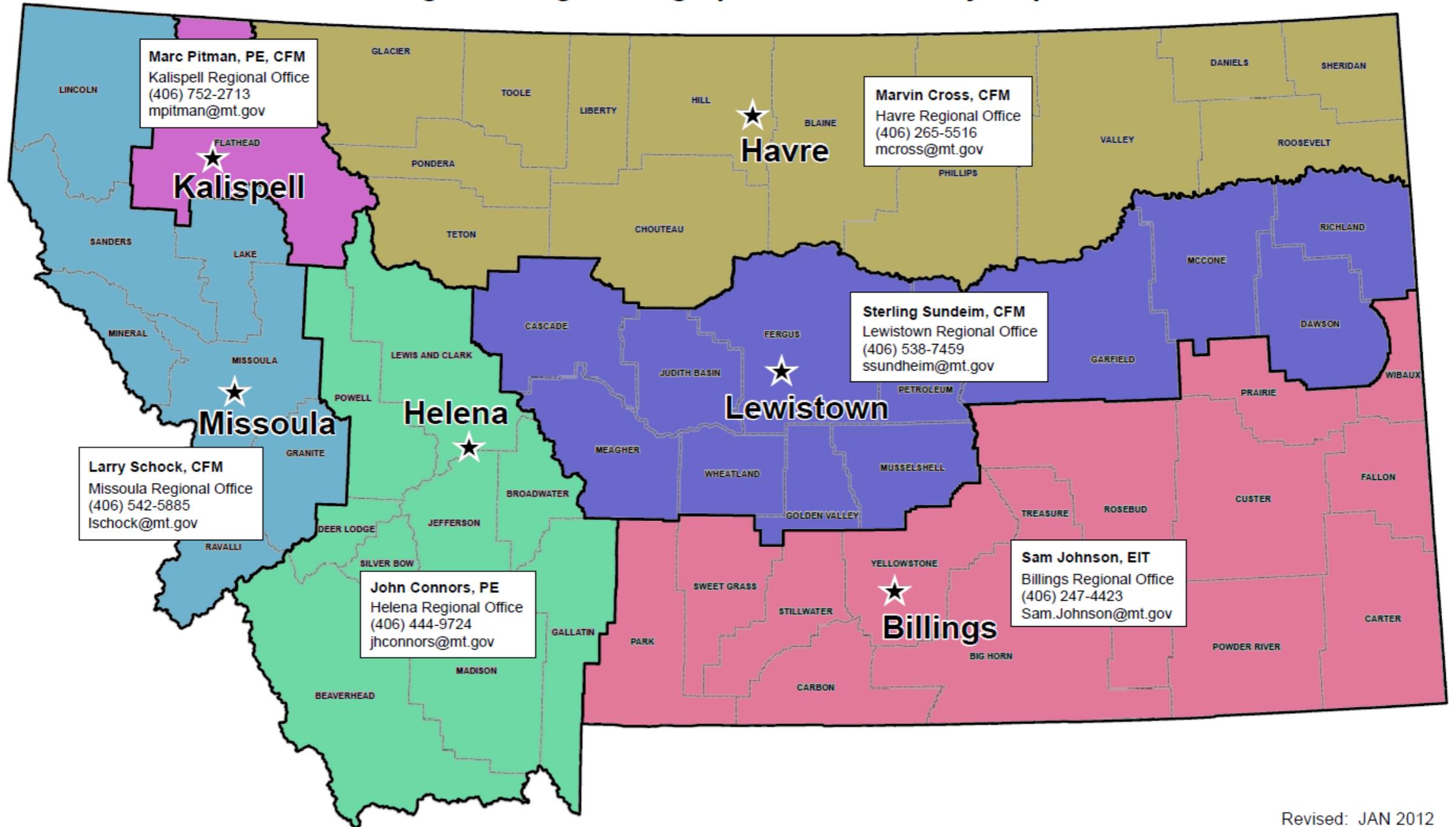
- **Multiple component projects (house, bridge, bank stabilization)**
- **Multiple structure projects (commercial center)**
- **Multiple-reach bank stabilization projects (MDT, MRL)**
- **Project requiring a LOMR or variance**

Strategies for Complex Projects

- Break project down into individual components, but don't lose site of the big picture. (e.g. A permit for a house may include a residential structure, a non-residential detached garage, fill for building pads, fill & culverts for an access road, and routing of utilities to the building sites.)
- Make applicant address all applicable standards in your ordinance – have as a submittal requirement.
- Ask for help
 - DNRC Regional Engineer
 - FEMA
 - Other Floodplain Administrators

DNRC FLOODPLAIN PROGRAM

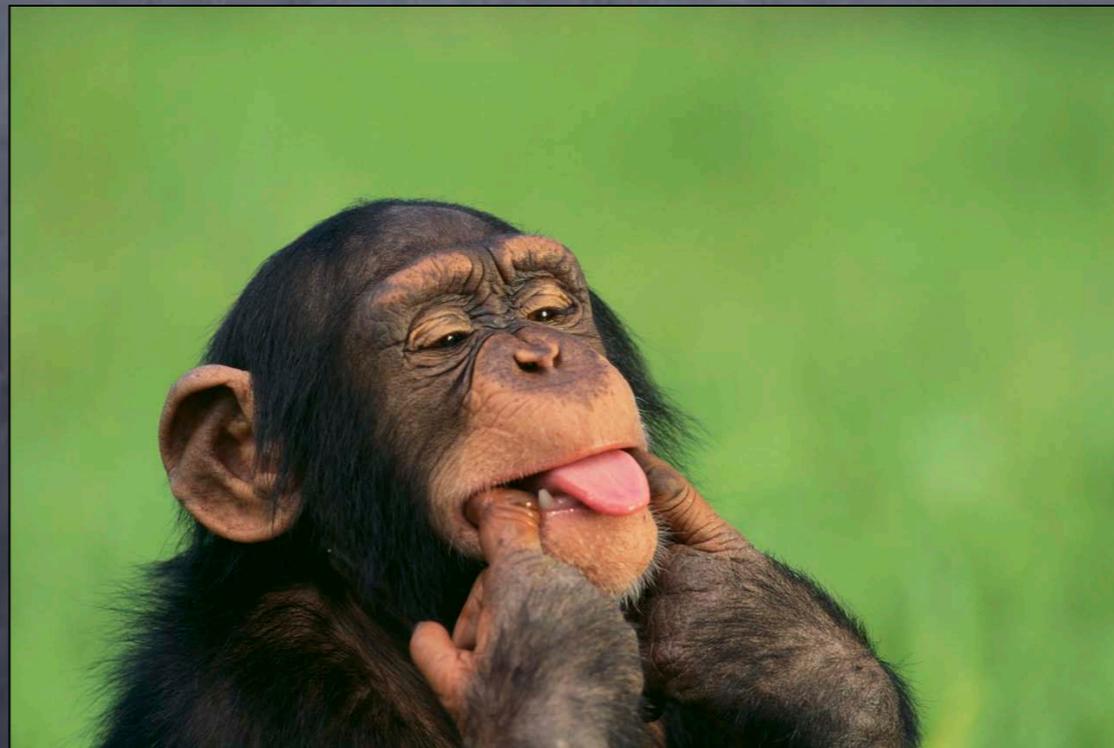
Regional Engineering Specialist Boundary Map



Revised: JAN 2012

Strategies for Difficult Personalities and Outside Influences

- **Communication**
- **Education**
- **Acknowledge that you have limited control**



Communication

- **Identify one point of contact for the project**
- **Be timely & responsive with communication**
- **Be clear and direct**
- **Be solution-oriented, when possible**
- **Keep elected officials informed of high-profile or unusually contentious cases**

Why Manage Floodplain Development?

- **Local communities have to in order to maintain eligibility for federal disaster relief funds**
- **Guide the development of the 100-year floodplain by insuring regulations balance the greatest public good with the least private injury (assure the actions of one landowner are not to the detriment of another landowner or the public).**
- **Identify lands unsuitable for certain development purposes due to hazards.**
- **Minimize the need for rescue and relief efforts.**

Progressive Floodplain Management

- If all our flood maps are accurate and regulations enforced, how come we keep experiencing ever-increasing damages from floods?
- Progressive floodplain management acknowledges imperfect flood hazard prediction and errs on the side of protecting public health and safety!
- “Eyes Wide-Open” Approach

Flooding in Montana

What's the big deal?





Don't we
want to
leave a
better



Debris Jam



Ice Jam



Channel Migration

W. Gallatin, June 1986











Historical Flood Photos



Acknowledge You Have Limited Control

- The effective flood study in your community is adopted by FEMA, not by you personally, and that study establishes the jurisdictional floodplain.
- State and federal legislation establish minimum standards (um.....I believe they are called laws) that your local ordinance must adhere to. You didn't dream this stuff up.
- You are simply applying your community's ordinance to the applicant's project. There is some subjectivity in the review process, but not a whole lot.
- The best way the applicant can help you is to provide a thorough application, with excellent supporting documentation, demonstrating how they comply with your community's ordinance.
- If the applicant doesn't like the decision you made, there is an appeal process, and if they don't like the standards in your community's ordinance, there is a variance process.

Conflict with Other Agencies

- **Every agency is reviewing the same project, but is looking at how it complies with a different set of standards and requirements**
- **Scope of your review is relatively limited – how will the project affect flood hazards and flood behavior – you can advocate for good outcomes, but don't get caught up in other battles**
- **Develop good working relationship with other agencies and participate in inter-agency site visits**
- **Applicants and consultants love to pit one agency against another agency – don't fall for it**
- **Remember the floodplain development permit is supposed to be the last permit issued.**

Questions?



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