

Lessons Learned from a Section 1316 Declaration

Sean O'Callaghan,
CFM, Gallatin
County Floodplain
Administrator



Agenda

- Section 1316 Declaration Basics
- A Little Bit About Gallatin County
- 1316 Declaration Case Study

Declaration of 1316



We hold these truths to be self evident that the Federal Insurance Administrator can deny a property's eligibility for coverage under the NFIP . . .

FEMA - Definition & Purpose

- Section 1316 of the National Flood Insurance Act of 1968, as amended, provides for the denial of flood insurance coverage for any property which the Administrator finds has been declared by a duly constituted State or local authority to be in violation of State or local floodplain management regulations.
- Section 1316 was intended for use primarily as a backup for local enforcement actions (i.e., if a community could not force compliance through the enforcement mechanisms in its regulations, it could use Section 1316 as additional leverage) and was not intended merely as a mechanism to remove bad risks from the policy base.

FEMA - Process



 Navigation

 Search

 Languages

Flood Insurance

Got a problem?

How do I Buy Flood Insurance?

Flood Insurance Forms

▼ National Flood Insurance Program Policy Index

Information for Communities

Available Data

> Floodplain Management

Crawlspace

Elevation Certificate

Coastal High Hazard Area

Section 1316

The purpose of this page is to define Section 1316, a commonly used regulation in floodplain management.

> [Expand All Sections](#)

> [Definition/Description](#)

▼ [NFIP Requirement](#)

• [61.5 \(a\) Denial of Insurance](#)

• [Part 73 - Procedures](#)

> [Guidance](#)

> [Related Keywords](#)

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Code of Federal Regulations

PART 73—IMPLEMENTATION OF SECTION 1316 OF THE NATIONAL FLOOD INSURANCE ACT OF 1968

Sec.

73.1 Purpose of part.

73.2 Definitions.

73.3 Denial of flood insurance coverage.

73.4 Restoration of flood insurance coverage.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

SOURCE: 51 FR 30318, Aug. 25, 1986, unless otherwise noted.

§ 73.1 Purpose of part.

This part implements section 1316 of the National Flood Insurance Act of 1968.

§ 73.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in part 59 of this subchapter are applicable to this part.

(b) For the purpose of this part a *duly constituted State or local zoning authority or other authorized public body* means an official or body authorized under State or local law to declare a structure to be in violation of a law, regulation or ordinance.

(c) For the purpose of this part, *State or local laws, regulations or ordinances intended to discourage or restrict development or occupancy of flood-prone areas* are measures such as those defined as *Flood plain management regulations* in § 59.1 of this subchapter. Such measures are referred to in this part as State or local flood plain management regulations.

§ 73.3 Denial of flood insurance coverage.

(a) No new flood insurance shall be provided for any property which the Administrator finds has been declared by a duly constituted State or local zoning authority or other authorized public body, to be in violation of State or local laws, regulations or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

(b) New and renewal flood insurance shall be denied to a structure upon a finding by the Administrator of a valid declaration of a violation.

(c) States and communities shall determine whether to submit a declaration to the Administrator for the denial of insurance.

(d) A valid declaration shall consist of:

(1) The name(s) of the property owner(s) and address or legal description of the property sufficient to confirm its identity and location;

(2) A clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation or ordinance;

(3) A clear statement that the public body making the declaration has authority to do so and a citation to that authority;

(4) Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and

(5) A clear statement that the declaration is being submitted pursuant to section 1316 of the National Flood Insurance Act of 1968, as amended.

§ 73.4 Restoration of flood insurance coverage.

(a) Insurance availability shall be restored to a property upon a finding by the Administrator of a valid rescission of a declaration of a violation.

(b) A valid rescission shall be submitted to the Administrator and shall consist of:

(1) The name of the property owner(s) and an address or legal description of the property sufficient to identify the property and to enable FEMA to identify the previous declaration;

(2) A clear and unequivocal statement by an authorized public body rescinding the declaration and giving the reason(s) for the rescission;

(3) A description of and supporting documentation for the measures taken in lieu of denial of insurance in order to bring the structure into compliance with the local flood plain management regulations; and

(4) A clear statement that the public body rescinding the declaration has the authority to do so and a citation to that authority.

Managing Floodplain Development Through the NFIP (E-273) Manual

SECTION 1316

Section 1316 of the National Flood Insurance Act authorizes FEMA to deny flood insurance to a property declared in violation of the community's ordinance.

Section 1316 is used when all other legal means to remedy the violation have been exhausted and the structure is still noncompliant. Check with your state NFIP coordinator or FEMA Regional Office on how 1316 works in your state.

If invoked under Section 1316, denying flood insurance means:

- ◆ The property may be difficult or impossible to sell.
- ◆ The market value of the property may fall.
- ◆ The cost of suffering flood damage without insurance may be too great a risk for the property owner.
- ◆ Lending institutions holding the property's mortgage may threaten to foreclose.
- ◆ Any permanent reconstruction will be denied disaster assistance.

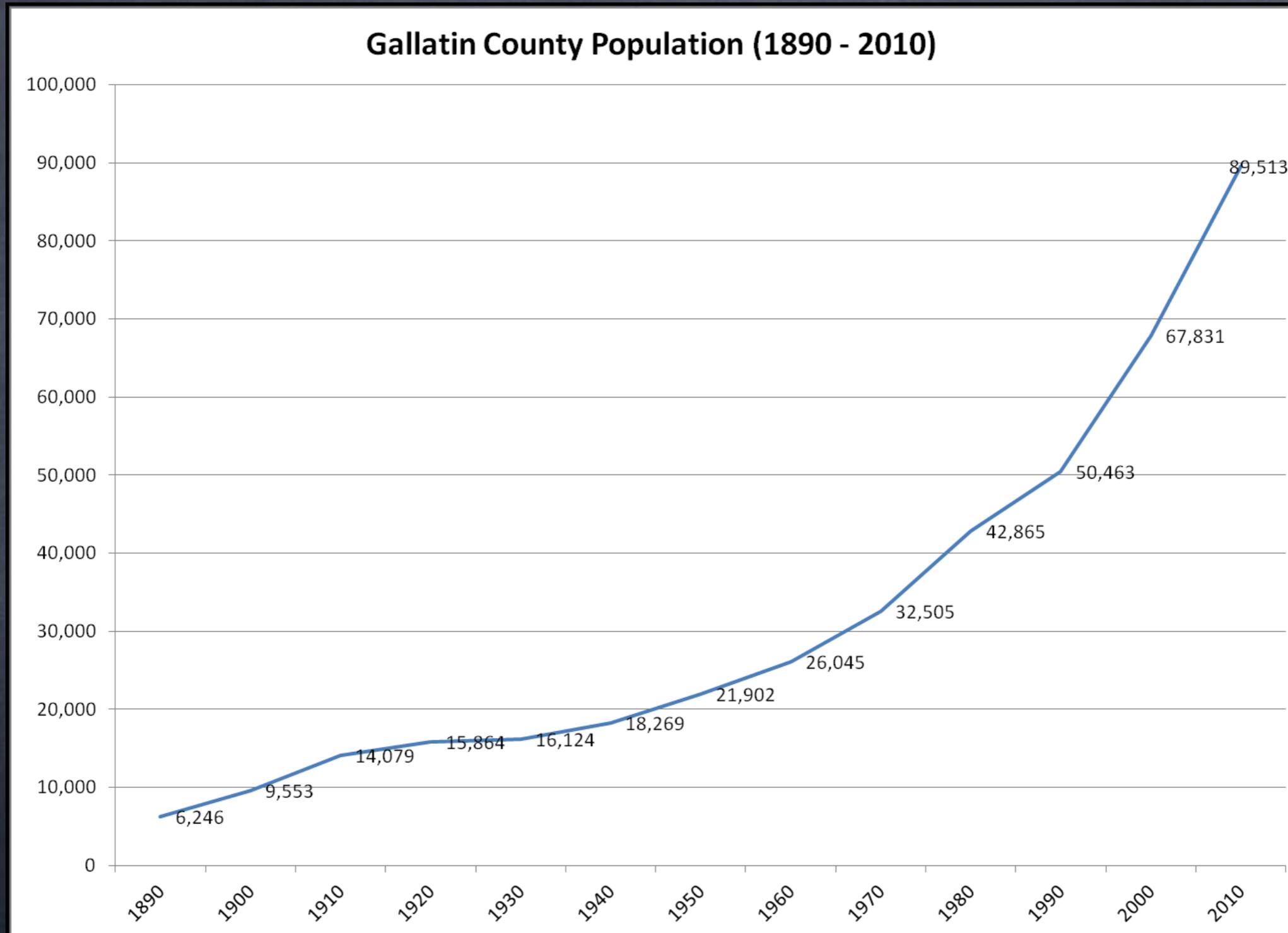
In some cases a Section 1316 insurance denial will be sufficient to convince the property owner to correct the violation. Section 1316 also has the advantage of limiting any taxpayer liability if the building is damaged by a flood, as the owner will be ineligible for an insurance claim and disaster assistance.

A Little Bit About Gallatin County

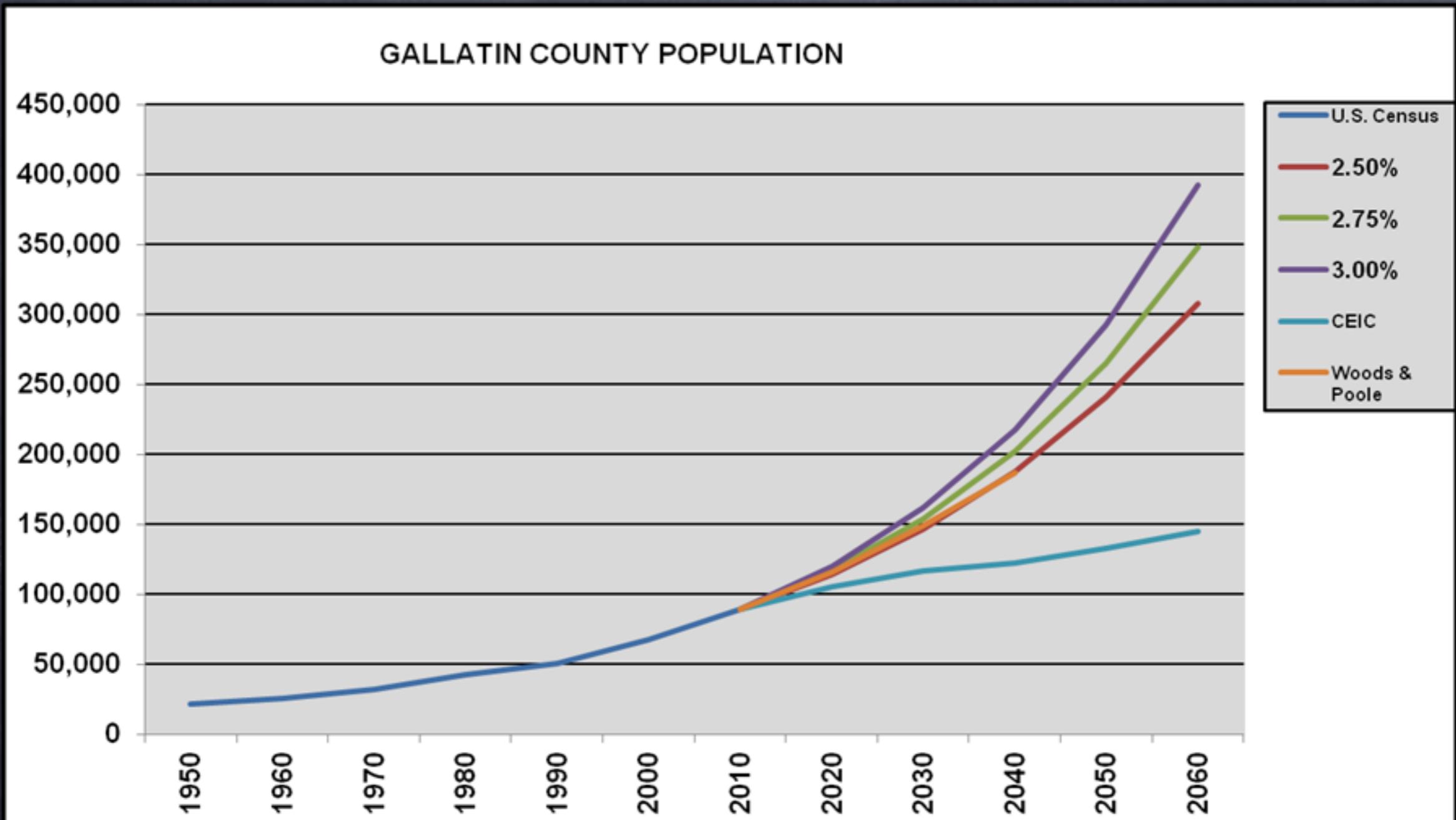
- Gallatin County was established in 1863 and is approximately 2,500 square miles –approximately 50 miles wide and 120 miles long.
- Approximately 48% of Gallatin County's diverse landscape is public land.
- Gallatin County contains five municipalities - Bozeman, Belgrade, Manhattan, Three Forks, and West Yellowstone
- The latest population estimates available count 104,502 people and 50,089 cows in Gallatin County.



Historical Population Change



Population Projections



Data Sources: Historical Population Data from U.S. Census Bureau. Projected Population Data based on percentages from data from Montana Census and Economic Information Center & Woods and Poole.

Land Use Regulations

- Zoning
- Subdivision
- Building for Lease of Rent
- Floodplain (CRS Community)
- Sanitation

Zoning Districts in Gallatin County

Bear Canyon (1985)

Reese Creek (2006)

Bozeman Pass (2006)

River Rock (1978)

Bridger Canyon (1971)

South Cottonwood (2005)

East Gallatin (2006)

South Gallatin (1975)

Four Corners (2009)

Springhill (1990)

Gallatin Canyon/Big Sky (1996)

Sypes Canyon No. 1 (1979)

**Gallatin County/Bozeman Area
(1999)**

Sypes Canyon No. 2 (1979)

Hebgen Lake (1975)

Trail Creek (1990)

Hyalite (1970)

Wheatland Hills (1979)

Middle Cottonwood (1996)

Zoning District No. 1 (1970)

North Gallatin Canyon (2010)

Zoning District No. 6 (1979)

Zoning Districts in Gallatin County

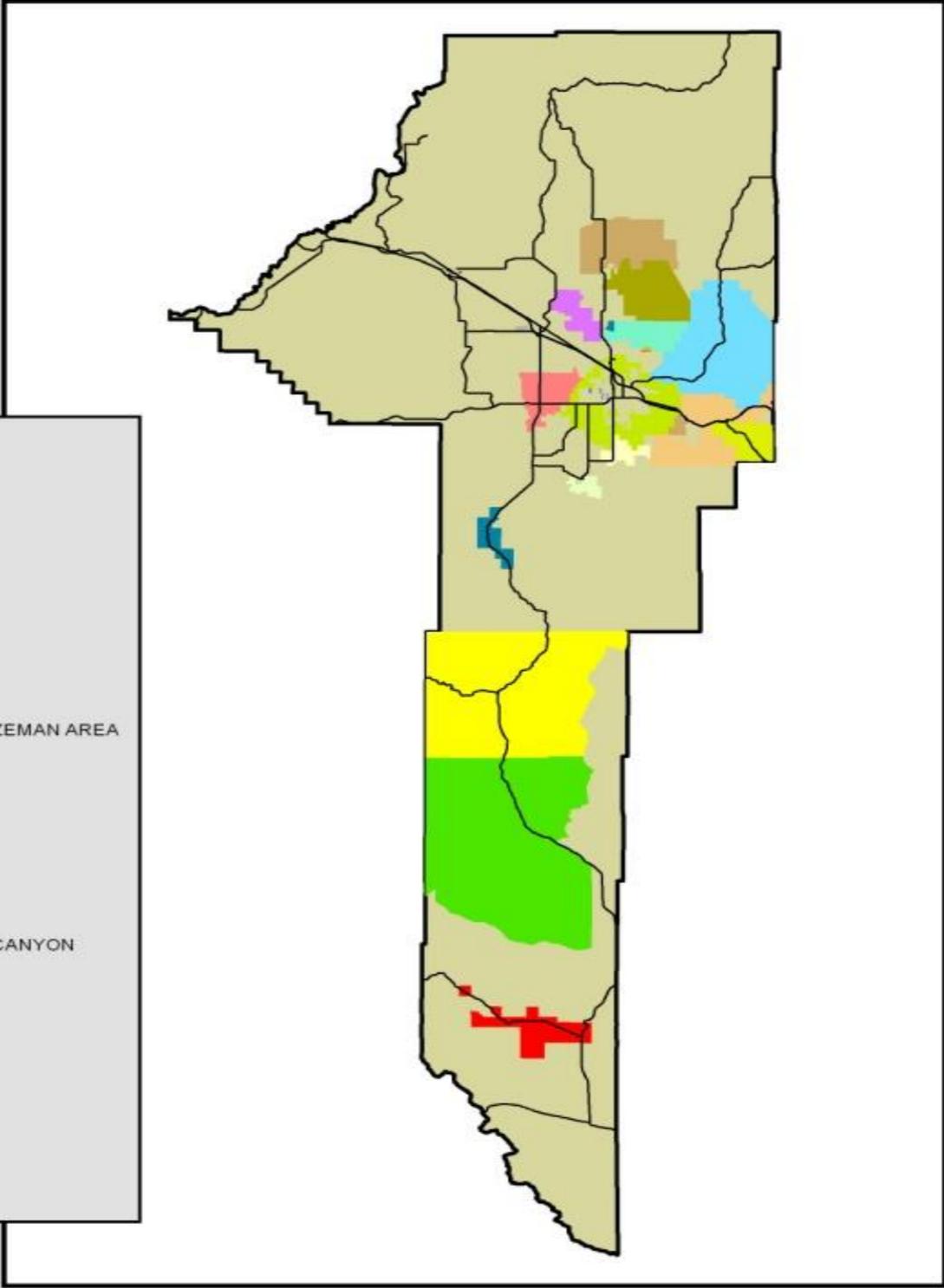


Legend

— Major Roads

Zoning District Name

- BEAR CANYON
- BIG SKY
- BOZEMAN PASS
- BRIDGER CANYON
- EAST GALLATIN
- FOUR CORNERS
- GALLATIN COUNTY / BOZEMAN AREA
- HEBGEN LAKE
- HYALITE
- MIDDLE COTTONWOOD
- NORTH GALLATIN
- REESE CREEK
- RIVER ROCK
- SOUTH COTTONWOOD CANYON
- SOUTH GALLATIN
- SPRINGHILL
- SYPES CANYON 1
- SYPES CANYON 2
- TRAIL CREEK
- WHEATLAND HILLS
- ZONING DISTRICT 1
- ZONING DISTRICT 6



Map created by Gallatin County Planning Department 10/18/2012

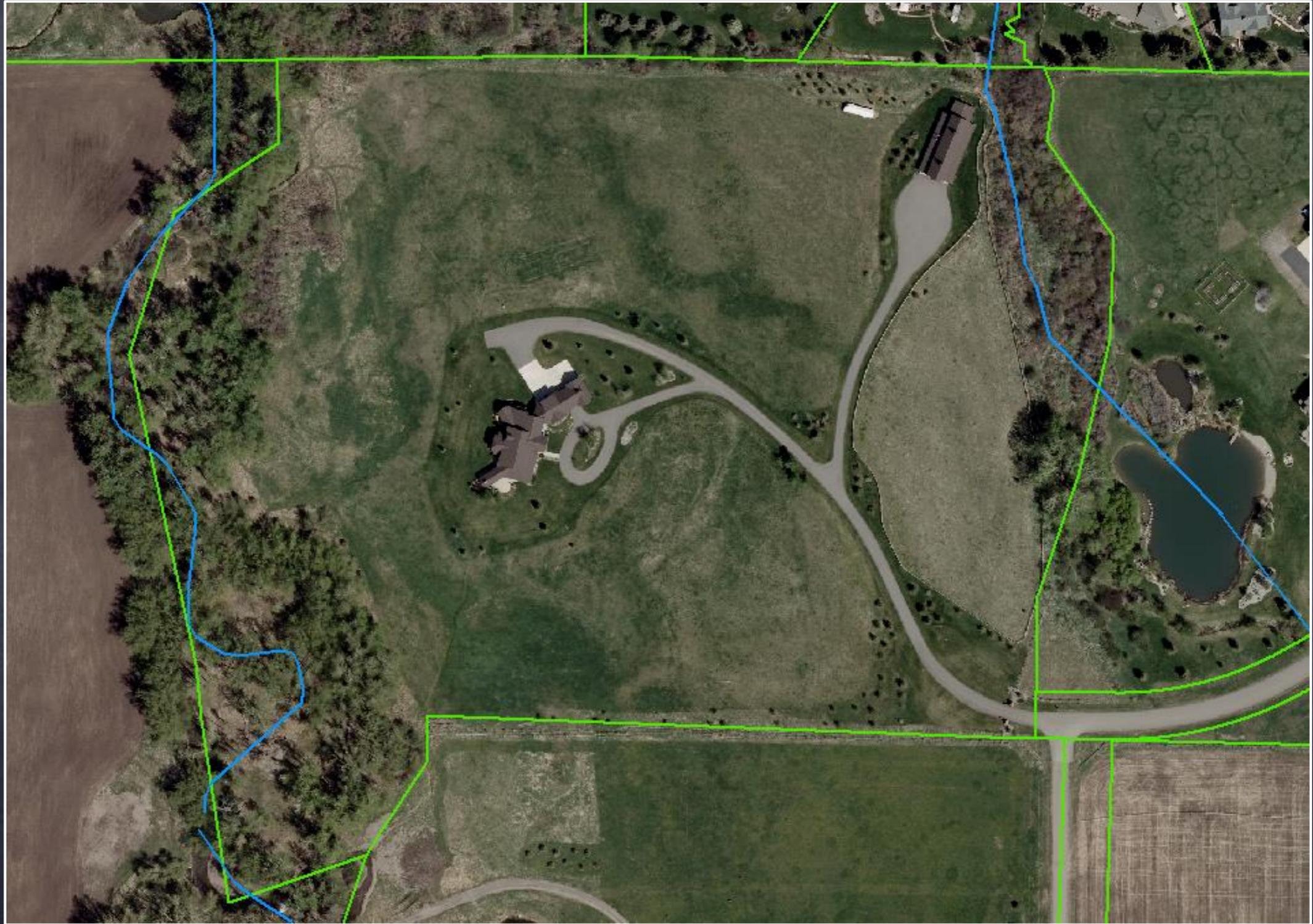


Compliance Process

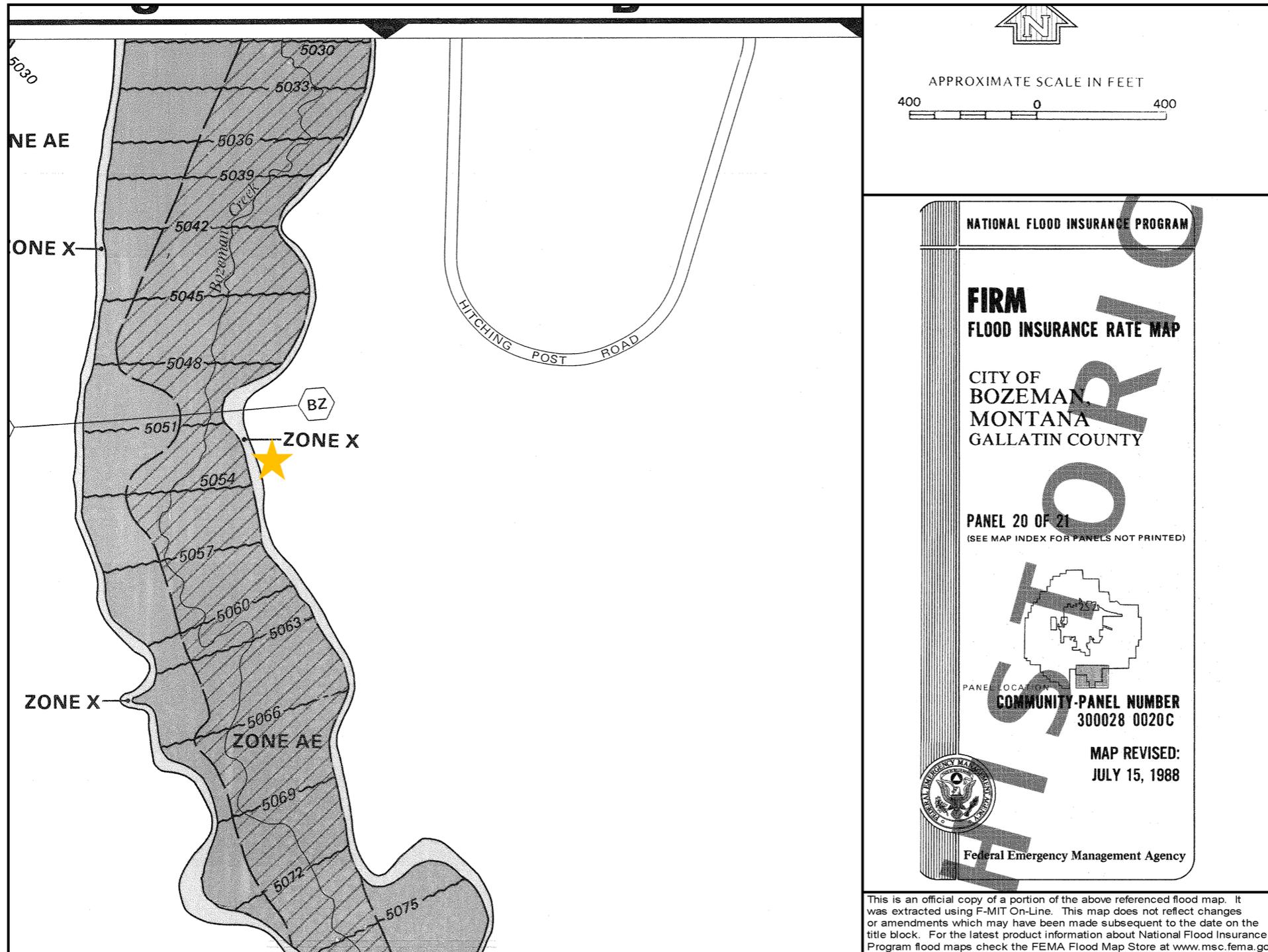


- Bi-Monthly Compliance Stakeholder Group Meetings
- Three Step Process (investigation, warning, notice of violation)
- Appeal (optional)
- Referral to Legal Counsel

Section 1316 Case Study



1988 FEMA FIRM

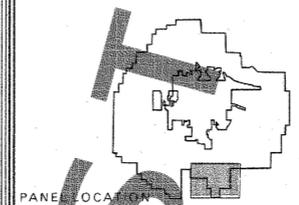


NATIONAL FLOOD INSURANCE PROGRAM

FIRM
FLOOD INSURANCE RATE MAP

CITY OF
BOZEMAN,
MONTANA
GALLATIN COUNTY

PANEL 20 OF 21
(SEE MAP INDEX FOR PANELS NOT PRINTED)



PANEL LOCATION
COMMUNITY-PANEL NUMBER
300028 0020C

MAP REVISED:
JULY 15, 1988



Federal Emergency Management Agency

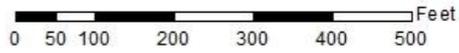
This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov

2011 DFIRM



Legend

- Water Line
- BFE
- XS
- Parcels
- 1 PCT ANNUAL CHANCE FLOOD
- 0.2 PCT ANNUAL CHANCE FLOOD
- FLOODWAY



Construction Underway

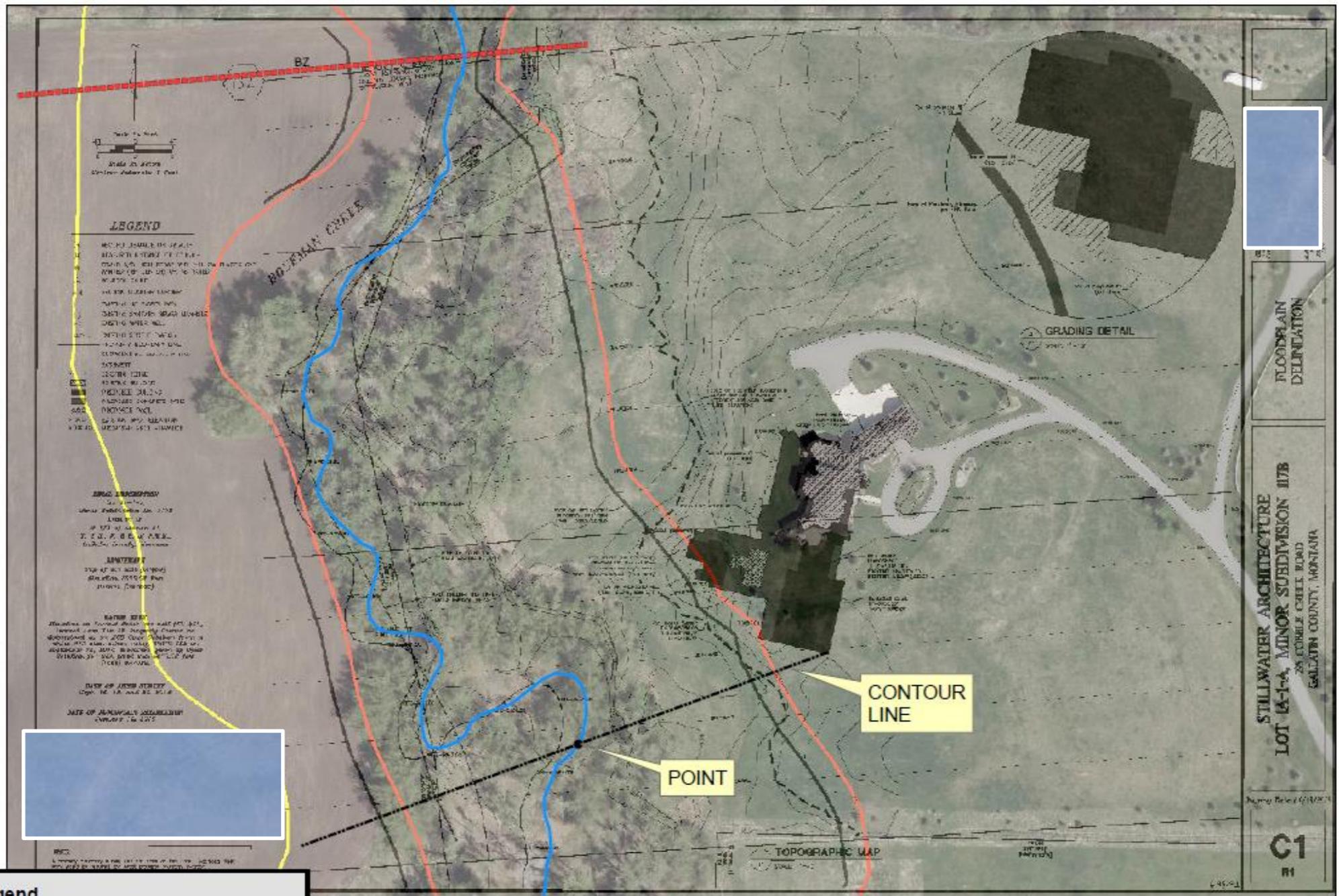


FEMA maps are used
as a guide, but

“...the exact location of the floodplain
boundary shall be determined where the base
flood elevation intersects the natural ground.”



Floodplain Exhibit 295 Cobble Creek Road

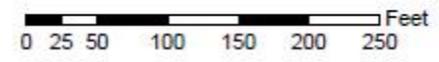


Legend

- WATER LINE
- CROSS SECTION

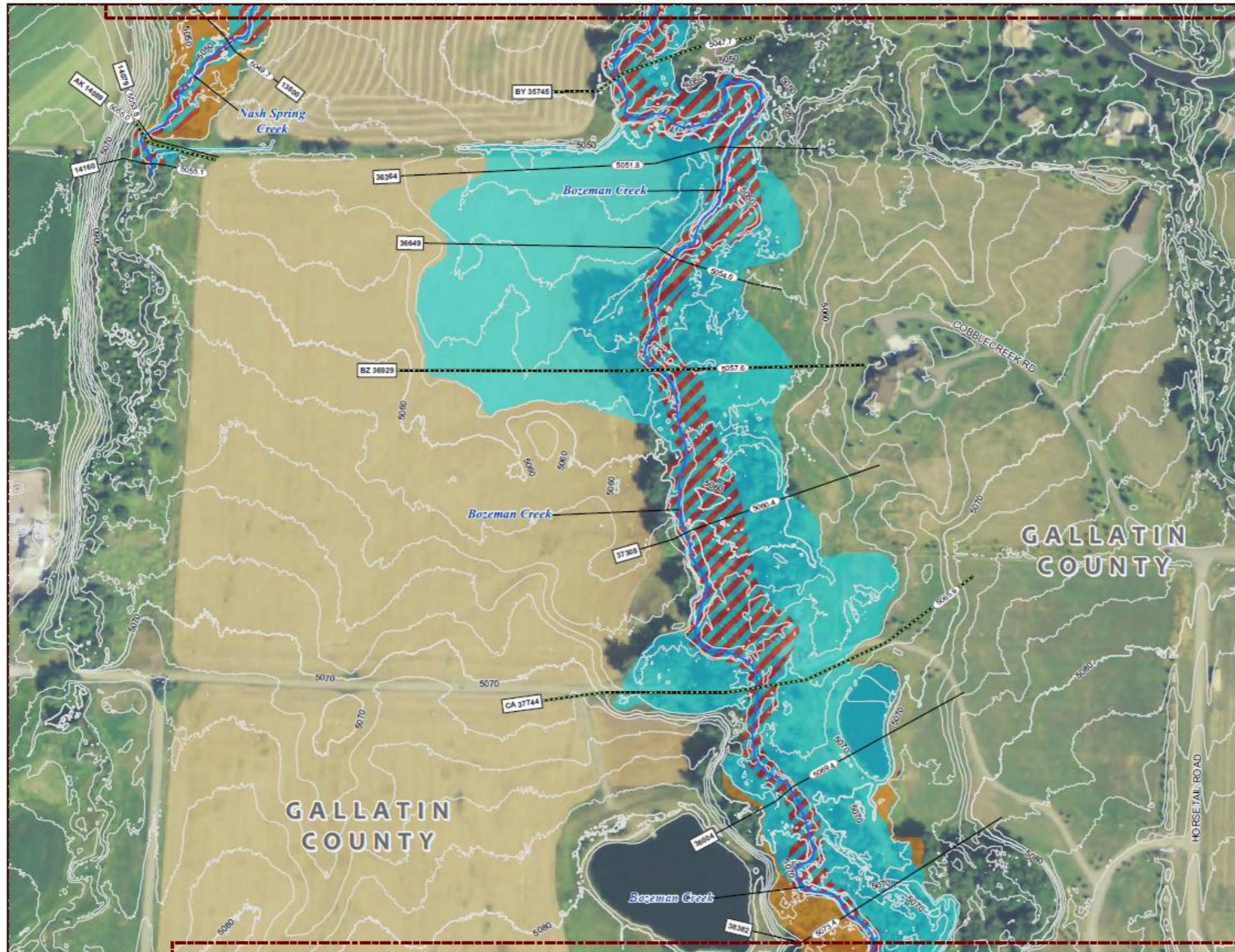
FEMA Flood Hazard Boundaries

- 1 PCT ANNUAL CHANCE FLOOD HAZARD
- FLOODWAY

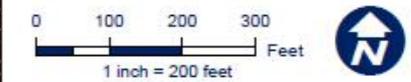
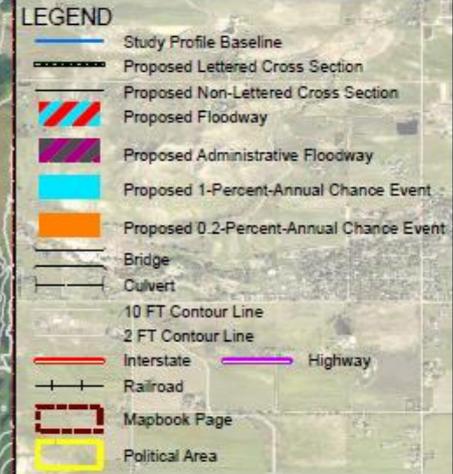


Map produced by Gallatin County Planning Department 1/27/2016.
Base Map is 2012 City of Bozeman Aerial Imagery.
Engineering Site Plan applied as transparent overlay

Preliminary FEMA FIRM

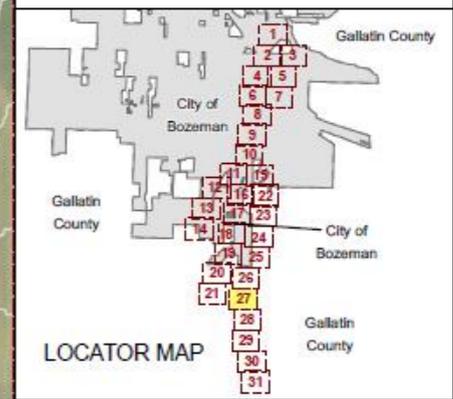


CITY OF BOZEMAN HYDRAULIC WORKMAP



DATA FRAME PROPERTIES:
 Coordinate System: NAD 1983 2011 StatePlane Montana FIPS 2600 R Int
 Projection: Lambert Conformal Conic
 Datum: NAD 1983 2011
 Vertical Datum: NAVD 88
 Units: Feet

Michael Baker International
 165 S. UNION BLVD.
 SUITE 200
 LAKEWOOD, CO 80228
 PHONE: 720-514-1100



Bozeman Map 27

Summary of Events

- We find out about project and identify zoning and floodplain issues in November, 2015)
- Notice of Violation for zoning infractions issued December 2015 ~ No appeal filed.
- Attempt to work through floodplain issues issue as part of resolving zoning violations from November, 2015 ~ January, 2016
- Notice of Violation and Demand for Corrective Action for Floodplain Violations issued February, 2016 ~ No appeal filed.
- Zoning approval for project issued February 23, 2016



Dear Applicants:

The approved Gallatin County Land Use Permit for 295 Cobble Creek Road is attached. In light of the Gallatin County Floodplain Violation Letter issued on February 8, 2016, the Planning Department would like to emphasize that the attached permit approves the project's compliance with the Gallatin County/Bozeman Area Zoning Regulation and does not authorize construction within the mapped floodplain nor supersede the requirements from the Gallatin County Floodplain Regulation.

Please feel free to contact us with any questions.

Landowner Options

- Ignore County and keep working
- Stop work until new map gets adopted by FEMA
- Request a Variance (Substantial Improvement and Lowest Floor standards)
- Pursue a LOMR



Legal Concerns

- Clear violation of Floodplain Regulation
- Basis of violations appears to be imperfections associated with effective FEMA FIRM
- Preliminary maps complicate likelihood of succeeding in litigation, both in substance and in timing
- Landowner isn't actively pursuing a remedy, so some additional action is necessary by County to protect CRS status.
- BOCC willing to consider 1316 Declaration

Additional Guidance from FEMA

REQUESTING A SECTION 1316

There is no FEMA template for a community to submit a Section 1316 request. A *sample* request for a Section 1316 declaration is attached.

A community would need to submit a letter to FEMA on community letterhead requesting a 1316 for the subject property. They would describe the violation, reference their ordinance including supporting paragraph/section, and identify the attempts to remedy the violation (what they did and when) and notification by community to property owner of intent to request 1316..

1. Letter can be addressed to the FEMA NFIP state specialist or could be addressed to Regional Administrator (please copy the FEMA state specialist). You are encouraged to cc: the state NFIP coordinator.
2. Letter would request a 1316 for property X.
3. Letter would describe what the violation is and reference the pertinent paragraph/section in ordinance (provide copy of ordinance).
4. Letter would describe what community has done to remedy violation and provide documentation to support (letters to property owner, notice of violation, court order, etc.).

FEMA regional office reviews request; may ask for additional/supporting information.

FEMA regional office determines if they support community/State request for 1316. If supported, the request is sent to FEMA HQ for action.

Can't commit timeline for FEMA HQ, but if request has all necessary information and support of FEMA regional office, then 1316 should be able to be done within 30 days (likely it would be shorter).

A letter is prepared and signed by FEMA HQ, a (hardcopy) letter sent to community and property owner; an eletter is sent to regional office, State, and BureauNet. It takes about a week to get into system; if an agent were to try and write a policy, it would be flagged (and denied). If the property owner has an existing policy when 1316 enacted (which is the date of the FEMA letter), the policy would be allowed to expire, but not renew. If the property owner has an effective policy when the 1316 enacted, then makes flood claim, it will be honored as long as all policy requirements met.

A 1316 request sent in to the regional office is similar to a Congressional and is given high priority.

Sample Declaration from FEMA

DECLARATION OF VIOLATION FOR IMPLEMENTATION OF SECTION 1316 OF THE NATIONAL FLOOD INSURANCE ACT OF 1968

The letter below serves as a sample Section 1316 declaration issued by a community to the policyholder that the structure is in violation of the local flood damage prevention ordinance. This sample declaration satisfies the criteria for a valid declaration according to 44 CFR 73.3, and may be used to support a community or State's request that FEMA deny the availability of flood insurance on the property.

As authorized by Section XXXX of the [COMMUNITY'S FLOOD DAMAGE PREVENTION REGULATION], I, [NAME], as the Building Official of [COMMUNITY], hereby declare the structure listed below to be in violation of the Section XXXXX of the [COMMUNITY'S FLOOD DAMAGE PREVENTION REGULATION] which is intended to discourage or otherwise restrict land development or occupancy in floodprone areas.

The [COMMUNITY] is required to submit this declaration of violation pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended, the results of which is the denial of flood insurance under 44 CFR 73.3.

OWNER/PROPERTY ADDRESS: _____ PARCEL ID# _____ TYPE OF STRUCTURE: _____

POLICY#: _____ INSURANCE COMPANY: _____

STATEMENT OF VIOLATION:

- **The area has been constructed for habitational use.** Section XXXX of the [COMMUNITY'S FLOOD DAMAGE PREVENTION REGULATION] states that "no enclosure below the base flood elevation shall be constructed or equipped for such uses as kitchens, dining rooms, family rooms, recreation rooms, offices, bedrooms, bathrooms, or workshops."
- **The area is air conditioned.** Section XXXX states, "enclosed areas below elevated buildings must be void of utilities that service the enclosures and cannot be temperature controlled."
- **Enclosure is partitioned.** Section XXXX states, "the interior portion of an enclosed area below an elevated building may not be partitioned except that garages may be separated from storage and entryway."

The Building Official is authorized by Section XXXX to enforce the provisions of the [COMMUNITY'S FLOOD DAMAGE PREVENTION REGULATION]. The above referenced property was inspected on [DATE]. The policy holder was notified of the violations on [DATE]. The violations were referred to the [MUNICIPAL DEPARTMENT] on [DATE] and found in violation. The owner appealed the decision and the decision by [MUNICIPAL DEPARTMENT] was dismissed by the Circuit Court on [DATE]. Therefore, [COMMUNITY] has exhausted all possible Code Enforcement remedies.

This declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

Date: _____

[NAME], Building Official
[MUNICIPAL DEPARTMENT]

CC: Policyholder

Process

- Notice to landowner that BOCC was considering a Section 1316 Declaration that would make flood insurance through NFIP unavailable to the property.
- BOCC held a hearing on 1316 Declaration
- BOCC Decision
- Submittal of Declaration to FEMA - December 2016
- Back & Forth with FEMA & FEMA internal processing

Getting BOCC on Board

- Documentation that staff and DNRC had gone out of our way to provide technical guidance to landowner's engineer
- Documentation that we gave landowner ample notice and opportunity to take corrective action and comply with Regulations.
- Paper trail from FEMA & DNRC (we were acting in a technically sound/defensible manner)
- Buy-in from County Attorney
- Risk to CRS rating ~ impact on other constituents

Back & Forth with FEMA

- Documentation of notice to landowner (violation & declaration, emails, etc.)
- Information about original dwelling
- Justification for not pursuing litigation
- Barriers to obtaining a floodplain permit (existing basement & substantial improvement)
- Discussion of other options that landowner could pursue (variances, LOMR, litigation, etc.)

Letter from FEMA

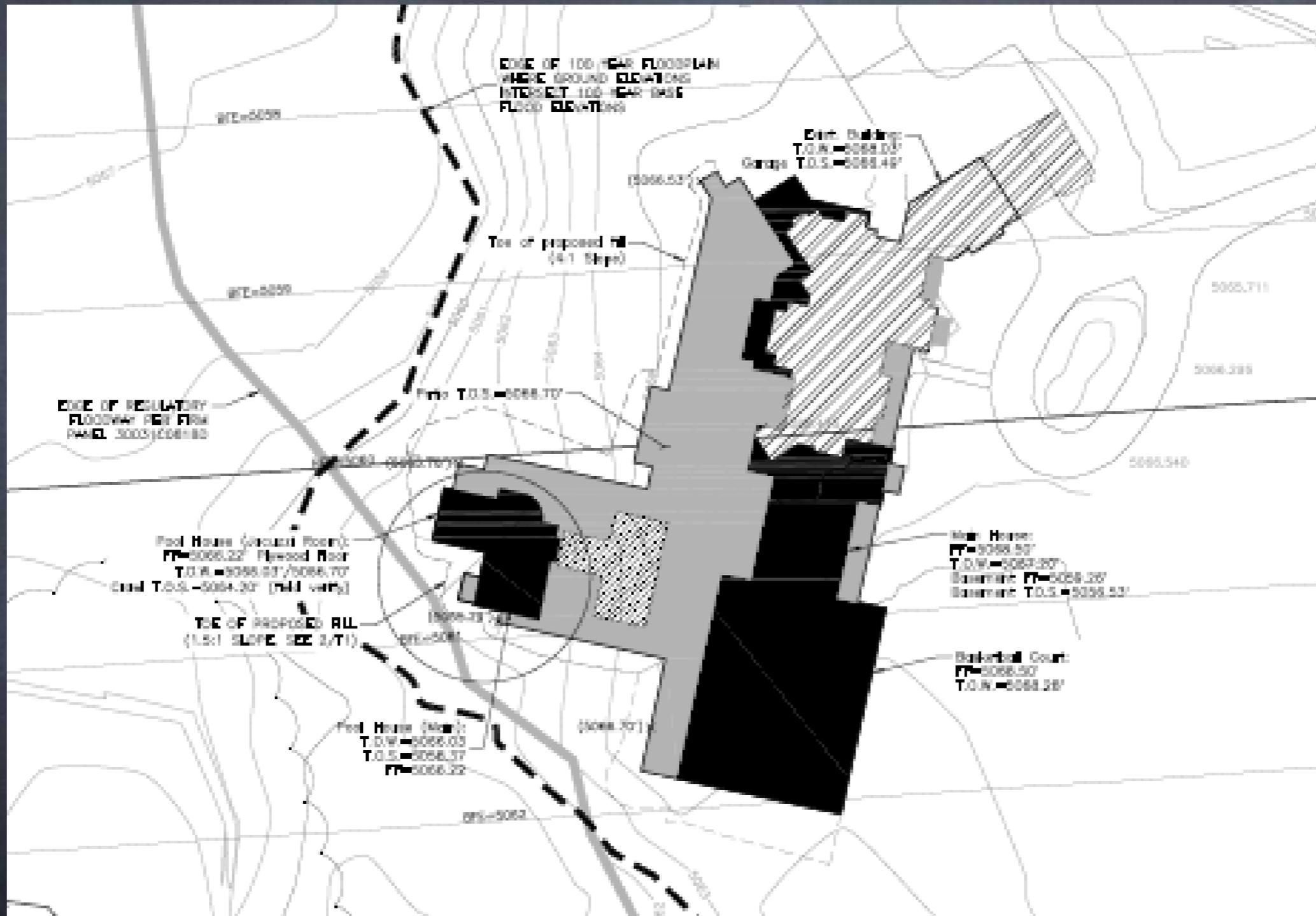
Dear Mr. [REDACTED]

The U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA) finds your property located at 295 Cobble Creek Road, Bozeman MT is no longer eligible for new or renewed flood insurance coverage under the National Flood Insurance Program (NFIP), pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. § 4023.

FEMA is authorized to deny flood insurance for a property FEMA finds has been declared by a duly constituted State or local zoning authority, or other authorized public body, to be in violation of State or local laws, regulations, or ordinances that are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas. 42 U.S.C. § 4023; 44 C.F.R. Part 73. According to a declaration submitted to FEMA by Sean O'Callaghan, Gallatin County Floodplain Administrator for the Gallatin County, an authorized public body representative, your property is in violation of the local floodplain management ordinance and you have been notified of the violation and the prospective denial of insurance. As a result, FEMA finds your property ineligible for new or renewed flood insurance coverage through the NFIP as of the date of this letter.

... And Then

- Landowner got serious about completing a LOMR
- Initial LOMR rejected by FEMA
- Landowner hired new engineer – used information from preliminary model but hydrology from effective FIS to submit LOMR – FEMA approved.
- Six month lag in time before LOMR effective date created further compliance issue as landowner insisted on constructing before effective date of LOMR



Code of Federal Regulations

§ 73.4 Restoration of flood insurance coverage.

(a) Insurance availability shall be restored to a property upon a finding by the Administrator of a valid rescission of a declaration of a violation.

(b) A valid rescission shall be submitted to the Administrator and shall consist of:

(1) The name of the property owner(s) and an address or legal description of the property sufficient to identify the property and to enable FEMA to identify the previous declaration;

(2) A clear and unequivocal statement by an authorized public body rescinding the declaration and giving the reason(s) for the rescission;

(3) A description of and supporting documentation for the measures taken in lieu of denial of insurance in order to bring the structure into compliance with the local flood plain management regulations; and

(4) A clear statement that the public body rescinding the declaration has the authority to do so and a citation to that authority.

County requested inspection of property, so we could confirm it was now in compliance and we could initiate rescission process. Landowner declined for the time-being.

What Did We Learn

- The 1316 Declaration process isn't super clear, but was actually pretty simple with the additional guidance that FEMA provided
- Took a lot of effort & explanation to get support of County Officials
- Protecting CRS standing was important to BOCC
- Getting FEMA's buy-in on our justification for the request (not pursuing litigation) wasn't as hard as we expected ~ recognized our circumstances
- Getting the 1316 Declaration rescinded wasn't as important to the landowner as we expected

Contact Information

Sean O'Callaghan, CFM
Gallatin County Planning Department
311 W. Main, #108
Bozeman, MT 59715

(406) 582-3130

sean.ocallaghan@gallatin.mt.gov

