

# BOZEMAN<sup>MT</sup>

## WETLANDS PROTECTION & MITIGATION

Wednesday March 13th, 2024

## Outline

1. Review current wetland requirements in City of Bozeman
2. Sackett Case
3. Local Wetland Mitigation Option
4. Upcoming Changes



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## Related Strategic Plan Priorities

6.1. a) **Watershed Management** – Develop and implement a regional watershed approach to manage water quantity and quality.

6.3. d) **Climate Change Adaptation and Mitigation** – Increase the community's resiliency and preparedness in response to climate change.

6.5 **Parks, Trails and Open Space** – Support the maintenance and expansion of an interconnected system of parks, trails and open spaces.

6.6 **Habitat** – Work with partner organizations to identify at-risk, environmentally sensitive parcels [that] contribute to water quality, wildlife corridors, and wildlife habitat.

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## Wetlands Requirements Overview

- Army Corps of Engineers/EPA Requirements
- Local Development Code Requirements

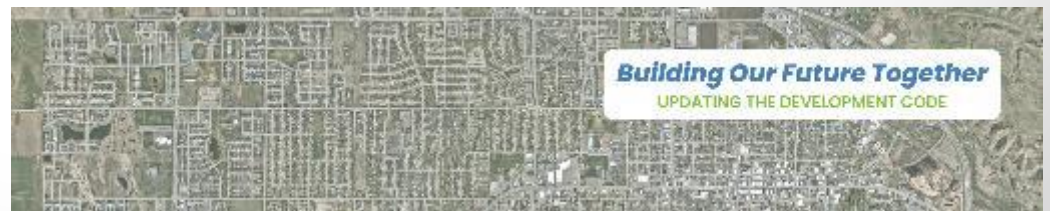


## City Code Requirements

- Priority 1: Avoid wetlands impacts
- Priority 2: Minimize wetlands impacts
- Lastly: Mitigate wetlands impacts where impacts are unavoidable

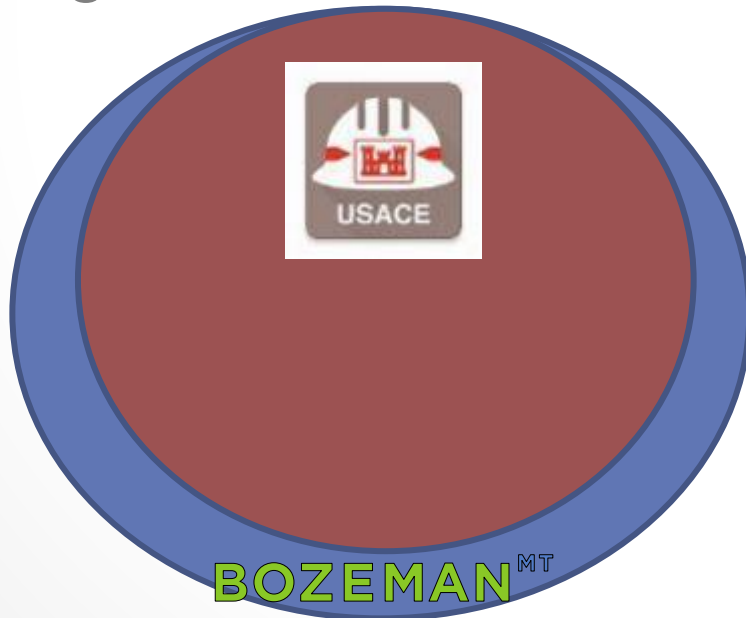
# Local Development Code Requirements - Differences from USACE

- Regulate isolated wetlands not connected to “Waters of the U.S.”
- Watercourse setbacks



## Local UDC Requirements

- Historically relied on permitting from USACE for overlapping regulations





## Local Requirements

- Bozeman does not regulate stormwater facilities or irrigation ditches as wetlands
- City Planning Division manages two wetlands consultant contracts to implement wetland regulations

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# Supreme Court Decision – Sackett Case

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- Prior to Sackett decision, regulated wetlands included wetlands with a “significant nexus” to interstate or navigable waters



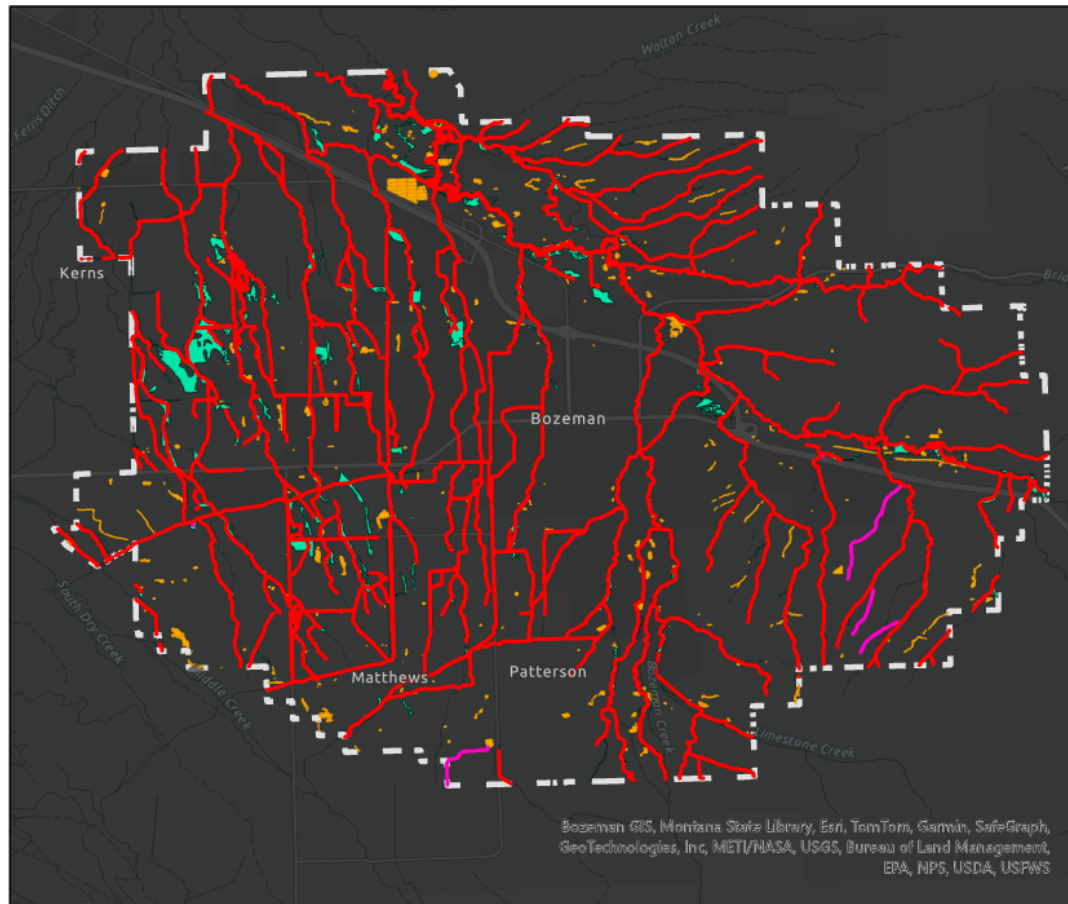
# Post Sackett Decision

- Regulated wetlands only include wetlands with a “continuous surface connection to Waters of the United States.”

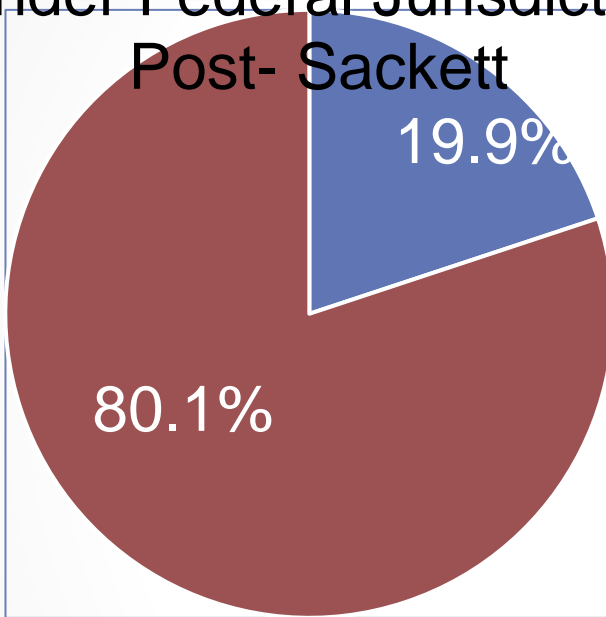
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# Estimate of Federal Jurisdiction of Bozeman Wetlands and Waterways



## City of Bozeman Wetlands – Under Federal Jurisdiction



■ No

Using the Methods above Pre-Sackett has an additional 27 acres of federal wetlands

Category	Acres
Total Wetlands within the Bozeman Urban Growth Boundary	1628
Total Acres Within Federal and City of Bozeman's Jurisdiction	1304
Total Acres of Isolated Wetland's Solely Within City of Bozeman's Jurisdiction	324
Category	Miles
Total Waterways within the Bozeman Urban Growth Boundary	254
Total Waterways Within Federal and City of Bozeman's Jurisdiction	250
Total Waterways Solely Within City of Bozeman's Jurisdiction	4

# Methods

## **Estimate of Federal Jurisdiction of Waterways within the Bozeman Urban Growth Area (UGA)**

- All waterways that are connected navigable water are considered WOTUS
- Waterways that start and end in uplands are not considered WOTUS
- Mapped waterways that lack bed and bank are not considered WOTUS

## **Estimate of Federal Jurisdiction of Wetlands within the Bozeman Urban Growth Area (UGA)**

### **Post Sackett**

- All wetlands within 25 feet of a WOTUS waterway are considered abutting and WOTUS
- All wetlands within 25 feet of a WOTUS wetland are considered WOTUS

### **Pre-Sackett**

- All wetlands within 50 feet of a WOTUS wetland or waterway are considered neighboring and/or abutting and WOTUS

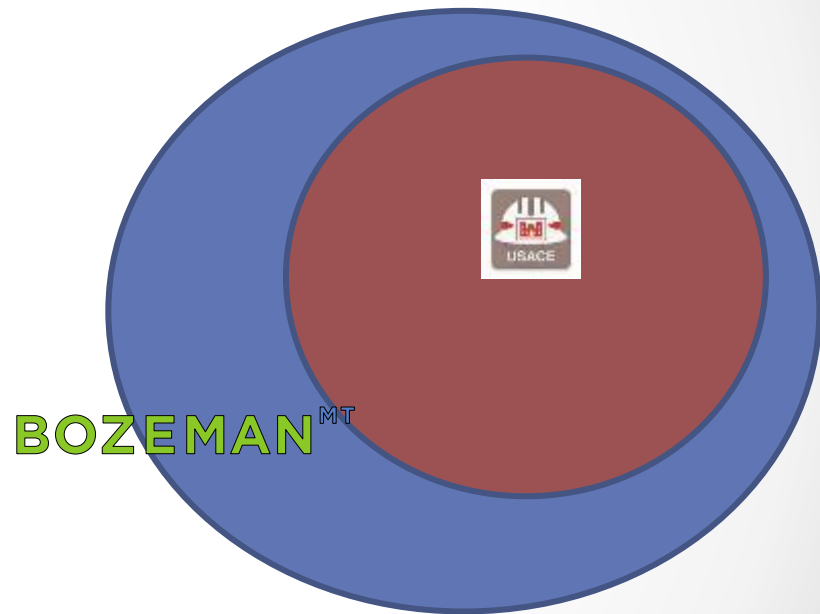
## **City of Bozeman Jurisdictional Waters**

- All wetlands and waterways.

# EPA/USACE Rulemaking

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- Revised wetlands rules in 2023 taking into account Sackett Decision





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# Local Wetland Bank Progress

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Sacajawea Audubon Society  
Indreland Audubon Wetland Preserve

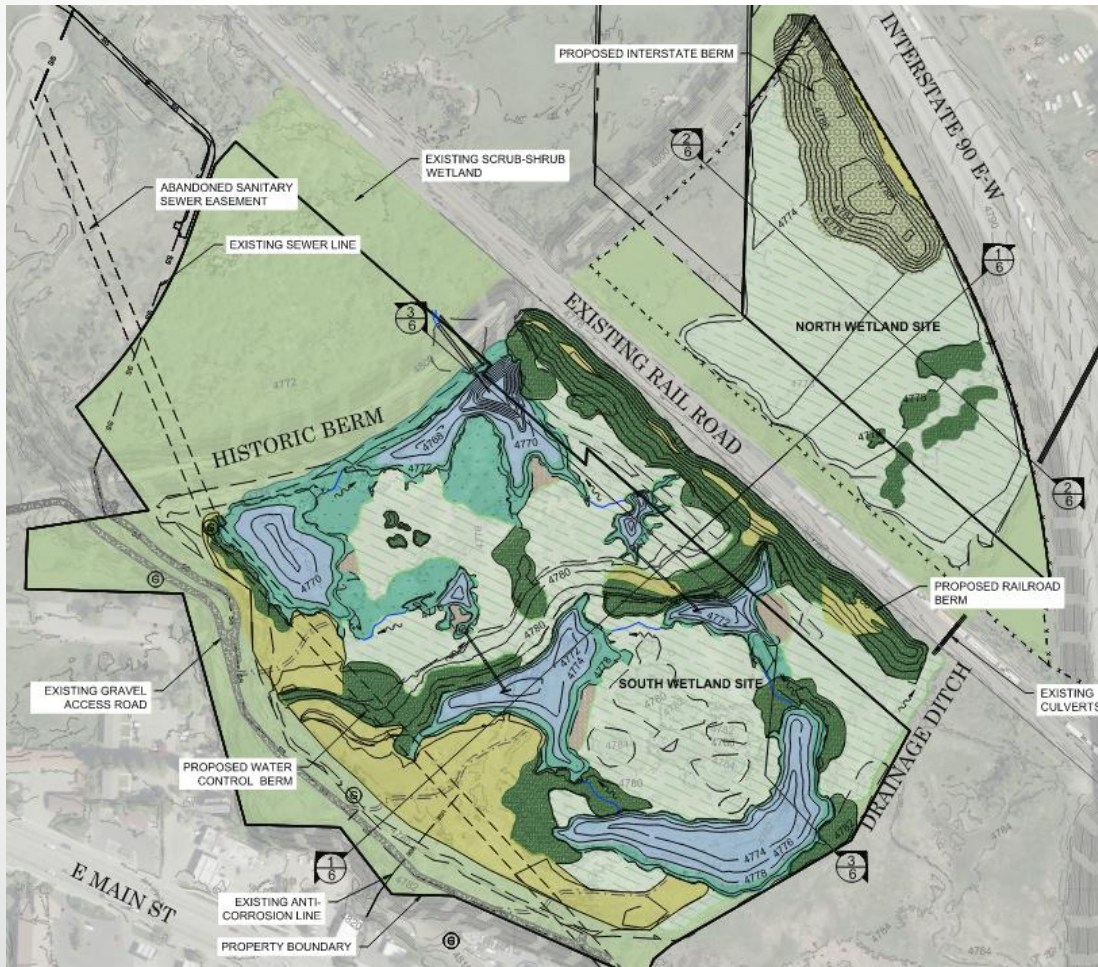
## Progress made:

- Design 90% complete
- 4 years of projected capacity
- Working on USACE authorization



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## USACE Coordination

- Wetlands mitigation regulated by both USACE and City
  - Need approved local bank
  - Follow 2008 Mitigation Rule

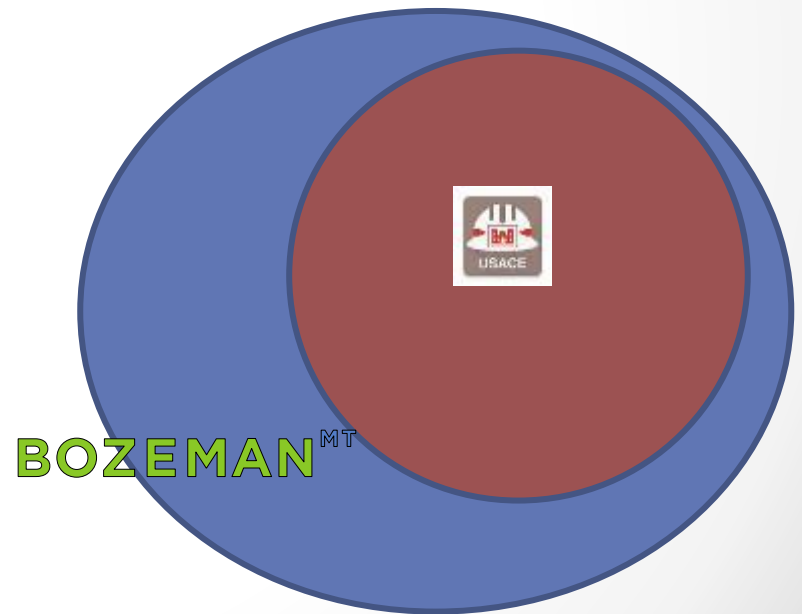


## Unresolved Issue

- Jurisdictional determinations associated with federal rule guidance in 2023

# Wetlands Oversight and Mitigation for City (only) Regulated Wetlands

- Staffing and program development for local permitting previously provided by USACE
  - Permitting
  - Mitigation tracking
  - Inspections
  - Enforcement
  - Etc.



- Use City resources to provide permitting and wetlands mitigation tracking previously provided by USACE?
  - Initial estimates \$300,000/year
  - Program cost recovery
- Interim enforcement of development requirements?



Prioritize local mitigation options for wetlands impacts to keep benefits in the local watershed

# Next Steps

- Modifications to development code
- Community Outreach
- City Boards and City Commission Reviews



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