

Mr. Chairman and Members of the Committee:

Good afternoon and thank you for inviting me today as a representative of local government to assist you in your task of reviewing water quality, quantity, and water use in Montana. The role of local government in protecting water quality and the availability of water to all legal users is obviously critical to a comprehensive statewide program to manage growth in demand for water resources.

I was asked to join this panel to discuss how local policies regarding land use and economic development are affected by water quality concerns and by concerns over the physical and legal availability of water. Obviously, continued healthy and sustainable local and regional economies hinges on several important factors, of which water quality and quantity are at the forefront. Without adequate water, and without adequate quality of water for certain uses, the vitality of our economy could suffer. And as we continue to increase in population here in the Gallatin, the importance of finding water of sufficient quality and quantity to support continued commercial and residential development will only increase over time.

The link between land use and water availability has been analyzed in great detail throughout many parts of the County but, in the Gallatin, we are in the initial stages of realizing development must be concurrent with protection of water quality and the physical and legal availability of water and the long-term sustainability of water quantity. We realize we have a long way to go here in understanding the role that water plays in continued economic prosperity but we have addressed these issues on a broad policy level and with specific implementation tools.

Before I go into some of the specific policies and standards the County has developed I want to give some background on the current status of growth and development in Gallatin County. Gallatin County's current population, including all municipalities, is approximately 80,000. Between 2000 and 2006, Gallatin County's overall population increased by 19.3% - an increase of approximately 3% per year and brought in over 13,000 new residents. The Department of Commerce projects Gallatin County's population could increase by upwards of 86% by 2030. This could mean the County and the municipalities would need to support a population of upwards of 148,000.

A tangential consideration regarding these population numbers is to understand where the growth is occurring. In Gallatin County, during 2000 – 2006, the population increased in the unincorporated areas by 12.1% while the incorporated areas saw an increase of 25.1%. This indicates that while our cities are growing here, so is the unincorporated areas of the County, as you saw yesterday by viewing the Utility Solutions water supply and wastewater treatment operations. These numbers do not, however, tell us, the long-term effects of growth on water quality and the physical and legal availability of water. Nor do the numbers help us to understand how we must address the relationship between water and growth. But it does tell us we have to take action.

While I believe we may not see this type of growth; that is, a consistent population increase of 3% per year over time, I believe we could continue to see an average of 2000 to 3000 new residents a year over the course of the next several decades resulting in a population of upwards of 110,000 by the year 2030. And undoubtedly this type of increase will spur continued economic activity. But it will also require us to be very proactive in how we establish infrastructure so our community can absorb this growth without degrading our quality of life.

As a result of continued migration and population growth, we will continue to develop land at a high rate in order to provide potential locations for ten thousand new homes and businesses within the next several decades. And with those new homes and business comes the need to provide adequate infrastructure and services. Here's where the County's policies and growth management tools come in.

On the broad policy level, the County's 2003 Growth Policy states as a primary goal to "Protect Water Quality." Another primary goal is to "Assure Sustained Water Quantity." (*See handout.*) With land development, the Growth Policy also addresses goals related to discouraging unplanned development and encouraging that infrastructure be installed concurrently with development.

Managing growth is the County Commission's most important priority. And understanding that one of the primary drivers of migration to Gallatin County is quality of life, the Commission, in 2006, embarked on a comprehensive program to implement the Growth Policy. This Growth Policy Implementation Program seeks, among other goals, to target growth to the areas where infrastructure exists and can be provided for with the least amount of public costs. And the availability of water, and the protection of water quality are certainly one component of the underlying policies behind both the Growth Policy and the implementation program.

To implement the broad goals of the Growth Policy, the County Commission adopted specific subdivision regulations that require subdividers to provide information regarding water rights, water quality and quantity, and to protect agri(*See handout.*) cultural water facilities. But the County also relies heavily on DEQ and DNRC to ensure new development protects water quality and has adequate legal and physical water.

Take water quality first: For years, the County has required, prior to final Subdivision and Platting Act approval, that subdividers provide DEQ or local approval for sanitation in the subdivision prior to final plat. And the County also requires DEQ/Health Department approval of the public drinking water system and storm water discharge systems. We rely upon DEQ because DEQ is the entity charged by law to regulate those systems. And quite frankly, the County does not have the institutional expertise to do so.

As far as the legal and physical availability of water, the County requires subdividers to provide significant amounts of information regarding water rights, the quantity available water and how the water rights will be used in a subdivision. Historically, and still today, the County has, for the most part, deferred completely to the State for determinations of legal and physical availability. But that is not to say the County is not concerned about the relationship between land use and development and impacts to water right holders.

In March of 2005, the County Commission adopted subdivision regulations that required subdividers to provide Beneficial Water Use Permits at the time of submittal of a preliminary plat application. Thus, without a showing that the State had approved a new appropriation or a change in use for the subdivision, the preliminary plat applications could not even proceed.

In 2006, the County Commission altered the timing of when the BWP would be required. Instead of the BWP being required at preliminary plat, the Commission recognized the DNRC process and the subdivision process should occur simultaneously. The result is that the Commission required the BWP at final plat. Thus, subdividers could receive preliminary plat approval and then apply to DNRC for the BWP.

In addition to the requirement to show, prior to final plat, a subdivider must mitigate effects on surface water. Our subdivision regulations require a watercourse setback or the approval of a watercourse mitigation plan. The Regulations require the provision of easements for drainage and irrigation easements. We require the Environmental Assessment to provide information on surface water, ground water and steps to avoid degradation. The Regulations also require subdividers to explain the impacts of the subdivision on agricultural water user facilities. And the Commission considers these issues to be very important; indeed, Commission comments and public participation repeatedly focuses in on issues related to water quality and the legal and physical availability of water.

These rules are designed to protect water quality and water users. But we certainly have room for improvement. As we continue to review development proposals, new issues arise as to how best to mitigate impacts. And we continue to wrestle with issues related to exempt wells.

In 2006, the Commission denied a major subdivision in the “triangle” – the area between Bozeman, Four Corners and Belgrade based, in part, on the subdividers proposal to put in 180 individual wells on 1-acre lots. The Commission found “the design of the subdivision cannot mitigate public health and safety with 180 individual wells...” And just next Tuesday, the Commission will hear a proposal to subdivide 30 acres into 26 lots, averaging just over 1 acre each while using individual wells and septic tanks. The location of the subdivision is within the Utility Solutions service area and currently within a mile or so of the City of Bozeman.

The question invariably comes back to tools the County has available to address water quality and the legal and physical availability of water in review of development proposals. Primarily, the County must continue to rely upon the State for permitting. But the County can do more to ensure continued economic prosperity does not negatively impact overall water quality, that new development provides adequate infrastructure for water, and that senior water right holders are not negatively affected by new development.

The Growth Policy Implementation Program, while not focused solely on water issues, will help to ensure water quality stays high by providing incentives for the use of or connection to central sewer and water systems, such as Utility Solutions. In addition, the County can continue to require new package water and sewer systems to be structured with a Sewer and/or Water District in charge. In addition, the County Planning Board completed a Regional Wastewater

Treatment Study to investigate the feasibility of various regional wastewater management concepts. I provided a copy of the Study to Krista Evans.

There are other tools available to Gallatin County to ensure subdivisions adequately mitigate affects on water quality. One of the most important tools is the use of Section 76-3-511, MCA, which would allow Gallatin County to adopt subdivision regulations that are more stringent than those required by DEQ. The impact could be that subdivisions of certain sizes or densities, or in specific locations, could be required to elevate the level of treatment of wastewater above that which DEQ establishes.

And perhaps most importantly, the County needs good information. In 2005, the Commission established a Water Task Force to provide information and guidance on the relationship between water and development. While this task force has not been active recently, the Commission may ask members to reform and continue its work to recommend policies to protect water resources throughout the County.

Cluster subdivisions, public assistance with water and sewer infrastructure, protection of key surface water components, better subdivision design can all play a role in protecting water quality.

As far as the legal and physical availability of water, the implementation of HB 831 could certainly impact economic activity and the County's growth management strategies in that it could impact where development occurs. If developers have the ability to change the location of use throughout a given water supply area, County policies regarding growth management could be supported. For instance, if a development is proposed for an area the Commission has targeted for growth through infrastructure investment and the site does not have water rights, the use of water rights from other locations must be flexible enough to ensure water can be used in the location where the Commission targets growth because water, while certainly critical to growth management, is but one of numerous services that must be provided to effectively manage growth.

Impacts of new development on irrigators also needs to at the forefront of concern. Conversion of green fields for development inevitably leads to conflicts between agriculture and new residents and the impact to agriculture water facilities is top amongst these issues. While Gallatin County requires mitigation in the forms of easements for water facilities, we can do better. This fall we plan to work with the Association of Gallatin Agricultural Irrigators (AGAI) to develop mitigation standards that do a better job of ensuring less conflict.

Continued economic prosperity is certainly tied to good water management. As such, local government must continue to play a strong role in ensuring a healthy relationship between development, water quality, and senior water right holders.

### 3.1 Water Quality

#### GOAL 1: Protect Water Quality.

##### Policies:

1. Minimize adverse impacts of development on rivers, streams and riparian areas.
  - Encourage development to demonstrate adequacy of setbacks and buffers.
2. Require development to demonstrate compliance with local, State and Federal water quality regulations and standards.
3. Encourage development to mitigate adverse impacts to neighboring properties, rivers, streams and riparian areas due to runoff.
  - Support an erosion control plan for major subdivisions at the time of preliminary plat submittal.
  - Encourage developers of minor subdivisions to document compliance with an erosion control plan prior to final plat approval.
4. Encourage multi-user or public water and wastewater treatment systems.
5. Encourage development to mitigate adverse impacts on wetlands, and require compliance with local, state and federal wetland protection regulations and standards.
  - Confirm compliance for both major and minor subdivisions.
  - Confirm-concurrence with Army Corps of Engineers on delineation of wetlands and evidence of application for a 404 permit.
6. Limit development to appropriate uses in identified source water protection areas.
7. Encourage development to document efforts to protect water quality.
8. Encourage heavy industrial uses, including animal feeding operations, to document mitigation of adverse impacts on surface and ground waters.

## **3.2 Water Quantity**

### **GOAL 1: Assure Sustained Water Quantity.**

#### **Policies:**

1. Encourage development to assess both the immediate and the long-term, cumulative impacts on water quantity.
2. Encourage development to document adequate water quantity.
  - Encourage development to show how water rights belonging to the property will be disposed of and demonstrate a rational plan to maintain and protect flows for existing water rights of others.

## **3.3 Fish, Wildlife and Plant Habitat**

### **GOAL 1: Conserve Important Habitat.**

#### **Policies:**

1. Use available incentives to conserve important habitat.
  - Neighborhood plans and citizen-petitioned 201 zoning districts should address conservation of important habitat.
  - Adopt criteria for protecting the most important habitat areas for fish, wildlife and plants and granting density bonuses based on the conservation value of the development.
2. Encourage development to conserve important habitat.
  - Promote open space corridors for identified wildlife migration corridors.
  - Encourage livestock operations to minimize adverse impacts on important habitat areas.
  - Encourage development to buffer important habitat areas.
  - Promote the use of covenants addressing:
    - a) Control of domestic animals.
    - b) No artificial feeding of bears, elk, deer, moose and big horn sheep.
    - c) Wildlife-friendly fencing.
    - d) Animal-proof refuse containers.
    - e) Attractant reduction (prohibiting outdoor food storage, elevated bird feeders, etc).
    - f) Wildlife access to streams.

## Montana Code Annotated 2005

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**76-3-511. Local regulations no more stringent than state regulations or guidelines.** (1) Except as provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a regulation under [76-3-501](#) or [76-3-504\(1\)\(f\)\(iii\)](#) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The governing body may incorporate by reference comparable state regulations or guidelines.

(2) The governing body may adopt a regulation to implement [76-3-501](#) or [76-3-504\(1\)\(f\)\(iii\)](#) that is more stringent than comparable state regulations or guidelines only if the governing body makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the governing body's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a regulation of the governing body adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the governing body to review the regulation. If the governing body determines that the regulation is more stringent than comparable state regulations or guidelines, the governing body shall comply with this section by either revising the regulation to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged regulation. The governing body may charge a petition filing fee in an amount not to exceed \$250.

(b) A person may also petition the governing body for a regulation review under subsection (4)(a) if the governing body adopts a regulation after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted governing body regulation.

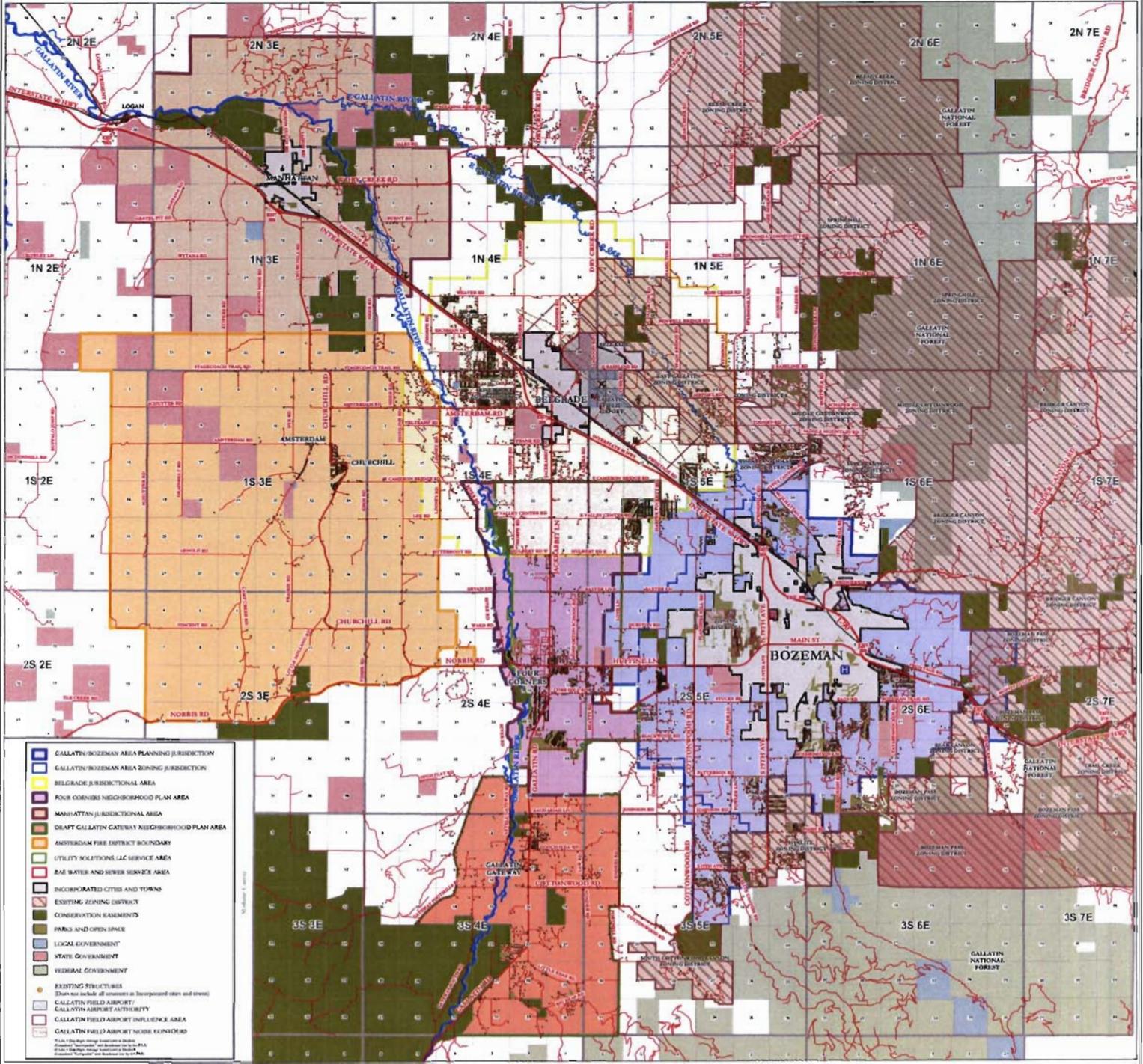
**History:** En. Sec. 5, Ch. 471, L. 1995; amd. Sec. 278, Ch. 42, L. 1997; amd. Sec. 2, Ch. 302, L. 2005.

*Provided by Montana Legislative Services*

5. Certification of Director of Public Service for subdivision within three miles of an incorporated municipality.
6. A horizontal scale of not less than 200 feet (200') to the inch, and the lengths of all lines shall be shown to at least tenths of a foot and all angles and bearings to at least the nearest minute.
7. Compliance with the requirements of the Uniform Standards for Final Subdivision Plats. (See APPENDIX C: UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS.)
8. Two (2) signed reproducible copies on a stable base polyester film or equivalent, one (1) digital file copy of the survey, and six copies shall be submitted.
9. **Beneficial Water Use Permit/Availability of Water.** Prior to final plat approval, the subdivider shall submit evidence to Gallatin County that the physical availability of water is sufficient to meet the water supply needs of the subdivision, as determined by the State of Montana, and that all uses of water within the subdivision are legally authorized. To fulfill the above requirement, and as required pursuant to Montana law, (i) the subdivider or the subdivider's water supply provider may provide to Gallatin County a permit to use water from the State of Montana pursuant to Title 85, Chpt. 2, MCA, in an amount equal to the water requirements of the subdivision as determined by the State of Montana; or (ii) the subdivider or subdivider's water supply provider may provide to Gallatin County permits and/or authorizations to change existing water rights from the State of Montana pursuant to Title 85, Chpt. 2. A permit and/or authorization to change existing water rights must demonstrate that, at the time of final plat approval, the subdivider or the subdivider's water supply provider has physical and legal access to water, as determined by the State of Montana, in an amount equal to the capacity required to meet the water requirements of the subdivision at full build out. If the subdivider connects to a water supply provider's system, the permits and/or authorizations to change existing water right must demonstrate the water supply provider has, at the time of final plat approval for the subdivision under review, physical and legal access to water, as determined by the State of Montana, in an amount equal to the capacity required to meet the water requirements of the water supply provider's entire supply system upon full build out of all lots within the water provider's system that were created pursuant to Title 76, Chpt. 3. The water provider's entire system includes: (i) the subdivider's subdivision; (ii) all other previously permitted subdivisions created pursuant to Title 76, Chpt. 3, for which the water supply provider provides water; and (iii) any existing or proposed subdivisions for which the water supply provider has committed to provide water.

# GROWTH PLANNING IN THE GALLATIN VALLEY OF MONTANA

DRAFT  
01/11/2007



- GALLATIN/BOZEMAN AREA PLANNING JURISDICTION
- GALLATIN/BOZEMAN AREA ZONING JURISDICTION
- BELGRADE JURISDICTIONAL AREA
- FOUR CORNERS NEIGHBORHOOD PLAN AREA
- MANHATTAN JURISDICTIONAL AREA
- DRAFT GALLATIN GATEWAY NEIGHBORHOOD PLAN AREA
- AMSTERDAM FIRE DISTRICT BOUNDARY
- UTILITY SOLUTIONS, LLC SERVICE AREA
- RAIL WATER AND SEWER SERVICE AREA
- INCORPORATED CITIES AND TOWNS
- EXISTING ZONING DISTRICTS
- CONSERVATION EASEMENTS
- PARKS AND OPEN SPACE
- LOCAL GOVERNMENT
- STATE GOVERNMENT
- FEDERAL GOVERNMENT
- EXISTING STRUCTURES  
(Does not include all structures as incorporated cities and towns)
- GALLATIN FIELD AIRPORT
- GALLATIN AIRPORT AUTHORITY
- GALLATIN FIELD AIRPORT INFLUENCE AREA
- GALLATIN FIELD AIRPORT NOISE CONTOURS

NOTE: This map is a draft and should not be used for any legal purposes. It is intended for informational purposes only. The map is based on the best available information and is subject to change without notice.



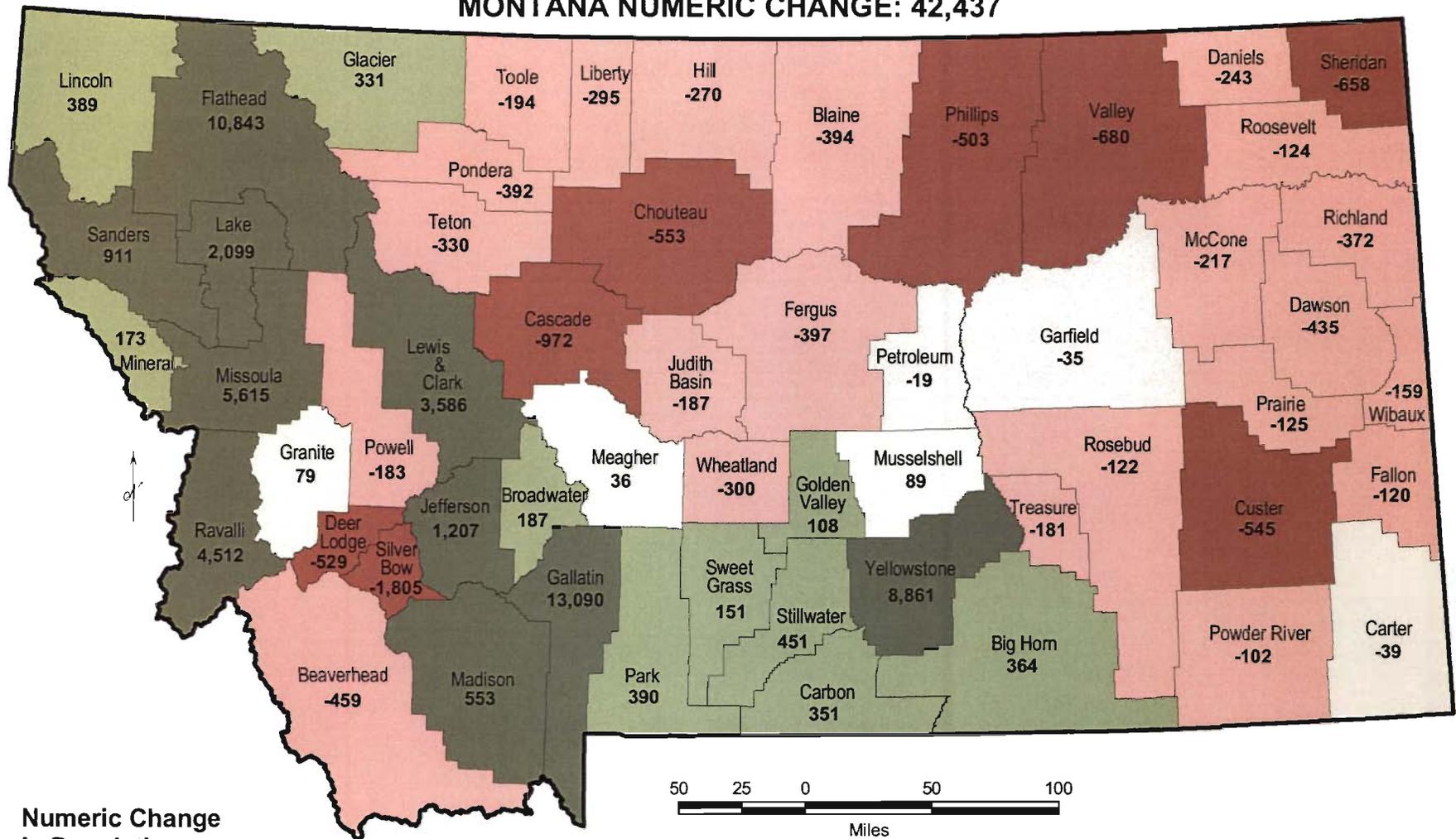
MAP PREPARED BY  
GALLATIN COUNTY, MT  
GIS DEPARTMENT  
PLANNING DEPARTMENT  
01/11/2006, 01/11/2007  
www.gallatinvalleyplanning.com



# MONTANA COUNTY POPULATION

Total Numeric Change Between 2000 Census and 2006 Estimates

MONTANA NUMERIC CHANGE: 42,437



## Numeric Change in Population



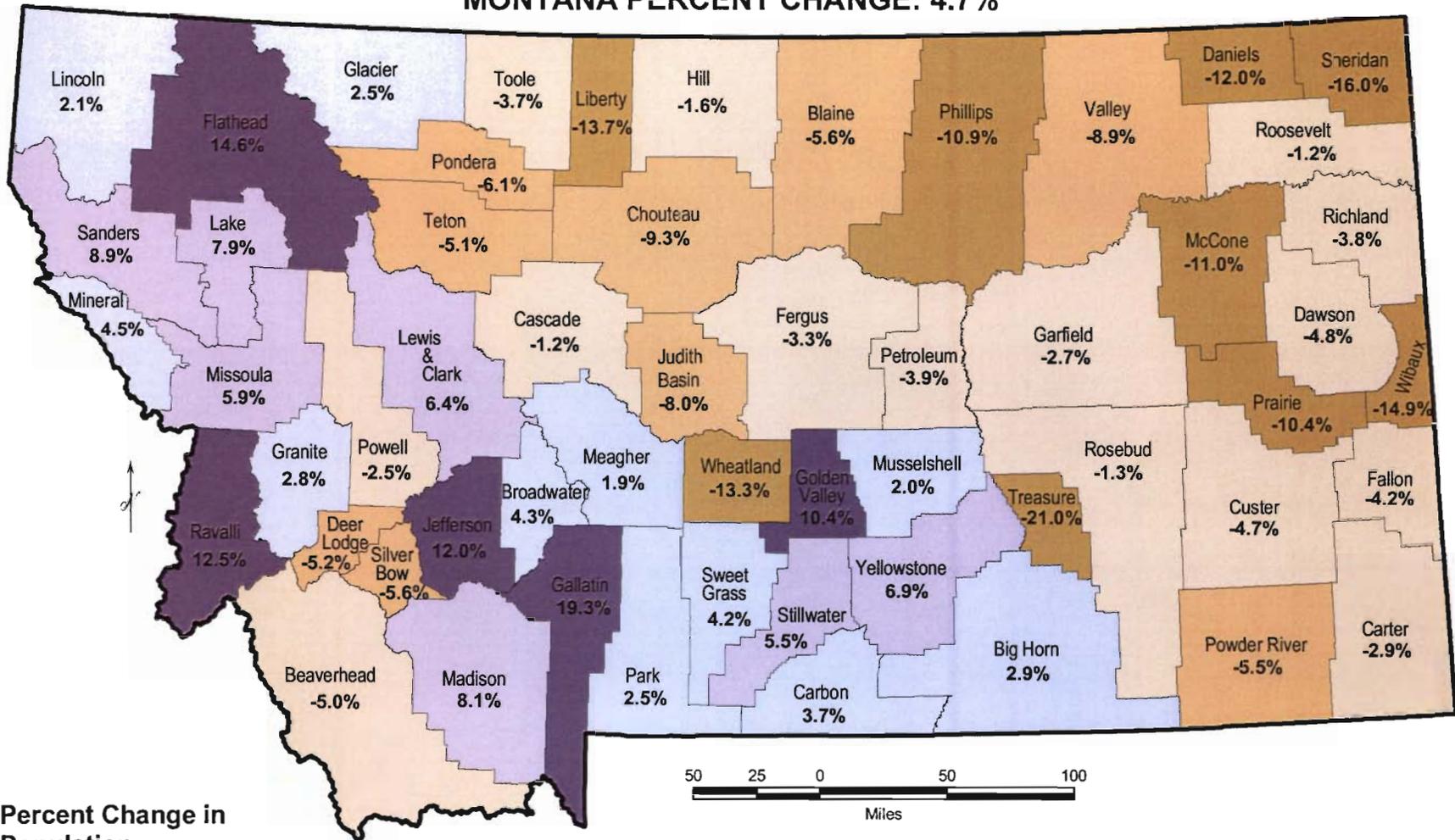
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 Census & Economic Information Center  
 Montana Department of Commerce  
 301 S. Park Ave, Helena, MT 59620-0505  
 406-841-2740 ceic@mt.gov  
<http://ceic.mt.gov>

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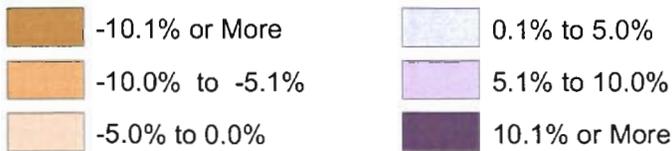
# MONTANA COUNTY POPULATION

## Percent Change Between 2000 Census and 2006 Estimates

### MONTANA PERCENT CHANGE: 4.7%



#### Percent Change in Population



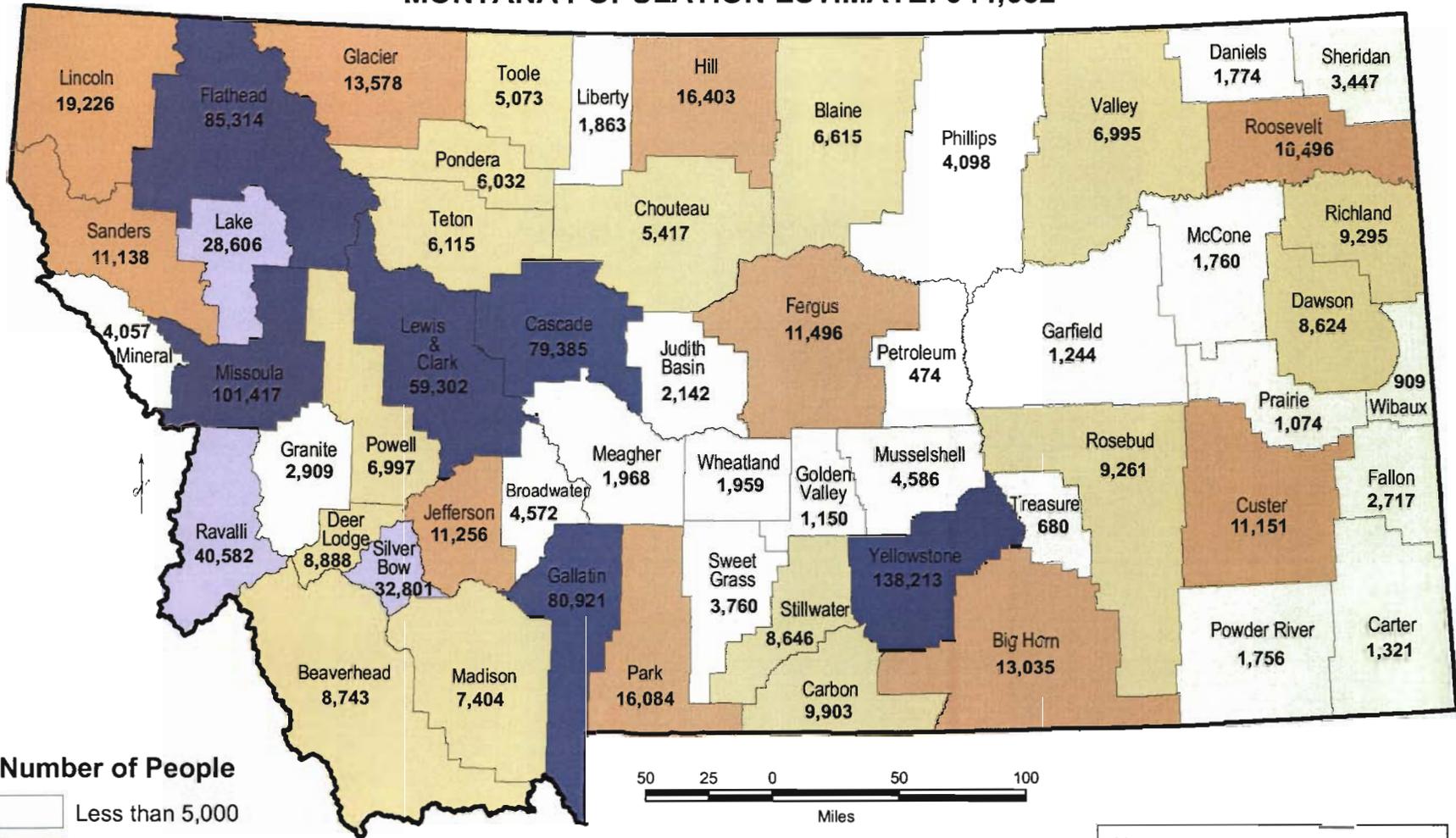
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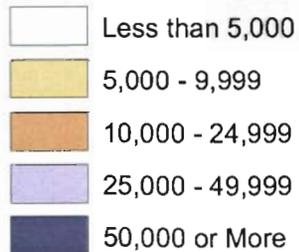
# MONTANA COUNTY POPULATION

July 1, 2006 Population Estimates

MONTANA POPULATION ESTIMATE: 944,632



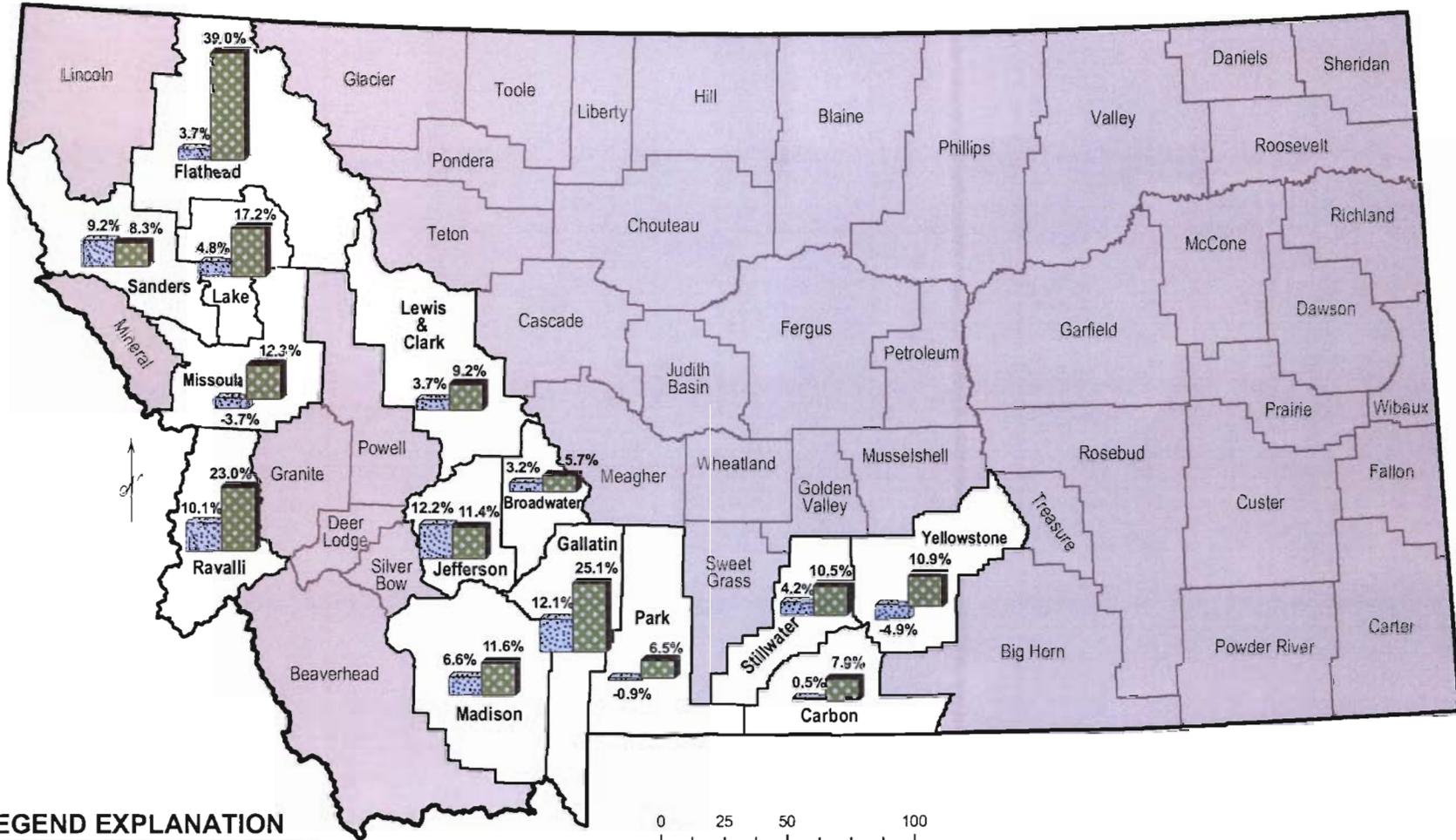
## Number of People



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# Montana Counties with High Population Growth Incorporated Versus Unincorporated Areas Population Percent Change 2000 - 2006



## LEGEND EXPLANATION

The Percent of Change in the Unincorporated Population from 2000 - 2006 is shown in light blue dots. In this example, the number of people living in Unincorporated areas of the county grew by 9% in that 6 year window.



The Percent of Change in the Incorporated Population from 2000 - 2006 is shown in green check. In this example, the number of people living in Incorporated areas of the county grew by 20% in that 6 year window.



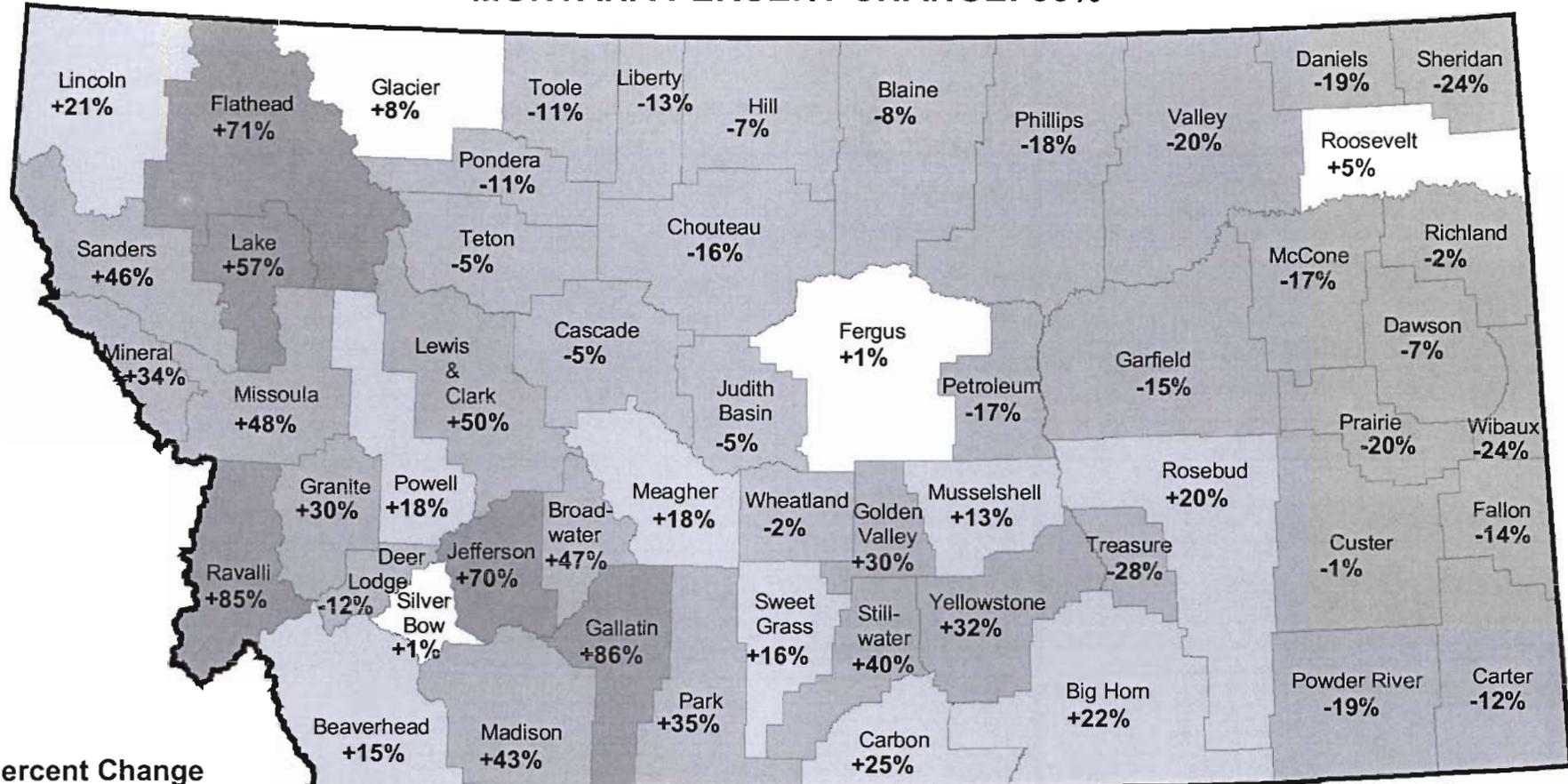
Map by: Census & Economic Information Center  
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# MONTANA POPULATION PROJECTIONS\*

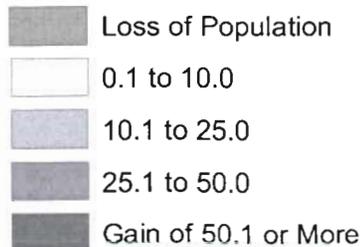
## Percent Change between Census 2000 and NPA Projections for 2030

### TOTAL POPULATION

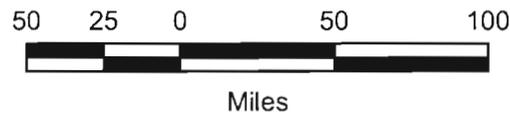
### MONTANA PERCENT CHANGE: 33%



#### Percent Change in Population



\* Projections are estimates of the population for future dates. They illustrate plausible courses of future population change based on assumptions about future births, deaths, international migration, and domestic migration.



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