CODE ENFORCEMENT DIVISION

"SERVING BILLINGS, BROADVIEW AND YELLOWSTONE COUNTY"

PLANNING & COMMUNITY SERVICES DEPARTMENT

510 NORTH BROADWAY, 4TH FLOOR

BILLINGS, MONTANA 59101

PHONE: (406) 247-8647 FAX: (406) 657-8327 EMAIL: wyckoffl@ci.billings.mt.us

Jon D. Lodge
Jane W. Deschner
1313 Granite Avenue
Billings, MT 59102

CASE NUMBER: 10–1998

NOTICE OF CITY CODE VIOLATION

December 2, 2010

Dear Mr. Lodge and Ms. Deschner,

The City of Billings Code Enforcement Office has become aware that a public nuisance, as defined by BMCC § 18–302, exists at 1313 Granite Avenue, legally described as Lot 12, Loners Subdivision 2nd Filing. Furthermore, the City has reason to believe that this public nuisance constitutes an emergency presenting imminent danger of serious injury to persons or property. Therefore, pursuant to BMCC § 18–306(a), you are ordered to abate the nuisance by removing the debris in and around your residence, as well as demolishing the structure, within ten (10) days. If you fail to abate the nuisance within the time prescribed, the City has the authority to abate the nuisance, with the costs of the abatement to be paid by you as prescribed by BMCC § 18–308(7).

Background

On October 9, 2010, a portion of the rims located approximately 60–70 yards north and uphill of your residence broke away and tumbled down the talus slope. Much of the slide material and debris came to rest along the north side of the residence. Large boulders impacted the house, with one large boulder breaking through the north wall and coming to rest inside the residence. Since the October 9 slide, the boulder inside the house has moved downward. Information received by the City indicates that the boulder and slide material may not be stable and may continue to move, despite your efforts to brace the house.

Although the residence may be to some degree restraining and acting as a barrier against further movement of the slide material, it likely will not be able to do so indefinitely. The weight and pressure of the debris could cause the residence to fail, with the possibility of causing the debris to continue downhill and cause damage to downhill homeowners and block city streets. This creates an emergency situation requiring immediate abatement.

Order

The City has determined that the situation at your property at 1313 Granite Avenue is a public nuisance, as defined by BMCC § 18–302:

> "A nuisance means a public nuisance created by allowing rubble, debris, junk, junk vehicle(s), dangerous structure(s) or refuse to accumulate so that it: (1) endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property; or (2) a condition which renders any public right-of-way dangerous for passage."

The debris in and around your residence constitutes a public nuisance, because it is rubble, debris, or a dangerous structure that has accumulated in such a way that it endangers safety or health. Additionally, it poses a risk of blocking the city streets below, thereby becoming a "condition which renders any public right-of-way dangerous for

passage." Furthermore, the structure itself constitutes an attractive nuisance which poses a risk injury to children who may be drawn to play in and around the structure.

The City has the authority to require abatement of a public nuisance which constitutes an emergency presenting imminent danger of serious injury to persons or property:

> "Whenever a public nuisance exists which constitutes an emergency presenting imminent danger of serious injury to persons or property, an enforcement officer may order, without notice or judicial action, that the public nuisance be summarily abated by removal, destruction or mitigation. If the owner or responsible person fails to comply with a such an order within the time prescribed, the code enforcement officer shall cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such abatement shall be paid by the owner of the property upon which the nuisance existed, pursuant to the procedures established in section 18-308."

BMCC § 18-306(b). Pursuant to this authority, the City hereby orders that the public nuisance described above be abated by you by the removal of the debris in and around your residence as well as the demolition of the structure within ten (10) days of the date of the this Order. BMCC § 18–306(b). If you fail to comply with this Order within the time prescribed, the City will abate the public nuisance, with the costs of such abatement to be paid by you.

Sincerely,

BILLINGS CODE ENFORCEMENT

By: Cal Meyer
Cal Meyer – 657-8288
Code Enforcement Officer

BILLINGS CITY ATTORNEY

By: _____
John "Kelly" Addy – 657-8201
Deputy City Attorney

I acknowledge receipt of a copy of the foregoing Notice of City Code Violation this 2nd day of December, 2010.

TOLLIVER LAW FIRM, P.C.

Matthew B. Gallinger

Attorneys of record
for Jon Lodge and Jane Deschner