

ENVIRONMENTAL QUALITY

CHAPTER 36

SUBDIVISIONS/ON-SITE
SUBSURFACE WASTEWATER TREATMENT

Subchapter 1

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Subchapter 1

Subdivision Application and Review

17.36.101 DEFINITIONS For purposes of subchapters 1, 3, 6, and 8, the following definitions apply:

(1) "Accessory building" means a subordinate building or structure on the same lot as the main building, which is under the same ownership as the main building, and which is devoted exclusively to an accessory use such as a garage, workshop, art studio, guest house, or church rectory.

(2) "Bedrock" means material that cannot be readily excavated by hand tools, or material that does not allow water to pass through or that has insufficient quantities of fines to provide for the adequate treatment and disposal of wastewater. The term does not include gravel and other rock fragments as defined in Department Circular DEQ-4, Appendix B.

(3) "Bedroom" means any room that is or may be used for sleeping. An unfinished basement is considered an additional bedroom.

(4) "Campground" is defined in 50-52-101, MCA.

(5) "Certificate of survey" is defined in 76-3-103, MCA.

(6) "Cesspool" means a seepage pit without a septic tank to pretreat the wastewater.

(7) "Commercial unit" means the area under one roof that is occupied by a business or other nonresidential use. A building housing two businesses is considered two commercial units.

(8) "Condominium" is defined in 70-23-101, MCA.

(9) "Connection" means a line that provides water or sewer service to a single building or main building with accessory buildings. The term is synonymous with "service connection." For purposes of ARM 17.36.328, "connection" means a water or sewer line that connects a subdivision to a public system.

(10) "Department" means the Montana Department of Environmental Quality.

(11) "Deviation" means a department-approved departure from a requirement contained in a department circular.

(12) "Drainageway" means a course or channel along which storm water moves in draining an area.

(13) "Dry well" means a storm water detention structure that collects surface runoff and discharges the water below the natural ground surface.

(14) "Escarpment" means any slope greater than 50% that extends vertically six feet or more as measured from toe to top.

(15) "Existing system" means a water supply or wastewater disposal system, in a proposed subdivision, that was installed prior to the submittal of a subdivision application under this subchapter.

(16) "Experimental system" means a wastewater treatment system for which specific design standards are not provided in Department Circular DEQ-4 or DEQ-2.

(17) "Facilities" means public or private facilities for the supply of water or disposal of sewage, storm water, or solid waste and any pipes, conduits, or other stationary method by which water, storm water, sewage, or solid wastes might be transported or distributed.

(18) "Fill" means artificially placed soil.

(19) "Floodplain" means the area adjoining the watercourse or drainway that would be covered by a flood that is expected to recur on the average of once every 100 years or by a flood that has a one percent chance of occurring in any given year. The floodplain consists of the floodway and the floodfringe, as defined in ARM 36.15.101.

(20) "Gray water" means wastewater that is collected separately from sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets.

(21) "Ground water monitoring" means measuring the depth from the natural ground surface to the seasonally high ground water for a long enough period of time to detect a peak and then a sustained decline in the ground water level.

(22) "Holding tank" means a watertight receptacle that receives wastewater for retention and does not as part of its normal operation dispose of or treat the wastewater. The term does not include surge tanks used in a gray water irrigation system if the system meets the requirements of ARM 17.36.319.

(23) "Impervious layer" means any layer of material in the soil profile that has a percolation rate slower than 240 minutes per inch.

(24) "Individual water system" means any water system that serves one living unit or commercial unit and that is not a public water supply system as defined in 75-6-102, MCA.

(25) "Individual wastewater system" means a wastewater system that serves one living unit or commercial unit and that is not a public sewage system as defined in 75-6-102, MCA.

(26) "Limiting layer" means bedrock, an impervious layer, or seasonally high ground water.

(27) "Living unit" means the area under one roof that can be used for one residential unit and that has facilities for sleeping, cooking, and sanitation. A duplex is considered two living units.

(28) "Local health officer" means health officer as defined in 50-2-101, MCA, or the health officer's designee.

(29) "Lot" is synonymous with "tract" or "parcel" for purposes of this chapter.

(30) "Main" means any line providing water or sewer to two or more service connections, any line serving a water hydrant that is designed for firefighting purposes, or any line that is designed to water or sewer main specifications.

(31) "Mixing zone" is defined in 75-5-103, MCA.

(32) "Mobile home" means a trailer equipped with necessary service connections that is designed for use as a long-term residence.

(33) "Multiple-user wastewater system" means a wastewater system that serves, or is intended to serve, more than two living units or commercial units or a combination of both and that is not a public sewage system as defined in 75-6-102, MCA. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units by 2.5.

(34) "Multiple-user water supply system" means a water supply system that serves, or is intended to serve, more than two living units or commercial units or a combination of both and that is not a public water supply system as defined in 75-6-102, MCA. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units by 2.5.

(35) "Municipal" means pertaining to an incorporated city or town.

(36) "Natural soil" means soil that has developed through natural processes and to which no fill material has been added.

(37) "Parcel" means a part of land which is created by a division of land. The term is synonymous with "tract" and "lot" for purposes of this chapter.

(38) "Percolation test" means a standardized test used to assess the infiltration rate of soils, performed in accordance with Appendix A in Department Circular DEQ-4.

(39) "Plat" is defined in 76-3-103, MCA.

(40) "Preliminary plat" is defined in 76-3-103, MCA.

(41) "Professional engineer" means an engineer licensed or otherwise authorized to practice engineering in Montana pursuant to Title 37, chapter 67, MCA.

(42) "Public wastewater system" means a system for collection, transportation, treatment, or disposal of wastewater that serves 15 or more families or 25 or more persons daily for any 60 or more days in a calendar year. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units by 2.5, so that ten or more proposed residential connections will be considered a public system.

(43) "Public water supply system" means a system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for any 60 or more days in a calendar year. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units by 2.5, so that ten or more proposed residential connections will be considered a public system.

(44) "Recreational camping vehicle" means a vehicular unit designed primarily as temporary living quarters for recreational, camping, travel, or seasonal use, and that either has its own power or is mounted on, or towed by, another vehicle. The basic types of RVs are camping trailer, fifth wheel trailer, motor home, park trailer, travel trailer, and truck camper.

(45) "Redoximorphic features" or "mottling" means soil properties associated with wetness that results from the reduction and oxidation of iron and manganese compounds in the soil after saturation and desaturation with water.

(46) "Registered sanitarian" means a person licensed to practice the profession of sanitarian in Montana pursuant to Title 37, chapter 40, MCA.

(47) "Reviewing authority" is defined in 76-4-102, MCA.

(48) "Sealed pit privy" means an enclosed receptacle designed to receive non-water-carried toilet wastes into a watertight vault.

(49) "Seasonally high ground water" means depth from the natural ground surface to the upper surface of the zone of saturation, as measured in an unlined hole or perforated monitoring well during the time of the year when the water table is the highest. The term includes the upper surface of a perched water table.

(50) "Seepage pit" means a covered underground receptacle that receives wastewater after primary treatment and allows the wastewater to seep into the surrounding soil.

(51) "Septic tank" means a wastewater settling tank in which settled sludge is in immediate contact with the wastewater flowing through the tank while the organic solids are decomposed by anaerobic action.

(52) "Sewage" is synonymous with "wastewater" for purposes of this chapter.

(53) "Shared wastewater system" means a wastewater system that serves, or is intended to serve, two living units or commercial units or a combination of both and that is not a public sewage system as defined in 75-6-102, MCA.

(54) "Shared water system" means a water system that serves, or is intended to serve, two living units or commercial units or a combination of both and that is not a public water supply system as defined in 75-6-102, MCA.

(55) "Site evaluation" means an evaluation to determine if a site is suitable for the installation of a subsurface wastewater treatment system.

(56) "Slope" means the rate that a ground surface declines in feet per 100 feet. It is expressed as percent of grade.

(57) "Soil consistence" means the attributes of soil material as expressed in degree of cohesion and adhesion or in resistance to deformation or rupture. See Appendix B of Department Circular DEQ-4.

(58) "Soil profile" means a description of the soil strata to a depth of eight feet using the United States Department of Agriculture (USDA) soil classification system method, which can be found in Appendix B, Department Circular DEQ-4.

(59) "Soil structure" means the combination or arrangement of primary soil particles into secondary units or peds. See Appendix B of Department Circular DEQ-4.

(60) "Soil texture" means the amount of sand, silt or clay measured separately in a soil mixture. See appendix B of Department Circular DEQ-4.

(61) "Spring" means natural opening in the earth's surface from which water issues or seeps.

(62) "State waters" is defined in 75-5-103, MCA.

(63) "Subsurface wastewater treatment system" means the process of wastewater treatment in which the effluent is applied below the soil surface or into a mound by an approved distribution system.

(64) "Surface water" means any water on the earth's surface including, but not limited to, streams, lakes, ponds, reservoirs, and irrigation ditches, whether fresh or saline.

(65) "Tract" is synonymous with "lot" or "parcel" for the purposes of this chapter.

(66) "Unstable land forms" means areas showing evidence of mass down-slope movement such as hummock hill slopes, debris flows, landslides, and rock falls. Unstable land forms may be evidenced by slip surfaces roughly parallel to the hillside; landslide scars and carving debris ridges; fences, trees, or telephone poles which appear tilted; or tree trunks which bend uniformly as they enter the ground.

(67) "Waiver" means a department-approved departure from a requirement contained in department rules. Granting of waivers must be in accordance with ARM 17.36.601.

(68) "Wastewater" means water-carried wastes. For purposes of these rules, wastewater does not include storm water. The term includes, but is not limited to, the following:

- (a) household, commercial, or industrial wastes;
- (b) chemicals;
- (c) human excreta; or
- (d) animal and vegetable matter in suspension or solution.

(69) "Wastewater treatment system" or "wastewater disposal system" means a system that receives wastewater for purposes of treatment, storage, or disposal. The term includes, but is not limited to, all disposal methods described in Department Circulars DEQ-2 and DEQ-4.

(70) "Well" means an artificial excavation that derives water from the interstices of rocks or soil which it penetrates.

(71) "Well isolation zone" means the area within a 100-foot radius of a water well.

(72) "Zone of saturation" means the area beneath the ground in which all open spaces are filled with ground water. (History: 76-4-104, MCA; IMP, 76-4-104, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1984 MAR p. 1568, Eff. 10/26/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2000 MAR p. 967, Eff. 4/14/00; AMD, 2000 MAR p. 3371, Eff. 12/8/00; AMD, 2002 MAR p. 1981, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03; AMD, 2009 MAR p. 1786, Eff. 10/16/09; AMD, 2014 MAR p. 2098, Eff. 9/19/14; AMD, 2016 MAR p. 722, Eff. 4/23/16.)

17.36.102 APPLICATION--GENERAL (1) To initiate review of a subdivision under 76-4-125 or 76-4-134, MCA, a person must submit a complete application to the department. The application must be signed by all owners of record of the property proposed to be subdivided. In the application, the owners may designate an authorized representative responsible for subsequent correspondence with the reviewing authority. If the department has certified a local department or board of health to review subdivisions pursuant to 76-4-104, MCA, the application must be submitted to the local reviewing authority.

(2) A subdivision application must be on a form approved by the department. Copies of the application form may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901, <http://www.deq.mt.gov>, or from the local reviewing authority.

(3) A copy of the complete application, including all supporting information supplied to the reviewing authority, and all resubmittals of the application, must be submitted concurrently to the local health officer having jurisdiction for purposes of reviewing compliance with local laws and regulations, as provided in ARM 17.36.108.

(4) To resume review of an application that has been inactive for more than one year after the issuance of a denial letter by the reviewing authority, the applicant shall reapply and submit fees as required by subchapter 8, unless the file is inactive due to ground water monitoring or other requirements imposed by the reviewing authority.

(5) In addition to meeting the requirements of this chapter, subdivisions designed for the placement of mobile homes or recreational camping vehicles may be subject to the requirements of ARM Title 37, chapter 111, subchapter 2.

(6) If a proposed subdivision includes facilities for wastewater treatment or disposal, including gray water irrigation, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The designated agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements. (History: 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1981 MAR p. 254, Eff. 3/27/81; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2000 MAR p. 967, Eff. 4/14/00; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2009 MAR p. 1786, Eff. 10/16/09; AMD, 2014 MAR p. 2772, Eff. 9/19/14.)

17.36.103 APPLICATION--CONTENTS (1) In addition to the completed application form required by ARM 17.36.102, the following information must be submitted to the reviewing authority as part of a subdivision application:

- (a) payment of subdivision review fees as required in subchapter 8;
- (b) plans and specifications for water supply, wastewater treatment, and storm water systems;
- (c) if public or multiple-user water supply or wastewater systems are proposed, one copy of the design report and one set of plans and specifications may be submitted until the plans are approvable, after which three copies of final plans and specifications must be submitted;
- (d) lot layout documents as required by ARM 17.36.104;
- (e) a vicinity map or plan showing the locations of the following features if they are within 100 feet of proposed or approved subdivision mixing zones, within 100 feet of proposed subdivision water supply or wastewater treatment facilities, or within 100 feet of the perimeter of the proposed subdivision:
 - (i) lakes, streams, irrigation ditches, wetlands, and springs; and
 - (ii) existing, previously approved, and proposed wells, wastewater treatment systems, and mixing zones;
- (f) evidence that the water source for the proposed subdivision is sufficient in terms of quality, quantity, and dependability, as required by ARM 17.36.331 and 17.36.332;
- (g) if ground water is proposed as a water source, the applicant shall submit the following information:
 - (i) the location of the proposed ground water source, which must be shown on the lot layout, indicating distances to any potential sources of contamination within 500 feet and any known mixing zone as defined in ARM 17.30.502. If the reviewing authority identifies a potential problem, it may require that all potential sources of contamination be shown in accordance with Department Circular PWS-6; and
 - (ii) a description of the proposed ground water source, including approximate depth to water bearing zones and lithology of the aquifer;
- (h) if water is to be supplied by means other than individual on-site wells, information about water use agreements;
 - (i) if subsurface wastewater treatment systems are proposed:
 - (i) soil profile descriptions, percolation tests if required, and other pertinent soil information for each proposed drainfield;
 - (ii) seasonal high ground water information;
 - (iii) direction and percentage of slope across the treatment area or a contour map with a contour interval of at least two feet; and
 - (iv) any other evidence to show whether the wastewater treatment systems are sufficient in terms of capacity and dependability;

- (j) if gray water irrigation systems are proposed:
 - (i) descriptions of the soils within 25 feet of proposed gray water irrigation areas. Soils must be described in accordance with Department Circular DEQ-4. Each test hole must be keyed by a number on a copy of the lot layout or map with the information provided in the report; and
 - (ii) the location and design of the proposed systems;
 - (k) a copy of the nondegradation analysis and calculations as required by ARM 17.30.715. If the proposed wastewater disposal facilities for a subdivision are subject to the discharge permit requirements of Title 75, chapter 5, MCA, and ARM Title 17, chapter 30, the applicant shall first obtain the discharge permit and provide the reviewing authority with a copy of the discharge permit nondegradation determination;
 - (l) a storm drainage map and plan as required by ARM 17.36.310;
 - (m) the name of the solid waste disposal site that will serve the subdivision;
 - (n) a copy of any environmental assessment required for the subdivision under Title 76, chapter 3, MCA;
 - (o) a copy of the plat, certificate of survey, deed, or other document that is consistent with the document that will be, or has been, filed with the county clerk and recorder for the proposed subdivision;
 - (p) a copy of applicable letters of approval or denial from local government officials;
 - (q) for an application that is not subject to review by a local reviewing authority under 76-4-104, MCA, a certification from the local health officer having jurisdiction that the design for non-public water supply and wastewater disposal facilities complies with applicable laws and regulations of local government;
 - (r) a copy of applicable supporting legal documents;
 - (s) except for connections to existing public systems addressed under ARM 17.36.328(2)(b)(iv), if the proposed water supply is from wells or springs, a letter from the Department of Natural Resources and Conservation stating that the water supply, either:
 - (i) is exempt from water rights permitting requirements; or
 - (ii) has a water right, as defined in 85-2-422, MCA.
 - (t) a copy or a summary of any public comments on preliminary sanitation information collected as provided in 76-3-604(7), MCA;
 - (u) if an application involves a change to the plans and specifications for a subdivision previously approved by the reviewing authority, a copy of the certificate of subdivision approval and a copy of the approved lot layout document; and
 - (v) all additional information that is required under this chapter or that the reviewing authority determines is reasonably necessary for the review of the proposed subdivision. (History: 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2009 MAR p. 1786, Eff. 10/16/09; AMD, 2011 MAR p. 2278, Eff. 10/28/11; AMD, 2014 MAR p. 2098, Eff. 9/19/14; AMD, 2016 MAR p. 722, Eff. 4/23/16.)

SUBDIVISIONS/ON-SITE
SUBSURFACE WASTEWATER TREATMENT

17.36.104

17.36.104 APPLICATION--LOT LAYOUT DOCUMENT (1) The applicant shall provide four copies of lot layout documents for the proposed subdivision. The lot layout documents must be on sheets no larger than 11" x 17", at a scale no smaller than 1" = 200'. The reviewing authority may require a larger scale if needed to enhance readability. Multiple sheets may be used for large developments, provided that individual lots are not split across two sheets. If multiple sheets are used, a single sheet must also be provided, using an appropriate scale, that shows the entire development.

(2) The following information must be provided on the lot layout documents. Other information (e.g., percolation test results, soil profile descriptions) may be included on the lot layout documents only if the documents remain legible:

- (a) the name of the subdivision, and the county, section, township and range (e.g., "Sec. 12 T27N R6E") in which the proposed subdivision is located;
- (b) a north arrow and scale;
- (c) the boundaries, dimensions, and total area of each lot;
- (d) an identifier or number for each lot (e.g., "Lot 1, Lot 2," "Tract 1, Tract 2," or "Parcel 1, Parcel 2");
- (e) locations of existing and proposed easements;
- (f) locations of existing and proposed roads and utilities;
- (g) locations, sizes, and design details of existing and proposed storm water structures (culverts, ponds, dry wells, etc.);
- (h) locations of drainageways;
- (i) name and affiliation of the person who prepared the lot layout;
- (j) information as set out in Table 1 for the specific water supply and wastewater systems in the subdivision. All systems must be labeled as "existing" or "proposed."

TABLE 1
REQUIREMENTS FOR LOT LAYOUTS

	Subdivisions served by nonmunicipal wells	Subdivisions served by nonmunicipal wastewater systems	Subdivisions served by municipal water	Subdivisions served by municipal wastewater systems
Existing and proposed wells, setbacks in ARM 17.36.323 Table 2, and features listed in ARM 17.36.103(1)(e)	X	X	X	X

	Subdivisions served by nonmunicipal wells	Subdivisions served by nonmunicipal wastewater systems	Subdivisions served by municipal water	Subdivisions served by municipal wastewater systems
Water lines (suction and pressure)			X	X
Water lines (extension and connections)	X	X	X	X
Existing and proposed wastewater systems (drainfield, replacement area, and existing septic tanks)	X	X		
Existing and proposed gray water irrigation systems	X	X	X	X
Percent and direction of slope across the drainfield	X	X		
Sewer lines (extensions and connections)	X	X	X	X
Lakes, springs, irrigation ditches, wetlands and streams	X	X		
Percolation test locations, if provided, keyed to result form		X		
Soil pit locations keyed to soil profile descriptions		X		
Ground water monitoring wells keyed to monitoring results form	X	X	X	X

SUBDIVISIONS/ON-SITE
SUBSURFACE WASTEWATER TREATMENT

17.36.105

	Subdivisions served by nonmunicipal wells	Subdivisions served by nonmunicipal wastewater systems	Subdivisions served by municipal water	Subdivisions served by municipal wastewater systems
Floodplain boundaries	X	X	X	X
Cisterns	X	X	X	X
Existing and proposed building locations	X	X	X	X
Driveways	X	X	X	X
Road cuts and escarpments or slopes > 25%		X		
Mixing zone boundaries and direction of ground water flow	X	X		
Locations, sizes, and design details of existing and proposed storm water facilities	X	X	X	X

(History: 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2009 MAR p. 1786, Eff. 10/16/09; AMD, 2014 MAR p. 2098, Eff. 9/19/14.)

17.36.105 SUBDIVISION AND PLATTING ACT EXCLUSIONS SUBJECT TO DEPARTMENT REVIEW (REPEALED) (History: 76-4-104, MCA; IMP, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; TRANS, from DHES, 1996 MAR p. 1499; REP, 2002 MAR p. 1465, Eff. 5/17/02.)

17.36.106 REVIEW PROCEDURES--APPLICABLE RULES (1) The procedures for review of subdivision applications by the reviewing authority are as follows:

(a) Upon receipt of a subdivision application, the department will have 55 days to approve, conditionally approve, or deny the subdivision application, unless an environmental impact statement is required, in which case action must be taken within 120 days.

(b) If a local department or board of health has been certified as the reviewing authority pursuant to 76-4-104, MCA, the local reviewing authority shall, within 45 days after receipt of a subdivision application, review the application and forward the application to the department together with a recommended action for approval, conditional approval, or denial. The department shall take final action on the application within ten days after receiving the recommendation of the local reviewing authority, but not later than the time remaining in the 55-day or 120-day period set out in (1)(a).

(i) If the local reviewing authority recommends denial of an application, the recommendation must be in the form of a denial letter sent to the applicant within 45 days after receipt of the application. The local reviewing authority shall send a copy of the application and denial letter to the department. A denial letter issued by the local reviewing authority shall constitute the department's final action regarding the denial unless the department finds, pursuant to ARM 17.36.116, that the recommended denial was in error.

(c) If an application is incomplete, the reviewing authority shall deny the application, setting forth, in writing, the deficiencies to the applicant and the applicant's representative. If the additional information is submitted within 30 days after the date of the denial letter, the reviewing authority shall review the resubmitted application within 30 days after receipt. If the review is conducted by a local department or board of health that is certified under 76-4-104, MCA, the department shall make a final decision on the resubmitted application within ten days after the local reviewing authority completes its review. If the additional information is not submitted within 30 days after the date of the denial letter, the review time frames in (a) and (b) apply.

(2) Pursuant to 76-4-125(1)(b), MCA, for an application that is not subject to review by a local reviewing authority under 76-4-104, MCA, the department shall provide an informational written notice to the applicant, within five working days after receipt of an application, if any of the following items is not submitted with the application:

(a) the certification required by ARM 17.36.108(1)(a);

(b) if applicable, an approval from the local governing body under Title 76, chapter 3, MCA; or

(c) if applicable, public comments or summaries of public comments collected as provided in 76-3-604(7)(a), MCA.

(3) Subdivision lots recorded with sanitary restrictions prior to July 1, 1973, shall be reviewed in accordance with requirements set forth in this chapter. In cases where any requirements of this chapter would preclude the use for which each lot was originally intended, then the applicable requirements (including the absence thereof) in effect at the time such lot was recorded shall govern except that sanitary restrictions in no case shall be lifted from any such lot which cannot satisfy any of the following requirements:

(a) if a subsurface wastewater treatment system is utilized, soil conditions must provide for safe treatment and disposal of wastewater effluent; and

(b) unless a waiver is granted pursuant to ARM 17.36.601 after consultation with the local health department:

(i) if a subsurface wastewater treatment system is utilized, there must be at least four feet from the natural ground surface to a limiting layer;

(ii) the site for any subsurface wastewater treatment system may not exceed 25% in slope;

(iii) no part of the lot utilized for the subsurface wastewater treatment system components addressed in Department Circular DEQ-4, Chapter 6 may be located in a 100-year floodplain; and

(iv) the proposed water supply must comply with the requirements of this chapter.

(4) Plans for proposed subdivision facilities that will be public water supply or public sewage disposal systems must be reviewed in accordance with the provisions of Title 75, chapter 6, MCA, and ARM Title 17, chapter 38, subchapter 1. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units by 2.5. (History: 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2011 MAR p. 2278, Eff. 10/28/11; AMD, 2014 MAR p. 2098, Eff. 9/19/14; AMD, 2016 MAR p. 722, Eff. 4/23/16.)

Rule 17.36.107 reserved

17.36.108 COMPLIANCE WITH LOCAL REQUIREMENTS (1) The applicant shall provide the department with evidence as to whether non-public facilities for the supply of water and disposal of wastewater are in compliance with applicable laws and regulations of local government. The evidence must be in one of the following forms:

(a) for an application that is not subject to review by a local reviewing authority under 76-4-104, MCA, a certification of compliance that is signed by the local health officer having jurisdiction. The applicant shall submit the certification to the department with the subdivision application; or

(b) for an application that is subject to review by a local reviewing authority under 76-4-104, MCA, a signed certificate of subdivision approval.

(2) As provided in ARM 17.36.110, the department may not issue a certificate of subdivision approval if non-public facilities for water supply or for the disposal of wastewater are proposed, unless the applicant has submitted evidence, in accordance with (1), that the design for the non-public water supply and wastewater disposal facilities complies with applicable laws and regulations of local government. (History: 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1981 MAR p. 254, Eff. 3/27/81; AMD, 1984 MAR p. 1027, Eff. 7/13/84; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2000 MAR p. 967, Eff. 4/14/00; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2011 MAR p. 2278, Eff. 10/28/11.)

Rule 17.36.109 reserved

17.36.110 CERTIFICATE OF APPROVAL (1) Subject to the local certification requirements set out in (2), the reviewing authority shall issue a certificate of subdivision approval if:

- (a) an applicant has submitted all of the information required by this chapter;
- (b) the requirements of this chapter and of the Montana Environmental Policy Act have been met; and
- (c) the reviewing authority determines that:
 - (i) wastewater will not pollute or degrade state waters or endanger public health;
 - (ii) all wastewater disposal facilities are sufficient in terms of capacity and dependability;
 - (iii) the water supply will be sufficient in terms of quality, quantity, and dependability;
 - (iv) solid waste disposal will be in accordance with applicable state laws and rules; and
 - (v) storm drainage will have proper drainageways and the drainage will not pollute state waters.

(2) The reviewing authority may not issue a certificate of subdivision approval if non-public facilities for water supply or for the disposal of wastewater are proposed, unless the applicant has submitted evidence, in accordance with ARM 17.36.108(1), that the design for the non-public water supply and wastewater disposal facilities complies with applicable laws and regulations of local government. (History: 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2000 MAR p. 967, Eff. 4/14/00; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2011 MAR p. 2278, Eff. 10/28/11; AMD, 2014 MAR p. 2098, Eff. 9/19/14.)

17.36.111 MOBILE HOMES AND RECREATIONAL CAMPING VEHICLES (REPEALED) (History: 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; NEW, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; REP, 2002 MAR p. 1465, Eff. 5/17/02.)

17.36.112 RE-REVIEW OF PREVIOUSLY APPROVED FACILITIES:

PROCEDURES (1) This rule applies to amendments (rewrites) of certificates of subdivision approval when no new subdivision is proposed. This rule identifies the procedures for re-reviewing facilities for water supply, storm water drainage, sewage, or solid waste disposal when the facilities have been previously approved under Title 76, chapter 4, MCA, and when:

(a) parcel boundaries are not changing, but changes are proposed to the facilities that would deviate from the conditions of the previous approval;

(b) parcel boundaries are not changing, but the previous approval has expired pursuant to ARM 17.36.314; or

(c) parcel boundaries are changed by an aggregation with other parcels.

(2) The owner of a parcel in (1) shall obtain approval from the reviewing authority as provided in this section.

(3) The owner shall submit an application to the reviewing authority on a form approved by the department. Copies of the form may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901, <http://deq.mt.gov/wqinfo/Sub/SubReviewForms.mcp>x, or from the local reviewing authority.

(4) The application must describe any proposed new facilities, any changes to previously approved facilities, and any new parcel boundaries. The reviewing authority may require the applicant to submit additional information that the reviewing authority determines is necessary for the review.

(5) The reviewing authority shall review the application pursuant to all applicable requirements, including fees, set out in ARM Title 17, chapter 36, subchapters 1, 3, 6, and 8. The application is subject to the rules in effect at the time the application is submitted, except that, if a requirement in the applicable rules would preclude a previously approved use of the parcel, the department may waive the requirement that would preclude the use. Waivers are subject to ARM 17.36.601.

(6) Facilities previously approved under Title 76, chapter 4, MCA, are not subject to re-review, if they are not proposed to be changed and are not affected by a proposed change to another facility. To determine whether previously approved water and sewer facilities are operating properly, the reviewing authority may require submittal of well logs, water sampling results, any septic permit issued, and evidence that the septic tank has been pumped in the previous three years.

(7) Except as provided in (8), if the proposed amendments are approved, the reviewing authority shall issue a revised certificate of subdivision approval.

(8) Amendments that consist solely of the relocation of previously approved facilities may be made through approval of a revised lot layout document. The approved revised lot layout document must be filed with the county clerk and recorder and a copy must be provided to the department. (History: 76-4-104, MCA; IMP, 76-4-125, MCA; NEW, 2014 MAR p. 2098, Eff. 9/19/14; AMD, 2016 MAR p. 722, Eff. 4/23/16.)

Rules 17.36.113 through 17.36.115 reserved

17.36.116 CERTIFICATION OF LOCAL DEPARTMENT OR BOARD OF HEALTH (1) A local department or board of health, if it requests certification, must be certified as the reviewing authority if the following requirements are met and the sanitarian or engineer is qualified as described in (2):

(a) the local department or board of health employs a registered sanitarian or a professional engineer responsible to perform the actual review. Those local governments employing more than one registered sanitarian or professional engineer shall designate one such person to be responsible for the review program;

(b) unless delegated under 75-6-121, MCA, a local department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems, except that a local department or board of health may be certified to review subdivisions proposed to connect to existing municipal water and wastewater systems previously approved by the department if no extension of the system is required; and

(i) the provisions of Title 76, chapter 4, MCA;

(ii) this chapter;

(iii) applicable department circulars;

(iv) Title 75, chapter 5, MCA;

(v) ARM Title 17, chapter 30, subchapters 5 and 7; and

(vi) other applicable laws and regulations.

(2) A registered sanitarian or registered professional engineer, prior to performing subdivision review, shall:

(a) pass, with a score of at least 90%, a written examination administered by the department that demonstrates knowledge of:

(i) Title 76, chapter 4, MCA;

(ii) this chapter;

(iii) applicable department circulars;

(iv) Title 75, chapter 5, MCA;

(v) ARM Title 17, chapter 30, subchapters 5 and 7; and

(vi) other applicable laws and regulations; and

(b) have a minimum of one year's experience performing subdivision review under the direct supervision of the department or of a department-approved registered sanitarian or professional engineer.

(3) The department's oversight of a certified local reviewing authority's review of subdivision applications shall be limited to the following:

(a) within the 55-day review period, the department shall determine, by reference to the local reviewing authority's review checklist or by other means, whether the local reviewer has conducted a completeness review of the application and whether the local reviewer has completed a compliance review of all systems designated by the contract between the department and the local reviewing authority. If the department determines that either of these tasks was not completed, the department may return the application to the local reviewing authority for further review or may itself complete the review;

(b) within the 55-day review period, the department may check the accuracy of the local reviewing authority's review of subdivision applications. The department's accuracy checks must be limited to ten percent of the applications submitted to the department by the local reviewing authority, except that the department may also review an application:

(i) upon the request of the local reviewing authority; or

(ii) when the department has reason to question the local reviewing authority's determination for a particular application;

(c) if the department identifies possible errors or discrepancies in the local reviewer's determination regarding an application, the department shall consult with the local reviewer. If, after consultation, the department does not agree with the local reviewer's determination regarding an application's compliance with applicable state laws, rules, and circulars, the department may, prior to the expiration of the review period for the application, modify the local determination regarding the state requirements;

(d) in addition to, or instead of, examining locally reviewed applications during the 55-day review period, the department may conduct an annual audit of a representative sample of locally reviewed applications.

(4) The department retains the right to suspend or revoke the certification of the local department or board of health if the department determines that the local reviewing authority is not complying with the sanitation in subdivisions act or other applicable statutes or rules. (History: 76-4-104, MCA; IMP, 76-4-104, 76-4-105, MCA; NEW, 1986 MAR p. 1509, Eff. 9/12/86; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2011 MAR p. 2278, Eff. 10/28/11; AMD, 2014 MAR p. 2098, Eff. 9/19/14.)

Subchapter 2 reserved

