

October 22, 2015

Greetings:

DEQ and the subdivision section have been evaluating the current Municipal Facilities Exclusion (MFE) review process as outlined in MCA §76-4-127. This statute limits subdivisions that qualify for an MFE by requiring a review by DEQ at some point between preliminary plat approval and filing of a final plat. This implies that MFEs are only allowed through the framework established in the Montana Subdivision and Platting Act (MCA § 76-3). DEQ understands that not every subdivision generates a preliminary or final plat, and until such time that the statute and law is clarified, we have modified our requirements and application form to require a plat if available along with a copy of the preliminary Montana Subdivision and Platting Act approval. This will allow even those subdivisions without a final plat (those for lease or rent, Amended Plats, etc.) to qualify for an MFE if they have undergone local review and been approved.

With that in mind there are several scenarios where an MFE is not available.

- MFE's may not be used to change the conditions of an existing Sanitation in Subdivisions Act approval. MCA § 76-4-130 indicates a person may not construct or use a facility that deviates from the certificate of subdivision approval until the reviewing authority has approved the deviation. Consistent with ARM 17.36.112, a change to previously approved facilities can only be addressed through a re-review process.
- Subdivisions that are exempt from review under the Montana Subdivision and Platting Act (MCA § 76-3) do not qualify for an MFE. However, there may be a different exemption available. For example, boundary line relocations may qualify for an exemption from the Sanitation in Subdivisions Act through ARM 17.36.605 (2)(c). Please contact your county health officer regarding specific requirements for the use of this exemption.

I have attached a copy of the new MFE checklist and a copy of the applicable MCAs and ARMs.

If you have any questions on the above, please feel free to call me at the Permitting and Compliance Division at (406) 444-5368.

Sincerely,

Barbara Kingery, PE
Environmental Engineering Specialist
Subdivision Section
Public Water and Subdivision Bureau
e-mail – Bkingery@mt.gov

MUNICIPAL FACILITIES EXCLUSION CHECKLIST
(formerly called master plan exclusion)

Below, please find the information required under § 76-4-127 MCA regarding a municipal facilities exclusion for this subdivision within a growth policy area or first-class or second-class municipality.

1. Is this subdivision exempt from the Montana Platting and Subdivision Act §76-3 MCA?
Yes ___ No ___
If yes, then you may not use the Municipal Facilities Exclusion for this subdivision
2. Does this subdivision affect property with a Title 76-4 Approval? Yes ___ No ___
If yes, then you may not use the Municipal Facilities Exclusion for this subdivision
3. Name of Subdivision: _____
4. Name and address of the applicant: _____

5. Name and address of engineer: _____

6. Copy of the preliminary, final or amended plat if available **and** letter of approval by the governing body as defined in §76-3-103 MCA: Attached ____.
7. Number of parcels in the subdivision: _____
8. A copy of any applicable zoning ordinances in effect: _____
9. How construction of the sewage disposal and water supply systems or extensions will be financed (method of financing): _____
10. Certification that the subdivision is within a jurisdictional area that has adopted a growth policy or within a first-class or second-class municipality: _____
11. Copy of Growth Policy: On file _____ Attached: _____
12. Location of the subdivision to the city or town, vicinity map attached: Yes ___ No ___
13. Are adequate municipal facilities, as defined in §76-4-102 MCA, for the supply of water and disposal of sewage and solid waste available or will they be provided under§76-3-507, MCA Yes ___ No ___
14. Has the governing body reviewed and approved plans to ensure adequate storm water drainage
Yes ___ No ____.
15. Will an extension of the existing sewer main(s) be necessary to serve this subdivision?
Yes ___ No ____
16. Will an extension of the existing water main(s) be necessary to serve this subdivision?
Yes ___ No ____
17. Exclusion Checklist review fee, (\$100) included: Yes ___ No ____
18. I certify that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided under§76-3-507 MCA , and I certify that the governing body has reviewed and approved plans to ensure adequate storm water drainage. I further certify that I am authorized to sign this form on behalf of the governing body.

Name _____ Signature _____

Dept. _____ Title _____

City _____ Zip _____ Phone _____

Please sign and send with the \$100.00 review fee to:

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY
SUBDIVISION REVIEW SECTION, PERMITTING AND COMPLIANCE DIVISION
PO BOX 200901
HELENA, MT 59620

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76-4-125. Review of subdivision application -- land divisions excluded from review. (1) Except as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing authority. The review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must include preliminary plans and specifications for the proposed development, whatever information the developer feels necessary for its subsequent review, any public comments or summaries of public comments collected as provided in [76-3-604](#)(7), and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(b) Within 5 working days after receipt of an application that is not subject to review by a local reviewing authority under [76-4-104](#), the department shall provide a written notice for informational purposes to the applicant if the application does not include a copy of the certification from the local health department required by [76-4-104](#)(6)(k) or, if applicable, contain an approval from the local governing body under Title 76, chapter 3, together with any public comments or summaries of public comments collected as provided in [76-3-604](#)(7)(a).

(c) If the reviewing authority denies an application and the applicant resubmits a corrected application within 30 days after the date of the denial letter, the reviewing authority shall complete review of the resubmitted application within 30 days after receipt of the resubmitted application. If the review of the resubmitted application is conducted by a local department or board of health that is certified under [76-4-104](#), the department shall make a final decision on the application within 10 days after the local reviewing authority completes its review.

(d) Except as provided in [75-1-205](#)(4) and [75-1-208](#)(4)(b), the department shall make a final decision on the proposed subdivision within 55 days after the submission of a complete application and payment of fees to the reviewing authority unless an environmental impact statement is required, at which time this deadline may be increased to 120 days. The reviewing authority may not request additional information for the purpose of extending the time allowed for a review and final decision on the proposed subdivision. If the department approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusion cited in [76-3-201](#);

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be

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constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule;

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to [76-4-127](#), that adequate storm water drainage and adequate municipal facilities will be provided; and

(e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of [50-2-116](#), a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield.

76-4-127. Notice of certification that adequate storm water drainage and adequate municipal facilities will be provided. (1) To qualify for the exemption from review set out in [76-4-125](#)(2)(d), the governing body, as defined in [76-3-103](#), shall, prior to final plat approval under the Montana Subdivision and Platting Act, send notice of certification to the reviewing authority that a subdivision has been submitted for approval and that adequate storm water drainage and adequate municipal facilities will be provided for the subdivision.

(2) The notice of certification must include the following:

(a) the name and address of the applicant;

(b) a copy of the preliminary plat included with the application for the proposed subdivision or a final plat when a preliminary plat is not necessary;

(c) the number of proposed parcels in the subdivision;

(d) a copy of any applicable zoning ordinances in effect;

(e) how construction of the sewage disposal and water supply systems or extensions will be financed;

(f) certification that the subdivision is within an area covered by a growth policy pursuant to chapter 1 of this title or within a first-class or second-class municipality, as described in [7-1-4111](#), and a copy of the growth policy, when applicable, if one has not yet been submitted to the reviewing authority;

(g) the relative location of the subdivision to the city or town;

(h) certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided within the time provided in [76-3-507](#);

(i) if water supply, sewage disposal, or solid waste facilities are not municipally owned, certification from the facility owners that adequate facilities are available; and

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(j) certification that the governing body has reviewed and approved plans to ensure adequate storm water drainage.

76-4-130. Deviation from certificate of subdivision approval. A person may not construct or use a facility that deviates from the certificate of subdivision approval until the reviewing authority has approved the deviation

17.36.112 RE-REVIEW OF PREVIOUSLY APPROVED FACILITIES: PROCEDURES (1)

This rule applies to "re-writes" 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, or 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.

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17.36.605 EXCLUSIONS (1) The exclusions in this rule are in addition to the exclusions set out in 76-4-111 and 76-4-125(2), MCA. A subdivision excluded under 76-4-111 or 76-4-125(2), MCA, is subject to review under 76-4-130, MCA, if the subdivision causes facilities previously approved under Title 76, chapter 4, part 1, MCA, to deviate from the conditions of approval.

(2) The reviewing authority may exclude the following parcels created by divisions of land from review under Title 76, chapter 4, part 1, MCA, unless the exclusion is used to evade the provisions of that part:

(a) a parcel that has no facilities for water supply, wastewater disposal, storm drainage, or solid waste disposal, if no facilities will be constructed on the parcel;

(b) a parcel that has a previous approval issued under Title 76, chapter 4, part 1, MCA, if:

(i) no facilities other than those previously approved exist or will be constructed on the parcel; and

(ii) the division of land will not cause approved facilities to deviate from the conditions of approval, in violation of 76-4-130, MCA;

(c) a parcel that will be affected by a proposed boundary line adjustment, if the parcel has existing facilities for water supply, wastewater disposal, storm drainage, or solid waste disposal that were not subject to review, and have not been reviewed, under Title 76, chapter 4, part 1, MCA, and if:

(i) no facilities, other than those in existence prior to the boundary line adjustment, or those that were previously approved as replacements for the existing facilities, will be constructed on the parcel;

(ii) existing facilities on the parcel complied with state and local laws and regulations, including permit requirements, which were applicable at the time of installation; and

(iii) the local health officer determines that existing facilities are adequate for the existing use. As a condition of the exemption, the local health officer may require evidence that:

(A) existing septic tanks have been pumped within the previous three years;

(B) the parcel includes acreage or features sufficient to accommodate a replacement drainfield;

(C) existing wells are adequate for the proposed uses; and

(D) adequate storm drainage and solid waste disposal are provided.

(3) Aggregations of parcels are not subdivisions subject to review, except that an aggregation is subject to review under 76-4-130, MCA, if any parcel included in the aggregation has a previous approval issued under Title 76, chapter 4, part 1, MCA.