Rationale for department Circular MFSA-2

In order to shorten administrative rules and provide requirements for the linear siting study to certificate applicants in a more "user-friendly" format, the application requirements for the alternative siting study and baseline study for linear facilities included in ARM 17.20.1426 through ARM 17.20.1431, 17.20.1434 through 17.20.1440, and 17.20.1444 through 17.20.1447 are proposed for transfer to department Circular MFSA-2. Within the circular, language that is currently an administrative rule and is proposed for transfer from the existing rule into the circular is neither interlined nor underlined. Language that is being proposed as new language is underlined. Language that is contained in an administrative rule and is proposed for deletion is interlined.

Throughout the proposed circular, application study requirements currently specified in a 5-step alternative siting study are proposed for consolidation into a 3-step alternative siting study. The reason for this proposed change is summarized in the following note (NOTE 1). For the sake of brevity throughout the rest of this rationale, this note will be referenced whenever additions or deletions are made for the reasons described below.

NOTE 1 Rationale for consolidation of analysis steps for the alternative siting study for linear facilities.

Current administrative rules specify an alternative siting study for linear facilities with the following 5 steps:

1) delineation of the study area (ARM 17.20.1434);
2) reconnaissance of the study area (ARM 17.20.1435);
3) selection and inventory of study corridors (ARM 17.20.1436 through 17.20.1438);
4) selection and baseline study of alternative routes (ARM 17.20.1439 through 17.20.1445); and
5) comparison of alternative routes and selection of a preferred route (ARM 17.20.1446 and 17.20.1447).

In an effort to simplify and shorten the alternative siting process for linear facilities, the board of environmental review (board) is proposing to consolidate the 5 steps of the current siting process into the following 3 steps:

1) delineation of the study area;
2) an overview survey of the study area that would identify alternative facility locations; and
3) baseline study of alternative facility locations that would identify an applicant's proposed facility location and proposed mitigating measures.

The board believes this consolidation of information requirements for linear facilities will expedite the siting process and simplify analysis steps for applicants, while retaining information needed to support the department's findings under 75-20-301, MCA.

Most of the information requirements currently specified in the administrative rules are proposed to be retained in the 3-step alternative siting study. Information would be retained because it provides the basis for determining impacts and supports the department's determination under 75-20-301(1), MCA. Information that would be retained is indicated as appropriate in the following sections and is referenced to this Note.

Lastly, prior to 1997, certification of a route for a linear facility was followed by an evaluation of centerlines within an approved route (ARM 17.20.1701 through 17.20.1706) and approval of a single centerline location for a facility. Based on legislative changes in 1997 that repealed 75-20-205, MCA, the board repealed administrative rules in subchapter 17 (Centerlines for Linear Facilities and Associated Facilities) in March 2001. Information requirements that were previously provided during a centerline evaluation are proposed for addition to this circular because they provide a basis for determining impacts and supporting the department's determination under 75-20-301(1), MCA. These additions are noted as appropriate in the following sections.

Section 1 Purpose and Applicability

Section 2 Definitions

Definitions are included in this circular to provide clarity and consistency in terminology used in the Major Facility Siting Act (hereinafter "Act"), the rules, and this circular. Some of these definitions come from ARM 17.20.301 and grammatical changes have been made.

Throughout Section 2, terminology describing steps in the alternative siting study is proposed for revision as described in Note 1.

The definition of "active fault" is proposed for addition, based on concerns raised during review of recent applications. The proposed definition of "active fault" is taken from American Geological Institute's Dictionary of Geological Terms. Current text describing an active fault would be deleted in Section 3.2(1)(e).

In definition 4, "certificate of environmental compatibility" has been changed to "certificate of compliance" to be consistent with legislative revisions to the Major Facility Siting Act made in 2003.

A definition for the new term "metadata" is proposed to facilitate submission of electronic information in electronic format. The term "metadata" is proposed for use several times in Circular MFSA-2 and it is more efficient to define the term once in a definitions section than it would be to define the term each time it is used.

In definition 13(b), "board" has been changed to "department" because the department now has decision-making authority rather than the board. The board hears appeals.

Section 3.0 General Requirements for the Alternative Siting Study

Information formerly in ARM 17.20.1426 is proposed for transfer to Section 3.0 and grammatical changes are proposed. Introductory material would be added to help provide an overview or "road map" of the steps in the alternative siting study contained in Circular MFSA-2. The information in Section 3.0 is necessary to help provide a basis for determining impacts and support the department's determination under 75-20-301(1), MCA. The proposed deletion of "ARM 17.20.1426 through 17.20.1431, 17.20.1434 through 17.20.1440, and 17.20.1444 through 17.20.1447" and insertion of "this circular" is for consistency in the proposed transfer of current administrative rules to this circular.

Insertion of the phrase "Unless otherwise approved by the department pursuant to ARM 17.20.804(2)" provides guidance to applicants. In ARM 17.20.804(2), the department recognizes that individual requirements in rules may not be relevant given the type, design, length, characteristics and complexity of the area where the linear facility would be located. ARM 17.20.804(2) provides a procedure for omitting certain information.

The following proposed deletions and insertions provide clarity and consistency in the proposed transfer of current administrative rules to this circular:

- in (2)(a) the proposed deletion of "ARM 17.20.1434" and insertion of "Section 3.2";
- in (2)(b) the proposed deletion of "ARM 17.20.1437 and 17.20.1438" and insertion of "Sections 3.3 and 3.4";
- in (2)(c) the proposed deletion "ARM 17.20.1439" and insertion of "Section 3.5";
- in (2)(d) the proposed deletion of "ARM 17.20.1440, 17.20.1444, 17.20.1445" and insertion of "Sections 3.6 through 3.8";
- in (2)(e) the proposed deletion of "ARM 17.20.1446" and insertion of "Section 3.9";
- in (2)(f) the proposed deletion of "ARM 17.20.1447" and insertion of "Section 3.10"; and
- in (5) the proposed deletion of "ARM 17.20.1426 through 17.20.1431, 17.20.1434 through 17.20.1440, and 17.20.1444 through 17.20.1447" and insertion of "this circular".

For the proposed deletion of the phrases "a reconnaissance of the study area (see ARM 17.20.1435)" and "selection of study corridors (see ARM 17.20.1436)" see Note 1. The proposed replacement of the phrase "inventory" with "overview survey" in (2)(b) denotes the proposed consolidation steps in the alternative siting study. The proposed replacement of the word "routes" with "locations for the proposed facility" in (2)(c) and (2)(d), "location for the proposed facility" in (2)(e), and "locations" in (3) and (4) is necessary to make the findings required in 75-20-301, MCA and for the proposed consolidation of the alternative siting study for linear facilities from 5 to 3 steps. See Note 1.

The phrase “identified according to ARM 17.20.1412 and 17.20.1415” in (3) is proposed for deletion because these administrative rules were repealed by the board in 2001. The phrase “including any mitigation measures suggested by those agencies,” is proposed for addition to help support the department findings required under 75-20-301(1), MCA.

Section 3.1 Linear Facilities, Preferred Location Criteria

Information formerly in ARM 17.20.1427 is proposed for transfer to Section 3.1. The information in this section is necessary to help identify the aspects of facility locations that would support the department’s determination under 75-20-301(1), MCA. For the proposed replacement of “routes” with “locations” see Note 1. The proposed replacement of 75-20-301 (2)(i) with (1)(c) would conform to current numbering in Title 75, chapter 20, MCA. The deletion of the phrase “centerline which is located” would conform with Legislative changes in 1997 that repealed the centerline approval process contained in 75-20-205, MCA. The addition of the word “location” is necessary to support the department’s findings required under 75-20-301, MCA. Other grammatical changes are proposed.

Section 3.2 Delineation of the Study Area

Information formerly in ARM 17.20.1434 is proposed for transfer to Section 3.2. Grammatical changes are proposed. The information in this section is necessary to help provide a basis for determining impacts and support the department’s determination under 75-20-301(1), MCA. The phrase “or areas” in (1)(c) is proposed for addition to maintain consistency with language in the first sentence of (1) and to increase an applicant's flexibility in the identification of a study area. For deletion of the phrase “study corridors” and addition of “locations for the proposed facility” in (1)(c) see Note 1. The phrase “a study area for a proposed transmission line must avoid the following areas unless it is demonstrated” is proposed for addition in (1)(d) to clarify that subsequent information in (1)(d) is needed to make department findings pursuant to 75-20-301, MCA. The addition of the phrase “though the following areas” in (1)(d) is proposed to clarify the paragraph.

Language in (1)(d)(i) and (ii) is proposed for transfer from ARM 17.20.1428(1) and (2). Information in this administrative rule supports the department findings required in 75-20-301,

MCA. Language in (1)(d)(iii) through (ix) is proposed for transfer from ARM 17.20.1429(1)(a) through (1)(e). Information in ARM 17.20.1429 supports the department findings required in 75-20-301, MCA. In (1)(d)(iv) the phrase "game ranges and game management areas" is proposed for deletion and the phrase "wildlife management areas and wildlife habitat protection areas" is proposed for addition in order to parallel language of the Montana fish, wildlife and parks land inventory system. In (1)(d)(v) the phrase "and state" is proposed for deletion because the state does not designate monuments. State parks is then included in (1)(d)(vi) to provide clarity in the listing of areas to be avoided in an alternative siting study. In (1)(d)(vii) the phrase "and state" is proposed for deletion because state recreation areas are not a current management designation in the Montana fish, wildlife and parks land inventory system. In (1)(d)(viii) the phrase "corridors of" is proposed for addition to conform to designated river corridors in the national wild and scenic rivers system. In (1)(d)(viii) the phrase "under active study" is proposed for replacement with "eligible" to conform to current determinations and listings of the forest service, bureau of land management, and national park service. This information supports department findings pursuant to 75-20-301, MCA.

Language in (1)(d)(x) and (xi) is proposed for transfer from ARM 17.20.1430(1)(a) and (1)(b). In (1)(d)(x) the phrase "areas of" is proposed for deletion for grammar. In (1)(d)(xi) the phrase "exclusion areas" is proposed for deletion and "national wilderness areas and national primitive areas" for addition to provide applicants the correct cross-cite for these areas.

The phrase "active faults" in (1)(e) is proposed for transfer from ARM 17.20.1431(1)(a) and the phrase "showing evidence of post Miocene movement" is proposed for deletion because the term "active fault" is now defined in Section 1. The phrase "for pipelines, avoidance of the areas referenced in (d)" is proposed for addition in (1)(e) to provide consistency with similar phrasing in (1)(d) and to clarify that subsequent information in (1)(e) is needed to make department findings required pursuant to 75-20-301, MCA. The phrases "that no adverse significant impacts are likely to result; that mitigation of significant adverse impacts is possible; or that siting the facility" and "would result in less cumulative adverse environmental impact and economic costs, including the costs of reasonable mitigating measures, than siting the facility in an alternative

location" are proposed for transfer from ARM 17.20.1429. Proposed addition of phrases "unless it is demonstrated" and "through those areas" and the word "and" are for grammar.

The phrases "the legislative or administrative unit of government with direct authority over the area" and "the applicant permission to locate the facility there" are proposed for transfer from ARM 17.20.1428. The phrase "prior to issuance of a certificate" is proposed for addition to allow the department to work jointly and concurrently with federal agencies should crossing such areas be under consideration. The phrase "for a proposed facility that crosses an area referenced in (d) (i) or (ii), a demonstration submitted prior to issuance of a certificate that" is proposed for addition to facilitate transfer of ARM 17.20.1428 to this circular and retain the intent of ARM 17.20.1428. The word "gives" is proposed for replacement with "has given", a grammatical change necessary to help preserve the sequence of approvals for language in this circular.

Language in (2)(a) through (e) is proposed for transfer from ARM 17.20.1436 and grammatical changes are proposed. For the proposed deletion in (2) of "The applicant shall select study corridors, based on consideration of the following" see NOTE 1. The proposed addition in (2) of "An application must identify the factors used to determine the boundaries of the study area considering" is intended to provide direction to applicants regarding information requirements for this step of the alternative siting study that supports the department's findings under 75-20-301, MCA. The proposed deletion in (2)(a) of "exclusion areas, sensitive areas and areas of concern identified pursuant to ARM 17.20.1435" and proposed addition of "avoidance of the areas listed in (1) (d) and (e)" is to provide readers with the correct cross-cites in conjunction with the proposed transfer of current administrative rules to this circular. The proposed replacement of the word "route" with "location" in (2)(b) provides consistency to the proposed consolidation of steps in the alternative siting study for linear facilities. See Note 1. The proposed deletion of "ARM 17.20.1427" and proposed addition of "Section 3.1" in (2)(b) provide clarity and consistency in the proposed transfer of current administrative rules to this circular. Language in (2)(f) is proposed for transfer from ARM 17.20.1434 (2)(f). The proposed deletion of the sentence "An application must identify the factors used to determine the boundaries of the study area" provides consistency with the proposed addition of this sentence at

the beginning of (2). The phrase “17.20.1309 through” in (2)(f) is proposed for deletion because this administrative rule was repealed by the board in 2001.

In Section 3.2 (3) the phrase “and an electronic equivalent approved by the department in advance” is proposed for addition to speed analysis and preparation of maps and figures for inclusion in the department’s report and to facilitate posting of information to the web for public review. Much of the department’s analysis and map preparation is now done with computers and receipt of electronic information would reduce manual data re-entry. The addition of “or 1:100,000” is proposed to provide flexibility in mapping scales to the applicant. In (3) the addition of the sentence “Each electronic submittal shall be accompanied by metadata describing the submittal” is proposed in order to provide the department with information on scales, sources, precision, projections, datums, and processing steps used for mapped data in the application that supports department findings pursuant to 75-20-301, MCA.

Language in Section 3.2 (4) is proposed for transfer from ARM 17.20.1436 (3). For the proposed replacement of the phrase “select the study corridors” with “determine the boundaries of the study area” and for the proposed replacement of the word “corridors” with “area” see NOTE 1. The replacement of (1) with (2) is proposed to provide readers the correct cross-cite. Deletion of the phrase “of this rule” is for consistency in the proposed transfer of rules to this circular.

Section 3.3 General Requirements for Overview Surveys

Language in Section 3.3 is proposed for transfer from ARM 17.20.1437 and grammatical changes are proposed. The information in this section is necessary to help provide a basis for determining impacts and support the department’s determination under 75-20-301(1), MCA. In Section 3.3(1), the proposed replacement of the word “inventory” with “overview survey”, replacement of “corridors” with “area” and replacement of “routes” with “locations” support the proposed consolidation and shortening of the alternative siting study for linear facilities (see NOTE 1). The proposed deletion of “ARM 17.20.1436” and addition of “Section 3.2” provides clarity and consistency in the proposed transfer of current administrative rules to this circular. The proposed replacement of the word “select” with “identify” is necessary to indicate that in the

overview survey an applicant would be identifying alternative locations rather than selecting a more general route.

The phrase “An applicant must conduct one or more public meetings that are accessible to the residents of the study area” is proposed for addition in Section 3.3(2) to help provide citizens the opportunity to participate in facility siting decisions (see 75-20-102(5)(c), MCA) early in the application process. Additionally, timeframes for the department to prepare its report have been shortened from 22 months to 9 months. Having the applicant hold initial meetings would identify public concerns early in the process so these concerns may be addressed in an application rather than being identified later in the review process. The phrase “to identify resources potentially affected by the proposed facility, suggested locations for the proposed facility, alternatives to the proposed facility, and mitigation measures for the proposed facility” and the sentence “At the meeting an applicant shall present or provide information on the need for the proposed facility” are proposed to more fully inform all parties participating in facility siting decisions why the project is being considered. The proposed addition of the sentence “The applicant shall notify the department prior to conducting these public meetings” would provide the department an opportunity to attend the meeting to hear public concerns. The proposed addition of “Information gathered by the applicant from these meetings may be used by the department to assist in determining the scope of an environmental assessment (EA) or environmental impact statement (EIS) pursuant to ARM 17.4.609 or 17.4.615” would help the department carry out its responsibilities under MEPA.

In Section 3.3(3), the proposed replacement of the word “corridors” with “area and alternative locations for the proposed facility” and proposed replacement of “corridors” with “area” would provide consistency for the proposed consolidation of steps in the alternative siting study for linear facilities. See Note 1.

In Section 3.3(3), the proposed replacement of “1:62,500” with “1:100,000” would be consistent with current United States Geological Survey (USGS) map scales. Proposed replacement of the word "mylar" with the phrase "on clear plastic film, such as the substance commonly referred to as mylar," is necessary to prevent the state from specifying a trademarked material as the only

option for map reproduction. Proposed deletion of the phrases “15 or 7.5 minute” and “enlarged or reduced to the appropriate scale if necessary” is appropriate now because 7.5 minute maps are currently available for the entire state whereas when the rules were compiled in 1984 they were not. Proposed addition of “and an electronic equivalent acceptable to the department” is proposed for addition to speed analysis and preparation of maps and figures for inclusion in the department’s report and to facilitate posting of information to the web for public review. Much of the department’s analysis is now done with computers and receipt of electronic information would reduce manual data reentry. Proposed deletion of the phrase “insofar as possible” is for grammar and consistency. The proposed deletion of the sentence “Where topographic coverage is not available, USGS advance or final 7.5 minute or orthophoto quads or the best available published maps with a scale of 1:125,000 or 1:100,000, enlarged to the appropriate scale if necessary, shall be used” would be consistent with currently available USGS maps and map scales. USGS 7.5 minute topographic maps are available for the entire state.

In Section 3.3(4), the proposed deletion of text from 17.20.1437 “the exclusion areas listed in ARM 17.20.1428, the sensitive areas listed in 17.20.1429(1) and (2), the areas of concern listed in 17.20.1430 (1) and (2), and the environmental information required by 17.20.1438” and insertion of “the areas specified in Sections 3.2(1)(d) and Section 3.4(1)” is for consistency in the proposed transfer of administrative rules to this circular. The phrases “that can be mapped shall be delineated on the minimum number of overlays to the base maps of the study corridors” and “the overlays shall clearly portray the required information” are proposed for deletion because these phrases would duplicate text in Section 3.3(8) below.

Proposed deletion of text in Section 3.3(4) that states: “The applicant shall organize and present the required information on overlays according to the categories listed in ARM 17.20.1446 (3)(c) through (e), and (g) through (l), to the extent it is practical. Within each category, uniform map scales must be used. The applicant shall submit one mylar copy of each overlay to the department. Where a map scale other than 1:62,500 is specified, the applicant may submit the information at the alternative scale, enlarged or reduced as specified in (2) of this rule. All overlays shall clearly show section lines or corners and township and range locations.” would

delete information on mapping requirements that is proposed for consolidation in Section 3.3(8) below.

In Section 3.3(5) the proposed deletion of "exclusion areas listed in ARM 17.20.1428, the sensitive areas listed in 17.20.1431(1) and (2)" and proposed addition of "areas specified in Sections 3.2(1)(e) and Section 3.4(2)" is for consistency in the proposed transfer of administrative rules to this circular. Text is proposed for deletion in Section 3.3(5) that states "that occur in the study corridors shall be delineated on the minimum number of overlays to the base map. The overlays shall clearly portray the required information. The applicant shall organize and present the required information on overlays according to the categories listed in ARM 17.20.1446(3)(c) through (e), and (g) through (l), to the extent it is practical. Within each category, uniform map scales must be used. The applicant shall submit one mylar copy of each overlay to the department. Where a map scale other than 1:62,500 is specified, the applicant may submit the information at the alternative scale, enlarged or reduced as specified in (2) of this rule. All overlays shall clearly show section lines or corners and township and range" because it duplicates text in Section 3.3(8) regarding mapping requirements.

The proposed deletion of the phrase "The following areas are sensitive areas and should not be crossed by a facility" from ARM 17.20.1429 and addition of the phrase "must be avoided when selecting alternative locations for a proposed facility" is for clarity and to provide the applicant information on general requirements of the alternative siting study. The text "unless the applicant demonstrates that no significant impacts are likely to result; that mitigation of significant adverse impacts is possible; or that siting the facility through those areas would result in less cumulative adverse environmental impact and economic costs, including the costs of reasonable mitigating measures, than siting the facility in an alternative location" is proposed for transfer into this circular from ARM 17.20.1429. Replacement of the phrase "in or through a sensitive area" with "through those areas" is proposed for clarity.

Text formerly in ARM 17.20.1429 is now in Section 3.3(6). In Section 3.3(6), the proposed deletion of "sensitive areas initially identified by either the reconnaissance or the inventory," proposed addition of "any areas listed in Section 3.2(1)(d) or (e) and Section 3.4 that may be

crossed by a facility," proposed deletion of "throughout the remainder of the alternative siting study" and proposed replacement of "routes" with "locations" or "location for the proposed facility" are consistent with the proposed transfer of administrative rules to this circular and consolidation of steps required in the alternative siting study for linear facilities. See NOTE 1.

Text formerly in ARM 17.20.1436 is now in Section 3.3(7). The proposed replacement of "The applicant shall select study corridors, based on consideration of the following" with "An application must identify the factors used to determine the alternative locations for the proposed facility including"; replacement of "exclusion areas, sensitive areas and areas of concern identified pursuant to ARM 17.20.1435" with "avoidance of the areas specified in (4) and (5)"; replacement of "route" with "location"; and replacement of "ARM 17.20.1427(1) or (2)" with "Section 3.1" are all proposed to maintain consistency and clarity in the proposed transfer of rules to this circular and consolidation of steps in an alternative siting study for linear facilities. See NOTE 1.

In Section 3.3(7), the proposed addition of "environmental information specified in Section 3.4" is necessary to incorporate resource information needed to identify alternative facility locations and support the department's determination under 75-20-301, MCA. Deletion and addition of "and" are for grammar. Proposed addition of the phrase "relevant information provided for Section 3.2(2)" is to provide applicants the option of cross-referencing rather than duplicating information previously developed.

Information specified in Section 3.3(8) specifies mapping requirements that support the department's determination under 75-20-301, MCA and was formerly found in ARM 17.20.1437(3) and (4). The proposed addition of the sentence "An application must delineate the proposed and alternative locations for a linear facility on base maps described in (3)" provides applicants guidance on these mapping requirements. Maps are necessary for purposes of public review of alternative locations.

In Section 3.3(8), the proposed sentence "Unless otherwise approved by the department pursuant to ARM 17.20.804(2), alternative locations shall be accurate to within 40 feet" would provide

the map resolution necessary to accurately locate proposed and alternative facility locations, especially in more heavily populated areas and areas with physical constraints such as mechanical irrigation systems, roads and railroads; and environmentally constrained areas. Formerly, more precise analysis was reserved for the centerline selection process, which was eliminated by the legislature in 1997. ARM 17.20.804(2) provides a process for an applicant to request that certain application requirements be waived where they do not make sense given the setting of a project.

Proposed deletion of the phrase “required by ARM 17.20.1438 that can be mapped” and addition of “specified in Section 3.4” provides clarity and consistency in the proposed transfer of current administrative rules to this circular. For the proposed deletion of “of the study corridors. The overlays shall” see NOTE 1. Proper grammar necessitates addition of the word “that”.

Proposed replacement of the word "mylar" with the phrase "on clear plastic film, such as the substance commonly referred to as mylar," is necessary to prevent the state from specifying a trademarked material as the only option for map reproduction. The phrase “and an electronic equivalent acceptable to the department” is proposed for addition to speed distribution and preparation of maps and figures for inclusion in the department’s report. Most of the department’s map preparation for reports is now done on computers. Addition of the sentence “Each electronic submittal shall be accompanied by metadata describing the submittal” is necessary to document the source, resolution, scale, projection and datum of mapped information submitted and any limitations to its use in supporting the department’s determination under 75-20-301, MCA. Electronically submitting map information is intended to reduce the burden on applicants by reducing the number of hardcopies that would otherwise have to be printed and submitted to the department. However, the metadata are necessary so that department staff understands what is contained in a computer file that is submitted.

Information in Section 3.3(9) was formerly in ARM 17.20.1436(3). This information supports department determinations under 75-20-301, MCA. For the proposed deletion of “select the study corridors” and addition of “determine alternative locations for the proposed facility” and the proposed replacement of “study corridors” with “alternative locations for further study” see

NOTE 1. Replacement of (1) with (2) is to provide the correct cross-cite. Deletion of the phrase "of this rule" is for consistency in the proposed transfer of rules to this circular.

Section 3.4 Environmental Information for Overview Surveys

Language in Section 3.4 is proposed for transfer from ARM 17.20.1438, 17.20.1429, 17.20.1430, and 17.20.1431 as noted below. The information in this section is necessary to help provide a basis for determining impacts and support the department's determination under 75-20-301(1), MCA. For the proposed deletion of the phrase "geographic area within each", deletion of "corridor" and addition of the word "area" see NOTE 1.

In Section 3.4(1), the proposed sentence "For electric transmission lines, an application must contain one or more overlays to the base map of the study area required by Section 3.3(3) that delineate the following environmental information" is necessary to indicate that mapped information contained in an application must be submitted on overlays. Overlays are necessary to provide an opportunity for public review of an application. The mapped information supports the department's determination under 75-20-301(1), MCA. Text in (1)(a) provides the cross-cite for information requirements specified in Section 3.2 of the circular. Information specified in (1)(b) through (1)(i) is proposed for transfer from ARM 17.20.1429(2)(e) through (l) and (3)(d). This information provides a basis for determining impacts and supporting the department's determination under 75-20-301(1), MCA. Section 3.4(1)(c) has been reworded for clarity so that it is not implied that all these areas are designated by the state of Montana.

Section 3.4(1)(i) has been reworded to recognize that Class I and II streams are listed in a database maintained by the department of fish, wildlife and parks rather than being formally designated by that agency. Proposed language in (j) would add considerations of "streams listed by the department pursuant to 75-5-702, MCA, that are not attaining designated beneficial uses of water". This would include information on streams that have had total maximum daily load (TMDL) limits established or where TMDL's are pending. If such streams are affected by a project, mitigation of potentially significant impacts would be considered in the subsequent more intensive baseline study (Sections 3.6 through 3.8).

Information specified in Section 3.4(1)(k) through (w) is proposed for transfer from ARM 17.20.1430(2)(e) through (q). In (l) the phrase "or regulations designed to protect viewsheds" is proposed for addition to recognize that local governments may not have visual management plans but may instead have regulations that accomplish the same end. This information would be used to determine conformance with local laws and regulations under 75-20-301, MCA.

The term "designated" in (m) through (q) is proposed for replacement with the word "identified" or the phrase "identified through consultation with" to recognize that the department of fish, wildlife and parks has identified these areas but does not formally designate them. Information in (e) through (q) provides a basis for determining impacts and supporting the department's determination under 75-20-301(1), MCA. In Section 3.4(1)(t) the proposed deletion of "with evidence of contemporary use" and addition of "or may have" is necessary to fully assess potentially significant impacts to heritage sites.

In Section 3.4(2), the proposed sentence "For pipelines, an application must contain one or more overlays to the base map of the study area required by Section 3.3(3) that delineate the environmental information specified in (1) and" is necessary to indicate that mapped information contained in an application that supports the department's determination under 75-20-301(1), MCA, must be submitted on overlays. Information in (2)(a) and (b) that is proposed for transfer from ARM 17.20.1431(2)(a) and (3)(a) provides a basis for determining impacts associated with pipelines and supporting the department's determination under 75-20-301(1), MCA. Addition of "and" in (2)(a) and deletion of "for" in (2)(b) is for grammar. Deletion of "designated" and replacement with "identified as" and addition of "in the Montana rivers database" is provided to recognize that class I and II streams have not been formally designated.

Information in Section 3.4(3) is proposed for transfer and consolidation from ARM 17.20.1438(1) and 17.20.1430(2). It is necessary to help provide a basis for determining land use impacts and supporting the department's determination under 75-20-301(1), MCA. For the proposed consolidation of information requirements form these rules, see NOTE 1. Deletion of the cross-site for (c) and addition of a cross-cite for (f) in "linear features required by (d), (e) and (f)" are necessary to provide the correct cross-cites for this circular. More precise mapping is

proposed in order to make the findings required in 75-20-301, MCA without a follow-up centerline evaluation. The legislature removed the requirement for a follow-up centerline study in 1997. The proposed requirement for more precise mapping would be qualified in a manner that, under ARM 17.20.804(2), would allow omission of detailed mapping areas where less precise information would suffice. Text in (3)(a) is proposed for transfer from ARM 17.20.1430(2)(a). In (2)(b) addition of the phrase "residential, industrial, and commercial" provides applicants specificity on information requirements; proposed deletion of "city and town boundaries" and addition of "cities, towns, and unincorporated communities" consolidates information requirements of this rule with information formerly in (g) which would be deleted. This additional information is necessary to make the determinations under 75-20-301, MCA.

In Section 3.4(3)(d)(i) the proposed addition of "Highways and roads designated as scenic routes or scenic byways by a land management agency must be differentiated from non-designated highways and roads" provides information necessary for assessing potentially significant visual impacts under Section 3.7(10) below and 75-20-301, MCA. In proposed (3)(g) addition of the phrase "grassland or" clarifies that information for both grassland and rangeland is necessary to assess potentially significant impacts to land cover.

Information requirements in Section 3.4(3)(i) through (p) are proposed for transfer from ARM 17.20.1429(2)(a) through (d) and (j), and from ARM 17.20.1430(2)(b) through (d). Cellular phone towers are proposed for addition to reflect this new land use, which has developed since these rules were first adopted. This information helps provide a basis for determining land use impacts and supporting the department's determination under 75-20-301(1), MCA. For the proposed consolidation of these information requirements, see NOTE 1. In (3)(n) proposed addition of the phrase "cropland differentiated by" would provide information necessary to differentiate and assess potentially significant land use impacts. In (3)(p) deletion of "permitted surface mining areas" and amendment of the language to include all permitted mines clarifies and updates information requirements for mines according to current state statute in order to assess potentially significant impacts and make findings required by 75-20-301(1)(h), MCA.

In Section 3.4(4)(a) addition of the phrase “federal and state” would provide the department information to accurately assess potentially significant impacts and make the finding required by 75-20-301(1)(h), MCA.

In Section 3.4(5) the map resolution is proposed to be reduced from a minimum of 20 acres to 2 acres. At the time the rules were first adopted this mapping was done by hand. Publicly available data and use of computers now allows much higher resolution mapping to be done in a more cost effective manner. Inclusion of higher resolution information would assist in better assessment of impacts and identification of mitigating measures in broken or mountainous terrain and would assist in making the findings required by 75-20-301, MCA.

Wording has been corrected in Section 3.4(5)(a) and (b) to reflect the ranges of slope that would be mapped. In the past, mixing of mathematical and non-mathematical symbols for a range of values has caused confusion when the rules are printed. Use of the words “to” and “less than” will be more easily understood.

In Section 3.4(6) replacement of “on the overlay(s) required by ARM 17.20.1430(2)(a)” with “for (3)(a)” provides the correct cross-cite for the proposed transfer of rules to this circular.

In Section 3.4(7), for the proposed deletion of “and near” and the proposed replacement of “corridors” with “area” see NOTE 1.

In Section 3.4(8) for the proposed replacement of “corridors” with “area” see NOTE 1. Proposed deletion of “may” from the phrase “public meetings the applicant holds” is consistent with proposed language in Section 3.3(5) to support citizen participation in facility siting decisions pursuant to 75-20-102(5)(c), MCA. Proposed insertion of “and mitigation measures for” and replacement of “man-made and natural environmental features” with “resources” would help provide information to assess significant impacts and would support the department’s findings under 75-20-301, MCA.

In Section 3.4(9), proposed additions and deletions would help provide a basis for determining impacts. Proposed changes specify application information that would supplement existing information on visual resources available and supporting the department's determination under 75-20-301(1), MCA, from federal land managers and other sources. This information would support the department's determination under 75-20-301, MCA. In (9)(a), the phrase "a description of the landscape of the study area, including its physiographic provinces, landscape character, scenic integrity, cultural influences, and scenic attractiveness" is proposed for addition to match current terminology of federal land management agencies for visual resource management.

In (9)(b) proposed addition of "maps developed by federal or state land managers or local or county officials that inventory scenic attractiveness, distance zones and concern levels, scenic classes, and visual absorption capability for all or a portion of the study area, or other comparable landscape inventory maps" corresponds to current visual resource methodology used by federal and state land managers. In (9)(c) and (9)(d), the phrase "with mapping requirements determined through consultation with the department" is proposed to facilitate mapping of visual resources on private lands that may cross diverse landscapes. The proposed addition of "the overlay must supplement existing maps that inventory visual contrast or visual absorption capability" is necessary to clarify that information available form federal or state land managers must be used and supplemented with information on private lands to support the department's determination under 75-20-301, MCA.

In Section 3.4(10), the proposed replacements of "corridors" with "area" and the proposed replacement of "corridors" with "study area" in (a), (b), and (c) would be consistent with the proposed transfer of administrative rules to this circular and consolidation of steps required in the alternative siting study for linear facilities. In 3.4(10)(a) "documentation that a file" has been replaced with "state and federal agency files search results" to indicate that searching more than one agency's files may be necessary to identify required information. See NOTE 1. In (10)(d) the phrase "or other appropriate scale determined in consultation with the department" is proposed for addition to allow flexibility in mapping scales when assessing impacts. The phrase "national historic landmarks, national register historic districts and sites, and national register

historic districts and sites nominated to or designated by SHPO (state historic preservation office)" is proposed for transfer from ARM 17.20.1429 (1)(h) and (1)(i). This information is necessary to provide a basis for assessing impacts to cultural resources and to support the department's findings under 75-20-301, MCA.

Section 3.5 Selection of Alternative Locations

Information formerly in ARM 17.20.1439 is proposed for transfer to Section 3.5. In Section 3.5 (1), see Note 1 for the proposed replacement of "routes" with "locations for the proposed facility", "corridors" with "area", "route" with "location", and the proposed deletion of text in (1)(a). In Section 3.5 (1)(a) the proposed deletion of "ARM 17.20.1427" and addition of "Section 3.1" and in (1)(b) the proposed deletion of "ARM 17.20.1438" and addition of "Section 3.2(1)(d) and Section 3.4" are necessary to provide the correct cross-cites for this circular. Addition of the phrase "for transmission lines" in (1)(b) and addition of the phrase land management in (1)(c) "for pipelines, the environmental information required by Section 3.2(1)(e) and Section 3.4" are proposed to differentiate information requirements for these linear facilities.

In Section 3.5(2) see Note 1 for the proposed replacements of "routes" with "facility locations."

Section 3.6 General Requirements For Baseline Study

Information formerly in ARM 17.20.1440 is proposed for transfer to Section 3.6 and grammatical changes are proposed. The information in this section is necessary to help identify impacts and support the department's determination under 75-20-301, MCA. In Section 3.6 (1) and (2) for the proposed replacements of "routes" with "facility locations" and "route" with "facility location" see Note 1. In Section 3.6 (2) deletion is proposed for the phrases "accurately", "to within one tenth mile", and "using lines one millimeter or less in width drawn on" and addition is proposed for "to within 40 feet of their actual location unless otherwise approved by the department pursuant to ARM 17.20.804(2)" in order to update mapping requirements for an application to make the findings in 75-20-301, MCA, without a follow-up centerline study. The Legislature repealed requirements for a centerline approval in 1997. For the proposed deletions of "tentative" see Note 1 and discussion of board's repeal of rules addressing centerlines for linear facilities. Replacement of "ARM 17.20.1444 or 17.20.1445"

with “Section 3.7 or Section 3.8” is proposed for consistency in the transfer of rules to this circular. The proposed deletion of “and” and insertion of “The base map must encompass” is for grammar and clarity.

Proposed replacement of the word "mylar" with the phrase "on clear plastic film, such as the substance commonly referred to as mylar," is necessary to prevent the state from specifying a trademarked material as the only option for map reproduction. In Section 3.6 (2), addition of “and in an electronic format approved by the department. All electronic submittals must be accompanied by metadata.” is proposed to speed preparation of maps and figures by computers for inclusion in the department’s report and to help ensure the reliability of electronically submitted data that supports the department’s determination under 75-20-301, MCA. Remaining text in Section 3.6 (2) proposed for deletion refers to outdated mapping specifications.

In Section 3.6 (3), for the two proposed additions of “and an electronic equivalent approved by the department” and text referring to mylar and metadata see the immediately preceding paragraph. The proposed replacement of “ARM 17.20.1444 or 17.20.1445” with “Section 3.7 and Section 3.8”, “17.20.1428” with “Section 3.2 (1)(d)”, “ARM 17.20.1428” with “Section 3.2 (1)(e)” and “ARM 17.20.1446” with “Section 3.8” is for consistency in the transfer of rules to this circular. For the proposed deletions of “exclusion”, “the sensitive areas listed in 17.20.1429, and the areas of concern listed in 17.20.1430”, “and the sensitive areas and areas of concern listed in 17.20.1431”, and replacements of “route” with “facility location” see Note 1. The mapping requirement for cultural resource data are addressed in a later section of the baseline impact assessment.

In Section 3.6(4), replacement of “black and white” with “color” air photos or an electronic equivalent is proposed to help differentiate land use and vegetation types. In the past, the US department of agriculture (ASCS) collected black and white aerial photography at five-year intervals. This black and white photographic product is being phased out nationally and replaced with a digital color product. For the proposed replacement of “routes” with “facility locations” and “route” with “facility location” in Section 3.6(4), (5), (6) and (7) and the deletion of “exclusion areas, sensitive areas, areas of concern and” in (6) see Note 1. Replacement of

“ARM 17.20.1444” with “Section 3.7” in (4) and “ARM 17.20.1444 or 17.20.1445” with “Section 3.7 or Section 3.8” in (6) is for consistency in the proposed transfer of rules to this circular. The proposed addition in (7) of the sentence “an application must contain the estimated cost of any proposed mitigation measures” provides information that supports the department’s determination under 75-20-301 (1), MCA.

Black and white stereo air photo coverage would be submitted to help identify landslides. In the past there was sufficient time after submission of an application for the department to order these aerial photographs. Legislation reduced the time for report preparation from 22 to 9 months. In order to meet the new time lines, this information needs to be submitted with an application.

Section 3.7 Baseline Data and Impact Assessment Requirements For Electric Transmission Lines

Information formerly in ARM 17.20.1444 is proposed for transfer to Section 3.7 of this circular and grammatical changes are proposed. The information in Section 3.7 is necessary to help provide a basis for determining impacts and supporting the department’s determination under 75-20-301(1), MCA.

In 3.7(1), for the proposed replacement of “route” with “facility location”, “route” with “site”, “routes” with “facility locations” and “route” with “location” in the introductory paragraph, see Note 1. Replacement of “ARM 17.20.1446” with “Section 3.9”, “ARM 17.20.1447” with “Section 3.10” and “ARM 17.20.1440” with “Section 3.6”, is proposed for consistency in the proposed transfer of rules to this circular.

In Section 3.7 (2), the phrase “the following” is proposed for addition for grammar. Proposed deletion of the phrase “required by ARM 17.20.1438(1) and the following data” is for consistency in rule transfer to this circular; proposed changes to (2)(b), (h), and (p) were stated in the justification for Section 3.4 (see page 15). For proposed replacements of “route” with “facility location” see Note 1. Proposed addition of the sentence “Environmental information (a) through (p) identified in the overview survey specified in Section 3.4(3)(a) through (p) must be included in the baseline impact assessment if located within an impact zone” is for clarity and

specificity in the sequential steps of an alternative siting study. Information requirements in (2)(a) through (p) were specified in Section 3.4(3)(a) through (p) of this circular and are repeated here for clarity to avoid excessive cross-reference. Proposed changes in (2)(e) are for grammar. Information requirements in (2)(t) and (u) are proposed for transfer from ARM 17.20.1429(3)(a) and (b). Information requirements in (2)(v) and (w) were formerly in ARM 17.20.1703(3) and (4) and supported the department's determination for centerlines. This information is necessary to provide a basis for the department's determination that a facility would minimize adverse environmental impact considering the nature of impacts and costs of alternatives under 75-20-301(1), MCA. In (2)(v) the phrase "not included within one of the urban or residential areas listed pursuant to (a)" is proposed for addition. For the proposed replacement of "centerline" with "facility location" see Note 1. In (2)(w) the phrases "regarding structure locations next to fence lines" and "located adjacent to the proposed and alternative facility locations where presence of the proposed line could preclude movement of farming equipment, or may produce a charge in a parallel fence" are proposed for addition to clarify and focus information requirements for fence lines and field boundaries next to transmission lines. These information requirements help support the department's determination under 75-20-301, MCA. Proposed deletions in (2)(w) would remove duplicative information requirements.

In Section 3.7(3) for the proposed replacement of "routes" with "facility locations" see Note 1.

In Section 3.7(4) for the proposed replacements of "routes" with "facility locations" see Note 1. Replacement of "ARM 17.20.1440" with "(2) and Section 3.4(3)" is for proposed consistency in the transfer of rules to this circular. Proposed deletion of "of the" and "of this rule" are for grammar. Addition of the sentence "An application must contain documentation that agencies with land management responsibilities for potentially affected areas have been consulted concerning impacts and mitigation and a description and evaluation of the mitigation measures suggested by these agencies" is proposed to inform and involve all parties in facility siting decisions and to support the department's determination under 75-20-301, MCA.

Information previously in ARM 17.20.1444(4) is now in Section 3.7(5). For the proposed replacements of “routes” with “facility locations” see Note 1. The proposed replacement of “ARM 17.20.1438” with “Section 3.4” is for consistency in the transfer of rules to this circular.

Information previously in ARM 17.20.1444(5) is now in Section 3.7(6). For the proposed replacement of “route” with “facility location” and “routes” with “facility locations” see Note 1. Proposed insertion of the phrases “public meetings and”, “An application must contain” and “and surveys” is necessary to identify public attitudes and concerns from all appropriate sources that would support the department’s determination under 75-20-301, MCA, under a nine-month report preparation period for department. Deletion of the sentence “Summaries of issues and concerns identified at public meetings the applicant may hold or the results of any surveys the applicant may conduct must also be included” would remove duplicative text from this section. Proposed replacement of the phrase “of the impact zone” with “potentially affected by an alternative facility location” is specified to help provide citizens the opportunity to fully participate and express their concerns in facility siting decisions (see 75-20-102(3)(c), MCA). Likewise, the proposed addition of the sentence “The applicant shall notify federal, state, and local government agencies potentially affected by facility locations of any public meetings the applicant holds” would support the full participation of agencies in siting decisions.

Information previously in ARM 17.20.1444 (6) is proposed for transfer to Section 3.7(7). The proposed deletion of “sufficiently accurate information to allow the and the board to make a valid comparison of alternative routes with respect to the requirements of the baseline study” and proposed addition of “mapping of preliminary centerlines for all access roads that would be required to construct and operate the facility along each alternative facility location. Preliminary road centerlines shall be delineated on the base map required by (2)” would provide the department with information on proposed access roads that is sufficiently accurate to support the department’s determination under 75-20-301, MCA. This more detailed access road information was previously included at the centerline selection stage. For the proposed replacement of “route” with “facility location” see Note 1.

In Section 3.7(7)(a) the information requirement for “an estimate of road mileage of new or substantially upgraded access road requirements for approximately 30 mile segments, or portions thereof, of each alternative route, and a description of the sources of data used to develop the estimates” is proposed for deletion because it would provide generalization that would duplicate more detailed information on access roads proposed for addition in the introductory paragraph. In new Section 3.7(7)(a), addition of “a discussion of whether” access roads “would be constructed” and deletion of “an assessment of the likelihood of constructing” is necessary to provide the department with information that supports the determination under 75-20-301, MCA. See also Note 1. Replacement of “ARM 17.20.1429 and the areas of concern listed in 17.20.1430” with “Section 3.2(1)(d) and Section 3.4(1)” is necessary for consistency in the proposed transfer of rules to this circular. Deletion of the phrase “of this rule” is for consistency in the proposed transfer of rules to this circular.

Information previously in ARM 17.20.1444(7) is proposed for transfer to Section 3.7(8). For the replacements of “route” with “facility location” see Note 1. Information gained from “and measures that could be implemented to mitigate significant impacts” would help provide a basis for the department’s determination under 75-20-301, MCA.

Proposed deletion of “between” and substitution of the phrase “potentially affected by these access roads and” would more precisely address impacts associated with access so that applicants avoid conducting unnecessary impact assessment in areas not affected by access roads.

Proposed addition of “each alternative location and associated” would help ensure that impacts of the line itself as well as access roads would be addressed in an application. This information is necessary to make the findings required under 75-20-301, MCA.

Information previously in ARM 17.20.1444(8) is proposed for transfer to Section 3.7(9). For the replacements of “route” with “facility location” and “routes” with “facility locations” see Note 1. In Section 3.7(9)(b) the phrase “required by the” is proposed to be replaced with “necessary to address physical constraints, impacts and” for grammar. The proposed addition of text in (9)(e) stating “a discussion and supporting documentation of any specific problems or concerns

associated with crossing of highways or encroachment on highway rights-of-way as determined through consultation with the Montana department of transportation and federal aeronautics administration" and text in (9)(g) stating "as determined through consultation with the Montana department of transportation and the federal aviation administration" would help provide the basis and support the department's determination under 75-20-301, MCA. This section would be renumbered to accommodate addition of a new Section 3.7(9)(e).

Information previously in ARM 17.20.1444(9) is proposed for transfer to Section 3.7(10). This information provides a basis for the department's determination under 75-20-301, MCA. For the proposed deletion of "exclusion area", "identified by ARM 17.20.1428 and 17.20.1429(1)(b) through (e), (2)(f), (h), (i), (j), and (l), and any", and "identified by 17.20.1429(3)(c), 17.20.1430(2)(a) and (3)(a), and 17.20.1438(1)" see Note 1. Proposed replacement of "data concerning" with "the following" and replacement of "characteristics" with "information" is for grammar and clarity of information requirements. Proposed deletion of "The following baseline data are required only for the referenced areas, sites and state or federal highways and county roads located" is for grammar. For the proposed replacements of "route" with "facility locations" see Note 1. Addition of "and" and deletion of "or" is for grammar. The proposed deletion of "161 to" and "161" in (10)(a) is based on department experience that an impact zone 2 miles in width is sufficient to identify visual impacts for a 161 kV transmission line.

The proposed addition of text in (a) stating "an overlay of the scenic quality and attractiveness of the impact zone, based on the overview provided in Section 3.4(9) and differentiated by distinctive or outstanding, typical or common, and indistinctive landscapes" and text in (b) stating "an overlay categorizing the visual contrast of the proposed facility with the landscape of the impact zone, based on the overview provided in Section 3.4(9) and" would provide a basis for the department determination under 75-20-301, MCA. Remaining text in (b) that states "considering vegetation, slope, land form definition, and other appropriate characteristics of the study area. For pipeline facilities, the degree of revegetation potential must also be included" is proposed for transfer from ARM 17.20.1438(7)(b).

In Section 3.7(10)(c), proposed addition of "a tabulation of classes of scenic quality mapped in (a) and categories of visual contrast mapped in (b) for alternative facility locations" would expedite the department's analysis of facility locations by summarizing mapped information. In (10)(d) the proposed addition of "in areas where classes of scenic quality from (a) and categories of visual contrast from (b) differ from existing landscape inventory maps prepared by land managers, the application must explain why" would support the department's determination under 75-20-301, MCA, by providing documentation for applicant-submitted information. Addition of the phrase "viewsheds of" incorporates current computer-generated analysis techniques, while addition of the phrase "which are defined as a series of representative locations that collectively provide the range of viewer and impact zone characteristics" provides the applicant guidance for selection of viewpoints. Addition of the phrase "Representative observation points for the areas referenced in (g) that are in close proximity to each other and would afford similar views of the proposed facility may only be selected in consultation with the department" would provide the applicant guidance through department consultation for the analysis of impacts for areas listed in (g), and help provide the basis for assessing potentially significant impacts.

In Section 3.7(10)(f) the proposed addition of the phrase "relative sensitivity" would consolidate an information requirement previously in ARM 17.20.1444(9)(d). Information previously in ARM 17.201444(9)(c) through (f) is proposed for deletion because it duplicates other information requirements. In (10)(g) the phrase "one or more" is proposed for deletion because it lacks specificity. The word "selected" would be replaced with the phrase "selected from (e)" to provide clarity in information requirements. And the phrase "with a description of pertinent information from (c), (d) and (e) above accompanying each photograph" would be replaced with the sentence "Photographs must be accompanied by or cross-referenced to information provided for (d) and (e)" to provide the correct cross-cite for application requirements. Lastly, the sentence "The applicant shall consult with the department regarding inclusion of visual simulations of the facility for selected observation points" is proposed for addition to support department identification of potentially significant impacts.

Text in Section 3.7(10)(h)(i) through (xvii) is proposed for transfer from ARM 17.20.1428(1) and (2); 17.20.1429(1)(b) through (e), (2)(f), (h), (i), (j), and (l) and (3)(c); 17.20.1430(2)(a) and (3)(a); and 17.20.1438(1)(a) through (c) with the following changes:

- The deletion of "and state" from (iii) and addition of "state parks" in (iv) to add clarity in rule requirements for state parks and national parks and monuments;
- The deletion of "and state" from national and state recreation areas in (v) to clarify that state recreation areas are not a current land management designation by the Montana department of fish, wildlife, and parks;
- The addition of "corridors of" to rivers in the national wild and scenic rivers system in (vii) to clarify that designated corridors associated with these rivers must be considered; and
- The replacement of "under active study" with "eligible" in (vii) to conform with current determinations and listings of the forest service, bureau of land management, and national park service.
- The replacement of "designated class" with "identified as having a fishery value class of" to recognize that class I and II streams are listed in a database maintained by the department of fish, wildlife and parks rather than being formally designated by that agency.

Information previously in ARM 17.20.1444(10) is proposed for transfer to Section 3.7(11). This information provides a basis for determining impacts and supporting the department's determination under 75-20-301(1), MCA. For the proposed replacement of "route" with "facility location" see Note 1. Other proposed deletions and substitutions in (11) are for clarity and consistency in the proposed transfer of rules to this circular. The sentence "An application must contain documentation that agencies with management responsibility for visual resources have been consulted concerning impacts and mitigation, and a description and evaluation of the mitigation measures suggested by these agencies" is proposed for addition to fully inform and involve all parties in facility siting decisions, including agencies responsible for land management.

Information previously in ARM 17.20.1444(11) is proposed for transfer to Section 3.7(12). This information provides a basis for determining biological impacts and supporting the department's determination under 75-20-301(1), MCA. For the proposed replacements of "routes" with "facility locations" and "route" with "facility location" see Note 1. In 12(a) "and/or" has been changed to "and" to remove ambiguity. Deletion of the word "sensitive" and the phrase "listed in ARM 17.20.1429(1), (2)(e), (f), (g), and (l), (3)(b) and (d), and the areas of concern listed in 17.20.1430(1)(b), (2)(g) through (l), and (3)(c) through (e)," is for consistency in the proposed transfer and consolidation of current rules to this circular.

Text in Section 3.7(12)(b)(i) through (vi) is proposed for transfer from ARM 17.20.1429(1)(a) and (c) through (e) to avoid excessive cross-references with the following revisions for consistency with current land management designations of state and federal agencies:

- The proposed replacement in (ii) of "game ranges and game management areas" with "wildlife management areas and wildlife habitat protection areas";
- The proposed deletion of "and state" from national and state recreation areas in (iii);
- The proposed addition of "corridors of" to rivers in the national wild and scenic rivers system and replacement of "under active study" with "eligible" to conform with current determinations and listing of the forest service, bureau of land management, and national park service.

Text in Section 3.7(12)(b)(vii) through (xiii) is proposed for transfer from ARM 17.20.1429(2)(e) through (g) and (l) and 17.20.1429(3)(b) and (d). Text in (12)(b)(xiv) is proposed for transfer from ARM 17.20.1430(1)(b) with the proposed deletion of "exclusion areas" and addition of "national wilderness areas and national primitive areas" to specify these areas as having potential for significant impacts due to the presence of a linear facility. Text in (12)(b)(xv) through (xxiii) is proposed for transfer from ARM 17.20.1430(2)(g) through (l) and (3)(c) through (e). In (xxiii) a change is proposed because US fish and wildlife service does not maintain a list of species of special interest or concern. Text in (12)(b)(xxiv) originates from text previously in ARM 17.20.1703 (8) for selecting a centerline. Information on nesting raptors is necessary to make the findings in 75-20-301, MCA. In (12)(e) text that states "for impacts identified in (b) and (c) a description of mitigating measures that could be implemented to reduce

significant impacts and the costs of such measures" is proposed for addition to provide information for the department's determination under 75-20-301, MCA. In (12)(xv), through (xix) the term "designated" would be changed to "identified" because agencies do not formally designate these areas.

Information previously in ARM 17.20.1444(12) is proposed for transfer to Section 3.7(13). This information provides a basis for determining impacts to cultural, historical and paleontological resources and supporting the department's determination under 75-20-301(1), MCA. Proposed deletion of "ARM 17.20.1438(8)" and insertion of "Section 3.4(10)" is for consistency in the transfer of rules to this circular. For the proposed replacement of "route" with "facility location" see Note 1. The phrase "any lands with" known "cultural" sites is edited for clarity. The phrase "historic or paleontological" is proposed for addition for consistency with Section 3.4(10). Text deleted in (13)(a) and (b) is for consistency in the consolidation of steps in the alternative siting study (see Note 1). For the proposed replacement of "the preferred and alternative centerline" with "each alternative facility location" and replacement of "in the certificate" with "by the department pursuant to 17.20.804" see Note 1. The words "and (b) above" would be deleted to provide the correct cross-cite in this section.

Information previously in ARM 17.20.1444(13) is proposed for transfer to Section 3.7(14). Information in this section supports the assessment of impacts to cultural, historical and paleontological resources and the department's determination under 75-20-301, MCA. For the proposed replacement of "route" with "facility location" see Note 1. The phrase "historic or paleontological" is proposed for addition for consistency with Section 3.4(12). Deletion of the phrase "of this rule" is for consistency in the proposed transfer of rules to this circular. Edits in (14)(a) are for grammar and to provide the correct cross-cite to previous circular sections. Information requirements in (a)(i) and (ii) are proposed for transfer from ARM 17.20.1429(2)(h) and (i). Information requirements in (b)(i) and (ii) are proposed for transfer from ARM 17.20.1430(2)(m) and (n). In (b)(ii) the proposed deletion of "with evidence of contemporary use" and addition of "or may have" is necessary to fully assess potentially significant impacts to heritage sites. Proposed addition of the phrase "a discussion of whether the proposed facility would affect the qualities of" is for clarity in requirements of this circular. Proposed text in (d)

stating “documentation that consultation has occurred with SHPO, affected state and federal agencies, and tribes regarding any affected cultural sites, impacts, and mitigation” supports the full participation of agencies and potentially affected parties in siting decisions.

Information previously in ARM 17.20.1444(14) and (15) is proposed for transfer to Section 3.7(15) and (16). This information supports the department’s assessment of impacts to recreation resources and provides a basis for the department’s determination under 75-20-301, MCA. For the proposed replacements of “route” with “facility location” and “location” see Note 1. Proposed deletion of the sentence “Recreation areas and sites are listed in ARM 17.20.1428, 17.20.1429(1)(b) through (e), (2)(f), national natural landmarks where recreation is listed as a current site use, (j), and (l), and by (a) and (b) below” is for consistency in the transfer of current rules to this circular. The information requirements specified in these rules are proposed for addition in (c)(i) through (xi) and noted with replacement text in (a) that states “depicting recreation areas and sites from (c) below that are located within the impact zones.” For proposed revisions of (c)(i) through (x) see rationale provided for Section 3.7(10)(g) on page 25 of this document. Information requirements specified in ARM 17.20.1444(14)(a) would be moved to (c)(xi) for consistency and clarity in format. Other edits in (15) are for grammar. In (16) for the proposed replacement of “route” with “facility location” see Note 1. Replacement of the phrase “the requirements of this rule are” with “this assessment of impacts is” is for clarity in the proposed transfer of rules to this circular. Remaining edits in (16) are for grammar.

Information previously in ARM 17.20.1444(16) is proposed for transfer to Section 3.7(17). This information supports the assessment of water quality impacts and the department’s determination under 75-20-301, MCA. For the proposed replacement of “route” with “facility location” see Note 1. Deletion of the phrase “of this rule” is for consistency in the proposed transfer of rules to this circular.

Information previously in ARM 17.20.1444(17) is proposed for transfer to Section 3.7(18). For the proposed replacement of “route” with “facility location” see Note 1. Deletion of the phrase “of this rule” is for consistency in the proposed transfer of rules to this circular. Proposed addition of the phrase “and streams listed by the department pursuant to 75-5-702, MCA, that are

not attaining designated beneficial uses of water" is necessary for department evaluation of impacts to impaired water bodies. Other proposed changes are for grammar.

Information previously in ARM 17.20.1703(10)(a) and (b) would be incorporated into Section 3.7(19)(a) and (b). Information specified in ARM 17.20.1444(18)(a) through (e) is proposed for transfer to (19) (c) through (g) of this circular. These proposed changes address noise, radio and television interference, and electrical effects of transmission lines, and provide the basis for the department decision under 75-20-301, MCA. For the replacements of "route" or "centerline" with "facility location" see Note 1. In (19)(b) proposed replacement of "facilities" with "installations" is necessary for clarity between transportation and communication installations and linear facilities as defined in 75-20-104, MCA. In (19)(d) the proposed deletion of the word "subdivided", addition of "for which a plat or certificate of survey approved under Title 76, Chapter 3 or 4, MCA, has been filed with the county clerk and recorder" and the deletion of the sentence "for purposes of these rules subdivided areas shall be defined as a location within which a plat of a subdivision is on file with local governments" is needed to include all areas that have been subdivided for residential purposes. Addition of "and" before (19)(g) is for grammar.

Section 3.8 Baseline Data and Impact Assessment Requirements For Pipelines

Information in ARM 17.20.1445 is proposed for transfer to Section 3.8, would be edited for clarity and renumbered. This section provides the basis for assessment of impacts resulting from pipeline construction and operation, and helps support the department decision under 75-20-301, MCA. For proposed replacements of "route" with "facility location", "routes" with "facility locations" and "route" with "site" throughout this section see Note 1. Replacement of "ARM 17.20.1446" with "Section 3.9", "7.20.1447" with "Section 3.10", "ARM 17.20.1440" with "Section 3.6(2)", and "ARM 17.20.1444" with "Section 3.7(2)" is for consistency in the proposed transfer of rules to this circular. Replacement of "(9)(c) and (e)" with "(9)(c) and (f)" is for consistency with a previously proposed rule revision.

In Section 3.8(1)(b), replacement of "ARM 17.20.1444" with "Section 3.7(10)" is for consistency in the proposed transfer of rules to this circular. In Section 3.8(1)(b), "exclusion" would be deleted and areas "listed in Section 3.7(10)(h)" would be substituted to provide the

correct cross-reference. Replacement of the phrase “and the referenced recreation areas, national register or national register eligible sites, residential areas, and federal and state highways or county roads” with “listed in Section 3.7(10)(h)” is proposed to provide the applicant a correct cross cite to the referenced recreation areas that help provide the basis for assessing potentially significant impacts. Proposed deletion of “in forested areas” and the sentence “In non-forested areas the application shall contain visual resource information adequate to determine the level of impact” would remove confusing language and clarify the information that supports the department decision under 75-20-301, MCA.

In Section 3.8 (1)(c), replacements of “ARM 17.20.1431 and 17.20.1444(11)” with “Section 3.7(12)” and “ARM 17.20.1440” with “Section 3.6(2)” are for consistency in the proposed transfer of rules to this circular. Deletion of the phrase “for pipelines greater than 10” diameter” is proposed in (l)(c)(i)(A) because only pipeline facilities greater than 24 inches inside diameter are regulated under the definition of a facility in 75-20-104(8), MCA. The proposed replacement of “designated” with “identified as having a fishery value class of” in (1)(c)(i)(B) recognizes that class I and II streams are listed in a database maintained by the department of fish, wildlife and parks rather than being formally designated by that agency.

Proposed deletions of the word “product” in (1)(c)(iii)(C), (1)(c)(iv), and (1)(c)(v) are necessary to identify impacts for both non-processed (crude) and processed (refined) liquids and support the department decision under 75-20-301, MCA. Addition of the word “facility” would separate water pipelines from non-water pipelines by using the definition of facility in 75-20-104(8), MCA.

Proposed replacements of “ARM 17.20.1444” with “Section 3.7(15), (17), and (18)” in sections 3.8(1)(e), (f) and (g) are for consistency in the proposed transfer of rules to this circular.

In Section 3.8(1)(h) the proposed text would allow the department to identify noise impacts associated with operation of the proposed pipeline, and would help support and provide the basis for the department decision under 75-20-301, MCA. The department’s experience with pipeline

operation indicates that noise from operating pumps or compressors constitutes one of several on-going effects for the life of the project.

Proposed text in Section 3.8(1)(i) would provide information related to potential impacts on groundwater and discharges from hydrostatic testing, and support and help provide the basis for the department's decision under 75-20-301, MCA.

Section 3.9 Comparison of Alternative Facility Locations

Information formerly in ARM 17.20.1446 is proposed for transfer to Section 3.9 and edited for clarity. The information in Section 3.9 is necessary for comparison of proposed alternatives. The information supports and provides the basis for the department's determination under 75-20-301(1), MCA. For the proposed replacements of "routes" with "facility locations" throughout this section see Note 1. In Section 3.9(1)(b) replacement of "ARM 17.20.1444 or 17.20.1445" with "Section 3.7 or 3.8" and in (1)(d) replacement of "ARM 17.20.1447(3)" with "Section 3.10" is necessary for consistency in the proposed transfer of rules to this circular. In Section 3.9(1)(c)(xii) the phrase "noise, radio and television interference and electrical effects" is proposed for addition to provide the basis for the department's decision under 75-20-301, MCA, as it relates to potential communication and electrical effects of transmission lines. Information for these effects was previously required for the centerline evaluation under ARM, Title 17, chapter 20, subchapter 17. Deletion of the phrase "of this rule" is for consistency in the proposed transfer of rules to this circular. Remaining edits are for grammar.

Section 3.10 Selection of the Preferred Facility Location

Information previously in ARM 17.20.1447 is proposed for transfer to Section 3.10. For proposed replacements of "route" with "facility location" or "location" and replacement of "routes" with "locations" see Note 1. Replacement of "ARM 17.20.1439" with "Section 3.5" in Section 3.10(1)(b); replacement of "ARM 17.20.1427" with "Section 3.1"; and in Section 3.10(1)(c) replacement of "ARM 17.20.1446" with "Section 3.9" are for consistency in the proposed transfer of rules to this circular. Proposed revisions of Section 3.10(1)(d) and (e) would be consistent with the proposed transfer and consolidation of current rules to this circular (see Note 1).

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