

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING ON
17.36.101, 17.36.102, 17.36.103,)	PROPOSED AMENDMENT AND
17.36.104, 17.36.106, 17.36.110,)	ADOPTION
17.36.116, 17.36.310, 17.36.312,)	
17.36.328, 17.36.330, 17.36.331,)	(SUBDIVISIONS/ON-SITE
17.36.332, 17.36.333, 17.36.334,)	SUBSURFACE WASTEWATER
17.36.335, 17.36.336, 17.36.340,)	TREATMENT)
17.36.605, 17.36.802, and 17.36.804)	
and the adoption of New Rules I and II)	
pertaining to subdivision applications)	
and review, subdivision requirements,)	
subdivision waivers and exclusions,)	
subdivision review fees, and on-site)	
subsurface wastewater treatment)	
systems)	

TO: All Concerned Persons

1. On May 19, 2014, at 9:00 a.m., the Department of Environmental Quality will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., May 5, 2014, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

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

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

(1) remains the same, but is renumbered (2).

~~(2)~~ (3) "Bedroom" means any room that is or may be used for sleeping. An unfinished basement is considered as an additional bedroom.

(3) through (5) remain the same, but are renumbered (4) through (6).

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

(6) remains the same, but is renumbered (8).

~~(7)~~ (9) "Connection" means a water or wastewater line that connects provides water or sewer service to a single building or living unit to a shared, multiple user or public water or wastewater system main building with accessory buildings. The term is synonymous with "service connection." For purposes of ARM 17.36.328, "connection" means a water or sewer line that connects a subdivision to a public system.

(8) through (11) remain the same, but are renumbered (10) through (13).

~~(12) "Dwelling" or "residence" means any structure, building, or portion thereof, which is intended or designed for human occupancy and supplied with water by a piped water system.~~

(13) remains the same, but is renumbered (14).

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

(14) remains the same, but is renumbered (16).

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

(18) "Fill" means artificially placed soil.

~~(15)~~ (19) "Floodplain" means the area adjoining the watercourse or drainway that would be covered by the floodwater of a flood of 100-year frequency except for sheetflood areas that receive less than one foot of water per occurrence and are considered zone b areas B or a shaded X zone by the Federal Emergency Management Agency. The floodplain consists of the floodway and the floodfringe, as defined in ARM 36.15.101.

(16) through (18) remain the same, but are renumbered (20) through (22).

~~(19)~~ (23) "Impervious layer" means any layer of material in the soil profile that has a percolation rate slower than 420 240 minutes per inch.

~~(20)~~ (24) "Individual water system" means any water system that serves one living unit or commercial structure unit. The total number of people served may not exceed 24 and that is not a public water supply system as defined in 75-6-102, MCA.

~~(21)~~ (25) "Individual wastewater system" means a wastewater system that serves one living unit or commercial structure unit. The total number of people served may not exceed 24 and that is not a public sewage system as defined in 75-6-102, MCA.

(22) remains the same, but is renumbered (26).

~~(23)~~ (27) "Living unit" means the area under one roof occupied by a family that can be used for one residential unit and that has facilities for sleeping, cooking, and sanitation. For example, a A duplex is considered two living units.

(24) and (25) remain the same, but are renumbered (28) and (29).

(30) "Main" means any line providing water or sewer to two or more service

connections, any line serving a water hydrant that is designed for firefighting purposes, or any line that is designed to water or sewer main specifications.

(26) and (27) remain the same, but are renumbered (31) and (32).

~~(28)~~ (33) "Multiple-user wastewater system" means a non-public wastewater system that serves, or is intended to serve, three through 14 living units or three through 14 commercial structures more than two living units or commercial units or a combination of both and that is not a public sewage system as defined in 75-6-102, MCA. The total number of people served may not exceed 24. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data by 2.5.

~~(29)~~ (34) "Multiple-user water supply system" means a non-public water supply system designed to provide water for human consumption to serve three through 14 living units or three through 14 commercial structures that serves, or is intended to serve, more than two living units or commercial units or a combination of both and that is not a public water supply system as defined in 75-6-102, MCA. The total number of people served may not exceed 24. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data by 2.5.

(30) and (31) remain the same, but are renumbered (35) and (36).

~~(32)~~ (37) "Parcel" means a part of land which is created by a division of land or a space in an area used for recreational camping vehicles or mobile homes. The term is synonymous with "tract" and "lot" for purposes of this chapter.

~~(33)~~ (38) "Percolation test" means a standardized test used to assess the infiltration rate in of soils, performed in accordance with Appendix A in Department Circular DEQ-4.

~~(34)~~ "Piped water system" means a plumbing system that conveys water into a structure from any source including, but not limited to, wells, cisterns, springs, or surface water.

(35) and (36) remain the same, but are renumbered (39) and (40).

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

~~(37)~~ (42) "Public wastewater system" means a system for collection, transportation, treatment, or disposal of wastewater that serves 15 or more families or 25 or more persons daily for a period of at least any 60 or more days in a calendar year. In estimating the population that will be served by a proposed residential system, the department reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data by 2.5, so that ten or more proposed residential connections will be considered a public system.

~~(38)~~ (43) "Public water supply system" means a system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for any 60 or more days in a calendar year. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of

living units by 2.5, so that ten or more proposed residential connections will be considered a public system.

~~(39)~~ (44) "Recreational camping vehicle" means a ~~vehicle that is used for non-permanent residence and is moved frequently~~ vehicular unit designed primarily as temporary living quarters for recreational, camping, travel, or seasonal use, and that either has its own power or is mounted on, or towed by, another vehicle. The basic types of RVs are camping trailer, fifth wheel trailer, motor home, park trailer, travel trailer, and truck camper.

(40) through (44) remain the same, but are renumbered (45) through (49).

~~(45)~~ (50) "Septic tank" means a ~~storage~~ wastewater settling tank in which settled sludge is in immediate contact with the wastewater flowing through the tank while the organic solids are decomposed by anaerobic action.

(46) remains the same, but is renumbered (51).

~~(47)~~ (52) "Shared wastewater system" means a wastewater system that serves, or is intended to serve, two living units or commercial ~~structures~~ units or a combination of both. ~~The total number of people served may not exceed 24 and that is not a public sewage system as defined in 75-6-102, MCA.~~

~~(48)~~ (53) "Shared water system" means a water system that serves, or is intended to serve, two living units or commercial ~~structures~~ units or a combination of both. ~~The total number of people served may not exceed 24 and that is not a public water supply system as defined in 75-6-102, MCA. In estimating the population served, the reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data.~~

(49) through (51) remain the same, but are renumbered (54) through (56).

~~(52)~~ (57) "Soil profile" means a description of the soil strata to a depth of eight feet using the United States Department of Agriculture (USDA) soil classification system method, which can be found in Appendix B, Department Circular DEQ-4.

(53) through (55) remain the same, but are renumbered (58) through (60).

~~(56)~~ "Septic tank" means a ~~storage settling tank in which settled sludge is in immediate contact with the sewage flowing through the tank while the organic solids are decomposed by anaerobic bacterial action.~~

(57) through (61) remain the same, but are renumbered (61) through (65).

~~(62)~~ (66) "Wastewater" means water-carried wastes ~~that is discharged from a dwelling, building, or other facility, including, but not limited to:~~

(a) through (d) remain the same.

~~(63)~~ (67) "Wastewater treatment system" or "wastewater disposal system" means a system that receives wastewater for purposes of treatment, storage, or disposal. ~~The term includes, but is not limited to, pit privies and experimental systems~~ all disposal methods described in Department Circulars DEQ-2 and DEQ-4.

(64) remains the same, but is renumbered (68).

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

(65) remains the same, but is renumbered (70).

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The term "accessory building" is defined in new definition (1). The term is used in the revised definition of "connection" in order to allow a water or sewer line that serves a main building and accessory buildings to be classified as a service connection rather than as a main. The proposed definition of "accessory building" is the same as the definitions in Department Circular DEQ-4, 2013 edition (DEQ-4) and in the public water supply and public sewage system rule at ARM 17.38.101(3)(a). Because design standards are different for service lines and mains, this definition is necessary to ensure that the standards are consistently applied for public and non-public water supply and sewage systems.

A non-substantive change is proposed to the definition of "bedroom" in (2) to delete an unnecessary "as."

The term "commercial unit" is defined in new (7). The term is used in the definitions of individual, shared, and multiple-user water and wastewater systems. The proposed definition of "commercial unit" is the same as the definition in DEQ-4. The definition is necessary to clarify how shared and multiple-user systems are defined.

The proposed amendments to the definition of "connection" in (7) conform this definition to the definitions in DEQ-4 and in the public water supply and public sewage system rule at ARM 17.38.101(3)(h). Because the design standards are different for service connections and mains, this amendment is necessary to ensure that the standards are consistently applied for public and non-public water supply and sewage systems.

The proposed amendments delete the definition of "dwelling." The term "dwelling" is currently used primarily in references to single or multiple "family dwellings." The proposed amendments to these rules would replace the term "family dwelling" with "living unit," so this definition is no longer needed.

The term "existing system" is defined in new (15). The term is used in ARM 17.36.327 and ARM 17.36.335, which set out requirements for existing non-public water supply and sewage systems in proposed subdivisions. The new definition codifies the department's current interpretation that a system is considered to be "existing" if it was installed prior to the submittal of a subdivision application. A system that was approved, but not installed, prior to the submittal of a subdivision application would not be "existing" under this definition. The definition is necessary to clarify which systems are subject to the provisions of ARM 17.36.327 and ARM 17.36.335. The rule contains requirements for the adequacy of systems that are already in place.

The term "facilities" is defined in new (17). The definition is the same as the definition in statute at 76-4-102(6), MCA, except that storm water has been added. The Sanitation in Subdivisions Act requires the department to review storm water drainage in subdivisions and the department has determined that storm water drainage structures are "facilities" as defined in the Act. Expressly referencing storm water in this definition is necessary to clarify that storm water facilities are subject to Sanitation in Subdivisions Act requirements.

The term "fill" is defined in new (18). The term is used primarily in ARM 17.36.321 to prohibit fill systems in new subdivisions except for replacement drainfield areas. The proposed definition conforms to the definition in DEQ-4 and is

necessary to clarify the application of ARM 17.36.321.

A non-substantive amendment is proposed to the definition of "floodplain" in ARM 17.36.101(15) to conform to the language in the floodplain statute at 76-5-104(10), MCA.

The proposed amendment to the definition of "impervious layer" in ARM 17.36.101(19) changes, from 120 to 240 minutes per inch, the percolation rate at which material is considered impervious by the reviewing authority. The amendment conforms this definition to that in DEQ-4 and is necessary because adequate wastewater treatment can be achieved in soils with slower percolation rates.

The proposed amendments to the definitions of "individual water system" and "individual wastewater system" in ARM 17.36.101(20) and (21) replace the term "commercial structure" with "commercial unit." This is necessary in order to use the defined term "commercial unit." The amendments also delete the limitation to 24 people served, and replace it with a reference to the statutory definitions of public water supply and public sewage system. The amendments are necessary because the 24-person limit does not accurately identify the threshold between a non-public and a public system contained in 75-6-102, MCA.

The proposed amendments to the definition of "living unit" in (23) delete the reference to "occupied by a family" and replace it with "that can be used for one residential unit." This is necessary because not all residential uses involve use by a family. The amendments also identify the basic features of a living unit, which are that it has facilities for sleeping, cooking, and sanitation. The amendments conform this definition to that in DEQ-4 and are necessary to identify which structures constitute living units for purposes of these rules.

The term "main" is defined in new (30), using the same definition as in DEQ-4 and in the public water supply and sewage system rule at ARM 17.38.101(3)(d), except that the term "multiple" is replaced by "two or more" to avoid potential confusion that could be caused by the definition of "multiple-user wastewater" or "multiple-user water supply" systems, which systems have three or more connections. The term is used in the footnotes to the setback table in ARM 17.36.323, as amended. The new definition is necessary to clarify the meaning of the setback table and to maintain general consistency with the public water supply and sewage system definitions.

The definitions of "multiple-user wastewater system" and "multiple-user water supply system" in (28) and (29) are amended to replace the term "commercial structure" with "commercial unit." This is necessary in order to use the defined term "commercial unit." The amendments also provide that multiple-user systems can consist of more than two living units, commercial units, or a combination of residential and commercial units. This codifies an existing department interpretation of the definitions and is necessary to provide guidance to applicants about the meaning of the rules. The amendments also delete the limitation to 24 people served and replace it with a reference to the statutory definition of public water supply and public sewage systems. This amendment is necessary because the 24-person limit does not accurately identify the threshold between a non-public and a public system. The amendments also modify the formula for determining when proposed residential water and sewage systems in subdivisions will be subject to the requirements for public systems. The current rule multiplies the number of proposed

living units times the county average of persons per living unit, based on the most recent census data. The amendments standardize the persons per living unit to 2.5. This is necessary to ensure that the requirements for public systems are applied consistently across the state to developments of a certain size.

The proposed amendments to the definition of "parcel" in (32) provide that spaces for recreational camping vehicles (RV) or mobile homes are not parcels. This amendment is necessary because most RV and mobile home spaces are not separate tracts of land. The proposed amendments to the lot size provisions in ARM 17.36.340 provide that the requirements of that rule apply to the entire area within which the RV or mobile home park is located, not to the spaces within the park. The amendments also provide that the term "parcel" is synonymous with "lot" and "tract." These two amendments are necessary to conform the definitions to the definition terminology in the Sanitation in Subdivisions Act, which uses the term "parcel."

The proposed amendment to the definition of "percolation test" in (33) references the procedures for performing percolation tests set out in DEQ-4 Appendix A. This amendment conforms to the definition in DEQ-4 and is necessary to identify requirements applicable to percolation test procedures.

The proposed amendments delete the definition of "piped water system" in (34). The deletion is necessary because the term is used only in the definition of "dwelling," which the proposed amendments would replace with the term "living unit."

The term "professional engineer" is defined in new (41), using the same definition as in DEQ-4. The definition provides that references to professional engineer in these rules refer to a person licensed pursuant to Title 37, chapter 67, MCA. The definition is necessary to implement rules and to ensure that engineered designs are prepared by properly qualified people.

The definitions of "public wastewater system" and "public water supply system" in (37) and (38) are amended to make minor changes to conform to the statutory definitions of public systems in 75-6-102(13) and (14), MCA. The amendments also set out the formula for determining when proposed residential water or sewage systems in subdivisions will be subject to the design standards for public systems. The amendments are necessary to be consistent with statutory definitions, to clarify when public design standards apply, and to conform the definition of "public wastewater system" to that in DEQ-4.

The definition of "recreational camping vehicle" in (39) is amended to conform to the definition in DEQ-4 and to the definition in the trailer court licensing rules adopted by the Department of Public Health and Human Services. ARM 37.111.201(28). The amendment is necessary to provide consistency between the application of these rules and the trailer court licensing provisions.

The definition of "septic tank" in (45) is amended to make minor changes for clarification and to conform to the definition in DEQ-4.

The definitions of "shared wastewater system" and "shared water system" in ARM 17.36.101(47) and (48) are amended to replace the term "commercial structure" with "commercial unit." This is necessary in order to use the defined term "commercial unit." The amendments also clarify that shared user systems can consist of two living units, commercial units, or a combination of both. This codifies an existing department interpretation of the definitions and is necessary to provide guidance to applicants about the meaning of the rules. The amendments also delete

the limitation to 24 people served and replace it with a reference to the statutory definition of public water supply and public sewage systems. This amendment is necessary because the 24-person limit does not accurately identify the threshold between a non-public and a public system. The amendment conforms to the definition of "shared wastewater system" in DEQ-4. The amendments to the definition of "shared water system" also delete the reference to the formula for determining when a shared system is subject to the design standards for public systems. The reference is not necessary because shared systems can be public based on the definition in 75-6-102, MCA, but will not reach the public threshold based on the county average of persons per living unit.

The definition of "soil profile" in (52) is amended to include a reference to the soil classification method set out in DEQ-4 Appendix B. The amendment is necessary to provide guidance to applicants about where the required procedures can be found.

The proposed amendments delete the definition of "septic tank" at (56). The definition is not necessary because the term has been defined at ARM 17.36.101(45).

The definition of "wastewater" in (62) is amended to delete the reference to wastewater that is discharged from a dwelling, building, or other facility. The amendment is necessary to include systems that do not discharge from a building, such as a waste segregation system. The proposed amendment also conforms this definition to that in DEQ-4.

The definition of "wastewater treatment system" in (63) is amended to replace the reference to pit privies and experimental systems with a reference to all disposal methods described in Department Circulars DEQ-2 and DEQ-4. Pit privies and experimental systems are addressed in DEQ-4, together with a number of other types of systems. The amendment is necessary to provide a more complete reference to the types of wastewater treatment systems.

The term "well isolation zone" is defined in new (69). The definition is the same as in statute at 76-4-102(18), MCA. Repeating the definition in the rules is necessary for ease of reference.

17.36.102 APPLICATION--GENERAL (1) To initiate review of a subdivision under 76-4-125 or 75-4-134, MCA, a person must submit a complete application, signed by the owner of the subdivision or an authorized representative, to the department. The application must be signed by all owners of record of the property proposed to be subdivided. In the application, the owners may designate an authorized representative responsible for subsequent correspondence with the reviewing authority. If the department has certified a local department or board of health to review subdivisions pursuant to 76-4-104, MCA, the application must be submitted to the local reviewing authority.

(2) through (4) remain the same.

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

(6) If a proposed subdivision includes facilities for subsurface wastewater treatment or disposal, including gray water irrigation, the developer shall notify the

designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The designated agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

AUTH: 76-4-104, MCA

IMP: 76-4-104, 76-4-125, MCA

REASON: ARM 17.36.102(1) is proposed to be amended to require a subdivision owner to sign the initial subdivision application, but to allow the owner to designate in the application an authorized representative to conduct subsequent correspondence with the reviewing authority. All owners of record of the property to be subdivided must sign the application. The requirement of the owner signatures on the application is necessary to show that the application has been authorized by the owners, even though subsequent submittals may be provided by an authorized consultant.

Section (6) is proposed to be amended to require notice to the agent of the local board of health of all proposed wastewater treatment facilities, not just those providing subsurface treatment. The amendment is necessary to ensure that the local health authority receives notice of systems such as lagoons and incinerator toilets.

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

(a) and (b) remain the same.

(c) if public or multiple-user water supply or wastewater systems are proposed, one copy of the design report and one set of plans and specifications may be submitted until the plans are approvable, after which three copies of final plans and specifications must be submitted;

(d) a lot layout documents as required by ARM 17.36.104;

(e) ~~if nonmunicipal water supply or wastewater systems are proposed, a vicinity map or plan showing the locations of the following features if they are within the area impacted by 100 feet of proposed or approved subdivision mixing zones, or within 100 feet (whichever is greater) of the proposed subdivision water supply or wastewater system treatment facilities, or within 100 feet of the perimeter of the proposed subdivision:~~

(i) lakes, streams, irrigation ditches, wetlands, and springs; and

(ii) existing, previously approved, and proposed wells, wastewater treatment systems, and mixing zones;

(f) remains the same.

(g) if ground water is proposed as a water source, the applicant shall submit the following information:

(i) the location of the proposed ground water source, which must be shown on the lot layout, indicating distances to any potential sources of contamination within 500 feet and any known mixing zone as defined in ARM 17.30.502. If the reviewing authority identifies a potential problem, it may require that all potential

sources of contamination be shown in accordance with Department Circular PWS-6; and

(ii) a description of the proposed ground water source, including approximate depth to water bearing zones and lithology of the aquifer;

~~(g)~~ (h) if water is to be supplied by means other than individual on-site wells, information about ~~water right ownership and water use agreements;~~

~~(h)~~ (i) if subsurface wastewater treatment systems are proposed:

(i) and (ii) remain the same.

(iii) direction and percentage of slope across the treatment area ~~(or a contour map with a minimum contour interval of two feet); and~~

(iv) remains the same.

~~(j)~~ (j) if gray water irrigation systems are proposed:

(i) descriptions of the soils within 25 feet of proposed gray water irrigation areas. Soils must be described in accordance with ~~Appendix B of d~~ Department Circular DEQ-4. Each test ~~hole~~ hole must be keyed by a number on a copy of the lot layout or map with the information provided in the report; and

(ii) remains the same.

~~(j)~~ (k) a copy of the nondegradation analysis and calculations as required by ARM 17.30.715. If the proposed wastewater disposal facilities for a subdivision are subject to the discharge permit requirements of Title 75, chapter 5, MCA, and ARM Title 17, chapter 30, the applicant shall first obtain the discharge permit and provide the reviewing authority with a copy of the discharge permit nondegradation determination;

(k) through (q) remain the same, but are renumbered (l) through (r).

(s) except for connections to existing public systems addressed under ARM 17.36.328(2)(b)(iv), if the proposed water supply is from wells or springs, either:

(i) a letter from the Department of Natural Resources and Conservation stating that the water supply is exempt from water rights permitting requirements; or

(ii) proof of a water right, as defined in 85-2-422, MCA.

(r) through (t) remain the same, but are renumbered (t) through (v).

AUTH: 76-4-104, MCA

IMP: 76-4-104, 76-4-125, MCA

REASON: The proposed amendment to (1)(c) would allow a subdivision applicant to initially submit one set of plans and specifications, instead of three. The amended rule would require three copies after the plans and specifications are approvable. The amendment is necessary to streamline the application process and to avoid unnecessary copying of preliminary plans and specifications.

The proposed amendments to (1)(d) make minor changes to clarify the requirements for providing a vicinity map with a subdivision application.

The proposed amendments to (1)(e) delete the limitation of this subsection to non-municipal systems. This is necessary to allow for review of potential impacts to, and from, all types of proposed water supply and wastewater treatment facilities. The proposed amendments state that the vicinity map must show all features listed in (1)(e)(i) and (ii) if they are within 100 feet of proposed or approved subdivision mixing zones. This is necessary to clarify the meaning of the current language

"within the area impacted by mixing zones." The proposed amendments retain the current requirement that the listed features be shown on the map, if they are within 100 feet of proposed water supply or wastewater treatment systems, although the amendment replaces the term "system" with the defined term "facilities." Finally, the proposed amendments to (1)(e) require that the listed features be shown on the map, if they are within 100 feet of the perimeter of the proposed subdivision. This is necessary to allow for review of potential contamination impacts between the proposed subdivision and the immediate vicinity.

Proposed new (1)(g) repeats the information requirements in ARM 17.36.330(2) regarding ground water proposed for a drinking water source. The amendment is necessary to identify in this rule all of the major items required to be submitted with an application.

The proposed amendment to (1)(h) deletes the requirement for information about water rights. This is necessary because proposed new (1)(s) sets out the requirements for applicants to provide water rights information.

Current (1)(j) is proposed to be renumbered and amended to clarify the requirements for providing a water quality nondegradation analysis with a subdivision application. If a proposed subdivision wastewater treatment system will require a department discharge permit under the Water Quality Act, the amendment will require the applicant to obtain the discharge permit before completing the subdivision application. The amendment is necessary to ensure that the department subdivision review program uses the same nondegradation analysis that is used in reviewing the discharge permit.

The proposed amendments add a new (1)(s), which would require applicants to provide information to the department about the status of the water rights for any proposed water supply using wells or springs. Except for connections to existing public water supply systems, which are addressed under ARM 17.36.328(2)(b)(iv), the amendment would require the applicant to provide either proof of a water right or a letter from the Montana Department of Natural Resources and Conservation (DNRC) stating that the proposed subdivision water supply is exempt from DNRC permitting requirements. If the applicant cannot provide the water rights information, the department would not issue a Sanitation in Subdivisions Act approval for the subdivision. Section 76-4-104(6)(b), MCA, dictates that the department require adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available before a subdivision can be approved. In the past, subdivisions have been developed and lots have been sold in areas where an exemption or a water right cannot be granted. The amendment is necessary to allow the department to better assess the dependability of a proposed subdivision water supply and to help prevent the development of a subdivision when water is not legally available for use.

17.36.104 APPLICATION--LOT LAYOUT DOCUMENT (1) The applicant shall provide four copies of a lot layout documents~~s~~ for the proposed subdivision. The lot layout documents~~s~~ must be on a sheets~~s~~ no larger than 11" x 17". ~~Multiple lots should be shown on one sheet,~~ at a scale no smaller than 1" = 200'. The reviewing authority may require a larger scale if needed to enhance readability. Multiple sheets may be used for large developments, provided that individual lots are not split

across two sheets. If multiple sheets are used, a single sheet must also be provided, using an appropriate scale, that shows the entire development.

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

(a) through (f) remain the same.

(g) locations, and sizes, and design details of existing and proposed storm water structures (culverts, ponds, dry wells, etc.);

(h) and (i) remain the same.

(j) information as set out in Table 1 for the specific water supply and wastewater systems in the subdivision. All systems must be labeled as "existing" or "proposed."

TABLE 1
REQUIREMENTS FOR LOT LAYOUTS

	Subdivisions served by nonmunicipal wells	Subdivisions served by nonmunicipal wastewater systems	Subdivisions served by municipal water	Subdivisions served by municipal wastewater systems
Existing and proposed wells, and 100-ft setback setbacks <u>in ARM 17.36.323 Table 2 [contained in MAR Notice No. 17-359 published in this register], and features listed in ARM 17.36.103(1)(e)</u>	X	X	X	X
Water lines (suction and pressure)			X	X
Water lines (extension and connections)		X	X	
Existing and proposed wastewater systems (drainfield, replacement area, and existing septic tanks)	X	X		

Existing and proposed gray water irrigation systems	X	X	X	X
Percent and direction of slope across the drainfield	X	X		
Sewer lines (extensions and connections)	X	X	X	X
Lakes, springs, irrigation ditches, wetlands and streams	X	X		
Percolation test locations, if provided, keyed to result form		X		
Soil pit locations keyed to soil profile descriptions		X		
Ground water monitoring wells keyed to monitoring results form		X		
Floodplain boundaries	X	X	X	X
Cisterns		X		
Existing and proposed building locations		X		
Driveways		X		
Road cuts and escarpments or slopes > 25 percent		X		
Mixing zone boundaries and direction of ground water flow	X	X		
<u>Locations, sizes, and design details of existing and proposed storm water facilities</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>

AUTH: 76-4-104, MCA

IMP: 76-4-104, 76-4-125, MCA

REASON: The proposed amendments to ARM 17.36.104(1) provide the requirements for lot layout documents. The amendments allow the reviewing authority to require a larger scale on documents if needed to enhance readability. The amendments clarify that multiple sheets may be used. When multiple sheets are used, lots may not be split across two sheets, and a single sheet must also be provided that shows the entire development. These amendments are necessary to facilitate the review of larger developments.

The proposed amendment to (2)(g) clarifies that lot layout documents must include design details for proposed and existing storm water structures. The same requirement is proposed to be added to Table 1. Table 1 is also proposed to be amended to require that all setbacks be shown on lot layout documents, not just the setback between wells and drainfields, and that the documents must show all features listed in ARM 17.36.103(1)(e). The amendments to Table 1 also require that proposed, as well as existing, buildings be shown on the lot layout documents. This is necessary to allow the reviewing authority to evaluate whether the lot size is adequate for the proposed development, as required by the proposed amendments to the lot size rule at ARM 17.36.340(2)(d). These amendments are necessary to ensure that lot layout documents provide sufficient information to allow review for compliance with applicable requirements.

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

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

(b) and (b)(i) remain the same.

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

(2) through (2)(c) remain the same.

(3) Subdivision lots recorded with sanitary restrictions prior to July 1, 1973, shall be reviewed in accordance with requirements set forth in this chapter. In cases where any requirements of this chapter would preclude the use for which each lot was originally intended, then the applicable requirements (including the absence thereof) in effect at the time such lot was recorded shall govern except that sanitary

restrictions in no case shall be lifted from any such undeveloped lot which cannot satisfy any of the following requirements:

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

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

(a) and (b) remain the same, but are renumbered (i) and (ii).

~~(c) (iii)~~ no part of the lot utilized for the subsurface wastewater treatment system may be located in a 100-year floodplain; and

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

(e) remains the same, but is renumbered (iv).

(4) Plans for proposed subdivision facilities that will be public water supply or public sewage disposal systems must be reviewed in accordance with the provisions of Title 75, chapter 6, MCA, and ARM Title 17, chapter 38, subchapter 1. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units by 2.5.

AUTH: 76-4-104, MCA

IMP: 76-4-104, 76-4-125, MCA

REASON: The proposed amendment to (1)(a) provides that resubmittals and additional information are not subject to the 55-day application review timeframe. Statutory changes in 2011 addressed the time frame for review of additional information. The rules incorporate the statutory changes at ARM 17.36.106(1)(c), which provides that additional information submitted within 30 days after an application is denied must be reviewed within 30 days after receipt. The proposed amendments to ARM 17.36.106(1)(c) also state that the failure of the applicant to submit the requested additional information within 30 days after the application is denied will reset the review period to the 55-day review time for new applications. This amendment establishes the review period for late-submitted additional information. Review of late submissions often requires additional time because of the need for reviewers to refamiliarize themselves with the application.

The existing provisions in (3) set out the procedures for review of subdivision lots recorded with sanitary restrictions prior to July 1, 1973. Prior to that date, lots could be created without Sanitation Act review, but could not legally be developed until the sanitation review occurred and sanitary restrictions were lifted. Section (3) lists five minimum requirements that must be satisfied before sanitary restrictions can be lifted. The current rule applies these minimum requirements only to undeveloped lots. The proposed amendments would apply the minimum requirements to all lots, but would allow waivers of four of the five requirements after consultation with the local health department. Waivers would be subject to ARM 17.36.601, which requires that a waiver not cause adverse health or environmental effects. The one requirement that could not be waived is the requirement that soil conditions provide for safe treatment and disposal of effluent. The proposed amendments are necessary to apply the minimum requirements more uniformly, while still retaining flexibility to adjust the requirements when appropriate.

Proposed new (4) states that plans for subdivision facilities that are public systems must be reviewed under the public water supply laws in Title 75, chapter 6, MCA, and implementing regulations. This requirement is set out in statute at 76-4-131, MCA, but the inclusion in these rules is necessary to provide guidance to applicants about applicable requirements. The proposed amendment also states that the reviewing authority will estimate the future population of a subdivision based on 2.5 people per living unit. This provision is already set out in the proposed amendments to the definitions in ARM 17.36.101, but the inclusion here is necessary to provide information in this rule about how public water laws are implemented in subdivision review.

17.36.110 CERTIFICATE OF APPROVAL (1) through (2) remain the same.

~~(3) Pursuant to a contract between the department and a local reviewing authority, minor changes to a certificate of subdivision approval may be made through an approval by the local reviewing authority of an "as-built" lot layout document. Amendment of the certificate of approval shall be effective upon filing of the approved "as-built" lot layout document with the clerk and recorder's office, with a copy sent to the department. Only the following changes may be made through the "as-built" procedure:~~

~~(a) relocation of structures, water systems, or sewer systems, provided that the changes comply with Title 76, chapter 4, part 1, MCA, this chapter, and all related rules and regulations; and~~

~~(b) changes to structures, water, or wastewater systems that do not significantly affect the approval statement of the subdivision.~~

AUTH: 76-4-104, MCA

IMP: 76-4-104, 76-4-125, MCA

REASON: The proposed amendment would delete (3), which sets out a procedure for making minor changes to a certificate of subdivision approval through use of an "as-built" lot layout document. The deletion is necessary because New Rule I will address the procedures for amending certificates of approval.

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

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

(b) unless delegated under 75-6-121, MCA, a local department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems, except that a local department or board of health may be certified to review subdivisions proposed to connect to existing municipal water and wastewater systems previously approved by the

department if no extension of the system is required; and

(b) through (b)(iv) remain the same, but are renumbered (c) through (c)(iv).

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

(a) through (a)(vi) remain the same.

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

(3) through (4) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, 76-4-105, MCA

REASON: The proposed amendments to (1) replace the term "registered" sanitarian with "licensed" sanitarian. This is necessary to use the correct term for Montana's professional certification programs for sanitarians. The amendments also delete the reference to "registered" professional engineers. The term is unnecessary because the proposed amendments to ARM 17.36.101 provide a definition for the term "professional engineer." The definition contains a requirement that the engineer be licensed or otherwise authorized to practice engineering in Montana. The reference to a "registered" engineer has been deleted throughout the rules. The proposed amendments also restate statutory provisions restricting the authority of local departments and boards of health to review public water supply and sewage systems in subdivisions. The provisions are in statute at 76-4-104(3)(b), MCA. Restating the provisions in this rule is necessary to provide a more complete statement of the requirements applicable to certification of local authorities to perform Sanitation in Subdivisions Act review.

17.36.310 STORM DRAINAGE (1) The applicant shall submit a storm drainage plan to the reviewing authority. The plan must include a design report, calculations, and plan sheets sufficient to provide construction details of the storm drainage system and must conform with the requirements of either (2) or (3).

(2) Except as provided in (3), a storm drainage plan must be designed in accordance with ~~d~~Department Circular DEQ-8.

(a) for lots proposed for uses other than as single-family dwellings, a storm drainage plan submitted under (2) must be prepared by a ~~registered~~ professional engineer and the storm drainage system is subject to the requirements in [New Rule III];

(b) remains the same.

(3) Regardless of the type of use or the number of commercial or residential units proposed, a storm drainage plan is not subject to the requirements of (2) if all of the requirements in (3)(a) through (h) are met. To be exempt from the requirements of (2), a storm drainage plan must be submitted demonstrating that:

(a) remains the same.

(b) the area of disturbance within ~~the proposed subdivision~~ each proposed lot has a slope of 3% percent or less;

(c) unvegetated areas including, but not limited to, road surfaces, road cuts

and fills, roofs, and driveways, comprise less than 15% percent of the total acreage of the ~~proposed subdivision~~ each proposed lot;

(d) drainage structures, such as road ditches, exist or, if necessary, will be constructed;

(e) completion of the proposed subdivision will not increase the amount of pre-development storm water runoff, during the 100-year 24-hour storm event, between proposed lots and from the proposed subdivision area to an adjoining property;

(f) the proposed subdivision will not alter pre-development pass-through water flow patterns; ~~and~~

(g) the applicant provides the reviewing authority with a 7 1/2 minute USGS topographic map showing the proposed subdivision and, if available, a map with contour intervals no greater than 20 feet that shows drainage patterns; and

(h) no buildings or drainfields in the subdivision will be flooded during the 100-year 24-hour storm event.

(4) through (7) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, 76-4-125, MCA

REASON: Section (1) requires that an applicant submit a storm drainage plan to the reviewing authority that complies with the requirements of either (2) or (3). The proposed amendment to (1) provides additional detail about the required contents of the plan. The amendment is necessary to facilitate review of storm drainage systems and to ensure that the systems meet applicable requirements.

Section (2) sets out requirements for storm drainage plans for subdivisions that do not meet the exemption criteria in (3). Under (2), storm drainage plans must follow Department Circular DEQ-8 (DEQ-8) and, if required by (2)(a), must be designed by a licensed professional engineer. The proposed amendment to (2)(a) deletes the reference to a "registered" professional engineer. See Reason for ARM 17.36.116. The amendment also provides a cross-reference to the requirements in New Rule II for engineer-designed systems. The cross-reference is necessary to provide guidance about requirements that are applicable to storm drainage plans that are designed by a professional engineer.

Section (3) sets out criteria for exempting subdivisions from the requirements in (2). The proposed amendments clarify that, regardless of the type of use or the number of commercial or residential units proposed, a storm drainage plan is exempt from the requirements of (2) if all of the exemption criteria in (3) are met. The proposed amendments clarify that, to qualify for the exemption in (3), a plan must be submitted to the reviewing authority that demonstrates compliance with all of the criteria in (3). The proposed amendments to (3)(b) and (c) would require each lot in a subdivision to meet the slope and impervious area limits provided in the exemption. Applying the limits to individual lots is necessary because drainage problems can be created by failure of some lots in a subdivision to meet these requirements, even though the subdivision as a whole meets them. The proposed amendment to (3)(d) clarifies that existing as well as proposed drainage structures may be considered by the reviewing authority because existing structures can also

provide draining control.

Subsection (3)(e) currently provides that the proposed development may not increase pre-development flows of storm water from the subdivision. Development typically creates impermeable areas, such as buildings and roads, which reduce the capability of the land within the subdivision to absorb storm water, which can increase the rate of runoff from the subdivision over historic runoff levels.

Subsection (3)(e) requires a storm water plan to show that any excess runoff will be managed to prevent an increase in the rate at which the runoff historically left the subdivision. The proposed amendments to (3)(e) require that the pre-development runoff also be maintained between proposed lots within the subdivision. The amendments also identify the 100-year 24-hour storm event as the maximum storm event that must be managed. The requirements are contained in DEQ-8 and are necessary to prevent undesirable runoff impacts, even from exempt parcels.

The proposed amendments to (3)(f) clarify that the prohibition on alteration of pre-development flows applies to flows that historically originated outside the proposed subdivision area and passed through it. The amendment is necessary to be consistent with ARM 17.36.310(3)(e), which, as amended, allows alteration of pre-development flows that originate within the subdivision when they exceed the 100-year 24-hour storm event.

Proposed new (3)(h) prohibits inundation of buildings and drainfields in the proposed subdivision during the 100-year 24-hour storm event. The amendment is necessary to establish a minimum standard, consistent with DEQ-8, for management of storm water within the subdivision. As with the requirements in (a), these requirements prevent undesirable impacts and should apply to exempt parcels.

17.36.312 SUBDIVISIONS ADJACENT TO STATE WATERS

(1) remains the same.

~~(2) The department hereby adopts and incorporates by reference ARM Title 17, chapter 30, subchapters 6, 7, 10, and 12, which set forth water quality standards for state surface waters. Copies of ARM Title 17, chapter 30, subchapters 6, 7, 10, and 12, may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.~~

AUTH: 76-4-104, MCA

IMP: 76-4-104, 76-4-125, MCA

REASON: ARM 17.36.312 allows the department to require information about, and impose requirements on, sewage treatment and disposal systems in subdivisions if necessary to protect state waters. When imposing such requirements the department implements both the Sanitation Act and the Montana Water Quality Act. Because the Water Quality Act and rules are directly applicable to subdivision sewage systems, it is not necessary to incorporate the Water Quality Act rules in this subchapter. The incorporation also creates an ambiguity about whether the current Water Quality Act standards in DEQ-7 apply to subdivisions, or whether the applicable standards are those that were in effect at the time this incorporation rule was adopted. For these reasons, it is necessary to delete the incorporation by

reference section.

17.36.328 CONNECTION TO PUBLIC WATER SUPPLY AND WASTEWATER SYSTEMS (1) A New water supply and sewage disposal facilities in a proposed subdivision must be connected provided by a connection to a public water supply or wastewater system if any boundary of the subdivision is within 500 feet of any component of the public system and the public system meets the requirements of (2)(a) and (b). The department may grant a waiver, pursuant to ARM 17.36.601, of the requirement to connect to a public system if the applicant demonstrates that connection to the public system is physically or economically impractical, or that easements cannot be obtained. For purposes of this rule, a connection is economically practical if the cost of constructing the connection to the system is less than or equal to three times the cost of ~~installation of an~~ constructing approvable systems on the site.

(2) Unless a waiver is granted pursuant to ARM 17.36.601, ~~the~~ reviewing authority may not approve the connection of a proposed subdivision to an existing public system unless:

(a) remains the same.

(b) the managing entity of the public system certifies to the reviewing authority, on a form acceptable to the department, that:

(i) through (iii) remain the same.

(iv) the appropriate water rights exist for this connection ~~or the managing entity has made application for the appropriate water rights for their system and any connections;~~ and

(c) and (3) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendment to the title of ARM 17.36.328 adds the word "connection." This is necessary to clarify that this rule addresses when proposed subdivision water and sewer facilities must be connected to a nearby public system.

The proposed amendments to (1) clarify that the connection requirement applies only to proposed new facilities for water supply and sewage disposal. This codifies an existing department interpretation that existing systems are not subject to the connection requirement. The amendments also clarify that, when a waiver of the connection requirement is requested based on economic impracticality, only construction costs may be considered. Costs related to annexation, such as road improvements and sidewalks, are not relevant to the determination of whether to grant a waiver. This codifies the department's current interpretation of the meaning of the rule, and is necessary to provide guidance to applicants.

The proposed amendment to (2) allows an applicant to request a waiver from the requirements in (2)(a) through (c). This amendment is necessary to provide applicants, who can satisfy the criteria in ARM 17.36.601, the potential to acquire approval from the department for existing systems. This would allow for connections to systems that are in areas not subject to department jurisdiction and to systems

that are temporarily out of compliance but are under order to return to compliance. The proposed amendment to (2)(b)(iv) requires the managing entity of a public system to show that water rights exist for the proposed connection of a new subdivision. The amendment deletes the provision allowing the managing entity to simply show that the entity has made application for water rights. The amendment is necessary to be consistent with proposed new ARM 17.36.103(1)(g), which requires proof of a water right, or an exemption, as part of a subdivision application.

17.36.330 WATER SUPPLY SYSTEMS--GENERAL (1) The applicant shall demonstrate that water supply systems provide an adequate supply by showing that the following criteria are met:

(a) remains the same.

(b) the following flows must be provided:

(i) remains the same.

(ii) for multiple family ~~user~~ water supply systems, the requirements set out in ~~d~~Department Circular DEQ-3; and

(iii) for public water supply systems, the requirements set out in ~~d~~Department Circulars DEQ-1 and DEQ-3;

(c) remains the same.

(2) If ground water is proposed as a water source, the applicant shall submit the following information:

(a) the location of the proposed ground water source must be shown on the lot layout, indicating distances to any potential sources of contamination within 500 feet and any known mixing zone as defined in ARM 17.30.502. If a potential problem is identified, the reviewing authority may require that all potential sources of contamination be shown in accordance with ~~d~~Department Circular PWS-6, 1999 edition; and

(b) and (3) remain the same.

(4) Each existing and proposed drinking water well in a proposed subdivision must be centered within a 100-foot radius well isolation zone. Pursuant to 76-4-104(6)(i), MCA, each proposed well isolation zone must be located wholly within the boundaries of the proposed subdivision where the well is located unless an easement or, for public land, other authorization is obtained from the landowner to place the proposed well isolation outside the boundaries of the proposed subdivision. This section does not apply to the divisions provided for in 76-3-207, MCA, except those under 76-3-207(1)(b), MCA.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendment to (1)(b)(ii) replaces the term "multiple family" with "multiple-user." The definitions in ARM 17.36.101 use the term "multiple-user," and the amendment is necessary to conform to the definitions.

The proposed amendment to (1)(b)(iii) requires public water supply systems to comply with applicable requirements in DEQ-1 and DEQ-3. DEQ-3 contains requirements applicable to small water supply systems. Adding a reference to DEQ-3 in this rule is necessary to identify all potential applicable requirements.

The proposed amendment to (2)(a) deletes a reference to the year of Department Circular PWS-6 (PWS-6). It is not necessary to identify the year in this rule because the correct editions of applicable department circulars are identified when the circulars are incorporated by reference in ARM 17.36.345.

Proposed new (4) requires that existing and proposed drinking water wells in proposed subdivisions be centered within a 100-foot-radius well isolation zone and, for certain subdivisions, requires that well isolation zones be located wholly within the boundaries of the proposed subdivision. This new section is necessary to implement 76-4-104(6)(i), MCA, as amended in 2013, and to protect wells in proposed subdivisions from sources of contamination located outside the subdivision.

17.36.331 NONPUBLIC WATER SUPPLY SYSTEMS: WATER QUALITY

(1) For non-public water supply systems, the following water quality requirements must be met:

(a) the applicant shall demonstrate that water quality is sufficient for the proposed subdivision. The reviewing authority may not approve a proposed water supply system if there is evidence that, after appropriate treatment, the concentration of any water quality constituent exceeds the human health standards in ~~Department Circular DEQ-7~~, or the maximum contaminant levels established in ARM Title 17, chapter 38, subchapter 2. The necessary quality of water must be available at all times unless depleted by emergencies.

(b) the applicant shall obtain samples from wells in the proposed subdivision and shall provide analyses of the samples to the reviewing authority. If no wells exist in the proposed subdivision, the reviewing authority may accept samples from nearby water wells that are completed in the same aquifer as that proposed for the subdivision water supply. The samples may not be older than one year prior to the date of application. Water quality data must show the concentration of ~~nitrate (as nitrogen)~~ nitrates and nitrites and specific conductance. The reviewing authority may require testing of wells located near the proposed subdivision for additional constituents for which human health standards are listed in ~~Department Circular DEQ-7~~, or in ARM Title 17, chapter 38, subchapter 2, if the reviewing authority believes that those constituents may be present in harmful concentrations. Analyses must be conducted by a laboratory certified by the Department of Public Health and Human Services for analyses of water samples for public water systems.

(i) and (ii) remain the same.

(iii) the requirement to sample for ~~nitrate (as nitrogen)~~ nitrates and nitrites and specific conductance does not apply if the reviewing authority determines that information from nearby water wells, which are completed in the same aquifer as that proposed for the subdivision water supply, or a hydrogeological report confirms that the proposed water supply will be of acceptable quality.

(c) the minimum setback distances set out in Table 3 2 of ARM 17.36.323 [contained in MAR Notice No. 17-359 published in this register] must be maintained for all new and existing water sources. A drinking water supply well may not be constructed within 100 feet of a ground water mixing zone granted pursuant to ARM Title 17, chapter 30, subchapter 5.

(d) the reviewing authority may require greater than a 100-foot horizontal

separation between a well and surface water if there is a potential that the well may be influenced by contaminants (e.g., giardia lamblia) in the surface water. In determining the appropriate separation between a well and surface water, the reviewing authority may consider factors such as well location, well construction, aquifer material, hydraulic connection between the aquifer and watercourse, and other evidence of the potential for surface water contamination. The reviewing authority may also require that the proposed water source be tested for surface water influence in accordance with ~~d~~Department Circular PWS-5, 1999 edition.

(e) remains the same.

(f) a surface water or ground water source under the direct influence of surface water, as described in ~~d~~Department Circular PWS-5, 1999 edition, may not be used as a water source for a non-public system.

(2) Public water supply systems are subject to the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendment to the title of the rule deletes the word "nonpublic." This is necessary because, as amended, the rule contains requirements for both non-public and public wells.

The proposed amendment to (1)(a) states that the necessary quality of water must be available at all times unless depleted by emergencies. This repeats a provision currently in the general provisions for water supply systems in ARM 17.36.330. Restating it here is necessary to identify in this rule all applicable requirements regarding water quality.

The proposed amendments change the nitrate sampling requirements in (1)(b) and (1)(b)(iii). With this change, testing for ammonia will not be required to show that an aquifer has adequate water quality. Ammonia dissipates quickly and is not an indicator of long-term water quality.

The proposed amendment to (1)(c) requires a 100-foot separation between a proposed drinking water well and a mixing zone. This amendment is necessary to ensure that drinking water wells are isolated from potential sources of contamination.

The proposed amendment to (1)(f) deletes a reference to the year of Department Circular PWS-5 (PWS-5). It is not necessary to identify the year in this rule because the correct editions of applicable department circulars are identified when the circulars are incorporated by reference in ARM 17.36.345.

Proposed new (2) identifies the requirements applicable to public water supply systems set out in the statutes and rules applicable to public water supply systems. Including the reference here is necessary to identify in this rule applicable requirements for public water supply systems in subdivisions.

17.36.332 NONPUBLIC WATER SUPPLY SYSTEMS: WATER QUANTITY AND DEPENDABILITY (1) The applicant shall demonstrate that ground water quantity is sufficient for the proposed subdivision. The necessary quantity of water must be available at all times unless depleted by emergencies. The applicant shall show that the following minimum flows are available:

(a) ~~a single-family~~ an individual water system must provide a sustained yield

of at least ~~40~~ ten gallons per minute over a one-hour period, six gallons per minute over a two-hour period, or four gallons per minute over a four-hour period. For purposes of the minimum flows identified in this rule, sustained yield must be based on water that is supplied from the aquifer, not from well bore storage; ~~and~~

(b) a shared water system must provide a sustained yield of at least 15 gallons per minute over a one-hour period or ~~40~~ ten gallons per minute over a two-hour period;

(c) multiple-user water supply systems must meet the flow requirements in Department Circular DEQ-3; and

(d) public water supply systems must meet the flow requirements set out in Department Circulars DEQ-1 and DEQ-3.

(2) The minimum flows required in (1)(a) and (b) must be demonstrated through one or more of the following, as determined by the reviewing authority:

(a) through (d) remain the same.

~~(3) Multiple-user water supply systems must comply with department Circular DEQ-3.~~ For individual and shared water supply systems, the reviewing authority may require pumping tests for one or more wells to demonstrate sufficient quantity and dependability of the ground water sources. The tests must be conducted pursuant to ~~d~~Department Circular DEQ-3.

(4) The reviewing authority may restrict the volume of water withdrawn from a proposed water source for a subdivision in order to ensure that an adequate water supply will be available at all times.

(4) through (6) remain the same, but are renumbered (5) through (7).

~~(7) (8)~~ If water is to be supplied by means other than individual on-site wells, the reviewing authority shall also review the applicant's information, required under ARM 17.36.103(1)(h), ~~about water right ownership~~ and water use agreements to determine the quantity and dependability of the water supply.

(9) If the proposed water supply is from wells or springs, the water right information in ARM 17.36.103(1)(s) is required.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendment to the title of the rule deletes the word "nonpublic." This is necessary because, as amended, the rule contains requirements for both non-public and public wells.

The proposed amendment to (1) states that the necessary quantity of water must be available at all times unless depleted by emergencies. This repeats a provision currently in the general provisions for water supply systems in ARM 17.36.330. Adequate water quality is important for non-public systems, also.

The proposed amendment to (1)(a) replaces the term "single family water system" with "individual water system." The definitions in ARM 17.36.101 use the term "individual water system," and the amendment is necessary to conform to the definitions.

Proposed new (1)(c) and (d) reference applicable quantity requirements for multiple-user and public systems, respectively. Including the references here is necessary to identify in this rule all applicable requirements regarding water quantity.

The proposed amendment to (2) provides that the department has the authority to determine which of the listed methods are appropriate to demonstrate minimum flows. The amendment is necessary to ensure that the method or methods used are appropriate under the circumstances. For example, more exact testing may be necessary for aquifers for which adequacy is questionable.

The proposed amendments to (3) delete the first sentence, which references DEQ-3. The amendments move this reference to new (1)(c). The amendments also clarify that the purpose of pump testing is to demonstrate sufficient quantity and dependability of ground water sources.

Proposed new (4) restates a provision currently in ARM 17.36.330(3) that allows the reviewing authority to restrict the volume of water withdrawn from a proposed water source in order to ensure that an adequate supply will be available at all times. Restating this provision in this rule is necessary to identify applicable requirements pertaining to water quantity.

The proposed amendments to the renumbered (8) provide a reference to the requirement in the application rules that applicants submit information regarding water use agreements, if water is to be supplied by means other than individual on-site wells. The reference here is necessary to clarify that such information is required. The proposed amendments also delete the reference to water right ownership, because the requirement for water rights information is referenced in proposed new (9).

Proposed new (9) references the proposed new requirement in the application rules that applicants submit information regarding water rights, if the proposed subdivision water supply is from wells or springs. The reference to the application rules is necessary to identify applicable requirements regarding water quantity and dependability.

17.36.333 NONPUBLIC WATER SUPPLY SYSTEMS: DESIGN AND CONSTRUCTION (1) The applicant shall meet the following requirements relating to the design and construction of nonpublic water supply systems:

(a) remains the same.

(b) multiple-user water supply systems must be designed and constructed in accordance with ~~d~~Department Circular DEQ-3, and ARM Title 36, chapter 21, subchapter 6, unless the requirements of this subchapter are more stringent;

(i) ~~multiple-user water supply systems with six or more connections, including connections outside of a proposed subdivision, must be designed by a registered professional engineer and as-built plans must be submitted to the department within 90 days after completion of the system.~~ If an existing system is expanded to serve six or more connections, the expansion must be designed by a registered professional engineer. The reviewing authority may require smaller systems that it determines to be complex (e.g., a water supply system with substantial pressure difference through the distribution system) to be designed by a registered professional engineer. Systems required by this rule, which must be designed by a professional engineer, are subject to the requirements of [New Rule II];

(ii) and (c) remain the same.

(2) Public water supply systems are required to meet the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments to the title of the rule and to (1) delete the word "nonpublic." This is necessary because, as amended, the rule identifies requirements for both non-public and public wells.

The proposed amendments to this rule delete the reference to a "registered" professional engineer. See Reason for ARM 17.36.116.

The proposed amendments to (1)(b)(i) delete the provision requiring that as-built plans be submitted, and add a provision stating that systems designed by a professional engineer are subject to New Rule II. Proposed New Rule II contains the requirement for submittal of as-built plans and contains other requirements applicable to all systems required by these rules to be designed by a professional engineer. See Reason for New Rule II.

Proposed new (2) identifies the requirements applicable to public water supply systems set out in the statutes and rules applicable to public water supply systems. The reference here is included to provide notice of applicable requirements for public water supply systems in subdivisions.

17.36.334 WATER SUPPLY SYSTEMS: OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS, AND AGREEMENTS AND EASEMENTS (1) If a proposed subdivision includes a public or multiple-user water supply system, the applicant shall submit to the reviewing authority an operation and maintenance plan for the system. The plan must ensure that the multiple-user systems will be adequately operated and maintained. ~~The reviewing authority may require the applicant to create a homeowners' association, county water district, or other administrative entity that will be responsible for operation and maintenance and that will have authority to charge appropriate fees.~~

(2) Public systems must be owned by an individual or entity that meets the requirements of 75-6-126, MCA. The owner must be responsible for operation and maintenance and must have authority to charge appropriate fees.

(3) For multiple-user systems, the reviewing authority may require the applicant to create a homeowners' association, county water district, or other administrative entity that will be responsible for operation and maintenance and that will have authority to charge appropriate fees.

(4) Easements must be obtained if the reviewing authority determines they are needed to allow adequate operation and maintenance of the system or to comply with 76-4-104(6)(i), MCA. Easements must be in writing and signed by the grantor of the easement. In addition, the easement must:

(a) be filed with the county clerk and recorder at the time the certificate of subdivision approval issued under this chapter is filed; or

(b) if the same person owns both parcels, be shown on the plat or certificate of survey for the proposed subdivision.

~~(2)~~ (5) If a proposed subdivision includes a shared water supply system, or includes a water supply system shared by two or more commercial facilities, the reviewing authority may require the applicant to submit a draft user agreement that identifies the rights of each user. The user agreement must be signed by all users

when the lots are sold. ~~The applicant must also grant or obtain easements to allow adequate operation and maintenance of the system. Shared u~~User agreements and easements must be in a form acceptable to the department.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendments add to and change the word order in the title of the rule. This is necessary for the rule title to identify all of the subjects addressed in the rule and to show the order in which they are addressed.

The proposed amendments to (1) require public water supply systems to have an operation and maintenance plan. The amendment is necessary to help ensure that the operation and maintenance procedures for public systems are clearly documented. This amendment is also necessary to be consistent with the corresponding requirements for public sewage systems in ARM 17.36.326(1).

The proposed amendments also delete the provisions for administration of multiple-user systems from this section. These provisions are moved to new (3) for clarity and to conform the rule format to that of the corresponding rule for sewage systems in ARM 17.36.326.

Proposed new (2) identifies the ownership requirements for public water supply systems by referencing the statutory requirements in 75-6-126, MCA. The amendment is necessary to inform subdivision applicants about the statutory requirements.

Proposed new (4) modifies the easement requirements currently found in (2) and adds a recording requirement. The current easement requirements are in a section that addresses shared systems. The amendment is necessary to allow the reviewing authority to require easements for any type of system if needed to allow adequate operation and maintenance of the system or to comply with the provisions in statute that allow well isolation zones to cross subdivision boundaries through easements. The proposed amendments also require that easements be in writing and signed by the grantor or, if the same person owns both parcels, require that the easement be shown on the plat or certificate of survey for the subdivision. This amendment is necessary to ensure that the easement is of record and therefore effective.

The proposed amendments to (2), renumbered as (5), delete the easement requirements, which are moved to new (4).

17.36.335 NONPUBLIC WATER SUPPLY SYSTEMS: EXISTING SYSTEMS (1) The provisions of (2) through (3)(b) apply only to existing non-public water supply systems in proposed subdivisions. Public water supply systems must meet the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

(2) Existing non-public water supply systems within a proposed subdivision must meet all requirements of this chapter or, if previously approved by the reviewing authority, the rules in effect at the time of approval. The department may grant a waiver, pursuant to ARM 17.36.601, from:

(a) the setback requirements in ARM 17.36.323; and

(b) the well construction requirements of ARM 17.36.333, if the applicant provides adequate evidence that compliance with such requirements is not necessary to ensure an adequate water supply.

~~(2)~~ (3) The For existing non-public water supply systems within a proposed subdivision, the applicant shall submit information to allow the reviewing authority to review the quality, quantity, and dependability of the existing system.

(a) and (b) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendments delete "nonpublic" from the title of the rule and add a new (1) to clarify that the provisions of renumbered (2) through (3)(b) apply only to existing non-public water supply systems in proposed subdivisions. The amendments provide notice that the requirements applicable to existing public water supply systems within a proposed subdivision are those set out in Title 75, chapter 6, MCA, and rules promulgated thereunder. These amendments are necessary to clearly identify the requirements that are applicable to existing public and non-public water supply systems in proposed subdivisions.

Proposed new (2)(a) allows the department to grant, for existing non-public wells in proposed subdivisions, a waiver from the setback requirements in ARM 17.36.323. The waiver provision is necessary to provide flexibility to approve the location of existing water supply systems if the waiver criteria in ARM 17.36.601 are met. Existing systems may not be able to meet setback requirements. This should be allowed if no environmental or public health harm would occur, which ARM 17.36.323 assures.

The proposed amendments renumber (2) and provide that the section is applicable only to non-public water supply systems.

17.36.336 ALTERNATE WATER SUPPLY SYSTEMS (1) The provisions of this rule apply only to proposed non-public alternate water supply systems in subdivisions. Public water supply systems must meet the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

(1) through (3) remain the same, but are renumbered (2) through (4).

~~(4)~~ (5) The reviewing authority may require that the applicant collect information regarding quality, quantity, and dependability of the water supply at specified times of the year.

(a) The reviewing authority may require water quality sampling to test for direct influence by surface water. Such sampling may include:

(i) and (ii) remain the same.

(iii) testing for organisms that indicate direct influence by surface waters according to ~~Department Circular PWS-5, 1999 edition~~; and

(iv) and (b) remain the same.

~~(5)~~ (6) Cisterns may be utilized ~~only for individual water supplies. The reviewing authority may authorize such use only if:~~

(a) through (c) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendments to ARM 17.36.336 add a new (1) to clarify that the provisions of (2) through (6)(c) apply only to proposed non-public alternate water supply systems in subdivisions. The amendments clarify that the requirements applicable to public water supply systems within a proposed subdivision are those set out in Title 75, chapter 6, MCA, and rules promulgated thereunder. These amendments are necessary to clearly identify the requirements that are applicable to public and non-public alternate water supply systems in proposed subdivisions.

The proposed amendment to (4)(a)(iii) deletes a reference to the year of PWS-5. It is not necessary to identify the year in this rule because the correct editions of applicable department circulars are identified when the circulars are incorporated by reference in ARM 17.36.345.

The proposed amendment to (5) allows cisterns for uses other than individual water supplies if the criteria in the rule are met. The limitation to individual water systems is not necessary. Cisterns can provide a water source that is adequate in terms of the quantity, quality, and dependability, regardless of the size of system.

17.36.340 LOT SIZES: EXEMPTIONS (1) This rule sets out, for purposes of the review of proposed subdivisions, the requirements for minimum lot or parcel size and the criteria for varying the minimum size. ~~Proposed subdivisions involving mobile homes, trailer courts, campgrounds, multiple family dwellings, and commercial or industrial development are also subject to this rule.~~

~~(a) If an applicant proposes to use subsurface wastewater treatment systems, as described in DEQ-4, the minimum lot size must be one acre for each living unit and one acre for up to 700 gallons per day of design wastewater flow for commercial and other non-residential uses. The department may allow smaller lot sizes pursuant to waiver as provided in (1)(b) and ARM 17.36.601. The reviewing authority may, without a waiver, allow smaller lot sizes in accordance with the criteria set out in (1)(c) and (d). The reviewing authority may require larger lot sizes as provided in (1)(e).~~

~~(b) The department may allow, pursuant to a waiver under ARM 17.36.601, lot sizes smaller than one acre only for lots created before July 1, 1973, and for alteration of lots created before April 15, 2003, as provided in (1)(b)(i), and only after approval by the local health department. To qualify for a waiver, the applicant shall provide adequate evidence as set out in (1)(b)(ii) and (iii) to demonstrate that water quality is protected.~~

~~(i) For purposes of this rule, "alteration" of lots created before April 15, 2003, means redefining lots by relocating common boundaries. An alteration of lots under this rule must also meet the following requirements:~~

~~(A) it must be impracticable to create lots that comply with the minimum lot size required in (1)(a) and the alteration must improve, or at least not reduce, the capability for wastewater treatment on the affected lots;~~

~~(B) the alteration may not result in an increase in the number of affected lots;~~

~~(C) the alteration may not decrease the total acreage of all affected lots; and~~

~~(D) the number of existing wastewater systems on the affected lots may not be increased, although existing wastewater systems may be altered or replaced.~~

~~(ii) The applicant shall provide site-specific information regarding soil and aquifer characteristics, mixing zones, and impacts on surrounding properties taking into account existing and potential uses. The applicant shall also provide evidence showing that:~~

~~(A) level two treatment, as defined in ARM 17.30.702(9), is provided if a limiting layer is within 15 feet of the natural ground surface. The reviewing authority may require the applicant to construct soil test pits or ground water monitoring wells to demonstrate the depth to a limiting layer;~~

~~(B) soil properties are suitable for treatment and disposal of wastewater; and~~

~~(C) the lot has adequate space for the wastewater treatment system and replacement area, water supply, and all permanent structures including, but not limited to, driveways, houses, garages, ditches, service lines, easements, and utilities.~~

~~(iii) In order to determine site suitability, the reviewing authority may require the applicant to provide additional site-specific information, including results of ground water or soils analyses.~~

~~(c) The reviewing authority may allow lot sizes smaller than one acre, but not less than 20,000 ft² if all of the conditions in any one of (1)(c)(i) or (ii) are met:~~

~~(i) the water supply or wastewater treatment for the lots that are proposed to be smaller than one acre is provided by either a multiple user system (designed by a professional engineer) or by a public system; or~~

~~(ii) the water supply is provided by a cistern because it is not feasible to develop a water supply for the proposed subdivision that meets the water quality, quantity and dependability requirements in ARM 17.36.331 and 17.36.332, and the wastewater treatment systems for the proposed subdivision meet all of the requirements of this chapter.~~

~~(d) The reviewing authority may allow lot sizes smaller than one acre, including lots with less than 20,000 ft², if all of the conditions in any one of (1)(d)(i), (ii), or (iii) are met:~~

~~(i) the water supply and wastewater treatment are provided by public or municipal systems, and the well or other source for the water supply is not located on a lot that is proposed for lot size reduction;~~

~~(ii) the affected ground water beneath and surrounding the subdivision has a specific conductance equal to or greater than 7,000 microSiemens/cm at 25°C, and all existing and anticipated uses of the ground water are protected; or~~

~~(iii) the proposed subdivision is within a designated wastewater facility service area, which has been planned for by a local wastewater utility and approved by the department pursuant to Title 75, chapter 6, MCA, and the acreage of lots on which drainfields are located is at least one acre for up to 700 gallons per day of design wastewater flow; and~~

~~(A) the local wastewater utility certifies in writing that the collection systems serving the lots meet the utility's design standards and may be connected to the system when public wastewater mains are available. As-built plans for all collection systems must be submitted to the reviewing authority and to the local wastewater utility; or~~

~~(B) a dry-laid wastewater main is provided connecting the lots to a planned municipal wastewater main, with appropriate easements, and the local wastewater utility issues written approval of the design and installation of the main, and certifies that the dry-laid wastewater main, service lines, and related appurtenances may be connected to the municipal system when public wastewater mains are available. As-built plans for all dry-laid systems must be submitted to the reviewing authority and to the local wastewater utility.~~

~~(e) The reviewing authority may require lot sizes larger than those allowable under (1)(a) or may limit the wastewater flow for a lot if:~~

~~(i) wastewater flow exceeds 700 gallons per day per acre;~~

~~(ii) wastewater flow exceeds residential strength;~~

~~(iii) lots are used for a combination of residential and nonresidential uses; or~~

~~(iv) if otherwise necessary to protect water quality.~~

(2) Subject to (4), each proposed new subdivision lot, area proposed for condominiums, or area proposed for permanent multiple spaces for recreational camping vehicles or mobile homes, must be of sufficient size to satisfy all of the following criteria:

(a) facilities on each lot must comply with the setback requirements in ARM 17.36.323, except that setbacks for existing sewage systems may be waived pursuant to ARM 17.36.327(3);

(b) drainfield mixing zones must be located wholly within the boundaries of the proposed subdivision, pursuant to ARM 17.36.322(5);

(c) well isolation zones must be located wholly within the boundaries of the proposed subdivision, pursuant to ARM 17.36.330(4); and

(d) each lot must have adequate space for the sewage treatment system, drainfield replacement area, water supply, and all permanent structures including, but not limited to, driveways, houses, garages, ditches, service lines, easements, and utilities. Easements may be used to satisfy this requirement.

(3) For lots created before July 1, 1973, and for which sanitary restrictions are proposed to be lifted, the requirements of (2)(a) and (d) apply, subject to the provisions of ARM 17.36.106(3).

(4) The reviewing authority may require lot sizes larger than those allowable under (2) if necessary to protect human health or water quality.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: ARM 17.36.340 sets out the minimum requirements for lot or parcel size. The current rule establishes, for parcels with on-site sewage systems, a minimum size of one acre for each residential or commercial unit. The rule also sets out a number of exceptions to the one-acre requirement. The proposed amendments to the rule would eliminate the one-acre minimum requirement and the associated exemptions, and would replace them with four criteria.

The proposed amendments are necessary to simplify the lot size rule and to make it better serve the purposes of the rule. The current one-acre minimum and the numerous exceptions are difficult to administer. The list of exceptions has grown over time as new cases are found in which the one-acre requirement is not

necessary. The two main purposes of requiring a minimum subdivision lot size are: (1) to protect human health and water quality by creating sufficient separation between wells and contamination sources; and (2) to allow sufficient development space on subdivision parcels to allow installation of water and sewer facilities, together with other subdivision improvements such as houses, garages, and driveways. The one-acre minimum size is not well suited to achieve these purposes. The health and water quality purposes of the rule are better addressed by the setback rules in ARM 17.36.323, which set out detailed separation requirements between wells and contamination sources such as drainfields, mixing zones, surface water, and storm water facilities. The proposed amendments include a reference to a setback waiver for existing sewage systems. The water quality analysis performed for mixing zones provides an additional method for demonstrating that subdivision wells will not be impacted by subsurface sewage treatment systems. The proposed amendments address the need for adequate development space on a lot by expressly requiring it. The lot layout document required by ARM 17.36.104 will provide a tool for assessing compliance with this requirement.

The proposed amendment of (1) deletes the provisions addressing mobile homes, trailer courts, campgrounds, multiple family dwellings, and commercial or industrial development. The provisions for condominiums, mobile home parks, and recreational camping vehicle parks are moved to new (2), which clarifies that the parcel size requirements apply to the entire "area," whether comprised of one or multiple parcels, on which the condominium complex or park is located. This follows the statutory definition of "subdivision" in 76-4-102(16), MCA, and codifies an existing department interpretation of the lot size rule. The amendments are necessary to provide guidance to applicants about the meaning of the rule in these situations. Multiple family dwellings and commercial or industrial development are subject to the provisions of (2), as amended. The reference to campgrounds in this rule is deleted because, unless a campground is a recreational camping vehicle park, it is not subject to the Sanitation in Subdivisions Act.

Proposed new (3) provides that lots that were created prior to July 1, 1973, and for which sanitary restrictions are proposed to be lifted are subject to the requirements in (2) to comply with setbacks and to allow adequate development space. The setback rule, ARM 17.36.323, allows waivers in some situations and ARM 17.36.106(3) provides that pre-1973 lots are not subject to current rules, if the current rules would preclude the use for which the platted lot was intended. The proposed new section is necessary to clarify how the lot size requirements apply to pre-1973 lots.

Proposed new (4) allows the reviewing authority to require larger parcels than required in (2), if necessary to protect human health or water quality. This amendment is necessary to provide flexibility to address special situations where the setback requirements may not be adequate to protect human health or water quality. For example, a lot may need to be larger to provide adequate space for storm water treatment before discharging to surface water.

17.36.605 EXCLUSIONS (1) remains the same.

(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 ~~new~~ facilities will be constructed on the parcel;

(b) through (b)(ii) remain the same.

(c) a boundary line adjustment to a parcel that 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, if:

(i) no new facilities, other than those existing at the time of the boundary line adjustment or those that were previously approved as replacements for the existing facilities, will be constructed on the parcel any of the parcels affected by the boundary line adjustment;

~~(ii) the number of developed parcels is not increased;~~

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

~~(iv) (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; and~~

~~(B) the parcel includes~~ parcels include 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) remains the same.

AUTH: 76-4-104, MCA

IMP: 76-4-125, MCA

REASON: The proposed amendment to (2)(a) prohibits the construction of all facilities on the parcel, not just "new" facilities. The term "new" is misleading to the extent it may suggest that there are some other facilities that could be constructed.

The proposed amendment to (2)(c) clarifies that the exemption in this section applies only to parcels affected by boundary line adjustments (BLAs), not to parcels created through a new division of land. Existing (2)(c)(ii) was added earlier to this rule with the intent to limit the exclusion to BLAs, but it is not clearly stated. The proposed amendments delete (2)(c)(ii) and replace it with an express limitation to BLAs. The proposed amendments clarify that the facilities that were exempt from Sanitation in Subdivisions Act review must be in existence at the time of the BLA. This is the intended meaning of the current language "parcel that has facilities," but the amendment is needed for clarification. The amendments also prohibit the construction of any facilities, not just "new" facilities, other than the existing facilities or facilities previously approved as replacements for the existing facilities. The term "new" is misleading to the extent it may suggest that some facilities other than the existing or replacement facilities could be constructed. These amendments are

necessary to clarify the application of the rule.

A BLA always affects at least two parcels. The proposed amendments to (2)(c)(i) and (ii) will make the exclusion for prior exempt parcels inapplicable if, on any parcel affected by a BLA, new facilities are proposed or existing facilities are out of compliance with applicable regulations. The current reference in (2)(c)(i) to "the parcel" is misleading because it suggests that the exclusion applies when any one parcel in a BLA meets the "no new facilities" criteria. A similar incorrect interpretation could be made that only one parcel in a BLA needs to meet the compliance criteria in (2)(c)(ii). The proposed amendments clarify that the criteria in (2)(c)(i) and (ii) apply to all parcels affected by a BLA. The proposed amendment to (2)(c)(iii) provides that the local health officer may require that adequate sanitation facilities and replacement areas exist on parcels affected by the BLA before approving use of the exclusion. The amendments are necessary to ensure that all proposed new subdivision facilities are reviewed under the Sanitation in Subdivisions Act, to ensure that existing systems on subdivision parcels comply with applicable regulations and to ensure that parcels have adequate sanitation facilities before they are exempted from review.

17.36.802 FEE SCHEDULES (1) An applicant for approval of a division of land into one or more parcels, condominiums, mobile home/trailer courts, recreational camping vehicle spaces, and tourist campgrounds shall pay the following fees:

	<u>UNIT</u>	<u>UNIT COST</u>
<u>TYPE OF LOTS</u>		
Subdivision lot	lot/parcel	\$ 125
Condominium/trailer court/recreational camping vehicle campground	unit/space	\$ 50
Resubmittal fee – previously approved lot, boundaries are not changed	lot/parcel	\$ 75
<u>TYPE OF WATER SYSTEM</u>		
Individual or shared water supply system (existing and proposed)	unit	\$ 85

Multiple user system (non-public) - new system	each	\$ 315 (plus \$105/hour for review in excess of four hours)
- new distribution system design - connection to distribution system	lineal foot lot/unit	\$ 0.50 \$ 70
Public water system New system per DEQ-1	component	per ARM 17.38.106 fee schedule
- new distribution system design - connection to distribution system	lineal foot lot/structure	\$ 0.50 \$ 70
<u>TYPE OF WASTEWATER DISPOSAL</u>		
Existing systems	unit	\$ 75
New gravity fed system	drainfield	\$ 95
New pressure-dosed, elevated sand mound, ET systems, intermittent sand filter, ETA systems, recirculating sand filter, recirculating trickling filter, aerobic treatment unit, nutrient removal, and whole house subsurface drip irrigation systems	design	\$ 190 (plus \$105/hour for review in excess of two hours)
New pressure-dosed, elevated sand mound, ET systems, intermittent sand filter, ETA systems, recirculating sand filter, recirculating trickling filter, aerobic treatment unit, nutrient removal, and whole house subsurface drip irrigation systems	drainfield	\$ 50
	<u>UNIT</u>	<u>UNIT COST</u>
Gray water reuse systems. This is a stand-alone fee and all gray water reuse systems will be reviewed at the unit cost	unit	\$ 95 (plus \$105/hour in excess of two hours)

	<u>UNIT</u>	<u>UNIT COST</u>
Multiple user wastewater system (non-public) - new collection system design - connection to collection system	lineal foot lot/unit	\$ 0.50 \$ 70
New public wastewater system per DEQ-2 - new collection system design - connection to collection system	component lineal foot lot/structure	per ARM 17.38.106 fee schedule \$ 0.50 \$ 70
<u>OTHER</u>		
Deviation from circular	request or per design	\$ 200 (plus \$105/hour for review in excess of two hours)
Waiver from rule	request	\$ 200 (plus \$105/hour for review in excess of two hours)
Reissuance of original approval statement	request	\$ 60
<u>Review of modified lot layout document</u>	<u>request</u>	<u>\$ 125</u>
Municipal facilities exemption checklist (former master plan exemption)	application	\$ 100

	<u>UNIT</u>	<u>UNIT COST</u>
Nonsignificance determinations/categorical exemption reviews - individual/shared systems - multiple-user non-public systems - public systems	drainfield lot/structure drainfield	\$ 60 \$ 30 per ARM 17.38.106 fee schedule

	<u>UNIT</u>	<u>UNIT COST</u>
Storm drainage plan review - plans exempt from Circular DEQ-8 - Circular DEQ-8 review	lot design lot	\$ 40 \$ 180 \$ 40 (plus \$105/hour for review in excess of 30 minutes per lot)
Preparation of environmental assessments/environmental impact statements	----	actual cost

AUTH: 76-4-105, MCA
 IMP: 76-4-105, 76-4-128, MCA

REASON: The proposed amendments to ARM 17.36.802 add a new fee for the review of modified lot layout documents. The fee is necessary for situations like that addressed in proposed New Rule I, which allows amendment of a certificate of subdivision approval by means of a revised lot layout document when the changes consist of the relocation of previously approved facilities. Based on the number of modified lot layouts processed by the department in the past, the department estimates that the new \$125 fee will affect approximately 50 applicants per year, resulting in a total annual revenue from the new fee of \$6,250.

17.36.804 DISPOSITION OF FEES (1) through (1)(g) remain the same.

(2) The department shall reimburse local governing bodies under department contract to review subdivisions as follows:

(a) for subdivisions with individual wastewater treatment systems, the department shall reimburse \$25 per lot plus 80% percent of the review fee under ARM 17.36.802 for the following actions performed by the local governing body:

- (i) each review of water, storm water, and wastewater systems and;
- (ii) nonsignificance determinations and categorical exemptions performed by the local governing body; and
- (iii) review of modified lot layout documents.

(3) and (4) remain the same.

AUTH: 76-4-105, MCA
 IMP: 76-4-105, 76-4-128, MCA

REASON: The proposed amendments to ARM 17.36.804 add, to the provisions for reimbursement of local governing bodies, reimbursement for local

review of storm water plans and modified lot layout documents. Minor formatting changes are made for clarity. The amendments are necessary to allow for reimbursement of local costs in performing these actions. If not performed by local government, these actions would be done by the department.

4. The proposed new rules provide as follows:

NEW RULE I 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 [New Rule II]; 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.

(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.

AUTH: 76-4-104, MCA

IMP: 76-4-125, MCA

REASON: Proposed New Rule I applies to "re-writes" of certificates of subdivision approval when no new subdivision is proposed. The new rule is necessary to codify existing department procedures in these situations in order to provide guidance to applicants and to allow the department the authority to approve modifications for lot layouts. In the current rules, this authority is given only to local governing bodies. The need for a process to allow the modifications is also present for subdivisions reviewed by the department.

Proposed New Rule I(3) sets out application and review procedures. The application must be on a department-approved form. All of the provisions in the Sanitation in Subdivisions Act and rules, including fee provisions, apply to the review of the application, depending on the type of change proposed. A waiver provision is provided if necessary to allow use of facilities that were approved under previous rules. Facilities that are not changing are not re-reviewed, unless a proposed change indirectly affects that facility, e.g., where proposed relocation of a well would require moving a drainfield site. After approval of the application, the reviewing authority must issue a revised COSA, except when the revisions consist solely of the relocation of facilities, in which case the approval document may be a revised lot layout document. This is the procedure currently employed by the department in these situations and this rule codifies the procedure and notifies the public of requirements and procedures.

NEW RULE II REQUIREMENTS FOR SYSTEMS DESIGNED BY PROFESSIONAL ENGINEERS (1) The requirements in this rule apply to systems for which plans and specifications must be submitted to the department by a professional engineer under ARM 17.36.310(2)(a), ARM 17.36.320(2), or ARM 17.36.333(1)(b)(i).

(2) The applicant shall submit documentation in the application indicating commitment to retain a professional engineer to provide certification that the system was built in conformance with the plans and specifications approved by the reviewing authority.

(3) A person may not commence or continue the operation of the system, or any portion of the system, until a professional engineer has certified by letter to the department that the system, or portion of the system constructed, altered, or extended to that date, was completed in substantial accordance with the plans and specifications approved by the department and that there are no deviations from the design standards of the applicable circulars, other than those previously approved by the department.

(4) Within 90 days after completion of construction of the system, a set of certified "as-built" drawings must be signed by a professional engineer and submitted to the department.

(5) If construction of the system is not completed within three years after the department has issued its written approval of the plans and specifications, the approval is void and plans and specifications must be resubmitted to the department with appropriate fees.

AUTH: 76-4-104, MCA

IMP: 76-4-125, MCA

REASON: Proposed New Rule II sets out requirements for storm drainage, water supply, and sewage systems for which plans and specifications must be submitted by a professional engineer under ARM 17.36.310(2)(a), 17.36.320(2), or 17.36.333(1)(b)(i). In those cases, proposed New Rule II(2) requires the applicant to document a commitment to retain a professional engineer to certify that the system was completed in accordance with approved plans. This provision requires the applicant to retain an engineer not only for design purposes, but also for construction inspection and final certification. Proposed New Rule II(3) prohibits use of a system, or portion of a system, prior to a letter from a professional engineer certifying to the department that construction was completed in substantial accordance with the approved plans and specifications and that there are no deviations from applicable design circulars other than those previously approved by the department. Proposed New Rule II(4) requires that a professional engineer submit to the department, within 90 days after completion, signed and certified "as-built" plans. Proposed New Rule II(5) provides that the department's approval of plans submitted by a professional engineer expires if the system is not constructed within three years. These requirements are already in place for water supply and sewer systems that meet the definition of "public" under the public water and sewer laws. See ARM 17.38.101. Applying these requirements to all engineer-designed systems in subdivisions is necessary to provide a mechanism to verify that the systems are constructed in accordance with the plans and specifications approved by the department and ensure that design plans for systems not yet built are updated to address changes in department regulations.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., May 22, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Paul Nicol, attorney for the Department of Environmental Quality, has been designated to preside over and conduct the hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans;

wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter dated April 4, 2014.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and adoption of the above-referenced rules will significantly and directly impact small businesses.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ John F. North BY: /s/ Tracy Stone-Manning
JOHN F. NORTH TRACY STONE-MANNING, Director
Rule Reviewer

Certified to the Secretary of State, April 14, 2014.