



# State & Local Subdivision Review 101

September 1, 2022

*Prepared for the Montana Governor's Housing Task Force*

# Welcome & Logistics

Welcome and thank you for joining us for an educational webinar on Montana Subdivision Review. Please read the following tips about participating in this hybrid meeting:

- The virtual portion of this meeting is a Zoom webinar. All Zoom participants have been automatically muted. For those joining us in the room, please remain quiet so everyone is able to hear.
- The meeting will follow an agenda with presentations from several panelists followed by a Q&A session.
- In the interest of time, we ask that you hold questions until the end. Should you have questions as we go, please jot them down or type them into the Q&A on Zoom.
- When we get to the Q&A session, use the “raise hand” feature on Zoom to indicate that you would like to speak. For those in the room, please also raise your hand.
- If you are called on to speak, please identify yourself by stating your first and last name.
- Joining by phone?
  - If the host allows you to talk, press \*6 to mute/unmute yourself.
  - Press \*9 to raise your hand.

# Today's Agenda

1:30 Welcome and Meeting Overview

1:40 Subdivision and Platting Act

1:50 Sanitation in Subdivisions Act

2:10 Local Health Department Role

2:20 Panel Q&A

## Webinar Purpose

Educate key stakeholders about the various parts of the subdivision review process, why it's important, and how key entities are working together to improve the application and review process.



## Presenters

**Karen Alley**, Montana Association of Counties

**Margarite Juarez-Thomas**, Montana Dept. of Environmental Quality

**Jeanna Miller**, Missoula County



# Montana Subdivision and Platting Act

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# Montana Subdivision and Platting Act

- Introduced as SB 208 in 1973 Legislative Session
- 1973 Legislative Purpose
  - Promote public health, safety, and general welfare by regulating subdivision of land
  - Prevent overcrowding of land
  - Lessen congestion on streets and highways
  - Provide adequate light, air, water supply, sewage disposal, park and recreation areas, ingress and egress, and other public requirements
  - Encourage development in harmony with natural environment
  - Require uniform monumentation of land subdivisions and transferring interests in real property be reference to plat or certificate of survey

# Montana Subdivision and Platting Act

- 1973 passage applied to divisions of land of 10 acres or less, which was the most controversial part of the bill.
  - This acreage was quickly changed in 1974 to apply to divisions of land 20 acres or less.
  - Present definition of subdivision, **effective as of April 6, 1993:**

“division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed.” (MCA 76-3-103(16))

# Montana Subdivision and Platting Act

- Overarching goal of MSPA is two-fold
  - Government regulation of development (both local and state)
    - Prior to 1973, local government had minimal, if any, review of subdivided lands
  - Public participation in community growth and development
    - SB 208 (1973) included public participation in subdivision review, specifically in the creation of regulations created by the local governing bodies.

# Montana Subdivision and Platting Act

- Current iteration of the Act
  - By and large the purpose remains the same, though in the intervening years, the legislature has added the following to the purpose of the Act:
    - Promote preservation of open space
    - Promote cluster development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services
    - Protect the rights of property owners
    - Provide for phased developments

# Montana Subdivision and Platting Act

Each governing body's subdivision regulations must reasonably provide for:

- (a) the orderly development of their jurisdictional areas;
- (b) the coordination of roads within subdivided land with other roads, both existing and planned;
- (c) the dedication of land for roadways and for public utility easements;
- (d) the improvement of roads;
- (e) the provision of adequate open spaces for travel, light, air, and recreation;
- (f) the provision of adequate transportation, water, and drainage;
- (g) subject to the provisions of [76-3-511](#), the regulation of sanitary facilities;
- (h) the avoidance or minimization of congestion; and
- (i) the avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and wildland fire, or the lack of water, drainage, access, transportation, or other public services or that would necessitate an excessive expenditure of public funds for the supply of the services." (MCA 76-3-501)

# Montana Subdivision and Platting Act

- Review of each subdivision application requires analysis of several primary criteria under MCA 76-3-608(3)(a):
  - Agriculture;
  - Agricultural water user facilities;
  - Local services;
  - The natural environment;
  - Wildlife;
  - Wildlife habitat; and
  - Public Health and Safety

# Montana Subdivision and Platting Act

- It is the role of local government to analyze any adverse impacts to the primary criteria
  - Significant adverse impacts are mitigated with conditions of approval, imposed through the review process itself
- In completing its review, local governing body relies upon not only representation from the subdivider but also on public participation.
- Public still plays a critical role in community growth, both in the development of regulations as well as in the site-specific (application) review

# Montana Subdivision and Platting Act

- Specific to Sanitation in Subdivision
  - Under MCA 76-4-102(23), subdivision is defined by a division of land that creates parcels of land less than 20 acres. Any parcel under 20 acres is reviewed by the Montana DEQ for water and sanitation review. Parcels over 20 acres are reviewed by the local county sanitarian for water and sanitation review.
  - Subdivision applications, submitted under MCA Title 76, Chapter 3 “must be accompanied by preliminary water and sanitation information required under MCA 76-3-622.”
  - As part of the review process, the local governing body is required to collect public comment related to water and sanitation review. Those comments are provided to the subdivider and passed along to the appropriate reviewing authority, pursuant to MCA 76-3-604.



# DEQ Subdivision Review Process

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# Statutory Authority for DEQ



# Sanitation Act Background

- Sanitation review is to ensure that facilities meet the state's requirements in place to protect public and environmental health for:
  - water,
  - wastewater,
  - stormwater, and
  - solid waste

...and to help ensure that any parcel that is created can be used for the expected purpose.

- The structure of the Sanitation Act gives counties and local governments flexibility while providing statewide minimum standards.
- Before the Sanitation Act, lots were created that don't have enough room or weren't the right shape to allow for wastewater systems to be far enough from rivers, streams or their neighbors wells (for example).

# Two Subdivision Acts, Different Purposes

## Subdivision and Platting Act

- Lots less than 160 acres
- RVs and mobile homes for lease or rent
- Widely used exemption for 5 or fewer lots
- Looks at many different types of impacts for example- roads, houses, and traffic
- Public comment is considered and provided to DEQ

## Sanitation in Subdivisions Act

- Lots less than 20 acres
- RVs and mobile homes
- Requires review under most circumstances were water, wastewater and stormwater facilities are being added or changed
- Projects that can meet the standards will be approved

# Water Rights Coordination

## 17.36.103 APPLICATION--CONTENTS

- DNRC Letter
  - water supply is exempt  
OR
  - water right complete
- Different procedure within reservation boundaries.

# Quick Sanitation Act History

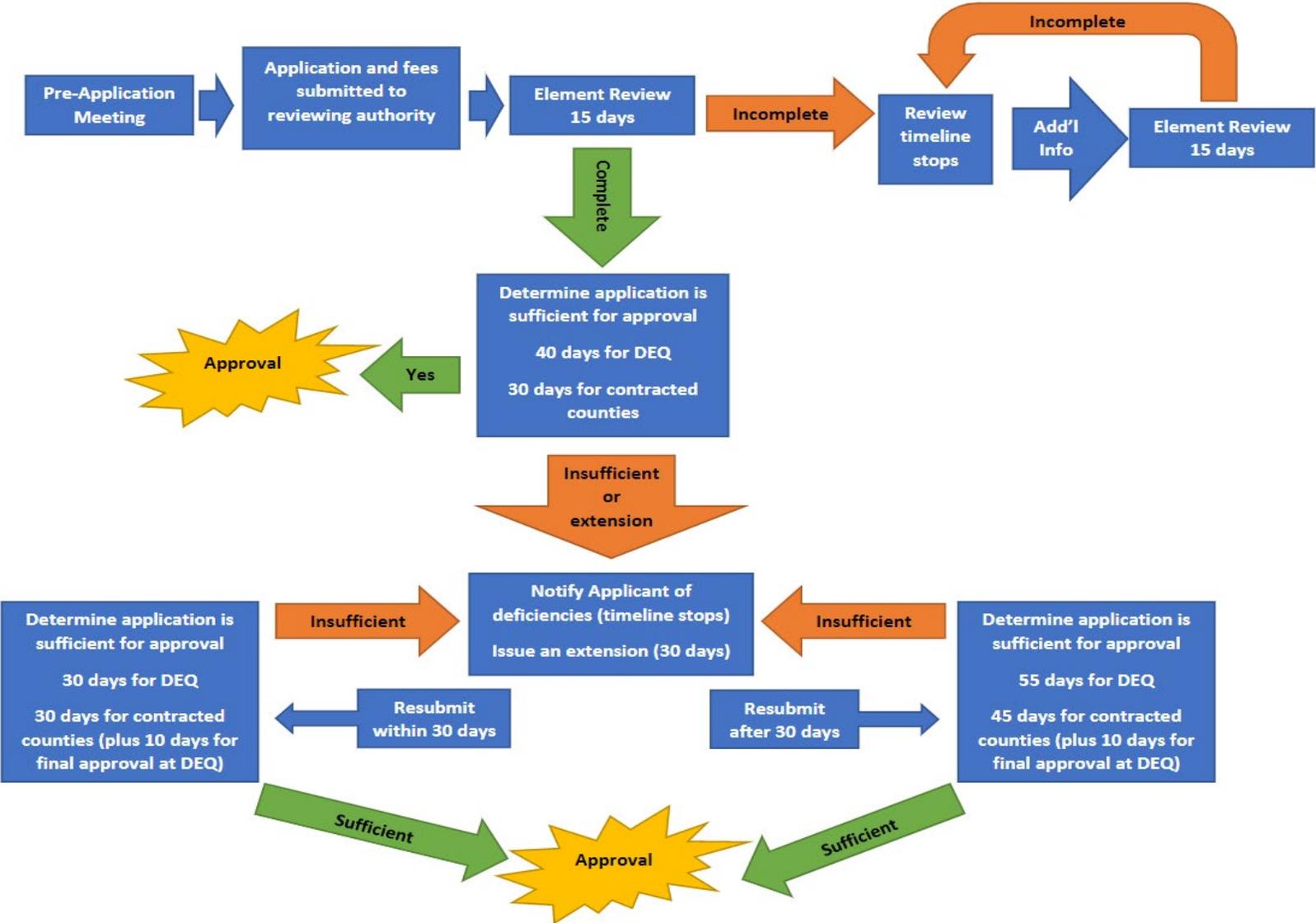
- The Sanitation in Subdivisions Act has been in effect since 1961, requiring approval before building or sanitation facilities can be constructed.
- The Sanitation Act implementation improved after the Subdivision and Platting Act in 1973 providing a better system to make sure that parcels that were subject to the Sanitation Act were getting reviewed.
- Between 1961 and 1975 the definition of a Subdivision in the Sanitation Act changed with different lot sizes and the addition of RVs, mobile homes and condos.
- Since 1975, the definition has only minor modifications.

# Water Quality Division Engineering Bureau

**"Subdivision"** means a division of land or land so divided that creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision, any condominium, townhome, or townhouse, or any parcel, regardless of size, that provides two or more permanent spaces for recreational camping vehicles or mobile homes.

76-4-102 (23), MCA

# DEQ Review Process



# DEQ Subdivision Review

- Receive Subdivision Applications
- DEQ Reviews Application using the Application Part IV: Subdivision Checklist

We look at:

- Proper formatting of the lot layout
  - Water quality, quantity, and dependability
  - Proper functioning of the wastewater system
  - Setbacks
  - Non-degradation of state waters
  - Storm water drainage
- Issue Certificates of Subdivision Approval (COSA)

# System Classification

## **Individual**

- Serves one living unit or commercial unit and that is not a public system

## **Shared**

- Serves, or is intended to serve, two living units or commercial units or a combination of both and that is not a public system

## **Multi-user**

- 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 system

## **Public**

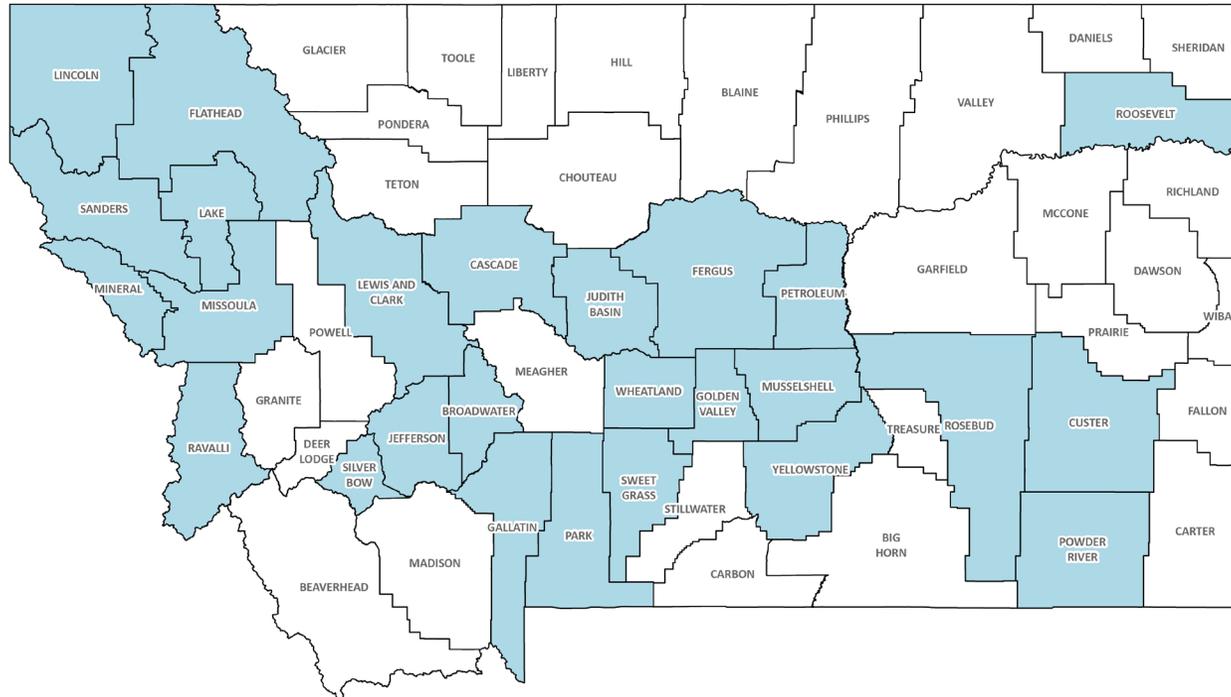
- Serves 15 or more connections, or
- 25 or more persons for 60 or more days per year

# Strategies to Improve Timelines

- Hiring
- Exploring pay adjustments and overtime
- Program "people-sharing"
- Technology – online application submittals
- Contracts – city engineers
- Rulemaking
- Funding
- Efficiency

# Contracted Counties Subdivision Review

Approximately half of the counties in Montana (28) are contracted to conduct reviews of subdivision applications in their county



After the County's review is complete, they make a recommendation for approval of the application to DEQ

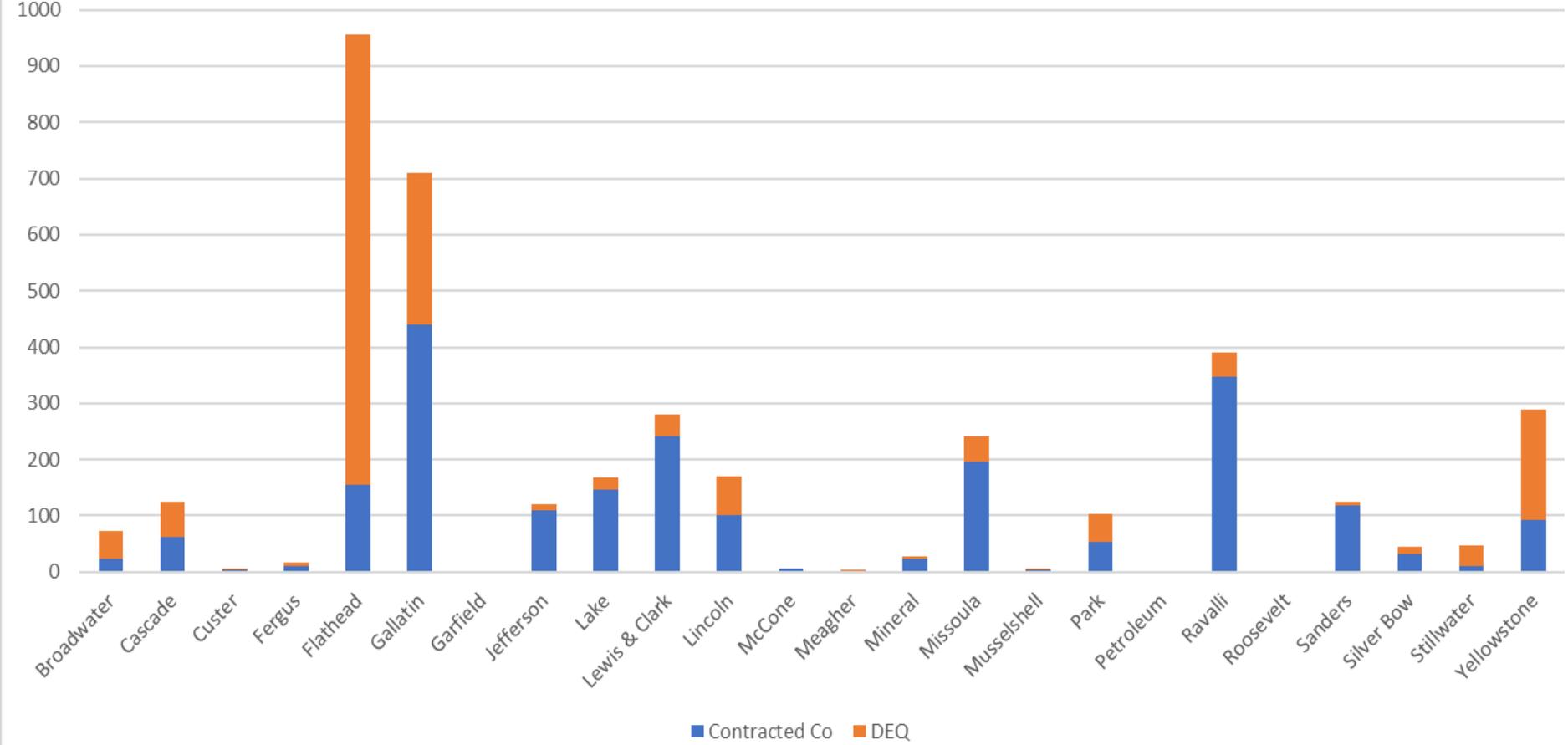
\*DEQ has added new contracts with Stillwater and Madison Counties since this map was created

# Total Files Reviewed in Top 10 Contracted Counties vs DEQ - 5 years

County Name	Contracted Co	Co %	DEQ	DEQ %	Grand Total
Gallatin	439	62%	271	38%	710
Ravalli	348	89%	42	11%	390
Lewis & Clark	241	86%	40	14%	281
Missoula	195	81%	46	19%	241
Flathead	154	16%	802	84%	956
Lake	146	87%	22	13%	168
Sanders	118	94%	7	6%	125
Jefferson	110	92%	10	8%	120
Lincoln	102	60%	68	40%	170
Yellowstone	93	32%	195	68%	288

### Contracted County vs. DEQ File Reviews

5+ Years: 1/1/2017 - 8/31/2022

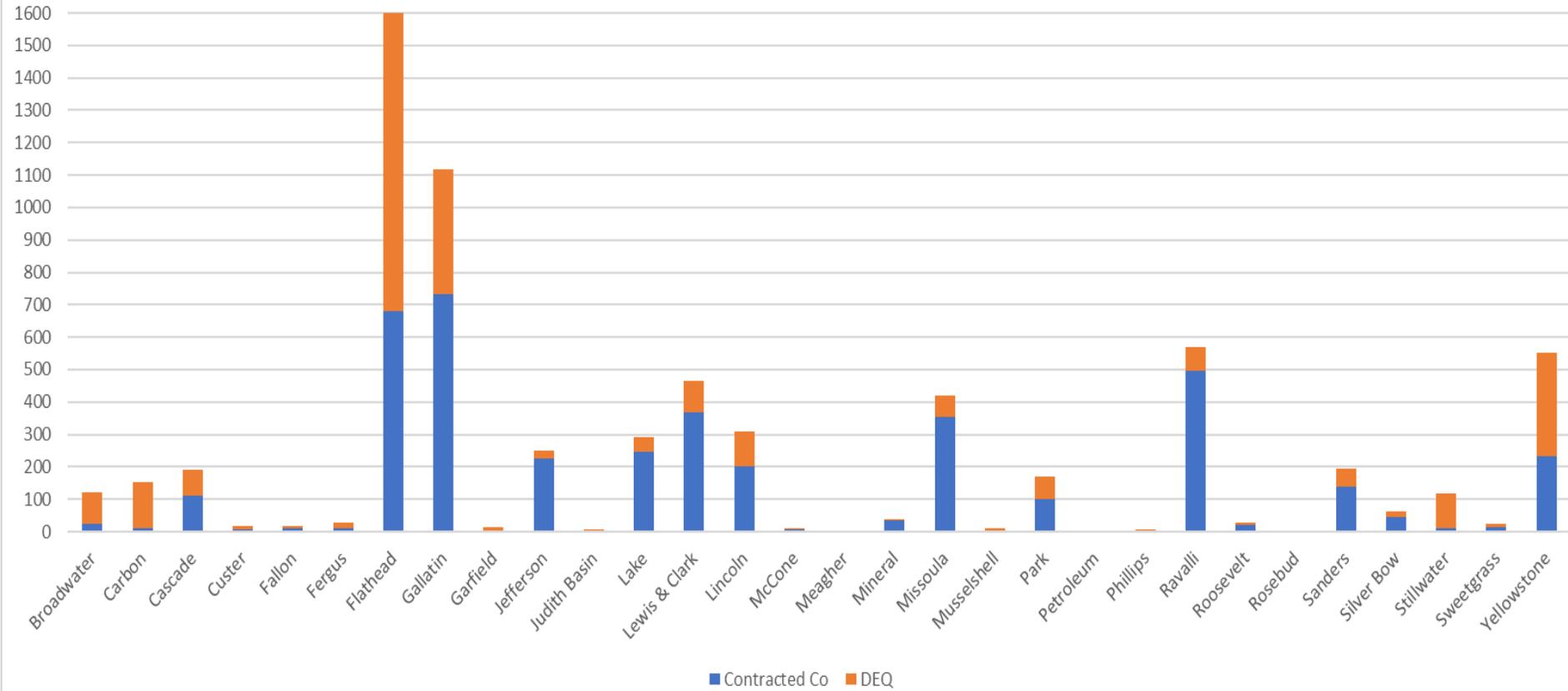


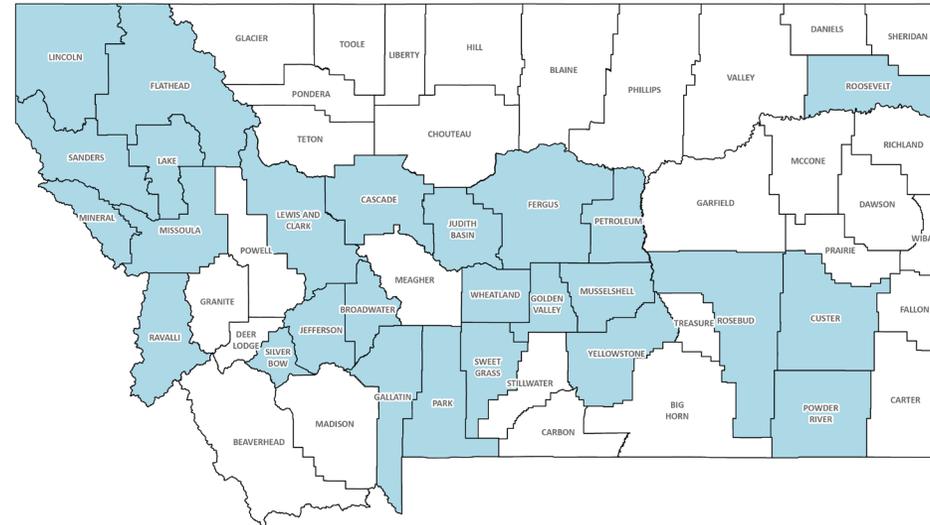
# Total Files Reviewed in Top 10 Contracted Counties vs DEQ - 10 years

County Name	Contracted Co	Co %	DEQ	DEQ %	Grand Total
Gallatin	734	66%	382	34%	1116
Flathead	680	42%	922	58%	1602
Ravalli	497	87%	72	13%	569
Lewis & Clark	368	79%	97	21%	465
Missoula	355	85%	65	15%	420
Lake	248	85%	44	15%	292
Yellowstone	233	42%	320	58%	553
Jefferson	225	90%	26	10%	251
Lincoln	202	65%	108	35%	310
Sanders	138	70%	58	30%	196

### Contracted County vs. DEQ File Reviews

10+ Years: 1/1/2012 - 8/31/2022





# Contracted Counties

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# Review by local sanitarians, rather than DEQ staff

Under a contract with DEQ. Contract generally covers:

- Types of systems/applications that can be reviewed by local sanitarians (ex: not allowed to review public systems, main extensions, commercial stormwater)
- Timelines for communicating various steps with DEQ (app received, element review complete, letters sent), and shorter timeline for completing reviews
- Training requirements for local reviewers. One year minimum under supervision of another certified reviewer, pass exam with a 90%.
- Reimbursement rates and mechanisms. County receives only a portion of the review fees, even when they review all aspects of an application.

# Advantages of local review

County sanitarians have a different perspective, the whole picture...

- For DEQ staff, the sanitation approval (COSA) is the end game. Sanitarians see it through until the well, septic, and stormwater structures have been permitted and installed and inspected. It is critical to us that the approval documents are understandable to all audiences, that the site plan is real-world accurate.
- Experience looking at decades worth of old approval documents for permitting purposes. We know what language works, and what has been confusing or problematic for owners/contractors at the time of permitting.
- Sanitarians are experts in the local rules that apply in addition to the state laws/rules. County Health Codes, and other local rules/ordinances often have a big impact.

# Advantages, continued...

- Extensive knowledge of the land.
  - We go to every site. It's not uncommon for site plans to be submitted that don't show existing structures, sanitary facilities, surface water, or significant slopes. Those discrepancies shouldn't be discovered at the time of system inspection.
  - Examples: We know where the groundwater is high, where the floodplain is located (and how accurate it really is in a flood year), where bedrock is a concern, and where it is unlikely that a well will be productive. We have permitted and inspected hundreds of new and replacement septic systems and wells. Boots on the ground and an understanding of local issues.
- We know the stakeholders. We work closely with applicants, consultants, developers, contractors, drillers, installers, and other regulatory staff members (building, planning, floodplain, special districts) in our jurisdictions. Establishing trust and positive long-term relationships are a priority.
- We conduct our own enforcement actions when there is a violation of the Act or a COSA condition.

# Panel Q&A

Raise your hand if you would like to speak or type your question into the Q&A on Zoom to have it read aloud.

If you are joining by phone, press \*9 to raise your hand.

When you are called on, please state your name prior to asking your question.

If you are in the room, make sure to speak into a microphone so those online can hear.

Please be respectful of the limited time.



Thank You!

