

SUBDIVISIONS – ARM 17.36

17.36.101 DEFINITIONS

For purposes of subchapters 1, 3, 6, 8, [and the Department Circulars DEQ-1, -2, -3, -4, and -20](#) the following definitions apply:

- "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. [This definition is only relevant for determining whether a pipe is considered a main or a service connection and has no bearing on whether a system is classified as individual, shared, multiple user or public.](#)
- "Bedrock" means material that cannot be readily excavated by hand tools, or material that does not allow water to pass through or that has insufficient quantities of fines to provide for the adequate treatment and disposal of wastewater. The term does not include gravel and other rock fragments as defined in Department Circular DEQ-4, Appendix B.
- "Bedroom" means any room that is or may be used for sleeping. An unfinished basement is considered an additional bedroom.
- "Campground" is defined in 50-52-101, MCA.
- "Certificate of survey" is defined in 76-3-103, MCA.
- "Cesspool" means a seepage pit without a septic tank to pretreat the wastewater.
- "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.
- "Condominium" is defined in 70-23-101, MCA.
- "Connection" means a line that provides water or sewer service to a single building or to a main building with accessory buildings. The term is synonymous with "service connection." For purposes of [ARM 17.36.123](#) ~~ARM 17.36.328~~, "connection" means a water or sewer line that connects a subdivision to a public system.
- "Department" means the Montana Department of Environmental Quality.
- "Deviation" means a department-approved departure from a requirement contained in a department circular.
- ["Discharge" means the amount of flow, in volume per unit time, from any structure that is used for collecting and conveying water, wastewater, or storm water, often expressed in units, gallons per minute, gallons per day, cubic feet per second or acre-inches per hour.](#)
- ~~"Drainageway"~~ ["Drainage way"](#) means a course or channel along which storm water moves in draining an area.

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

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

• "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.

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

• "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.

• "Failed system" means a wastewater treatment and/or disposal system that no longer provides the treatment and/or disposal for which it was intended, or violates any of the requirements that were in place at the time that the system was approved or permitted.

~~• "Fill" means artificially placed soil.~~

• "Flood plain" means the area adjoining the watercourse or drainage way that would be covered by ~~a flood that is expected to recur on the average of once every 100 years or by a flood that has a one percent chance of occurring in any given year.~~ the floodwater of a flood of 100-year frequency, except for sheetflood areas that receive less than 1 foot of water per occurrence and are considered "zone B" or a "shaded X zone" by the federal emergency management agency. The flood plain consists of the floodway and the flood fringe, as defined in ARM 36.15.101.

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

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

~~• "Holding tank" means a watertight receptacle that receives wastewater for retention and does not as part of its normal operation dispose of or treat the wastewater. The term does not include surge tanks used in a gray water irrigation system if the system meets the requirements of ARM 17.36.319 Department Circular DEQ-4.~~

• "Impervious area" means a hard surface area that prevents or retards the entry of water into the soil. Impervious areas include, but are not limited to, rooftops, traditional asphalt, concrete and gravel parking lots, driveways, roads, and sidewalks.

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

- "Individual wastewater system" means a wastewater system that serves one living unit or commercial unit and that is not a public sewage system as defined in 75-6-102, MCA.
- "Individual water system" means any water system that serves one living unit or commercial unit and that is not a public water supply system as defined in 75-6-102, MCA.
- ["Irrigation" means those systems that provide subsurface application of water or wastewater to any planted material by means of a piping system.](#)
- "Limiting layer" means bedrock, an impervious layer, or seasonally high ground water.
- "Living unit" means the area under one roof that can be used for one residential unit and that has facilities for sleeping, cooking, and sanitation. A duplex is considered two living units.
- "Local health officer" means health officer as defined in 50-2-101, MCA, or the health officer's designee.
- "Lot" is synonymous with "tract" or "parcel" for purposes of this chapter.
- "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.
- "Mixing zone" is defined in 75-5-103, MCA.
- "Mobile home" means a trailer equipped with necessary service connections that is designed for use as a long-term residence.
- ["MS4" means municipal separate storm sewer systems](#)
- "Multiple-user wastewater system" means a wastewater system that serves, or is intended to serve, more than two living units or commercial units or a combination of both and that is not a public sewage system as defined in 75-6-102, MCA. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units by 2.5.
- "Multiple-user water supply system" means a water supply system that serves, or is intended to serve, more than two living units or commercial units or a combination of both and that is not a public water supply system as defined in 75-6-102, MCA. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units by 2.5.
- "Municipal" means pertaining to an incorporated city or town.
- ~~"Natural soil" means soil that has developed through natural processes and to which no fill material artificially placed soil has been added.~~
- "Parcel" means a part of land which is created by a division of land. The term is synonymous with "tract" and "lot" for purposes of this chapter.

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

• "Plat" is defined in 76-3-103, MCA.

• "Preliminary plat" is defined in 76-3-103, MCA.

• "Pretreatment"

• When applied to water means the treatment to reduce suspended solids, impurities, and chemicals prior to full primary treatment or prior to use including, but not limited to filtration, softening, dealkalizing, deionizing, and reverse osmosis.

• When applied to wastewater means the wastewater treatment that takes place prior to discharging to any component of a wastewater treatment and disposal system including, but not limited to, pH adjustment, oil and grease removal, BOD5, and TSS reduction, screening, and detoxification.

• When applied to storm water means improving storm water quality by reducing sediment, trash, debris, or organic materials. The term does not apply to the pre-treatment standards promulgated by the EPA and set forth in 40 C.F.R. Part 403 and 40 C.F.R. chapter 1, subchapter N.

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

• "Public wastewater system" ~~means a system for collection, transportation, treatment, or disposal of wastewater that serves 15 or more families or 25 or more persons daily for any 60 or more days in a calendar year. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units by 2.5, so that ten or more proposed residential connections will be considered a public system.~~ is defined in ARM 17.38.101.

• "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.~~ is defined in ARM 17.38.101.

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

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

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

- "Replacement Area" means the ground surface area for the location of a wastewater treatment system proposed to replace a failed, failing, or contaminating system.
- "Reviewing authority" is defined in 76-4-102, MCA.
- "Sealed Components" means holding tanks, sealed pit privies, and the components addressed in Department Circular DEQ-4, Chapters 4 and 5.
- ~~"Sealed pit privy" means an enclosed receptacle designed to receive non-water-carried toilet wastes into a watertight vault a building containing a stool, urinal, or seat over an underground watertight vault for the temporary storage of wastewater.~~
- "Seasonal use" means use for not more than a total of 120 days during any calendar year
- ~~"Seasonally high ground water" means depth from the natural ground surface to the upper surface of the zone of saturation, as measured in an unlined hole or perforated monitoring well during the time of the year when the water table is the highest. The term includes the upper surface of a perched water table.~~
- "Seepage pit" means a covered underground receptacle that receives wastewater after primary treatment and allows the wastewater to seep into the surrounding soil.
- "Septic tank" means a wastewater settling tank in which settled sludge is in immediate contact with the wastewater flowing through the tank while the organic solids are decomposed by anaerobic action.
- "Service connection" means a line that provides water or sewer service to a single building or main building with accessory buildings, and that is designed to service line specifications. The term is synonymous with "connection."
- "Sewage" is synonymous with "wastewater" for purposes of this chapter.
- "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point through a wastewater treatment system;
- "Shared wastewater system" means a wastewater system that serves, or is intended to serve, two living units or commercial units or a combination of both and that is not a public sewage system as defined in 75-6-102, MCA.
- "Shared water system" means a water system that serves, or is intended to serve, two living units or commercial units or a combination of both and that is not a public water supply system as defined in 75-6-102, MCA.
- "Site evaluation" means an evaluation to determine if a site is suitable for the installation of a subsurface wastewater treatment system.

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

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

- "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.

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

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

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

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

- "Storm Sewer" means a network of pipes that conveys surface drainage to an outfall from an inlet or through a manhole.

- "Storm Water" means water that originates during a storm event. Storm water can infiltrate, evaporate, or runoff. Used interchangeably with the term "storm water drainage."

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

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

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

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

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

- household, commercial, or industrial wastes;
- chemicals;
- human excreta; or
- animal and vegetable matter in suspension or solution.

- "Wastewater treatment system" or "wastewater disposal system" means a system that receives wastewater for purposes of treatment, storage, or disposal. The term includes, but is not limited to, all disposal methods described in Department Circulars DEQ-2 and DEQ-4.
- "Well" ~~means an artificial excavation that derives water from the interstices of rocks or soil which it penetrates.~~ is synonymous with the term "water well" defined in 75-5-103(41), MCA.
- "Well isolation zone" means the area within a 100-foot radius of a water well.
- "Wetlands" are areas inundated or saturated by ground or surface water sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. See 33 C.F.R. § 328.3(4).

~~(72) "Zone of saturation" means the area beneath the ground in which all open spaces are filled with ground water.~~

17.36.102 APPLICATION--GENERAL

- (1) To initiate review of ~~a subdivision~~ an application under ~~76-4-114~~ ~~76-4-125~~ or 76-4-134, a person must submit a complete application to the department. The application must be signed by all owners of record of the property ~~proposed to be subdivided~~ or properties. In the application, the owners may designate an authorized representative responsible for subsequent correspondence with the reviewing authority. If the department has certified a local department or board of health to review subdivisions pursuant to 76-4-104, MCA, the application must be submitted to the local reviewing authority.
- (2) A subdivision application must be on a form ~~approved~~ provided by the department. Copies of the application form may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901, <http://www.deq.mt.gov>, or from the local reviewing authority.
- (3) A copy of the complete application, including all supporting information supplied to the reviewing authority, and all resubmittals of the application, must be submitted concurrently to the local health officer having jurisdiction for purposes of reviewing compliance with local laws and regulations, as provided in ARM 17.36.108.
- (4) To resume review of an application that has been inactive for more than one year after the issuance of a denial letter by the reviewing authority, the applicant shall reapply and submit fees as required by subchapter 8, unless the file is inactive due to ground water monitoring, flood plain surveys, additional testing or sampling information which must be done seasonally, acquiring water rights, or other similar long-time frame requirements imposed by the reviewing authority or another agency.
- (5) In addition to meeting the requirements of this chapter, ~~subdivisions~~ parcels 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~~ an application includes facilities for onsite 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.

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~~ an application:

(a) a fee calculation sheet, as provided by the department, and payment of review fees as required in subchapter 8;

(b) one copy of a design report and one copy of plans and specifications for water supply, wastewater treatment, and storm water systems until the plans are approvable, after which three copies of final plans and specifications must be submitted;

~~(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)~~ (c) lot layout documents as required by ARM 17.36.104;

~~(e)~~ (d) a vicinity maps or plans showing the locations of the following features ~~if they are within 100 feet of proposed or approved subdivision mixing zones, within 100 feet of proposed subdivision water supply or wastewater treatment facilities, or within 100 feet of the perimeter of the proposed subdivision:~~

(i) a small-scale vicinity map showing lakes, streams, irrigation ditches, wetlands, and springs, located within ½ mile from any existing or proposed well or drainfield or perimeter of the subdivision; and

(ii) a large-scale vicinity map showing existing, previously approved, and proposed wells, wastewater treatment systems, and mixing zones existing or approved public water and public wastewater facilities, drainfields, existing or approved mixing zones, lagoons, or other sources of contamination within 1,000 feet of any existing or proposed well or drainfield or perimeter of the subdivision;

~~(f)~~ (e) evidence that the water source is sufficient in terms of quality, quantity, and dependability, in accordance with ARM 17.36.117 and 17.36.332;

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

~~(i) the location of the proposed ground water source, which must be shown on the lot layout, indicating distances to any potential sources of contamination within 500 feet, any known mixing zone as defined in ARM 17.30.502 within 500 feet, and any sewage lagoon within 1,000 feet. If the reviewing authority identifies a potential problem, it may require that all potential sources of contamination be shown in accordance with Department Circular PWS-6; and~~

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

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

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

~~(i) soil profile descriptions, percolation tests if required, and other pertinent soil information for each proposed drainfield;~~

~~(ii) seasonal high ground water information;~~

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

~~(iv)~~ (f) any other evidence to show whether the wastewater treatment systems, including gray water systems, are sufficient in terms of capacity and dependability in accordance with ARM Title 17, Chapter 36, Subchapter 3;

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

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

~~(ii) the location and design of the proposed systems;~~

~~(k)~~ (g) 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;

~~(h)~~ (h) ~~a storm drainage map and plan as required by ARM 17.36.310~~ evidence that storm water facilities will be of sufficient size and located to ensure proper drainage and treatment in accordance with ARM 17.36.310;

~~(m)~~ (i) the name of the solid waste disposal site that will serve the subdivision and information as required in ARM 17.36.309;

~~(n)~~ (j) a copy of any environmental assessment ~~required~~ prepared for the subdivision under Title 76, chapter 3, MCA;

~~(o)~~ (k) a copy of the plat, certificate of survey, deed, or other document that is consistent with the document that will be, or has been, filed with the county clerk and recorder for the ~~proposed~~ subdivision;

~~(p)~~ ~~a copy of applicable letters of approval or denial from local government officials;~~ (l) If planning and platting approval is required under Title 76, Chapter 3 MCA; the applicant must include

(i) a copy of the preliminary plat approval and findings of fact

(ii) any public comments or summaries of public comments collected as provided in 76-3-

604(7).

~~(q)~~ ~~for an application that is not subject to review by a local reviewing authority under 76-4-104, MCA, a certification from the local health officer having jurisdiction that the design for non-public water supply and wastewater disposal facilities complies with applicable laws and regulations of local government;~~

~~(r)~~ (m) a copy of applicable supporting legal documents;

~~(s)~~ (n) except for connections to existing public systems addressed under ARM-~~17.36.328(2)(b)(iv)~~ 17.36.123, if the proposed water supply is from wells or springs, or is relocating an existing multi-user water supply, a letter from the Department of Natural Resources and Conservation stating that the water supply, ~~either:~~

- is, or is not, located in a controlled groundwater area, and,
- is either exempt from water rights permitting requirements; or

(iii) has a water right, as defined in 85-2-422, MCA.

~~(t)~~ ~~a copy or a summary of any public comments on preliminary sanitation information collected as provided in 76-3-604(7), MCA;~~

~~(u)~~ ~~if an application involves a change to the plans and specifications for a subdivision previously approved by the reviewing authority, a copy of the certificate of subdivision approval and a copy of the approved lot layout document;~~

(o) a copy of any existing certificate of subdivision approval and the approved lot layout document;

(p) a letter from the Montana Sage Grouse Habitat Conservation Program or evidence the subdivision is located outside designated sage grouse habitat as required under 76-22-104, MCA

~~(v)~~ (q) information required in ARM 17.30.1702 regarding setbacks between sewage lagoons and wells; and

~~(w)~~ (r) all additional information that is required under this chapter or that the reviewing authority determines is reasonably necessary for the review of the application.

17.36.104 APPLICATION--LOT LAYOUT DOCUMENT

(1) The applicant shall provide ~~four copies of~~ lot layout documents for the ~~proposed~~ subdivision application. One copy of the lot layout may be submitted until the plans are approvable, after which four

copies of the final lot layout must be submitted. The lot layout documents must be on sheets no larger than 11" x 17", at a scale no smaller than 1" = 200'. The reviewing authority may require a larger scale if needed to enhance readability. Multiple sheets may be used for large developments, provided that individual lots are not split across two sheets. If multiple sheets are used, a single sheet must also be provided, using an appropriate scale, that shows the entire development.

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

- (a) the name of the subdivision, and the county, section, township and range (e.g., "Sec. 12 T27N R6E") in which the ~~proposed~~ subdivision is located;
- (b) a north arrow and scale;
- (c) the boundaries, dimensions, and total area of each lot;
- (d) an identifier or number for each lot (e.g., "Lot 1, Lot 2," "Tract 1, Tract 2," or "Parcel 1, Parcel 2");
- (e) locations of existing and proposed easements;
- (f) locations of existing and proposed roads and utilities-facilities;
- ~~(g) locations, sizes, and design details of existing and proposed storm water structures (culverts, ponds, dry wells, etc.);~~
- (g) locations of drainage ways;
- (j) ~~(h)~~ name and affiliation of the person who prepared the lot layout;
- (j) ~~(i)~~ information as set out in Table 1 for the specific water supply, ~~and~~ wastewater, and storm water systems in the subdivision, and those located within 100 feet of the perimeter of the subdivision or parcel. 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 <u>or</u> <u>municipal sewer systems</u>	Subdivisions served by municipal wastewater systems
Existing and proposed wells, setbacks in ARM 17.36.323 Table 2, and features listed in ARM 17.36.103(1)(e)	X	X	X	X
Water lines (suction and pressure)			X	X
Water lines (extension and connections)	X	X	X	X
Existing and proposed wastewater systems	X	X		

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

<u>Locations, of existing storm water facilities</u>	<u>X</u>	<u>X</u>	<u>X</u>	
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17.36.106 REVIEW PROCEDURES--APPLICABLE RULES

(1) The procedures and timelines for review of subdivision applications by the reviewing authority are as provided in 76-4-114, MCA.

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

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

(b) the proposed water supply must comply with the requirements of this chapter; and,

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

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

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

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

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

~~(3) 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.~~

17.36.108 COMPLIANCE WITH LOCAL REQUIREMENTS

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

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

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

(2) ~~As provided in ARM 17.36.110, the~~ The department may not issue a certificate of subdivision approval if non-public facilities for water supply or for the disposal of wastewater are proposed, unless the applicant has submitted evidence, in accordance with (1), that the design for the non-public water supply and wastewater disposal facilities complies with applicable laws and regulations of local government.

17.36.110 CERTIFICATE OF APPROVAL

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

(a) an applicant has submitted all of the information required by this chapter;
(b) the requirements of this chapter and of the Montana Environmental Policy Act have been met; and

(c) the reviewing authority determines that:

- (i) wastewater will not pollute or degrade state waters or endanger public health;
 - (ii) all wastewater disposal facilities are sufficient in terms of capacity and dependability;
 - (iii) the water supply will be sufficient in terms of quality, quantity, and dependability;
 - (iv) solid waste disposal will be in accordance with applicable state laws and rules; and
 - (v) storm drainage will have proper drainageways and the drainage will not pollute state waters.
- (vi) local certification is provided in accordance with 17.36.108(1)

(vii) preliminary plat approval or zoning approval from local authority if applicable?

~~(2) The reviewing authority may not issue a certificate of subdivision approval if non-public facilities for water supply or for the disposal of wastewater are proposed, unless the applicant has submitted evidence, in accordance with ARM 17.36.108(1), that the design for the non-public water supply and wastewater disposal facilities complies with applicable laws and regulations of local government.~~

17.36.112 RE-REVIEW OF PREVIOUSLY APPROVED FACILITIES: PROCEDURES

(1) Facilities previously approved under Title 76, chapter 4, MCA, are not subject to review, if:

- (a) they are not proposed to be changed,
- (b) are not affected by a proposed change to another facility,
- (c) meet the conditions of their approval and are operating properly.

(2) To determine whether previously approved water, sewer, and storm water facilities are operating properly, the reviewing authority may require submittal of well logs, water sampling results, any septic permit issued, evidence that the septic tank has been pumped in the previous three years unless the system is less than 5 years old, and documentation from the owner stating that storm water runoff is adequately controlled.

(3) Facilities that deviate from the conditions of an existing approval issued under Title 76 chapter 4 MCA must meet all applicable requirements of this chapter. The facilities are subject to the rules and standards in effect at the time the application is submitted, except that, if a requirement in the applicable rules and standards would preclude a previously approved use of the parcel, the department may grant a deviation or waive the requirement that would preclude the use. Waivers and deviations are subject to ARM 17.36.601.

(4) Applications for amendments (rewrites) of certificates of subdivision approval, when no new subdivision is proposed, must be submitted in accordance with ARM 17.36.102.

(5) The application must describe any changes to previously approved facilities. The reviewing authority may require the applicant to submit additional information that the reviewing authority determines is necessary for the review.

(6) Except as provided in (7) and (8), if the proposed amendments are approved, the reviewing authority shall issue a revised certificate of subdivision approval pursuant to ARM 17.36.110.

(7) Amendments that consist solely of the relocation of previously approved facilities may be made through approval of a revised lot layout document. A revised lot layout document may be issued for lots with previously approved facilities if:

- (a) changes that consist solely of the relocation or modification of previously approved facilities shown on the lot layout that do not affect the certificate of subdivision approval statement and meet the setback requirements;
- (b) there are no changes in lot boundaries;
- (c) changes in previously approved facilities comply with the current rules, or with the rules in place at the time of the approval;
- (d) a copy of the revised lot layout document which complies with ARM 17.36.104 is provided to the department, and,
- (e) the approved revised lot layout document is filed with the county clerk and recorder.

(8) As designated by the contract between the department and the local reviewing authority, certified local authorities or the department may issue revised lot layout documents that include the following:

- replacing distribution piping with gravelless trenches or vice versa in accordance with Circular DEQ-4,
- replacing a standard trench system with a pressure-dosed system that is designed according to Circular DEQ-4 and reviewed by the certified reviewer,

- replacing a previously approved system with a similar system designed in accordance with the current version of Circular DEQ-4,
- replacing components in a previously approved system with similar components that meet criteria in Circular DEQ-4, and
- adding a water or wastewater treatment system that provides greater treatment than the approved system provided the approved system is installed and used as a redundant system and the new treatment system does not interfere with the operation of the approved system,
- installing any Level 2 system in place of any other Level 2 system through the revised lot layout process as long as no other facilities are changing,
- approving changes to sizes of approved systems unless there is a limitation on the ground that cannot be overcome. If the Certificate of Subdivision Approval is for a 3 bedroom home the certified local authority may issue a permit for a larger home unless there are limitation caused by the soils, slope etc.

17.36.116 CERTIFICATION OF LOCAL DEPARTMENT OR BOARD OF HEALTH AS THE REVIEWING AUTHORITY

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

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

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

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

~~(ii) this chapter;~~

~~(iii) applicable department circulars;~~

~~(iv) Title 75, chapter 5, MCA;~~

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

~~(vi) other applicable laws and regulations.~~

(i) the existing public system is approved by the department and is in compliance with the provisions of Title 75, chapter 6, part 1, MCA, and ARM Title 17, chapters 30 and 38;

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

(A) the system has an adequate capacity to meet the needs of the subdivision;

(B) the connections are authorized;

(C) the system is in compliance with ARM Title 17, chapter 38, and all other applicable department regulations;

(D) the appropriate water rights exist for this connection; and

(iii) the applicant submits to the reviewing authority the name and public water supply ID (PWSID) number of the public system.

(2) A registered sanitarian or registered professional engineer ~~prior to~~ must complete the following before becoming certified to performing subdivision reviews, ~~shall~~:

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

(i) Title 76, chapter 4, MCA;

(ii) this chapter;

(iii) applicable department circulars;

(iv) Title 75, chapter 5, MCA;

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

(vi) other applicable laws and regulations;

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

(c) for individuals previously ~~qualified~~ certified under this subsection, complete at least one subdivision review in the preceding two years. Previously ~~qualified~~ certified individuals who have not

completed at least one subdivision review in the preceding two years shall, prior to performing subdivision review, satisfy the requirements in ~~subsection~~ (2)(a).

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

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

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

(c) The department may also review an application:

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

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

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

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

(4) The department retains the right to suspend or revoke the certification of the local department or board of health if the department determines that the local reviewing authority is not complying with the sanitation in subdivisions act or other applicable statutes or rules.

17.36.117 WATER SYSTEMS

(1) Plans for proposed subdivision facilities that include public water supply systems must be reviewed in accordance with the provisions of Title 75, chapter 6, MCA, and ARM Title 17, chapter 38, subchapter 1;

2) Non-Public Water Systems must comply with Circular DEQ-20;

(3) Systems required by this rule, which must be designed by a professional engineer, are subject to the requirements of ARM 17.36.121.

17.36.120 SOLID WASTE

(1) When removed from the subdivision, the solid wastes must be disposed of at a department-licensed site in accordance with ARM 17.50.508 or an appropriate out-of-state waste disposal site.

17.36.121 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 17.36.117(2), ARM 17.36.310(2), or 17.36.320(2).

(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, for review and approval. If the original conditions of approval, applicable rules, and design standards have not changed since the department approved the system, the department shall reissue the approval to allow an additional three years to complete construction.

17.36.122 OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS AND AGREEMENTS

(1) The applicant shall demonstrate that all public and multiple-user systems are adequately operated and maintained and shall submit an operation and maintenance manual acceptable to the department.

(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) When required by Department Circulars; an operation and maintenance manual must be provided for water supply, wastewater treatment, and storm drainage facilities meeting the requirements of that circular.

(4) A proposed well isolation zone, as defined in ARM 17.36.101, or proposed drainfield mixing zone, as defined in ARM 17.36.101, must be located wholly within the boundaries of a lot unless one of the following are met:

(a) The adjoining land is owned by the same person;

(b) An easement has been provided for the well isolation zone or mixing zone;

(c) For public land, other authorization is obtained from the landowner to place the proposed well isolation outside the boundaries of the proposed subdivision;

(d) A mixing zone or well isolation zone may extend onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities provided that the well location is at least 50 feet from the right-of-way boundary

(5) Easements must be obtained if the reviewing authority determines they are needed to allow adequate operation and maintenance of the systems or to comply with 76-4-104(6)(i), MCA. 50-2-116(1)(j) well isolation, Missoula County? Easements must be filed with the county clerk and recorder at the time the certificate of subdivision approval issued under this chapter is recorded. Easements must be in one of the following forms:

(a) in writing signed by the grantor of the easement and

(i) adequately describes what is being conveyed,

(ii) contains language of conveyance

(iii) identifies the grantor and grantee of the easement; or

(b) if the same person owns both parcels, one of the following must be submitted with the application and recorded with the subdivision approval:

(i) A plat or certificate of survey for the proposed subdivision, illustrating the easement, and,

(ii) Covenant and Reservation Easement

a. The covenant and reservation easement must be signed by the landowner and recorded with the county clerk and recorder.

b. The covenant must stipulate that upon transfer of ownership of any of the subject parcels, an easement shall be recorded for the benefit of all parcels to allow permanent use and access to shared components of systems for the purposes of operation, maintenance, repair and replacement.

c. The covenant and reservation easement must include a map exhibit that stipulates the easement extents.

(6) If an application includes a shared or multiple-user system that serves more than one lot, the applicant shall submit to the reviewing authority a user agreement that identifies the rights and responsibilities of each user. User agreements must be in a form acceptable to the department.

(7) If the same person owns more than one parcel, a covenant and reservation easement must be recorded with the county clerk and recorder at the time the certificate of subdivision approval issued under this chapter is recorded. The covenant and reservation easement must be signed by the landowner and recorded with the county clerk and recorder.

(a) The covenant must stipulate that upon transfer of ownership of any of the subject parcels, the user agreement shall be recorded for the benefit of all parcels to stipulate the responsibilities of each landowner regarding the operation, maintenance, repair and replacement of the system(s).

17.36.123 CONNECTION TO PUBLIC WATER SUPPLY AND WASTEWATER SYSTEMS

(1) New water supply and sewage disposal facilities in a subdivision must be provided by a connection to a public water supply or public wastewater system if any boundary of the subdivision is within 300 feet of any component of the public system.

(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) the existing public system is approved by the department and is in compliance with the provisions of Title 75, chapter 6, part 1, MCA, and ARM Title 17, chapters 30 and 38;

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

(i) the system has an adequate capacity to meet the needs of the subdivision;

(ii) the connections are authorized;

(iii) the system is in compliance with ARM Title 17, chapter 38, and all other applicable department regulations; and

(iv) the appropriate water rights exist for this connection; and

(c) the applicant submits to the reviewing authority the name and public water supply ID (PWSID) number of the public system.

(3) If the proposed additional connections will create a new public system, the applicant shall submit plans and specifications for the entire system (existing and proposed) for review and approval by the department in accordance with the provisions of Title 75, chapter 6, part 1, MCA, and ARM Title 17, chapters 30 and 38.

(4) The department may grant a waiver to the requirement in (1), pursuant to ARM 17.36.601, if the applicant demonstrates that connection to the public system is physically impractical or that easements cannot be obtained.

17.36.124 SUBDIVISION ADJACENT TO STATE SURFACE WATER

(1) Where the department has determined that the disposal of sewage from a proposed subdivision may adversely affect the quality of a lake or other state waters, the department may require additional information and data concerning such possible effects. Upon review of such information, the department may impose specific requirements for sewage treatment and disposal as are necessary and appropriate to assure compliance with the Water Quality Act, Title 75, chapter 5, MCA, and water quality and non-degradation standards, ARM Title 17, chapter 30, subchapters 6, 7, 10, and 12.

17.36.125 CONDOMINIUM CONVERSIONS

(1) Except as provided in (2) and (3), condominiums, including those to be constructed on parcels of land that are exempted from review under the provisions of Title 76, chapter 3, MCA, and including conversion of existing structures into condominiums, are subject to review under the requirements of this chapter.

(2) Conversions of existing structures into condominiums are not subject to this chapter where the converted units are to be served by existing municipal water and sewer facilities in a Class I or II city as defined in 7-1-4111 , MCA.

(3) Where the water or sewage disposal system in an existing building to be converted into condominiums has already been approved under either department requirements or has been approved by the local health department under local requirements, such water or sewage disposal system is not subject to review under this chapter.

17.36.126 ADOPTION BY REFERENCE

(1) For purposes of this chapter, the department adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

- (a) Department Circular DEQ-1, "Standards for Water Works," 2018 edition;
- (b) Department Circular DEQ-2, "Design Standards for Public Sewage Systems," 2016 edition;
- (c) Department Circular DEQ-3, "Standards for Small Water Systems," 2022 edition;
- (d) Department Circular DEQ-4, "Montana Standards for Subsurface Wastewater Treatment Systems," 2013 edition;
- (e) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (June 2019 edition);
- (f) Department Circular DEQ-8, "Montana Standards for Subdivision Storm Water Drainage," 2017 edition;
- (g) Department Circular DEQ-10, "Standards for the Development of Springs for Public Water Systems," 2014 edition;
- (h) Department Circular DEQ-16, "Standards for Hauled Water Cisterns for Noncommunity Public Systems," 2014 edition;
- (i) Department Circular DEQ-20, "Standards for Non-Public Water Systems," 2022 edition;
- (j) Department Circular PWS-5, "Ground Water Under the Direct Influence of Surface Water," 2002 edition;
- (k) Department Circular PWS-6, "Source Water Protection Delineation," 1999 edition;
- (l) the U.S. Department of Agriculture's National Soil Survey Handbook (USDA, NRCS, September 1999), and the Soil Survey Manual (USDA, October 1993), which contain a recognized set of methods for identifying the nature and characteristics of soils; and
- (m) ARM 17.30.1702 regarding setbacks between sewage lagoons and wells.

2) Copies of the documents incorporated by reference in this rule may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.