

Chapter 300 Rules Changes Stikethrough-2022

17.36.309 SOLID WASTES

(1) Solid wastes stored within the subdivision must be placed in adequate containers and removed at a frequency to prevent a nuisance. 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.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

Reason:

17.36.310 STORM DRAINAGE

(1) The applicant shall submit a storm drainage plan in accordance with department Circular DEQ-8 to the reviewing authority.

(2) Storm drainage plans must be prepared by a professional engineer ~~and must comply with the requirements in ARM 17.36.314~~ if the subdivision application proposes either of the following:

(a) six or more lots; or

(b) a lot proposed for use other than a single living unit, with greater than 25 percent impervious area.

(3) Storm drainage plans that are required to be designed by a professional engineer under (2) must meet the requirements in ARM 17.36.121 except for the following:

(a) a three-year expiring approval in ARM 17.36.121(5) does not apply.

(b) certification and as-built drawings in ARM 17.36.121(2) through 17.36.121(4) do not apply for retention ponds for residential lots, designed solely for, and located on, the lot that additional runoff is generated. Certification and as-builts are required for other storm water facilities within those designs.

(4) ~~(3)~~ A storm drainage plan must include a maintenance plan for all drainage structures. The maintenance plan must describe the drainage structures, provide a maintenance schedule, and designate the entity responsible for performing maintenance. The reviewing authority may require the applicant to create a homeowner's association or other legal entity that will be responsible for maintenance of storm drainage structures and that will have authority to charge appropriate fees. The maintenance plan must include easements and agreements as necessary for operation and maintenance of all proposed storm drainage structures or facilities.

(5) ~~(4)~~ The applicant shall obtain an easement if the reviewing authority determines the easement is needed to allow adequate operation and maintenance of the facilities. The easement must be filed with the county clerk and recorder at the time the certificate of subdivision approval issued under this chapter is filed. The easement must be in one of the following forms:

(a) in writing signed by the grantor of the easement; or

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

(6) ~~(5)~~ The reviewing authority may exempt the requirements of (1), (2), and (3) for the following:

(a) subdivisions located entirely within a first-class or second-class municipality, as described in 7-1-4111, MCA, or within a Municipal Separate Storm Sewer System (MS4) general permit area, as defined in ARM 17.30.1102, if:

(i) ~~(a)~~ the applicant submits to the reviewing authority a letter of consent from the municipal or MS4 entity on a form provided by the department; and

(ii) ~~(b)~~ the municipal or MS4 entity either accepts the stormwater into a municipal storm water system or requires the applicant to comply with municipal or MS4 storm water drainage design standards.

(b) lots over 5 acres in size if the following conditions are met:

(i) the proposed impervious area on the lot will be less than 5% of the lot area, including easements and right-of ways; and

(ii) the proposed development will not impact adjacent property through flooding, erosion or sedimentation; and

(iii) the proposed development will include best management practices to reduce erosion and sedimentation; and

(iv) the proposed development will not cause storm runoff from proposed development to discharge to a high-quality state water within 500 feet of the development without minimum treatment of the first 0.5 inch of runoff from proposed impervious area.

(7) ~~(6)~~ If material will be displaced or added within a delineated floodplain, the applicant shall provide evidence that the floodplain permit coordinator has been notified and that appropriate approvals ~~have been~~ can be obtained. Adequate evidence must be in the form of a floodplain permit or certification from the floodplain coordinator

(8) ~~(7)~~ If applicable, the applicant shall obtain an MPDES permit for storm water discharges, pursuant to ARM Title 17, chapter 30.

(9) ~~(8)~~ Storm water that reaches state surface waters must be treated prior to discharge if the reviewing authority determines that untreated storm water is likely to degrade the receiving waters.

(a) minimum treatment of storm water consists of removal of settleable solids and floatable material. The reviewing authority may require more extensive treatment if deemed necessary to protect state waters from degradation;

(b) plans for the treatment facility must be approved by the reviewing authority.

(10) ~~(9)~~ The department may grant a waiver from any of the requirements in this rule pursuant to the provisions of ARM 17.36.601.

AUTH: 76-4-104, MCA

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

REASON:

~~17.36.312 SUBDIVISIONS ADJACENT TO STATE WATERS~~

~~(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.~~

~~———— AUTH: 76-4-104, MCA~~

~~———— IMP: 76-4-104, 76-4-125, MCA~~

~~———— REASON:~~

~~17.36.313 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.~~

~~———— AUTH: 76-4-104, MCA~~

~~———— IMP: 76-4-111, 76-4-125, MCA~~

~~———— REASON:~~

~~17.36.314 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(3)(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, 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.~~

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

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

REASON:

17.36.319 GRAY WATER REUSE

(1) This rule applies to gray water reuse on subdivision parcels that are subject to review, or that have been approved, under Title 76, chapter 4, MCA.

(2) Except as provided in (3) and (4), treatment and disposal of gray water must be by means of a wastewater treatment system that meets all of the requirements of this chapter and applicable department circulars. Gray water reuse within a building or residence for uses such as toilet flushing is permitted without review, provided that the gray water is ultimately disposed of by means of a wastewater treatment system that is in compliance with this chapter and applicable department circulars.

(3) Gray water may be used for irrigation as provided in (4). If a gray water irrigation system meets all of the requirements in (4), the system is not subject to the requirements of subchapter 3.

(4) Gray water that is collected separately from sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets may be used for irrigation, if the following requirements are met:

(a) prior to installation, a gray water irrigation system must have a permit from the local health department;

(b) gray water irrigation must be subsurface, with a collection and application system that is designed, installed, and used in accordance with Department Circular DEQ-4;

(c) as provided in 75-5-326, MCA, gray water may not be used to irrigate plants to be consumed by humans, and gray water systems may not be located within a floodplain, as defined in 76-5-103, MCA. For purposes of this rule, "plants to be consumed by humans" does not include nut and fruit trees;

(d) there must be a minimum of four feet of natural soil between the point of gray water application and a limiting layer, as defined in ARM 17.36.101;

(e) unless a waiver is granted by the department, the following horizontal setback distances must be maintained. Gray water irrigation may not occur within:

(i) 100 feet of wells;

(ii) 100 feet of surface water;

(iii) 100 feet of a floodplain; or

(iv) two feet of a property line;

(f) gray water from kitchens may be used for irrigation only where a waste segregation system is used. For purposes of this rule, a "waste segregation system" consists of dry disposal of toilet waste by a method such as composting, chemical, dehydrating, or incinerator treatment, with a separate disposal method for gray water;

(g) gray water irrigation systems in subdivisions may not be installed unless approved under Title 76, chapter 4, MCA. If a system complies with (4)(a) through (e), review under Title 76, chapter 4, MCA, is not required if the system serves:

(i) a parcel that has a previous certificate of subdivision approval issued pursuant to Title 76, chapter 4, MCA, if no other changes to the certificate are proposed, except that review under Title 75, chapter 6, MCA, is required before a public wastewater system is modified to include a gray water irrigation system; or

(ii) a parcel that, when created, was exempt from review under Title 76, chapter 4, MCA, because it was served solely by municipal facilities, as defined in 76-4-102, MCA.

(5) Subdivision applications must contain descriptions of the soils within 25 feet of proposed gray water irrigation areas. Soils must be described in accordance with Appendix B of 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.

(6) Gray water irrigation systems with a design flow greater than or equal to 2,500 gallons per day must be designed by a professional engineer.

(7) The department may require user agreements for systems that serve more than one user. The department may require easements for systems that cross property lines.

(8) If an existing gray water irrigation system is present in a proposed subdivision, the department shall review the adequacy of the system for the proposed use and the capability of the system to operate without risk to public health and without pollution of state waters. Existing systems must comply with state and local laws and regulations, including permit requirements, applicable at the time of installation.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON:

17.36.320 SEWAGE SYSTEMS: DESIGN AND CONSTRUCTION

(1) All components of sewage treatment systems must be designed and installed in accordance with Department Circular DEQ-4, Department Circular DEQ-2, or other applicable department circular and are subject to the following restrictions:

(a) systems designed in accordance with Department Circular DEQ-2 may not be used for individual, shared, or multiple-user systems, except as provided in Department Circular DEQ-4; and

(b) experimental systems are allowed only pursuant to a waiver granted in accordance with ARM 17.36.601.

(2) Multiple-user systems with design flows greater than or equal to 2500 gallons per day must be designed by a professional engineer and are subject to the requirements in ARM ~~17.36.314~~ 17.36.121.

(3) Subsurface wastewater treatment systems must comply with Circular DEQ-4;

(a) The applicant will provide the following minimum information for wastewater submittals:

(i) Site evaluation, drainfield dimensions and locations including lateral length, width, type of system, and based on application rate and design flow

(ii) setback information *(needs additional language)*

(iii) criteria necessary to make a non-degradation significance determination

(b) additional design details showing compliance with DEQ-4 will be required by the reviewing authority if:

(i) the proposed wastewater system is multiple-user or public;

(ii) the discharge is not residential strength;

(iv) the local health department does not issue septic permits for parcels reviewed under MCA 76-4; or

(v) other site conditions as determined by the reviewing authority.

~~(3)~~ (4) For subsurface systems, a minimum separation of at least four feet of natural soil must exist between the infiltrative surface or the liner of a lined system and a limiting layer. except that at least six feet of natural soil must exist on a slope of greater than 15 percent.

Exceptions to this rule are:

(a) at least six feet of natural soil must exist between the infiltrative surface or the liner of a lined system and a limiting layer on a slope of greater than 15 percent and,

(b) For elevated sand mounds only constructed in accordance with department circular DEQ 4, the depth of the key may be included as part of the separation distance between infiltrative surface and limiting layer if:

i. Depth to groundwater from the natural ground surface is confirmed with groundwater monitoring, conducted in accordance with DEQ 4, Appendix C.

~~(4)~~ (5) The proposed subsurface sewage treatment area must include an area for 100 percent replacement of the system, except that the replacement area for elevated sand mounds may be allowed as provided in Department Circular DEQ-4. If a size reduction is approved for a system, the replacement area must have area sufficient for the system without the size reduction. Unless a waiver is approved by the department pursuant to ARM 17.36.601, the replacement area must meet the same requirements as the primary area. If the

replacement area is not immediately adjacent to the primary area, or if there is evidence that site conditions for the replacement area may vary from those for the primary area, the applicant shall submit adequate evidence of the suitability of the replacement area.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON:

17.36.321 SEWAGE SYSTEMS: ALLOWABLE NEW AND REPLACEMENT SYSTEMS

(1) All systems must be designed and installed in accordance with Department Circular DEQ-4, Department Circular DEQ-2, or other applicable department circular. Requirements applicable to review of existing sewage treatment systems are set out in ARM 17.36.327.

(2) Systems designed in accordance with Department Circular DEQ-2 may not be used for individual, shared, or multiple-user systems, except as provided in Department Circular DEQ-4.

(3) The following sewage systems may not be used for new systems, but may be used as replacement systems subject to the limitations provided in Department Circular DEQ-4:

- (a) cut systems;
- (b) fill systems;
- (c) artificially drained systems;
- (d) absorption beds;
- (e) pit privies;
- (f) seepage pits; and
- (g) holding tanks, except that:

(i) the department may grant a waiver, pursuant to ARM 17.36.601, to allow holding tanks in facilities owned and operated by a local, state, or federal unit of government, or in facilities licensed by the Department of Public Health and Human Services and inspected by the local health department. Holding tanks must be designed and maintained in accordance with the requirements in Department Circular DEQ-4 and all other requirements imposed by the department and local health department; and

(ii) the department may grant a waiver, pursuant to ARM 17.36.601 and with concurrence by the local health department, to allow holding tanks to replace a failed system when no other alternative that meets these rules is reasonably available.

(4) Cesspools are prohibited as new or replacement systems.

(5) Sealed pit privies may be used only in facilities owned and operated by a local, state, or federal unit of government, or in facilities where use of a sealed pit privy is authorized by the Department of Public Health and Human Services.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON:

17.36.322 SEWAGE SYSTEMS: SITING

(1) Gravity-fed subsurface sewage treatment systems may not be used if natural slopes are greater than 15 percent. A pressure-dosed sewage treatment system with a design flow of 5000 gallons per day or less may be used on slopes greater than 15 percent and up to 25 percent, if a professional engineer or a person qualified to evaluate and identify soil in accordance with Department Circular DEQ-4 submits adequate evidence that there will be no visible outflow of liquid downslope from the subsurface sewage treatment system.

(2) The department may grant a waiver, pursuant to ARM 17.36.601 and after consultation with the local health department, to allow pressure-dosed subsurface sewage treatment systems on slopes greater than 25 percent and up to 35 percent if a professional engineer or a person qualified to evaluate and identify soil in accordance with Department Circular DEQ-4 submits adequate evidence that there will be no visible outflow of liquid downslope from the subsurface sewage treatment system.

(3) Subsurface sewage treatment systems may not be installed on unstable landforms, as defined in ARM 17.36.101.

(4) No component of any sewage treatment system may be located under structures or driveways, parking areas or other areas subjected to vehicular traffic, or other areas subject to compaction, except for those components of the system designed to accommodate such conditions. Drainfields must not be located in swales or depressions where runoff may flow or accumulate.

~~(5) Pursuant to 76-4-104(6)(i), MCA, a proposed drainfield mixing zone must be located wholly within the proposed subdivision where the drainfield is to be located unless an easement or, for public land, other authorization is obtained from the landowner to place the proposed mixing zone outside the boundaries of the proposed subdivision. A mixing zone may extend outside the boundaries of the proposed subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities. This section does not apply to the divisions provided for in 76-3-207, MCA, except those under 76-3-207(1)(b), MCA.~~

(6) For lots two acres in size or less, the applicant shall physically identify the drainfield location by staking or other acceptable means of identification. For lots greater than two acres in size, the department may require the applicant to physically identify the drainfield location.

(7) The department may require the applicant to show detailed lot layouts on a contour map if the department determines that there is a question about suitability of the drainfield location.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON:

17.36.323 SETBACKS

(1) Minimum setback distances, in feet, shown in Table 2 of this rule must be maintained, except as provided in the table footnotes or as allowed through a deviation granted under ARM Title 17, chapter 38, subchapter 1. The setbacks in this rule are not applicable to gray water irrigation systems that meet the setbacks and other requirements of ARM 17.36.319.

TABLE 2
SETBACK DISTANCES
(in feet)

From	To Drinking Water Wells	To Sealed Components (1) and Other Components (2)	To Drainfields/Soil Absorption Systems (3)
Public or multiple-user drinking water wells/springs	-	100 (4)	100
Individual and shared drinking water wells	-	50 (4)	100
Other wells (5)	-	50 (4)	100 (4)
Suction lines	-	50	100
Cisterns	-	25	50
Roadcuts, escarpment	-	10 (6)	25
Slopes > 35 percent (7)	-	10 (6)	25
Property boundaries	10 (8)	10 (8)	10 (8)
Subsurface drains	-	10	10
Water mains	-	10 (9)	10
Drainfields/Soil absorption systems	100	10	-
Foundation walls	-	10	10
Surface water (10), springs	100 (4) (11) (12)	50 (4) (11)	100 (4) (11) (13)
Floodplains	10 (4) (11)	- Sealed components - no setbacks (1) Other components - 100 (2) (4) (11)	100 (11) (14)
Mixing zones	100 (4)	-	-

Storm water ponds and ditches (15)	25 (4) (16)	10 (4)	25 (4)
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- (1) Sealed components include holding tanks, sealed pit privies, raw wastewater pumping stations, dose tanks, and septic tanks. Sealed components must meet the requirements of ARM 17.36.322(4).
- (2) Other components include the components addressed in Department Circular DEQ-4, Chapter 7.
- (3) Absorption systems include the systems addressed in Department Circular DEQ-4, Chapters 6 and 8, subject to the limitations in ARM 17.36.321.
- (4) A waiver of this requirement may be granted by the department pursuant to ARM 17.36.601.
- (5) Other wells include, but are not limited to, irrigation and stock watering, but do not include observation wells as addressed in Department Circular DEQ-4.
- (6) Sewer lines and sewer mains may be located in roadways and on steep slopes if the lines and mains are safeguarded against damage.
- (7) Down-gradient of the sealed component, other component, or drainfield/soil absorption system.
- (8) Easements may be used to satisfy the setback to property boundaries.
- (9) Unless a waiver is granted by the department pursuant to ARM 17.36.601, sewer mains that cross water mains must be laid with a minimum vertical separation distance of 18 inches between the mains.
- (10) For purposes of this rule, "surface water" does not include intermittent storm water.
- (11) The department may require more separation from the floodplain or from surface water or springs if it determines that site conditions or water quality requirements indicate a need for the greater distance.
- (12) Pursuant to ARM 17.36.331, 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 in the surface water.
- (13) A waiver may be granted by the department, pursuant to ARM 17.36.601, if the applicant demonstrates that ground water flow at the drainfield site cannot flow into the surface water or spring. The setback between drainfields or soil absorption systems to irrigation ditches does not apply if the ditch is lined with a full culvert.
- (14) After consultation with the local health department, a waiver may be granted by the department, pursuant to ARM 17.36.601, if the applicant demonstrates that the surface water or spring seasonally high water level is at least a 100-foot horizontal distance from the drainfield and the bottom of the drainfield will be at least two feet above the maximum 100-year flood elevation.
- (15) Storm water ponds and ditches are those structures that temporarily hold or convey water as part of storm water management.
- (16) The setback is 100 feet for public wells, unless a deviation is granted under ARM Title 17, chapter 38, subchapter 1.

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

REASON:

17.36.324 SEWAGE SYSTEMS: FLOODPLAINS

(1) The applicant shall identify the location of any floodplain on the lot layout document. The department may require the applicant to provide additional information, such as elevations at specific locations.

(2) The applicant shall submit evidence adequate to allow the department to establish the location of the floodplain if:

(a) the federal or state government has not designated the floodplain, or if the location of the floodplain is in question with respect to a proposed subdivision; and

(b) the stream is shown as an intermittent or perennial stream on the most current USGS 7 1/2 minute (1:24,000) topographic map (unless the applicant provides adequate information that the stream is not subject to flooding).

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON:

17.36.325 SEWAGE SYSTEMS: SITE EVALUATION

(1) The reviewing authority may require that percolation tests, conducted in accordance with department Circular DEQ-4, be performed within the boundary of each proposed subsurface sewage treatment system. Percolation tests must be keyed by a number on the lot layout to the results in the report form.

(2) If the applicant or the department has reason to believe that ground water will be within seven feet of the surface at any time of the year within the boundaries of the treatment system, ground water monitoring must be conducted in accordance with Department Circular DEQ-4.

(3) The applicant shall provide descriptions of the soils within 25 feet of the boundaries of each proposed drainfield. Soil descriptions for the proposed subdivision must meet the following requirements:

(a) Soil descriptions must be done in accordance with Department Circular DEQ-4. The characteristics that must be addressed include, but are not limited to, soil texture, soil structure, soil consistence, and indicators of redoximorphic features.

(b) Soil descriptions must be based on data obtained from test holes. Test holes must be dug in accordance with Department Circular DEQ-4. The number of test holes must be as provided in (c), unless a waiver is granted by the department pursuant to ARM 17.36.601. Before a waiver is granted, the applicant shall complete test holes for 25 percent of the proposed drainfield locations in the proposed subdivision, shall demonstrate that the soils are consistent throughout the area requested for a waiver, and shall obtain the approval of the local reviewing authority. The department may require additional test holes than are required in (c) if the department determines that there is significant variability of the soils in the proposed drainfield areas. Each test hole must be keyed by a number on a copy of the lot layout or map with the information provided in the application.

(c) At least one test hole must be dug for each individual drainfield and for each shared (two-user) drainfield. At least three test holes must be dug for each multiple-user and public drainfield. At least one test hole must be dug for each zone of a pressure-dosed drainfield.

(d) If the applicant or the department has reason to believe that a limiting layer is within seven feet of the ground surface at the site of a proposed subsurface sewage treatment system, the department may require additional test holes and soil descriptions sufficient to describe the suitability of the soil.

(4) Sewage systems that are subject to the design requirements of Department Circular DEQ-2 must meet the siting requirements of that circular.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON:

~~17.36.326 SEWAGE SYSTEMS: OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS, AND AGREEMENTS~~

~~(1) The applicant shall demonstrate that all public and multiple-user sewage systems will be adequately operated and maintained and shall submit an operation and maintenance manual acceptable to the department. If required by Department Circulars DEQ-2 or DEQ-4, the operation and maintenance manual must meet the requirements of that circular.~~

~~———— (2) Public systems must be owned by an individual or entity that meets the requirements of 75-6-126, MCA.~~

~~———— (3) For multiple-user systems, the reviewing authority may require the applicant to create a homeowners' association, county sewer 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 filed with the county clerk and recorder at the time the certificate of subdivision approval issued under this chapter is filed. Easements must be in one of the following forms:~~

~~———— (a) in writing signed by the grantor of the easement; or~~

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

~~———— (5) If an application includes a shared or multiple-user sewage system that serves more than one lot, the applicant shall submit to the reviewing authority a draft user agreement that identifies the rights and responsibilities of each user. User agreements must be in a form acceptable to the department.~~

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

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

REASON:

17.36.327 SEWAGE SYSTEMS: EXISTING SYSTEMS

(1) The provisions of (2) through (5) apply only to existing non-public sewage systems in proposed subdivisions. [Facilities previously approved under Title 76, chapter 4, MCA will be reviewed in accordance with ARM 17.36.112.](#) Public sewage supply systems must meet the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

(2) If an existing sewage treatment system is present, the department shall review the adequacy of the existing system for the proposed use and the capability of the existing system to operate without risk to public health and without pollution of state waters. To assist the department in making this determination, the applicant shall submit the following information, together with fees as provided in ARM 17.36.802:

- (a) evidence demonstrating the proper hydraulic functioning of each existing system;
- (b) evidence as to whether each existing system complied with state and local laws and regulations, including permit requirements, applicable at the time of installation; and
- (c) evidence that each existing septic tank was pumped within three years prior to the department's review unless the existing septic tank is less than five years old.

(3) The setbacks requirements in ARM 17.36.323 apply, but may be waived for existing sewage systems pursuant to ARM 17.36.601.

(4) The applicant shall provide for a replacement area for each existing system. Unless a waiver is approved by the department pursuant to ARM 17.36.601, replacement areas must comply with the requirements of this subchapter.

(5) Existing cesspools and pit privies must be replaced by a system approved under this subchapter. Holding tanks may be allowed by waiver pursuant to ARM 17.36.321(3)(g)(ii). Existing sealed pit privies must also be replaced, unless they are at a facility owned and operated by a local, state, or federal unit of government, or are at a facility where use of a sealed pit privy is authorized by the Department of Public Health and Human Services.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON:

~~17.36.328 CONNECTION TO PUBLIC WATER SUPPLY AND WASTEWATER SYSTEMS~~

~~(1) New water supply and sewage disposal facilities in a proposed subdivision must be 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 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) 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.~~

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

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

~~REASON:~~

~~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) the maximum contaminant levels established in ARM Title 17, chapter 38, subchapter 2 may not be exceeded;~~
- ~~—— (b) the following flows must be provided:~~
 - ~~—— (i) for individual and shared water supply systems, the flow indicated in ARM 17.36.332;~~
 - ~~—— (ii) for multiple user water supply systems, the requirements set out in Department Circular DEQ 3; and~~
 - ~~—— (iii) for public water supply systems, the requirements set out in Department Circulars DEQ 1 and DEQ 3;~~
- ~~—— (c) the necessary quantity and quality of water must be available at all times unless depleted by emergencies.~~

~~(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 Department Circular PWS 6; and~~
- ~~—— (b) a description of the proposed ground water source, including approximate depth to water bearing zones and lithology of the aquifer.~~

~~(3) For lots two acres in size or less, the applicant shall physically identify the proposed well location by staking or other acceptable means of identification. For lots greater than two acres in size, the department may require the applicant to physically identify the well location.~~

~~(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.~~

~~(5) Each existing and proposed drinking water well in a proposed subdivision must be centered within a 100-foot radius well isolation zone. Except as provided in 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:

17.36.331 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 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) the applicant shall provide the well log for every well from which a ground water sample is collected. If a well log is not available, the applicant shall provide information about the well depth and depth to static water level. The reviewing authority may require additional information to demonstrate that ground water quality is sufficient for the proposed subdivision;~~

~~— (ii) the applicant shall accurately identify, on a topographic map or lot layout document, the location of every well from which a ground water sample is taken; and~~

~~— (iii) the requirement to sample for 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 2 of ARM 17.36.323 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 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 Department Circular PWS-5.~~

~~_____ (e) wells must have unperforated casing to a minimum depth of 25 feet below ground surface unless the reviewing authority finds that, based upon geological information provided by the applicant, a lesser depth will ensure that the other requirements of this rule are satisfied. The reviewing authority may require unperforated casing to a depth greater than 25 feet if water of better chemical or microbiological quality can be obtained from a deeper zone.~~

~~_____ (f) a surface water or ground water source under the direct influence of surface water, as described in Department Circular PWS 5, 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:~~

~~17.36.332 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) an individual water system must provide a sustained yield of at least 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;~~

~~—— (b) a shared water system must provide a sustained yield of at least 15 gallons per minute over a one-hour period or 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) test wells within the proposed subdivision;~~

~~—— (b) well logs and testing of nearby wells;~~

~~—— (c) hydrogeological reports; or~~

~~—— (d) ground water modeling.~~

~~(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 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.~~

~~(5) When the proposed water supply is an unconfined aquifer and a significant recharge source is from irrigation ditches or irrigated fields, the reviewing authority may require the applicant to demonstrate that the source will produce a water supply that is sufficient in terms of water quality, quantity and dependability for the proposed subdivision if all irrigation-related recharge to the aquifer is eliminated.~~

~~(6) The department may allow, pursuant to a waiver under ARM 17.36.601, a lesser flow than those set out in (1)(a) and (b) if the applicant demonstrates that the water supply system provides a sufficient quantity of water to meet demands and that adequate storage is provided to meet peak demand.~~

~~(7) The reviewing authority may require the applicant to submit information in addition to that required in (1) through (5) to demonstrate the dependability of the ground water supply if the reviewing authority believes that dependability is questionable. At a minimum, the applicant shall provide evidence that the aquifer can supply, by itself or through recharge from surrounding geologic units, water to wells in an amount equal to the proposed ground water withdrawals.~~

~~(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), 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:~~

~~17.36.333 WATER SUPPLY SYSTEMS: DESIGN AND CONSTRUCTION~~

~~(1) The applicant shall meet the following requirements relating to the design and construction of water supply systems:~~

~~(a) individual and shared wells must be constructed in accordance with ARM Title 36, chapter 21, subchapter 6, unless the requirements of this subchapter are more stringent;~~

~~(b) multiple user water supply systems must be designed and constructed in accordance with 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 professional engineer. If an existing system is expanded to serve six or more connections, the expansion must be designed by a 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 professional engineer. Systems required by this rule, which must be designed by a professional engineer, are subject to the requirements of ARM 17.36.314;~~

~~(ii) if more than one multiple user water system is proposed for a subdivision, the systems must be tied together to ensure greater system reliability. The department may grant a waiver, pursuant to ARM 17.36.601, of this provision if the applicant demonstrates that interconnection of the systems is physically or economically impractical or would create an environmental or public health concern;~~

~~(c) the reviewing authority may require additional well construction and/or testing requirements not required in ARM Title 36, chapter 21, subchapter 6 or in department Circular DEQ 3, to ensure that wells within a particular subdivision will provide an adequate water supply.~~

~~(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:~~

~~17.36.334 WATER SUPPLY SYSTEMS: OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS, AND AGREEMENTS~~

~~(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 system will be adequately operated and maintained.~~

~~———— (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 filed with the county clerk and recorder at the time the certificate of subdivision approval issued under this chapter is filed. Easements must be in one of the following forms:~~

~~———— (a) the easement must be in writing signed by the grantor of the easement; or~~

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

~~———— (5) If an application includes a shared or multiple-user water supply system that serves more than one lot, the applicant shall submit to the reviewing authority a draft user agreement that identifies the rights and responsibilities of each user. User agreements must be in a form acceptable to the department.~~

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

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

~~REASON:~~

~~17.36.335 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.~~

~~————(3) 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) The applicant shall submit, for each existing water supply source, water quality analyses for nitrates, nitrites and specific conductance. If an existing well is currently being used as a potable water supply within a proposed subdivision, a total coliform analysis must also be conducted. The nitrates, nitrites and specific conductance sample may not be older than one year prior to the date of the application. The coliform sample may not be older than six months prior to the date of application. If an existing well is not currently used as a potable water supply but will be converted to a potable water supply, a total coliform analysis must be conducted when it is put into use. The analysis must be performed by a laboratory certified by the department of public health and human services for analyses of water samples for public water systems. The reviewing authority may not approve the use of an existing system if there is evidence that, after appropriate treatment, the concentration of any ground water 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.~~

~~————(b) To characterize the water supply, the applicant must show, through a well log or other means, the depth to static water in the well and the total well depth.~~

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

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

REASON:

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.~~

~~————(2) A water source other than a well may be developed only if the applicant:~~

~~————(a) shows that it is not economically feasible to develop a well or that ground water quality, quantity, or dependability is unacceptable; and~~

~~————(b) complies with the other requirements set out in this rule.~~

~~————(3) The applicant shall provide evidence to the reviewing authority that the alternate water source is sufficient in terms of quality, quantity, and dependability.~~

~~————(4) Springs, when developed as an alternate water system, must be constructed in accordance with a plan approved by the reviewing authority and in accordance with Department Circular DEQ-11. Springs must also meet the requirements for wells regarding quality, quantity and dependability in ARM 17.36.331 and 17.36.332.~~

~~————(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) testing for pH, temperature, conductivity, and turbidity;~~

~~————(ii) testing for parameters with human health standards listed in Department Circular DEQ-7;~~

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

~~————(iv) seasonal bacteriological testing.~~

~~————(b) The reviewing authority may determine the adequacy of water quantity and water dependability based upon flows during the seasonal low-flow period.~~

~~————(6) Cisterns may be utilized only if:~~

~~————(a) a potable water source is available for hauling within a reasonable distance from the cistern and:~~

~~————(i) a licensed water hauler supplies water for the cistern and provides a letter verifying that the subdivision will be served by the hauler's business; or~~

~~————(ii) the water supply is from a public water system and the owner of the public water system certifies that water is available from the public water system to serve the applicant's cistern;~~

~~————(b) all water is hauled and disinfected in accordance with ARM Title 17, chapter 38, subchapter 5, or a reviewing authority approved plan; and~~

~~————(c) the cistern is constructed and installed in accordance with a plan approved by the reviewing authority and in accordance with department Circular DEQ-17.~~

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

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

REASON:

17.36.340 LOT SIZES

(1) This rule sets out, for purposes of the review of proposed subdivisions, the requirements for minimum lot or parcel size.

(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 in compliance with ARM 17.36.322(5);

(c) well isolation zones must be located in compliance with ARM 17.36.330(4); and

(d) as shown on the lot layout document, 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:

~~17.36.345 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," 2018 edition;~~
 - ~~—— (c) Department Circular DEQ-3, "Standards for Small Water Systems," 2018 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 Drainage," 2017 edition;~~
 - ~~—— (g) Department Circular DEQ-10, "Standards for the Development of Springs for Public Water Systems," 2014 edition;~~
 - ~~—— (h) Department Circular DEQ-11, "Montana Standards for Development of Springs for Individual and Shared Non-public Systems," 2002 edition;~~
 - ~~—— (i) Department Circular DEQ-16, "Standards for Hauled Water Cisterns for Noncommunity Public Systems," 2014 edition;~~
 - ~~—— (j) Department Circular DEQ-17, "Montana Standards for Cisterns (Water Storage Tanks) for Individual Non-public Systems," 2002 edition;~~
 - ~~—— (k) Department Circular PWS-5, "Ground Water Under the Direct Influence of Surface Water," 2002 edition;~~
 - ~~—— (l) Department Circular PWS-6, "Source Water Protection Delineation," 1999 edition;~~
 - ~~—— (m) 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~~
 - ~~—— (n) 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.~~

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

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

~~REASON:~~