Subdivision Seminar

June 16, 2022
Welcome!

- This meeting is a Zoom webinar
- Only presenters are panelists
- Please hold questions until the Q&A portion of the meeting (slides are numbered)
- Members of the public can raise their hand or use the Q&A feature to ask questions during the Q&A portion of the meeting
- *9 raises your hand if you're on the phone
- Please state your name and affiliation before providing your comment
Meeting Objective:
Provide information about the various parts of the subdivision review process, why it's important, and how key entities are working together to improve the application and review process.
Panelists

• County - Shannon Therriault, RS (Missoula), Beth Norberg, RS (Lewis and Clark), Brittney Krahn, RS (Gallatin)
• DEQ - Margarite Juarez Thomas, Susan Bawden, Eric Trum, Eric Regensburger, Scott Patterson
• DNRC - Nate Ward
• MACo - Karen Alley

• Facilitator – Rebecca Harbage, DEQ
Agenda:

Welcome and Meeting Overview – Rebecca Harbage

Subdivision and Platting Act – Karen Alley, Montana Association of Counties General Counsel

Sanitation in Subdivisions Act – DEQ and DNRC
  • Water Rights and Well Exemptions – Nate Ward, DNRC Water Rights Bureau Chief
  • Environmental Application and Review Process – Margarite Juarez Thomas, DEQ Public Water Supply
  • Ground water – Eric Regensburger, DEQ Water Quality Planning Bureau
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  • Stormwater – Susan Bawden, DEQ Enforcement Program

Title 50 – Shannon Therriault, RS (Missoula County), Beth Norberg, RS (Lewis and Clark County), Brittney Krahn, RS (Gallatin County)

11:30 Panel Q & A
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*11:30 Panel Q & A*
Montana Subdivision and Platting Act

What and Why
Karen Alley
kalley@mtcounties.org
Montana Subdivision and Platting Act

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

• SB 208 (1973) sponsored by Senator Jean Turnage
  • Stated its purpose was to bring order out of the confusion with land subdivisions and the role of local government therein.

• Widely supported
  • Hal Price, State Planning Board, stated the bill was to designed to deal with problems that result from poor subdivisions
  • Rick Mayfield, Bozeman City-County Planning Board, provided the legislative committee with an illustration of how land was subdivided with no concern for roads or drainage
  • Jean Anderson, League of Women Voters, supported SB 208, stating, in particular, the bill addressed the achievement of orderly community growth and enabled governmental services to be economically and efficiently supplied
Montana Subdivision and Platting Act

• 1973 passage applied to divisions of land of 10 acres or less, which was the most controversial part of the bill.
  • This acreage was quickly changed in 1974 to apply to divisions of land 20 acres or less.
  • Present definition of subdivision, effective as of April 6, 1993
    • “division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed.” (MCA 76-3-103(16))
Montana Subdivision and Platting Act

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

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

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

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

• It is the role of local government to analyze any adverse impacts to the primary criteria
  • Significant adverse impacts are mitigated with conditions of approval, imposed through the review process itself

• In completing its review, local governing body relies upon not only representation from the subdivider but also on public participation.

• Public still plays a critical role in community growth, both in the development of regulations as well as in the site-specific (application) review
Montana Subdivision and Platting Act

• Specific to Sanitation in Subdivision
  • Under MCA 76-4-102(23), subdivision is defined by a division of land that creates parcels of land less than 20 acres. Any parcel under 20 acres is reviewed by the Montana DEQ for water and sanitation review. Parcels over 20 acres are reviewed by the local county sanitarian for water and sanitation review.
  • Subdivision applications, submitted under MCA Title 76, Chapter 3 “must be accompanied by preliminary water and sanitation information required under MCA 76-3-622.”
  • As part of the review process, the local governing body is required to collect public comment related to water and sanitation review. Those comments are provided to the subdivider and passed along to the appropriate reviewing authority, pursuant to MCA 76-3-604.
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**11:30 Panel Q & A**
Water Rights: Permits & Exceptions

Nate Ward
Bureau Chief
Water Rights Bureau
nward@mt.gov
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*11:30 Panel Q & A*
DEQ Subdivision Review Process

Margarite Juarez Thomas
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Statutory Authority for DEQ

- **Sanitation in Subdivision Act**
  §76-4-101, et seq., MCA
  - Subdivision Rules
    ARM 17.36.101 et seq.

- **Public Water Supply Act**
  §75-6-101, et seq., MCA
  - Public Water and Sewer Rules
    ARM 17.38.101 et seq.

- **Water Quality Act**
  §75-5-101, et seq., MCA
  - Non-Degradation Rules
    ARM 17.30.701, et seq.
    State Minimum Standards
    ARM 17.36.901, et seq.

- **Local Health Boards**
  §50-2-116, MCA
  - Local Health Regulations
  - Local Subdivision Regulations
  - Septic Permits

- **Subdivision and Platting Act**
  §76-3-101, et seq., MCA
  - Local Subdivision Regulations
Water Rights Coordination

17.36.103 APPLICATION--CONTENTS

• DNRC Letter
  • water supply is exempt
    or
  • water right complete
"Subdivision" means a division of land or land so divided that creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision, any condominium, townhome, or townhouse, or any parcel, regardless of size, that provides two or more permanent spaces for recreational camping vehicles or mobile homes. MCA76-4-102 (23)
Contracted Counties
Subdivision Review

Approximately half of the counties in Montana are contracted to conduct reviews of subdivision applications in their county, for compliance with laws and rules.

After the County’s review is complete, they make a recommendation for approval of the application to the MDEQ.
DEQ Review process

[Flowchart image showing the DEQ review process]
Strategies to Improve Timelines

• Hiring
• Exploring pay adjustments and overtime
• Career path for EIT to PE
• Program "people-sharing"
• Technology – online application submittals
• Contracts – city engineers/private engineers
• Rulemaking
• Funding
• Efficiency
Subdivision Review

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

We look at:
• Proper formatting of the lot layout
• Water quality, quantity, and dependability
• Proper functioning of the wastewater system
• Setbacks
• Non-degradation of state waters
• Storm water drainage

• Issue Certificates of Subdivision Approval (COSA)
System Classification

- **Individual**
  - serves one living unit or commercial unit and that is not a public system

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

- **Multi-user**
  - serves, or is intended to serve, more than two living units or commercial units or a combination of both and that is not a public system

- **Public**
  - Serves 15 or more connections, or
  - 25 or more persons for 60 or more days per year
Identification of DEQ’s Rulemaking Priorities

Red Tape Relief
Incorporation of legislative changes from 2021 session
Changes based on concerns the subdivision program has consistently heard over the past several years.
Subdivision Advisory Task Force

Acts as a liaison between DEQ, counties and sanitarians, and the public as part of the Department’s continual improvement process focused on improving subdivision and development related processes and policies while protecting public health and the environment.

Work is guided by the policies set out under the Water Quality Act MCA 75-5-101 and the Sanitation and Subdivisions MCA 76-4-101.
DEQ Proposed Pathway

Phase 1 - Moving forward in 2022/2023

- Subchapter 1
- Portions of Subchapters 3, noted on following slides
- DEQ-3 and DEQ-20
- To be adopted in February of 2023

Phase 2 - Will continue work in SATF subcommittees

- Subchapter 6
- Subchapter 9
- DEQ-4, Portions of Subchapter 3
- DEQ-8
- Nondeg circular 4A may be included in phase 2
- Tentative adoption in November of 2023
Phase 2 - Timeline

- Continue to work on Phase 2 with the SATF
- Tentatively in June of 2023, we would enter the Rule and Refinement of Draft Rules for Phase 2.
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11:30 Panel Q & A
Septic System Water Quality Review

Eric Regensburger
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Overview

• Review Nitrogen (N) impacts to groundwater (and surface water when close enough)
• Review Phosphorus (P) impacts to surface water
Nitrogen Groundwater Review Basics

- Allow effluent to mix with groundwater
- Calculate nitrogen (N) concentration at end of groundwater mixing zone.
- Nondegradation limit is 5 or 7.5 mg/L (total concentration) at end of mixing zone
Mixing Zone (Top View)

GROUND WATER FLOW

MIXING ZONE
(extends 15 feet into groundwater)

100 – 500 ft

DRAINFIELD

Nitrogen Limit = 5 / 7.5 mg/L
Mixing Zone (side view)

Drainfield

Nitrogen Limit = 5 / 7.5 mg/L

Mixing Zone

GROUND WATER FLOW

15 FT.
Phosphorus Review Basics

- Calculate amount of soil between drainfield and surface water available to adsorb P.
- Need at least 50 years of adsorptive capacity.
Surface Water Review Basics

- Drainfield within ¼ or ½ mile of surface water (soil type dependant)
- Allow effluent N and P to mix with surface water.
- Calculate nitrogen N and/or P concentration after mixing with a statistical low flow streamflow.
- Allow a defined increase of N and P in surface water after mixing (0.01 and 0.001 mg/L)
Examples of Wastewater Treatment and Monitoring Data.
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11:30 Panel Q & A
Nitrate and Pathogens Contamination in Drinking Water Wells

Scott Patterson
MT DEQ – Nitrate and GWUDISW Rule Manager
Public Water Supply Bureau
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406-444-5360
Drinking Water Health Standards

- Safe Drinking Water Act sets health standards for quality of drinking water served
- These health standards are adopted by Subdivision rules
- Maximum Contamination Level (MCL) = Health Standards
  - Nitrate = 10 mg/L
  - *E. coli* = Presence
- Acute vs. Chronic contaminants

<table>
<thead>
<tr>
<th>Acute – Consumption of single dose over health limit can cause illness</th>
<th>Chronic – Consumption over health limit for extended period of time can cause illness</th>
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<tbody>
<tr>
<td>Examples: <em>E. coli</em>, Nitrate</td>
<td>Examples: Arsenic, Benzene, Lead, etc.</td>
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Nitrate and Pathogens are Common Groundwater Contaminates

- ~25% of PWS have nitrate above background (3 mg/L)
  - Indication of groundwater contamination
- ~11 PWS exceed the Nitrate MCL each year
  - Health concern
- Sources of Nitrate
  1. Fertilizer
  2. Animal manure
  3. Human sewage
  4. Natural deposits
- ~13% of PWS have Total coliform positive samples each year
- ~7 PWS have positive *E. coli* samples from wells each year
- Sources of pathogens
  - Human feces
  - Animal manure
  - Naturally occur in soil
Onsite WW are a source of GW Contamination

- **Type of waste** – Septic systems handle human waste (which contain nitrate and pathogens)

- **Siting Considerations** – Wells should be sited upgradient of wastewater systems for an individual property
  - Consider neighbors well and wastewater system

- **Well Proximity** – The closer the well is to a septic system drain field increases the likelihood of well contamination
  - Well has 100 control zone around which no contamination should be present
An Example: A Daycare and a Neighbors Drain Field

Nitrate Levels from Daycare’s well

- Daycare’s nitrate levels were elevated above background and jumped in 2021
- Neighbors drain field extends within 100 ft control zone of Daycare’s well
- Small lot sizes limit the places where wells and drain fields can be installed while maintaining appropriate setbacks
In Summary

• Nitrate and Pathogens are acute contaminants

• Onsite wastewater is a significant source for these acute contaminants

• Design considerations can reduce GW contamination – siting wells up gradient of wastewater facilities

• This creative Well and Septic Care brochure is available
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11:30 Panel Q & A
Nonpoint Sources of Nutrient Contamination to Surface Water

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DEQ Water Quality Planning

1. Develop Water Quality Standards
   - Adopt criteria to describe desired conditions and protect beneficial uses.

2. Monitor Water Quality
   - Collect data about water quality

3. Assess Water Quality
   - Describe water quality and determine whether waters are “impaired” (do not meet water quality standards and do not fully support beneficial uses)

4. Identify Sources of Pollution
   - Estimate amount of pollution from identified sources

5. Develop Total Maximum Daily Loads (TMDLs)
   - Determine reductions needed for impaired waters to meet water quality standards, and recommend pollution reduction strategies

6. Support Water Quality Improvements
   - Support efforts to reduce point and nonpoint source pollution and protect and restore water quality.

DEQ’s Water Quality Planning Process
Onsite Wastewater Treatment – Flathead TMDLs

Flathead-Stillwater Planning Area TMDLs (2014)

- Nutrients
  - estimated septic systems contribute 6-50% of nutrients to impaired surface waters
- Sediment
- Temperature

MEANSS model

- Method for Estimating Attenuation of Nutrients from Septic Systems

Existing loads (TN)

- Point Sources = 68.7 lbs/day
- NPS+NB = 161.9 lbs/day

Required reductions (all sources)

- TN = 91%
- TP = 91%
Onsite Wastewater Treatment – Bitterroot Protection

- Septic systems were estimated to contribute more than 20% of the TN loading to the Bitterroot River
- 5 times or more what local wastewater treatment plants are contributing
- nearly equivalent to all other nonpoint sources estimated

Relative estimated TN and TP loads from natural background, septic systems, other NPS, tributaries, and WTTFs
Onsite Wastewater Treatment - NPS

- Septic Risk Mapping in the Flathead
  - 30% older than 30 years
- Septic maintenance cost share
- Education and Outreach
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*11:30 Panel Q & A*
SUBDIVISION COMPLAINTS

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Enforcement Program

DEQ Complaint Hub
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**11:30 Panel Q & A**
Role and Perspective of Local Health Departments:
Title 50, Local Permitting and Subdivision Review

BRITTNEY KRAHN, RS-GALLATIN COUNTY
BETH NORBERG, RS-LEWIS AND CLARK COUNTY
SHANNON TERRIAULT, RS-MISSOULA COUNTY
Local Boards of Health

- Every city and county required to have a Local Health Board
- Can be a combined City-County Board or a District Board
- 50-2-116, MCA grants the powers and duties
- Includes what they SHALL do and what the MAY do
- All health boards have to propose wastewater regulations for adoption
- Health boards may adopt maintenance permits, rules to implement public health laws
Local permitting supported

- **Title 76, Chapter 4, MCA**
  - Require certification from local health officer that wastewater systems will meet local rules
  - Local health officer approval required before plat, survey or declaration can be filed

- **ARM Title 17, Chapter 36**
  - Requires local health officer approval be submitted
  - Requires compliance with local requirements

- **Certificate of Subdivision Approvals (COSA)**
  - Language requiring compliance with local rules
Local Permitting-additional

▶ ARM 17.36.900

▶ Requires that under Title 50 local Boards of Health must adopt regulations that are no less stringent for the disposal of sewage from public and private buildings and facilities.

▶ Defines and sets forth the minimum standards for construction, alteration, repair, extension and use of wastewater treatment systems in the state.

▶ Reviewing Authority (local Board of Health, Health Officer or designee) shall administer a permit system for wastewater treatment and disposal systems.
Circular DEQ-4

- Set forth the minimum standards and requirements for:
  - Size
  - Design
  - Construction
- Cannot be less stringent
Differences in Local Regulations: “No More Stringent”

- MCA 50-2-130
- No comparable state standard-Examples:
  - Certified Installer Programs
  - Standards and methods for enforcement-Authority in Title 50-2-116
- Being more stringent than the state minimum requires written finding that protects public health and can mitigate harm to the public or environment
- Allows petition of review of a rule under certain circumstances
Local Variances

- May be granted by a Local Board of Health under the authority in Title 50
- Procedure and requirements are set forth in 17.36.922
- Variances may be granted as an exception to the 900 rules and/or Circular DEQ-4, but not the requirements established by statute.
- Local Board of Health’s decision on any variance may be appealed to the Montana DEQ.
- Variances MUST meet the criteria set forth in ARM 17.36.922(2)
Local Variance and Subdivision Review

- The Board of Health may grant a variance from any requirement in ARM 17.36.900 or Circular DEQ-4.
- The variance approval is included in the submission of a Subdivision Application.
- The Department of Environmental Quality may grant a waiver or Deviation with the local variance used as supporting documentation.
  - Waiver: Departure from requirements set out in rule in accordance with ARM 17.36.601.
  - Deviation: Departure from a requirement contained in Circular 75.
Contracted Sanitation Act Review—why?

- Changing local conditions
  - Impaired water ways, floodplain, high background nitrates, etc
- Site visits
- Historical data including GIS specific to the area
- Compliance work
76-4-105 MCA allows a local authority (contracted county) to establish a fee to review applications. The fee must not exceed the actual costs less any reimbursement from DEQ (80/20)
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Facilitator – Rebecca Harbage, DEQ
Thank you for attending