

July 17, 2007

Mr. Joe Brenneman, Chairman and
Mr. Gary Hall and Mr. Dale Lauman, Commissioners
Flathead County Board of Commissioners
800 S. Main
Kalispell, MT 59901

Dear Sirs,

Thank you for the opportunity to comment once again on the proposed Flathead County Subdivision Regulations. As you are aware, the Flathead County Subdivision Regulations (FCSR) are being updated for two reasons: 1) to implement and be consistent with the county's newly adopted County Growth Policy and 2) to bring FCSR into compliance with the changes to state law under the Subdivision and Platting Act.

As you are also aware we have provided earlier comments. Subdivision regulations are by nature an inherently complex set of regulations and everyone on all sides has been scrambling to get you timely and specific comments to the significant changes that are being made to the current regulations. To date our organization's comments have primarily focused on ensuring that the subdivision regulations effectively implemented and were consistent with the newly adopted growth policy.

We were under the assumption that the new county subdivision regulations had been written to comply with state law. Unfortunately, we realized only in the last few days and that this was not case in some important areas that we want to point out to you this morning. We apologize for the late nature of our comments today, but I trust you recognize that the complexity of these regulations and the need to comply with numerous laws make this a process that requires detailed analysis when there has been little time for this analysis by all parties.

We feel that your careful reconsideration of these draft regulations at this time will both help avoid future confusion as to what information must be submitted as part of a preliminary plat subdivision application and it will help avoid needless yet potential litigation against the county by either a developer or the public when the required information that must be submitted is not clearly laid out.

To as simply as possible walk you through this issue of what information must be included in a preliminary plat application, I have attached a series of documents to provide the basis for the points I want to make. The first two attachments are state laws MCA 76-3-504 and MCA 76-3-622 which were each either created by—as was MCA 76-3-622--or amended by ---as was MCA76-3-504-- under SB 290 in the 2005 legislative session. These two statues taken together, as SB290 intended them to be, give clear

direction as to what must be included in a preliminary plat application and reference these items directly or indirectly by citing the need to comply with other statutes. The issue we are bringing to your attention is that the draft subdivision regulations before you for adoption, do not include all of these required items and thus if adopted as currently drafted would not be compliant with state law.

Your county Attorney, Peter Steele provided you an overview of SB 290 and changes to these statutes almost two years ago on Oct 31, 2005. In the attached minutes from one of your weekly minutes on this subject he states:

“...that what [SB] 290 was doing was codifying an attorney general’s opinion which was that when a subdivision comes before the commissioner at preliminary plat stage water and sanitation should be presented at that time. He stated that there is a miscommunication here because it does not require DEQ approval but **it requires, so that you will be able to know what is going on as far as water and sewer at the preliminary plat stage, you will have that information, and more importantly it gives the public time to comment.** He stated that what is not changed is that the DEQ approval still comes between the preliminary plat and the final plat, and so that is the intent of the legislature. He also stated that in the past they have always said that these plats are conditioned on DEQ approval, and that is still the same, they do not go to DEQ before preliminary plat, but when they came with preliminary plat they have this water and sanitation information.”

FCC Minutes October 31, 2005

The important point here is that SB290 in codifying an attorney general’s opinion that required **disclosure** of all required information at the preliminary plat application time and yet also recognized that final approval for water and sanitation remained with DEQ. **Disclosure**, however, as the attorney general held, **was found to be essential to give the county commissioners and the public--who would be most impacted by water and septic or sewer systems proposed---the information they would need to comment, and in the case of the commissioners enough information to determine if they had a reasonable basis to adopt findings of facts for approval of a proposed subdivision which they could not –as the attorney general’s ruling held--later add conditions to if problems arose that was not recognized because information was not disclosed earlier.**

Let me walk you through an example of how the current draft does not comply with the information requirements of MCA 76-3-504 and MCA 76-3-622. For this example we will look just at the requirement for information on sewage.

Under MCA 76-3-504 (g) (iii) a preliminary plat must include information on sewage that meet the “regulations adopted by the department of environmental quality under MCA 76-4-104. MCA 76-4-104 directs that the Department of Environmental Quality (DEQ),

“...shall, subject to the provisions of [76-4-135](#), adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards must provide the basis for approving subdivisions for various types of public and private water supplies, sewage disposal facilities, storm water drainage ways, and solid waste

disposal. The rules and standards must be related to:

- (a) size of lots;
- (b) contour of land;
- (c) porosity of soil;”
- (d) ground water level;
- (e) distance from lakes, streams, and wells;
- (f) type and construction of private water and sewage facilities; and
- (g) other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

To determine what rules and standards the DEQ has adopted that must be complied with one then goes to the Administrative Rules of Montana Title 17, Department of Environmental Quality Chapter 36. (see Attachment # 3). These administrative rules then direct one to Water Quality Circulars prepared by the Department of Environmental Quality, and in this case Water Quality Circular #4 Montana Standards for Wastewater Treatment Systems, which provide the detailed information that must be supplied. (see Attachment #4).

If you also go a copy of the Model Subdivision Regulations that incorporates the 2005 amendments to the Montana Subdivision and Platting Act that the county can use for guidance in how to incorporate and list out all of this required information you will find beginning on page A-1 a comprehensive 16 page listing of the information that must be provided under the changes made by the 2005 legislature, SB290.

When one goes to the draft Flathead County subdivisions, however to page 4-A3 and A4, Appendix B, Application and Preliminary Plat Supplements, Part 1 Application Supplements (p) Evidence of suitability for new onsite wastewater treatment systems... one does not find the listing of the information required under DEQ Water Quality Circular #4 as discussed above or even the information outlined in the Model Regulations. What one finds is some of the partial wording in MCA 76-3-622 that covers MCA 76-3-622(d) (i)(ii)(iii)----not the comprehensive information required when one complies with both MCA 76-3-504 and MCA 76-3-622.

Let me insert here quickly that in the Neighbors Over the Aquifer case, Flathead County and the developer’s attorneys both asserted that the county only had to comply with MCA 76-3-622. Judge Curtis in her ruling disagreed (page 10 line 7) however held that the County must also comply with MCA 76-3-504 as well. Additionally both MCA 76-3-608 and MCA 76-3-609 state that the criteria for local government review of subdivisions shall be based on MCA 76-3-504 as well.

Going back to our example of sewage information, under the county’s current subdivision regulations, --- Appendix B (b),page 81---unlike the new draft regs these regulations are generally compliant with MCA 76-3-504 and MCA 76-3-622 in its requirement for compliance with DEQ standards when it requires multiple test sites and states that, “The results of percolation tests performed in representative areas for drainfields in accordance with the most recent Department of Environmental Quality Bulletin.” See sample plat mat.

Under the county’s new draft subdivision regulations, the section on sewage is only compliant with a portion of MCA76-3-622—not MCA 76-3-504 when it **calls for only a single soil profile description**

from a “**representative drainfield site**” in Draft FCSR, Appendix B, page 4-A4, (p)(i)) as opposed to the multiple representative drainfield sites required by DEQ and 76-3-504.

The cross-referenced table of contents (See Attachment # 5) that the county developed to demonstrate where sections of this policy were revised to comply with state law indicate that Appendix B is based on 76-3-504, but that is not true for our case example and other sections as well. Instead, our case example is based only on 76-3-622.

In closing we have to point out again that we had been operating on the assumption that the county had already intergraded compliance with 76-3-622 and 76-3-504 into the draft regulations. We were surprised that our recent analysis of this draft found that this was simply not the case---either the full compliance with both these statutes is not in the regulation not in the draft regulations as we have shown with our case example or the proposed regulation compliance is buried and not user-friendly as it should be. We believe from the meetings that we have attended that the county has sought to integrate compliance with these statutes within the draft, but given time constrains, multiple demands on the staff’s time and the complexity of this task for even those fairly familiar with these regulations this has not been accomplished. Indeed, participating in the complexity of this update process has been a daunting process for everyone involved.

We would suggest that it is essential that the county take the time now to have staff and the county attorney’s office complete this compliance review and use the model regulations as a guide where appropriate. Our review has only identified what we feel is a significant problem and not a quick fix or line-by line review---though we imagine this can be done within a few more weeks---giving time for additional public review of these changes.

Additionally, we urge the county planning office to develop—similar to that found in the model regulations---a comprehensive check list for sufficiency compliance to use when reviewing development application submittals. I recently requested a copy of the list currently being used as a check list for sufficiency reviews and was told that one does not exist currently. In fairness to developers, the public, and to avoid needless law suits from either over the failure to provide sufficient information as required by law, we believe it is essential that the sufficiency check list be a publicly available document.

Thank for your considerations of these comments. Please note that we are attaching some additional written comments that address some other specific issues we feel still need your attention.

Sincerely,

Mayre Flowers
Citizens for a Better Flathead
Executive Director

Attachment #1 MCA 76-3-504 (1) (g) (2005) Excerpt

Emphasis added to highlight significant relevant language.

76-3-504. Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in [76-3-604\(1\)](#);

(b) except as provided in [76-3-210](#), [76-3-509](#), or [76-3-609](#), require the subdivider to submit to the governing body an environmental assessment as prescribed in [76-3-603](#);

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of [76-3-511](#), **water supply and sewage and solid waste disposal that meet the:**

(A) regulations adopted by the department of environmental quality under [76-4-104](#)¹ for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in [76-3-604](#)² and [76-3-622](#) for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities...

¹ **76-4-104. Rules for administration and enforcement.** (1) The department shall, subject to the provisions of [76-4-135](#), adopt reasonable rules, including adoption of sanitary standards, necessary for administration and enforcement of this part.

(2) The rules and standards must provide the basis for approving subdivisions for various types of public and private water supplies, sewage disposal facilities, storm water drainage ways, and solid waste disposal. The rules and standards must be related to:

(a) size of lots;

(b) contour of land;

(c) porosity of soil;

(d) ground water level;

(e) distance from lakes, streams, and wells;

(f) type and construction of private water and sewage facilities; and

(g) other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

² **76-3-604. Review of subdivision application -- review for required elements and sufficiency of information.**

(1) (a) Within 5 working days of receipt of a subdivision application submitted in accordance with any deadlines established pursuant to [76-3-504\(3\)](#) and receipt of the review fee submitted as provided in [76-3-602](#), the **reviewing agent or agency shall determine whether the application contains all of the listed materials as required by [76-3-504\(1\)\(a\)](#)** and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

76-3-504. Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in [76-3-604](#)(1);

(b) except as provided in [76-3-210](#), [76-3-509](#), or [76-3-609](#), require the subdivider to submit to the governing body an environmental assessment as prescribed in [76-3-603](#);

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of [76-3-511](#), water supply and sewage and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under [76-4-104](#) for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in [76-3-604](#) and [76-3-622](#) for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the

water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to [76-3-605](#) and [76-3-615](#);

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in [76-3-201](#) or [76-3-207](#) is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) allows a subdivider to meet with the agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to

the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in [76-3-604](#).

(2) In order to accomplish the purposes described in [76-3-501](#), the subdivision regulations adopted under [76-3-509](#) and this section may include provisions that are consistent with this section that promote cluster development.

(3) The governing body may establish deadlines for submittal of subdivision applications.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(2), (3); amd. Sec. 1, Ch. 236, L. 1981; amd. Sec. 17, Ch. 274, L. 1981; amd. Sec. 238, Ch. 418, L. 1995; amd. Sec. 18, Ch. 471, L. 1995; amd. Sec. 1, Ch. 201, L. 1999; amd. Sec. 21, Ch. 582, L. 1999; amd. Sec. 5, Ch. 348, L. 2001; amd. Sec. 3, Ch. 527, L. 2001; amd. Sec. 1, Ch. 564, L. 2001; amd. Sec. 11, Ch. 599, L. 2003; amd. Sec. 3, Ch. 298, L. 2005; amd. Sec. 1, Ch. 302, L. 2005.

76-3-622. Water and sanitation information to accompany preliminary plat. (1) Except as provided in subsection (2), the subdivider shall submit to the governing body or to the agent or agency designated by the governing body the information listed in this section for proposed subdivisions that will include new water supply or wastewater facilities. The information must include:

(a) a vicinity map or plan that shows:

(i) the location, within 100 feet outside of the exterior property line of the subdivision and on the proposed lots, of:

(A) flood plains;

(B) surface water features;

(C) springs;

(D) irrigation ditches;

(E) existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems;

(F) for parcels less than 20 acres, mixing zones identified as provided in subsection (1)(g); and

(G) the representative drainfield site used for the soil profile description as required under subsection (1)(d); and

(ii) the location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities;

(b) a description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the department of environmental quality;

(c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by the department of environmental quality pursuant to [76-4-104](#);

(d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:

(i) a soil profile description from a representative drainfield site identified on the vicinity map, as provided in subsection (1)(a)(i)(G), that complies with standards published by the department of environmental quality;

(ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and

(iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in subsection (1)(d)(ii);

(e) for new water supply systems, unless cisterns are proposed, evidence of adequate water availability:

(i) obtained from well logs or testing of onsite or nearby wells;

(ii) obtained from information contained in published hydrogeological reports; or
(iii) as otherwise specified by rules adopted by the department of environmental quality pursuant to [76-4-104](#);

(f) evidence of sufficient water quality in accordance with rules adopted by the department of environmental quality pursuant to [76-4-104](#);

(g) a preliminary analysis of potential impacts to ground water quality from new wastewater treatment systems, using as guidance rules adopted by the board of environmental review pursuant to [75-5-301](#) and [75-5-303](#) related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection (1)(g), the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.

(2) A subdivider whose land division is excluded from review under [76-4-125](#)(2) is not required to submit the information required in this section.

(3) A governing body may not, through adoption of regulations, require water and sanitation information in addition to the information required under this section unless the governing body complies with the procedures provided in [76-3-511](#).

History: En. Sec. 4, Ch. 302, L. 2005.

3

Westlaw

MT ADC 17.36.101

Page 1

Mont.Admin.R. 17.36.101

ARM 17.36.101

ADMINISTRATIVE RULES OF MONTANA
TITLE 17. DEPARTMENT OF
ENVIRONMENTAL QUALITY
CHAPTER 36. SUBDIVISIONS/ON-SITE
SUBSURFACE WASTEWATER TREATMENT
SUB-CHAPTER 1. SUBDIVISION
APPLICATION AND REVIEW

Current through September 30,
2006

17.36.101. DEFINITIONS

- (1) "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.
- (2) "Bedroom" means any room that is or may be used for sleeping. An unfinished basement is considered as an additional bedroom.
- (3) "Campground" is defined in 50-52-101, MCA.
- (4) "Certificate of survey" is defined in 76-3-103, MCA.
- (5) "Cesspool" means a seepage pit without a septic tank to pretreat the wastewater.
- (6) "Condominium" is defined in 70-23-101, MCA.
- (7) "Connection" means a water or wastewater line that connects a single building or living unit to a shared, multiple user or public water or wastewater system.
- (8) "Department" means the Montana department of environmental quality.
- (9) "Deviation" means a department-approved departure from a requirement contained in a department circular.

(10) "Drainageway" means a course or channel along which storm water moves in draining an area.

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

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

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

(14) "Experimental system" means a wastewater treatment system for which specific design standards are not provided in department Circular DEQ-4 or DEQ-2.

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

(16) "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.

(17) "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.

(18) "Impervious layer" means any layer of material in the soil profile that has a percolation rate slower

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

Water Quality Circulars by Program

➔ [Circular Titles/Descriptions](#)

Program/ Responsibility	DEQ 1	DEQ 2	DEQ 3	DEQ 4	DEQ 8	DEQ 9	DEQ 11	DEQ 17	PWS 5	PWS 6	DEQ 7
Coal Bed Methane											X
Discharge Permits						X					X
Drinking Water Supply	X		X						X	X	
Drinking Water SRF	X										
Ground Water Remediation											X
Mixing Zones											X
Water Quality Monitoring											X
Nondegradation											X
Nonpoint Source											X
Source Water Protection	X									X	
Standards/Classification											X
Subdivisions	X	X	X	X	X		X	X			
TMDL Program											X
Wastewater (sewer) Systems				X							
Water Pollution Control SRF		X									
Water/Wastewater Operator Certification				X							

Description of Circulars

- [DEQ 1](#)- Standards for Water Works
- [DEQ 2](#)- Design Standards for Wastewater Facilities
- [DEQ 3](#)- Standards for Small Water Systems
- [DEQ 4](#)- Montana Standards for On-Site Subsurface Sewage Treatment Systems 2004 Edition
- [DEQ 8](#)- Montana Standards for Subdivision Storm Drainage
- [DEQ 11](#)- Montana Standards for Development of Springs for Individual and Shared Non-Public Systems

- [DEQ 17](#)- Montana Standards for Cisterns (Water Storage Tanks) for Individual Non-Public Systems
- [PWS 5](#)- Groundwater under the Direct Influence of Surface Water
- [PWS 6](#)- Source Water Protection Delineation
- [DEQ-7](#)- Montana Numeric Water Quality Standards
DEQ-7 contains the surface water aquatic life and human health water quality standards and the ground water human health standards. DEQ-7 is revised on an "as need" basis. DEQ-7 dated February 2006 is the most recent version. All previous versions are not in effect. If you have any questions about this document, contact [Chris Levine](#), 444-0371. (Note: The document prints best using the legal landscape setting.)
- [DEQ 9](#) - Montana Technical Standards for Concentrated Animal Feeding Operations
- [Public Notice for the Proposed DEQ 1 and DEQ 3](#)



- Updated: 21 Dec 2006
- [Privacy & Security](#)
- [Accessibility](#)
- [Contact Us](#)

CIRCULAR DEQ 4

**MONTANA STANDARDS
FOR SUBSURFACE WASTEWATER
TREATMENT SYSTEMS**

2004 Edition

CIRCULAR DEQ-4

CHAPTERS

1 APPLICABILITY.....	4
2 DEFINITIONS.....	7
3 SITE EVALUATION.....	12
4 SITE MODIFICATIONS.....	15
5 WASTEWATER FLOW.....	18
6 DESIGN OF SEWERS.....	23
7 SEPTIC TANKS.....	26
8 STANDARD ABSORPTION TRENCHES.....	32
9 DOSING SYSTEM.....	37
10 DEEP ABSORPTION TRENCHES.....	39
11 AT-GRADE ABSORPTION TRENCHES.....	40
12 SAND-LINED ABSORPTION TRENCHES.....	42
13 GRAVELLESS ABSORPTION TRENCHES.....	43
14 ELEVATED SAND MOUNDS.....	44
15 INTERMITTENT SAND FILTERS.....	48
16 RECIRCULATING SAND FILTERS.....	51
17 RECIRCULATING TRICKLING FILTERS.....	54
18 EVAPOTRANSPIRATION ABSORPTION SYSTEMS.....	56
19 EVAPOTRANSPIRATION SYSTEMS.....	58
20 AEROBIC WASTEWATER TREATMENT UNITS.....	60
21 CHEMICAL NUTRIENT-REDUCTION SYSTEMS.....	65
22 EXPERIMENTAL SYSTEMS.....	66
23 ABSORPTION BEDS.....	68
24 HOLDING TANKS.....	70
25 SEALED (VAULT) PIT PRIVY.....	71
26 UNSEALED PIT PRIVY.....	72
27 SEEPAGE PITS.....	73
APPENDIX A.....	74
APPENDIX B.....	80
APPENDIX C.....	92
APPENDIX D.....	94
REFERENCES.....	97

CHAPTER 3

SITE EVALUATION

3.1 Information concerning soil and site conditions is needed for the design of subsurface wastewater treatment systems. Those factors which must be evaluated are thickness of permeable soil above seasonally high ground water, bedrock or other limiting layer, soil properties, land slope, topographic position, flooding hazard and amount of suitable area available, and setback distances required in ARM Title 17, chapter 36, subchapter 3 or 9. For systems with a design wastewater flow greater than 1,000 gallons per day, the potential for ground water mounding must be evaluated.

3.2 Evaluation of soil factors

Soil properties must be evaluated using a soil profile and must be supported by percolation tests, soils maps, and other available scientific information when variability of the soils indicates additional information is necessary to determine the appropriate application rate.

3.3 Existing soil information

Soil surveys are usually found at the local USDA Natural Resources Conservation Service (NRCS) office. Soil surveys offer good preliminary information about an area and can be used to identify potential problems; however, they cannot substitute for a field investigation.

3.4 Soil profile descriptions

3.4.1 Soil pits within 25 feet of the boundaries of the proposed absorption system are required for soil descriptions. For proposed primary and replacement absorption systems that are not located in the same immediate area, a soil profile may be required for each proposed absorption system area. The minimum depth of soil profile descriptions must be 8 feet unless a limiting layer is encountered at a shallower depth. The soil profile may be completed to a greater depth to demonstrate compliance with nondegradation rules for phosphorous breakthrough.

3.4.2 The following soil properties must be evaluated to the full depth of the holes and reported:

3.4.2.1 Thickness of layers or horizons;

3.4.2.2 Texture, structure, and consistence of soil horizons;

3.4.2.3 Color (preferably described by using the notation of the Munsell color scheme) and color variation (redoximorphic features);

3.4.2.4 Depth of water, if observed;

- 3.4.2.5 Estimated depth to seasonally high ground water and basis for the estimate;
- 3.4.2.6 Depth to and type of bedrock, if observed;
- 3.4.2.7 Stoniness reported on a volume basis (i.e. the percentage of the soil volume occupied by particles greater than 2 mm in diameter);
- 3.4.2.8 Plasticity; and
- 3.4.2.9 Other prominent features such as roots, etc.

3.5 Percolation tests

- 3.5.1 Percolation tests, if required, must be conducted at the approximate depth of proposed construction. For elevated sand mounds and at-grade systems, the depth of the percolation test hole must be 12 inches. Additional percolation tests may be required to determine the existence of a limiting layer. The percolation tests must be performed in accordance with the procedures contained in Appendix A. When the proposed replacement area is not immediately adjacent to the primary absorption system, at least one percolation test must be conducted within the boundaries of the replacement area.
- 3.5.2 When more than one percolation test is conducted within the boundaries of a proposed absorption system, the percolation rate will be determined based on the arithmetic mean of the percolation test values.

3.6 Site factors

The land slope, potential for flooding and surface water concentration, and amount of suitable area must be evaluated.

3.6.1 Type and percent of land slope

The type (concave, convex, or plane), percent, and direction of land slope must be reported, along with the method of determination.

3.6.2 Flooding and surface water

The potential for flooding or accumulation of surface water from storm events must be evaluated.

3.6.3 Ground water quality impact

Compliance with the nondegradation requirements of the Montana Water Quality Act (75-5-301, MCA) must be demonstrated.

APPENDIX A

PERCOLATION TEST PROCEDURE 1

Properly conducted percolation tests are needed to determine absorption system site suitability and to size the absorption system. Percolation tests must be conducted within the boundary of the proposed absorption system. The percolation test must be completed by an individual approved by the reviewing authority.

Test hole preparation

1. Dig or bore holes 6 to 8 inches in diameter, with a maximum size of 10 inches, with vertical sides. The depth of the holes must be at the approximate depth of the proposed absorption trenches, typically 24 inches below ground. If hole is larger than 6 to 8 inches, place a piece of 4-inch diameter, perforated pipe inside the hole, and fill the space between the pipe and the walls of the hole with drain rock.
2. Roughen or scratch the bottoms and sides of the holes to provide natural unsmear surfaces. Remove loose material. Place about 2 inches of $\frac{3}{4}$ -inch washed gravel in the bottom of holes to prevent scouring during water addition.
3. Establish a reference point for measurements in or above each hole.

Soaking

1. Fill holes with clear water to a level at least 12 inches above the gravel.
2. If the first 12 inches of water seeps away in 60 minutes or less, add 12 inches of water a second time. If the second filling seeps away in 60 minutes or less, the percolation test should be run in accordance with the sandy soil test; proceed immediately with that test. As an alternative to proceeding with the test, if these conditions are met and documented, the percolation rate may be considered to be faster than 3 minutes per inch, and the test may be stopped.
3. If either the first 12 inches or the second 12 inches does not seep away in 60 minutes, the percolation test must be run in accordance with the test for other soils. In these other soils, maintain at least 12 inches of water in the hole for at least 4 hours to presoak the hole.

Test

1. Sandy soils (percolation rate of 10 minutes per inch or faster)

Add water to provide a depth of 6 inches above gravel. Measure water level drop at least four times, in equally spaced intervals, in a 1 hour time period. Measure to nearest $\frac{1}{4}$ inch. Refill to 6-inch depth after each measurement. Do not exceed 6-inch depth of water. Use final water-level drop to calculate rate.

2. Other soils (percolation rate slower than 10 minutes per inch).

Remove loose material on top of gravel. Add water to provide a depth of 6 inches above gravel. Measure water levels for a minimum of 1 hour. A minimum of four measurements must be taken. The test must continue until two successive readings yield percolation rates that do not vary by more than 15 percent, or until measurements have been taken for four hours. Do not exceed 6-inch depth of water. Use final water-level drop to calculate rate.

Records

Record the following information on the attached form, and include as part of the application:

- Date(s) of test(s),
- Location, diameter, and depth of each test hole,
- Time of day that each soak period began and ended,
- Time of day for beginning and end of each water-level drop interval,
- Each water-level drop measurement,
- Calculated percolation rate,
- Name and signature of person performing test,
- Name of owner or project name.

Rate Calculation

Percolation Rate = Time interval in minutes/Water-level drop in inches

PERCOLATION TEST PROCEDURE II

The consultant may use either or both tests in choosing the value used in site evaluation. The results of all tests must be reported in the application, and the procedure used must be specified. Test Procedure II requires substantially more data be obtained at well-defined intervals. If this information is not properly obtained, the results are not valid and will not be accepted. The percolation test must be completed by an individual approved by the reviewing authority.

Note: This test is run without a pre-soak time period, therefore results can be obtained in a shorter time period.

Depth of tests

Tests must be taken entirely within the most dense, least permeable soil identified at the approximate depth of the absorption trench, as identified from the test pit(s) on the site.

Type of test hole

The test hole must be unlined, shaped like a vertically oriented cylinder with a diameter of 6 to 8 inches.

Preparation of test hole

Using a sharp instrument, carefully scrape the side walls of the hole to remove any smeared surface. This is particularly important in soils having a significant silt or clay content. Place 1 inch of clean fine to medium gravel in the bottom of the hole to reduce scouring. After this process the evaluator may place a perforated pipe at least 4 inches in diameter in the center of the hole and surround it with the same gravel that is in the bottom. This must be done if the type of test hole required above cannot be constructed. This process will help keep the side walls from falling and causing the bottom to clog. When possible, instead of pouring water directly from a bucket into the hole, use a hose to siphon water out of a suitably located reservoir; this will provide a higher degree of control over the rate of water entering the hole, thereby minimizing scouring.

Percolation test measurements

To begin the test, fill the hole with water up to a level 6 inches above the stone and allow it to drop the distance specified in the table below for seven consecutive runs. After each run, bring the water up to the 6-inch level. The time of each run, the refill time between each run, and the total elapsed time must be accurately recorded.

Soil Texture			
	Coarse to Medium Sand	Fine Sand to Silt Loam	Silts to Clay Loam
Anticipated Percolation Rate (min/inch)	1-10	10-60	60-120
Drop (inches)	2	1	0.5

Determining the percolation rate

The rate of drop for each run is plotted on graph paper, with logarithmic scales on both axes (log/log graph paper) against the cumulative time of the seven runs, including the refill time. The best straight line is fitted to the seven data points and extrapolated out to one day (1,440 minutes) of cumulative time. The rate of drop after 1,440 minutes is the percolation rate. A mathematical computation of the line of best fit of the seven or more data values may be used in lieu of the graphical method. The reviewing authority may require the mathematical computation of the line of best fit.

A typical data sheet is shown below, with units for each column noted below the table.

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
				t	T	H	
Test #	Time @ Begin of Test Run	Time @ End of Test Run	Fill Time (sec)	Time for Specific Drop (mm)	Total Time Since Start of Test (min)	Total Drop Since Start of Test (inches)	dT/dH min/inch
1	3:32:15	3:36:00	30	3.75	3.75	2	1.88
2	3:36:30	3:41:15	45	5.25	9.00	4	2.25
3	3:42:00	3:48:00	10	6.75	15.75	6	2.63
4	3:48:10	3:55:15	45	7.25	23.00	8	2.88
5	3:56:00	4:03:30	30	7.25	30.25	10	3.03
6	4:04:00	4:11:45	35	8.25	38.50	12	3.21
7	4:12:20	4:20:45		9.0	47.50	14	3.39

Common units

1. Number of test cycle (show all if more were run)
2. Start of test periods in hours, minutes, seconds
3. End of test periods in hours, minutes, seconds
4. Time to refill the test hole with water (seconds)
5. t – time in minutes to drop the predetermined distance for the test period
6. T – total cumulative time in minutes since the start of the first test
7. H – total measured drop in inches of water in the test hole since the start of the test
8. dT/Dt – the rate of water drop in minutes per inch

Test results

Based on the graphical plot show below, the percolation rate at 1,440 minutes is about 7.5 minutes per inch. This is the design percolation rate.

Percolation test procedure II

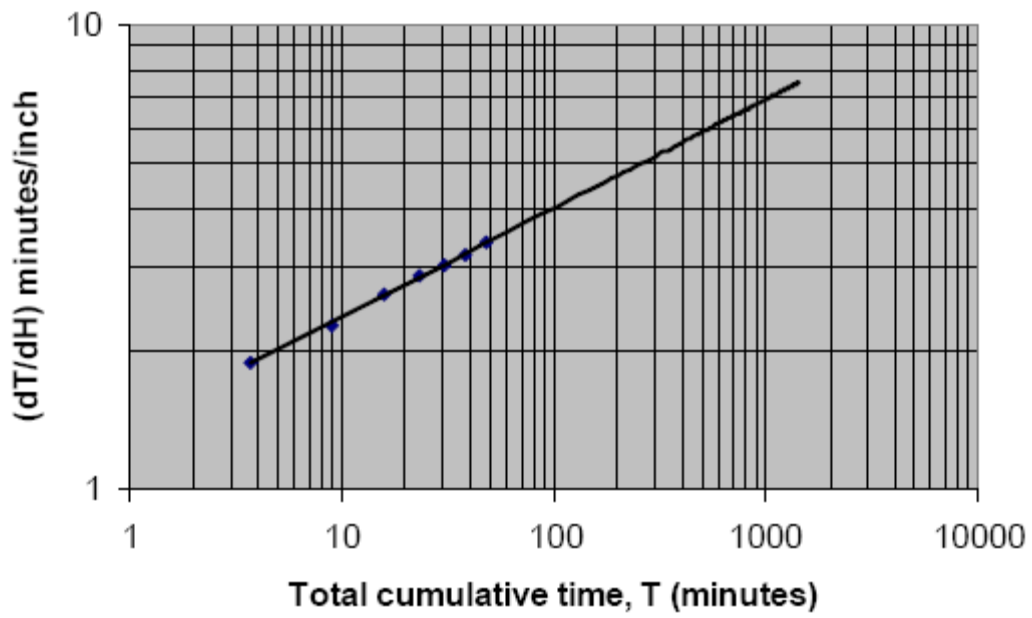


TABLE OF CONTENTS

CHAPTER	Page
4.0	GENERAL PROVISIONS
4.0.1	Purpose.....
4.0.2	Jurisdiction and Coordination.....
4.0.3	Amendment of Regulations.....
4.0.4	Violation and Penalties.....
4.0.5	Local Regulations More Stringent than State Regulations.....
4.1	GENERAL PROCEDURES
4.1.1	Construction Timing.....
4.1.2	Transfers of Title.....
4.1.3	Permission to Enter.....
4.1.4	Appeals.....
4.1.5	Restrictive Covenants.....
4.1.6	Subdivision Variances.....
4.1.7	Subdivision Variance Procedure.....
4.1.8	Subdivision Variance Statement of Facts.....
4.1.9	Variances from Floodway Provisions Not Authorized.....
4.1.10	Public hearings and Notices – In General.....
4.1.11	Application Deadline and Fees.....
4.2	FIRST MINOR SUBDIVISIONS
4.2.1	First Minor Subdivision Pre-application Process.....
4.2.2	First Minor Subdivision Application and Preliminary Plat Submittal.....
4.2.3	First Minor Subdivision Exceptions.....
4.2.4	First Minor Subdivision Element and Sufficiency Reviews.....
4.2.5	First Minor Subdivision Applicable Regulations.....
4.2.6	First Minor Subdivision Time Period for Approval, Conditional Approval or Denial.....
4.2.7	First Minor Subdivision Public Agency and Utility Review.....
4.2.8	First Minor Subdivision Water and Sanitation – Special Rules.....
4.2.9	First Minor Subdivision Consideration and Evidence.....
4.2.10	First Minor Subdivision Commission Decision.....
4.2.11	First Minor Subdivision Commission Decision First Minor Subdivision - Subdivider’s Preference for Mitigation.....
4.2.12	First Minor Subdivision Documentation of Commission Decision.....
4.2.13	First Minor Subdivision Preliminary Plat Terms of Approval.....
4.2.14	First Minor Subdivision Amended Application and Preliminary Plat.....
4.2.15	First Minor Subdivision Final Plat Submittal and Review.....
4.2.16	First Minor Subdivision Final Plat Approval.....
4.2.17	First Minor Subdivision Final Plat Filing.....

4.2.18	Amending Filed First Minor Subdivision Plats.....
4.2.19	First Minor Subdivision Subdivision Improvements Agreement; Guaranty.....
4.2.20	First Minor Subdivision Late-Comers Agreement.....
4.2.21	First Minor Subdivision Cluster Development
4.3	SUBSEQUENT MINOR SUBDIVISIONS
4.3.1	Subsequent Minor Subdivision Review and Approval Procedures
4.4	MAJOR SUBDIVISIONS
4.4.1	Major Subdivision Pre-application Process.....
4.4.2	Major Subdivision Application and Preliminary Plat Submittal.....
4.4.3	Waiver of Major Subdivision Environmental Assessment.....
4.4.4	Major Subdivision Element and Sufficiency Review
4.4.5	Major Subdivision Applicable Regulations.....
4.4.6	Time Period for Major Subdivision Approval, Conditional Approval or Denial.....
4.4.7	Major Subdivision Public Agency and Utility Review.....
4.4.8	Major Subdivision Water and Sanitation – Special Rules.....
4.4.9	Major Subdivision Amended Application and Preliminary Plat.....
4.4.10	Phased Major Subdivision Plat Submittals
4.4.11	Major Subdivision Public Hearing, Consideration and Recommendation.....
4.4.12	Mid-Process Resubmitted Applications
4.4.13	Major Subdivision Preliminary Plat Amendment following Public Hearing.....
4.4.14	Major Subdivision Determination of New Information.....
4.4.15	Subsequent Public Hearing.....
4.4.16	Major Subdivision Preliminary Plat Consideration and Evidence.....
4.4.17	Major Subdivision - Subdivider's Preference for Mitigation
4.4.18	Major Subdivision Commission Decision
4.4.19	Major Subdivision Preliminary Plat Commission Documentation of Decision.....
4.4.20	Major Subdivision Preliminary Plat Terms of Approval.....
4.4.21	Major Subdivision Final Plat Submittal
4.4.22	Major Subdivision Final Plat Application Contents
4.4.23	Major Subdivision Final Plat Review.....
4.4.24	Major Subdivision Final Plat Approval.....
4.4.25	Major Subdivision Final Plat Filing.....
4.4.26	Amending Filed Major Subdivision Plats.....
4.4.27	Exemptions from Final Major Subdivision Amended Plat Review.....
4.4.28	Major Subdivision Public Improvements; Guaranty
4.4.29	Major Subdivision Late-comers Agreement.....
4.4.30	Major Subdivision Cluster Development

4.5.	SUBDIVISIONS CREATED BY LEASE OR RENT (MANUFACTURED HOME PARKS, RECREATIONAL VEHICLE PARKS, AND CAMPGROUNDS)
4.5.1	General.....
4.5.2	Exemption from Survey and Filing Requirement.....
4.5.3	State Health Approval.....
4.5.4	Procedures.....
4.5.5	General Standards for Subdivisions Created by Lease or Rent.....
4.5.6	Manufactured Home Park Standards.....
4.5.7	Recreational Vehicle Park and Campground Standards.....
4.6.	CONDOMINIUMS
4.6.1	General Guidance for Condominiums.....
4.6.2	Condominium Development Standards.....
4.6.3	Condominium Exemption from Subdivision Regulations.....
4.6.4	Unit Ownership Act.....
4.7	SUBDIVISION DESIGN STANDARDS
4.7.1	Subdivision Design Standard Compliance.....
4.7.2	Conformance with Existing Regulations.....
4.7.3	Natural Environment.....
4.7.4	Lands Unsuitable for Subdivision.....
4.7.5	Planning Considerations.....
4.7.6	Landscape Requirements.....
4.7.7	Lots.....
4.7.8	Blocks.....
4.7.9	Payment for Extension of Public Improvements.....
4.7.10	Floodplain Provisions.....
4.7.11	Wetlands Provisions.....
4.7.12	Groundwater Provisions.....
4.7.13	Stream Riparian Setback Requirements.....
4.7.14	Drainage Facilities.....
4.7.15	Dust Control and Air Pollution.....
4.7.16	Roadway Classification.....
4.7.17	Access.....
4.7.18	Road Design and Construction Standards.....
4.7.19	Roadway Improvements.....
4.7.20	Alleys.....
4.7.21	Walkways and Pedestrian/Bicycle Paths and Easements.....
4.7.22	Water Supply Systems.....
4.7.23	Sewage Treatment.....
4.7.24	Solid Waste.....
4.7.25	Utilities.....
4.7.26	Parkland Dedication.....
4.7.27	Weed Control.....

4.7.28	Fire Protection.....
4.7.29	High or Extreme Fire Hazard Areas.....
4.7.30	Mail Box Facilities.....
4.7.31	School Bus Stops.....

4.8 DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW

4.8.1	Purpose.....
4.8.2	Procedure and General Requirements.....
4.8.3	Criteria for Review of Exemption.....
4.8.4	Definitions.....

APPENDICES

App A	Subdivision Pre-application Process.....	A2
App B	Application and Preliminary Plat Supplements.....	A3
App C	Environmental Assessment.....	A9
App D	First Minor Subdivision Impact Criteria Report.....	A21
App E	Contents of Final Plat.....	A24
App F	Sample Forms and Certificates.....	A28
App G	Subdivision Improvement Agreement.....	A36
App H	Subdivision Roadway Late-comers Agreement.....	A45

MONDAY, OCTOBER 31, 2005

The Board of County Commissioners met in continued session at 8:00 o'clock A.M. Chairman Hall, Commissioners Watne and Brenneman, and Clerk Robinson were present.

Chairman Hall opened the public comment on matters within the Commissions' Jurisdiction,

9:22:15 AM

Rick Breckenridge spoke with the commissioners in regards to changes in the subdivision application procedures. He wanted to bring to the commissioner's attention some of the miscommunication and process that have not been clarified. He stated that he brought five major subdivision applications into the planning office and discovered he needed current DEQ approval. He at that time asked Jeff Harris if he had spoken with Peter Steele about this new requirement. He stated that that is why he has asked both Peter Steele and Jeff Harris to attend the

meeting this morning. He also stated that he does realize that the laws have changed, and that they went into affect as of October 1st, but that he does not read the law the same way. He stated that he went to DEQ who stated that they require preliminary plat approval before they review the subdivision for approval. He reviewed the Montana law on DEQ approval and on preliminary plat applications stating that the law states that the governing body shall collect public comment submitted at a hearing or hearings regarding the information presented pursuant to 76-3-622, which is the environmental information that we need to submit with the preliminary plat application, and that there are to be a summary of comments submitted available to the subdivider within thirty days. He went on to say that then it says that the subdivider shall as part of the subdivision application for sanitation approval forward the comments or the summary provided by the governing body. He continued with stating that the laws state that he must submit the comments that are received from the public hearing process as a package to submit to DEQ. He also stated that in 76-3-22 it lists the things that he needs to submit with a preliminary plat application. He then stated that in 76-3-22 under g it states that a preliminary analysis of potential impacts on groundwater quality from new waste water treatment systems, using the guidance rules adopted by the board of environmental review pursuant to 76-5-301 and 75-5-303. He stated that it says preliminary impacts, so it is not an approval from DEQ, that DEQ reviews the data and then either agrees with the analysis or asks for more information, and then says that these are the impacts.

He also stated that it further states under 1g that the subdivider may perform a complete non degradation analysis in the same manner as required for an application that is reviewed under title 76 chapter four, which is the environmental sanitation and subdivision act. He states that what they have is guidance for the subdivision regulations. He also stated that what is happening is the planning department and the county attorney's office

is taking pieces of it and saying that it went into affect on October 1st and picking and choosing, when it is simply guidance for the rewriting of our subdivision review regulations. He told the commissioners that as they recall when the subdivision and platting act was enacted in 1973 it went into affect July 1, 1973, but Flathead County did not adopt subdivision regulations until 1975, and at that time it was 19 pages, the original subdivision regulations. He stated that it does not mean that they did not review subdivision from 1973 until 1975, but what it means is that they had a subdivision review process in place since the turn of the century and they used that, and when they were able to get through the system and comply with the regulations, and adopt a set of regulations in compliance with the code they did so and then followed them. He stated that this is the same thing, that we have subdivision regulations that are in place that need to be followed, and followed according to how they were adopted pursuant to law. He continued by saying now that there are changes they need to go back through the subdivision regulations process, which he is a part of, and every Tuesday he gives two hours of his time to review the model subdivision regulations, and make that change and once it is put together they get public comment and adopt it, and then they have something that is in place pursuant to something that is in the direction of the senate bill. He told the commissioners that they are the final say on it. He also stated that what this is doing is taking a piece here and there and creating a chaos as to where the planning office has not communicated with the sanitation office and there is no meeting in there, and that the DEQ does not know how they can do this. He stated that there is a breakdown in communication that is causing the chaos on how they are going to do things and how they are going to approach it. He stated that the subdivision regulations are quite adequate to handle what they are doing now, and that he thinks the board of commissioners

MONDAY, OCTOBER 31, 2005
(Continued)

could direct a review on how they are going to do this interim regulations, and either say that they are going to use the subdivision regulations or they are going to use the law, whatever they are going to use, but that they need an understanding so that they can give the commissioners the information that they need to make their decision based on something that is in writing. He stated that the commissioners could rectify this situation by saying that until they adopt the changes to the subdivision regulation that are in compliance with the law they are going to use the subdivision regulations that are in place.

Commissioner Brenneman asked Jeff Harris if any subdivision application had been sent in since October 1st ?

Jeff Harris stated that these are the first applications that have been received since the new laws were set in place. He stated that they did get quite a few before October 1st, stating that he believes that at that time the surveyor community really felt that these changes in state statute would change how they did business, and so they saw seventeen application come in on September 30th, so he believes that there was at least an impression out there that the rules had changed. He stated that Peter could address where they are going.

Commissioner Brenneman stated that he was a little surprised that if these are so onerous that there is not a room full of surveyors here complaining.

Jeff Harris spoke on what he thought probably what happened, and that he was not quite sure how it was all going to work out, but that there is going to be a little bit of a transition period until they are able to rewrite to subdivision regulations.

Peter Steele, giving the commissioners a little bit of history so they have an idea of where Senate Bill 290 came from, stated that it was passed this last legislature, and a bill that does not give an affective date is automatically affective October 1st. He also stated that what 290 was doing was codifying an attorney generals opinion which was that when a subdivision comes before the commissioner at preliminary plat stage water and sanitation should be presented at that time. He stated that there is a miscommunication here because it does not require DEQ approval but it requires, so that you will be able to know what is going on as far as water and sewer at the preliminary plat stage, you will have that information, and more importantly it gives the public time to comment. He stated that what is not changed is that the DEQ approval still comes between the preliminary plat and the final plat, and so that is the intent of the legislature. He also stated that in the past they have always said that these plats are conditioned on DEQ approval, and that is still the same, they do not go to DEQ before preliminary plat, but when they came with preliminary plat they have this water and sanitation information.

Commissioner Hall stated that they are interpreting it to mean that it has to done at the application of preliminary.

Rick Breckenridge stated that he is one of the few surveyors who does DEQ approvals. He stated that it is a very subjective process and is not that onerous of a process for him, that he learned it from the ground up. He stated that the direction that he is getting at is that yes the law went into affect October 1, 2005 but that it needs to be incorporated into the current county subdivision regulations, because is says that the subdivider may perform a complete non degradation, and that a non degradation is governed by ARM 17. He continued by saying that that tells them how they do the non degradation analysis. He again stated that it is not that onerous for someone like him because he does them. He stated that what he is questioning is that but it is not directing that they take a piece of this and that and say that they have to comply with that, that it is to direct the subdivision review regulations, and that when those review regulations go into affect then they are going to request this information, because they will decide as a group whether or not non degradation is going to be a requirement, because it does say may. He also stated that they need to have a point in the review of the process where they are going to determine that. He stated that the other thing is that the reason there is a big amount on September 30 is because, he does not whether it was the intent or not, he did not think it was the intent, that they did not even have a model subdivision regulation out there, and so since everyone was uncertain as to what was going to take affect and what was not. He stated that he does not believe that it was the surveyors thought deep down inside that these are going to change the way they do business, because he never did.

Commissioner Hall asked how many of those seventeen were his.

Rick Breckenridge stated that non of them were his, because he looked at as that they are working on the subdivision review process, with the model regulation, and that they will work it out. He stated that they are going to get something to the commissioner by the first of January to approve or disapprove.

Commissioner Brenneman questioned who is referring to when he says we.

Jeff Harris stated that we are a group of surveyors, Peter, and a couple of citizens.

Commissioner Hall asked the name of the group.

Peter Steele stated that it is the group that is working on the subdivision regulations, and that these people are Rick Breckenridge, Dawn Marquardt, John Lapp, Kathy Robertson, Ardis Larsen, Rich Dejana, himself, Jeff Harris, Jack Robertson, and Kirsten Holland etc.

Rick Breckenridge stated that everyone got an invite, and there was a group that decided to participate in the process.

Commissioner Brenneman thanked him for participating.

Rick Breckenridge stated that it was the lease that he could do.

Peter Steele stated that what presents a problem is that legislature passed senate bill 116 and they passed 291 which affected lots of things as of October 1, 2005, but then they said that counties needed to adopt their subdivision regulation by October 1, 2006. He stated that part of the subdivision regulations that they need to adopt have to include what was passed in 291, which was the water and sanitation information, but that 290 is affective October 1, 2006, and that it spells out what information needs to be presented. He stated that it is their interpretation that that is affective now. He also stated that in Senate bill 116 there were provisions that stated that they were affective immediately which was last April. He stated that they have some things that were affective mid April, some affective October 1, 2005, and they have until 2006 to adopt new subdivision regulations. He stated that what he is thinking he thinks will be a quicker fix to this, because this group is meeting every Tuesday, to rewrite Flathead County Subdivision Regulations subject to approval.

MONDAY, OCTOBER 31, 2005
(Continued)

He stated that Christmas would be really optimistic, but what they could do is adopt Subdivision Regulations that just pertain to Senate bill 291, and that they could do that right away. He did state that by reading 291 it is affective immediately, or October 1, 2005.

Commissioner Brenneman stated that Peter stated that subdivisions now require on water and sewer issues to be presented to the public and to the commissioners at the time of preliminary plat.

Peter Steele stated that that is correct.

Commissioner Brenneman asked that if he were a surveyor what he would information he would specifically have to provide. He asked if they had a list of what qualifies as information.

Peter Steele stated that yes, and it is now in the new statute per Senate Bill 291.

Commissioner Brenneman asked if Mr. Breckenridge or another surveyor could can present at the public hearing what qualifies for information on those issues in their opinion.

Peter Steele stated that yes in Chapter 76 part 3 chapter 3 part 6.

Commissioner Brenneman stated that Peter did not need to specify right now what the information is, but that if he heard Mr. Breckenridge right he was confused by exactly what qualified for that. He stated that it seems to him that it would be to their advantage to present as much as you can, because any subdivision you submit right now if the information that might be required by Senate Bill 291, and there is legal opinion out there that that is effective right now, and that if you don't provide that your subdivision would be open to litigation, because the claim could be made, and whether or not that would be upheld it certainly would stop any kind of development on your project. He stated that he would think that it would be in their best interest to provide the information that we think is needed, and you said that it is not a particular difficult thing to do because you do it all of the time.

Rick Breckenridge stated that they just need clarification as to what it is.

Commissioner Brenneman stated that Peter Steele has assured him that he can specify what that is.

Peter Steele stated that it is outlined in 76-3-622.

Rick Breckenridge stated that if it is 622 that is what is required then there is a part that says may in there for the non degradation analysis.

Commissioner Brenneman stated that if that is not difficult to supply, as Rick had said that it is not hard for him to do it, then he would put it out there in the best interest of moving his projects ahead, because as the interlake has been reporting lately you have a thirty percent chance of being sued on any project that goes through here.

Rick Breckenridge stated that that was not the issue when he came here this morning. He stated that when he called Jeff on Friday the issue was that he had to have DEQ approval, but Peter just clarified that it is not required. He continued by saying that this clarified his situation, but again he wanted to bring to the commissioners that it is their decision we have something that is in affect right now and it is up to them to decide whether or not we go until we adopt new regulations, or whether we adopt some interim plan, and that they need to get through this confusion until they get the new subdivision regulations adopted.

Jeff Harris spoke on the issues that they are dealing with.

Commissioner Hall stated that they just to communicate with everybody on what they are doing.

Peter Steele stated that part of the subdivision regulations state that here is what the subdivider has to submit October 1, 2005, and then another statute that says this is what has to be included in the subdivision regulations, included in what has to be included in the subdivision regulations.

Commissioner Hall stated that the subdivision regulations do not have to be rewritten, so it is just a matter of interpretation.

Peter Steele stated that he does believe that 622 is affective October 1, 2005, and maybe at least they could amend the subdivision regulations for just that part.

Rick Breckenridge stated that from his stand point is they would just state in a memo that this is what they are going to have.

Commissioner Brenneman agreed.

Rick Breckenridge stated that if they just have a memo that just states that 622, and it may or may not include non degradation analysis, storm drain some of those things. He stated that they just need to know for the benefit for their clients and the process, and the public review.

No one else rising to speak, Chairman Hall closed the public comment period.

PUBLIC HEARING: DEGITZ & NELSON ZONE CHANGE / BIGFORK ZONING DISTRICT

9:47:57 AM

Members present:

Chairman Gary D. Hall
Commissioner Robert W. Watne
Commissioner Joseph D. Brenneman

Others present:

Assistant Michael Pence
Clerk Kimberly Moser, Jeff Harris, BJ Grieve

ADMINISTRATIVE MATERIALS "A"

SUBDIVISION PLAT APPLICATION

PART I GENERAL DESCRIPTION AND INFORMATION

1. Name of the proposed subdivision _____
2. Location (City and/or County) _____
Legal description: _____ 1/4 _____ 1/4 of Section _____ Township _____ Range _____
3. Type of water supply system:
 - a. Individual surface water supply from spring _____
 - b. Multiple-family water supply system (3-14 connections and fewer than 25 people) _____
 - c. Service connection to multiple-family system _____
 - d. Service connection to public system _____
 - e. Extension of public main _____
 - f. New public system _____
 - g. Individual well _____
4. Type of wastewater treatment system:
 - a. Individual or shared on-site septic system _____
 - b. Multiple-family on-site system (3-14 connections and fewer than 25 people) _____
 - c. Service connection to multiple-family system _____
 - d. Service connection to public system _____
 - e. Extension of public main _____
 - f. New public system _____
5. Name of solid waste garbage disposal site and hauler:

6. Is information included which substantiates that there will be no degradation of state waters or that degradation will be nonsignificant? _____
8. Descriptive Data:
 - a. Number of lots or rental spaces _____

- b. Total acreage in lots being reviewed _____
- c. Total acreage in streets or roads _____
- d. Total acreage in parks, open space, and/or common facilities _____
- e. TOTAL gross acreage of subdivision _____
- f. Minimum size of lots or spaces _____
- g. Maximum size of lots or spaces _____

9. Indicate the proposed use(s) and number of lots or spaces in each:

- _____ Residential, single family
- _____ Residential, multiple family
- _____ Types of multiple family structures and numbers of each (e.g. duplex)
- _____ Planned Unit Development (Number of units _____)
- _____ Condominium (Number of units _____)
- _____ Mobile Home Subdivision (Number of spaces _____)
- _____ Recreational Vehicle Subdivision (Number of spaces _____)
- _____ Commercial or Industrial
- _____ Other (please describe) _____

10. Provide the following information regarding the development:

- a. Current land use _____
- b. Existing zoning or other regulations _____
- c. Depth to ground water at the time of year when water table is nearest to the natural ground surface within the drainfield area _____
- d. Depth to bedrock or other impervious material in the drainfield area _____
- e. If a tract of land is to be subdivided in phases, an overall development plan indicating the intent for the development of the remainder of the tract.
- f. Drafts of any covenants and restrictions to be included in deeds or contracts for sale. Drafts of homeowners' association bylaws and articles of incorporation, if applicable. (Submitting a draft copy of a homeowners' association bylaws and articles of incorporation is adequate for DEQ to initiate and complete its review of sanitary facilities, but a copy of the fully executed documents must be submitted before DEQ can issue final approval.)

g. Indicate whether the mineral rights have been severed from the property:
Yes_____ No_____

h. Indicate whether water rights have been severed from the property:
Yes_____ No_____

11. Is the applicant claiming an exemption under Section IV-A-1 of the subdivision regulations from the requirement to prepare an environmental assessment?
Yes_____ No_____

Name, address, and telephone number of designated representative, if any (e.g., engineer, surveyor).

Name Phone

Address (Street or P.O. Box, City, State, Zip Code)

Name, address, and telephone number of owner(s).

Name Signature of owner

Address (Street or P.O. Box, City, State, Zip Code)

Date Phone

Name, address, and telephone number of subdivider if different than owner(s).

Name Signature of subdivider

Address (Street or P.O. Box, City, State, Zip Code)

Date Phone

The application must be signed by the owner of the land proposed for subdivision or the responsible officer of the corporation offering the same for sale.

PART II PRELIMINARY PLAT FORM, CONTENTS AND SUPPLEMENTS

1. Preliminary Plat Subdivision Application Form:

The subdivider shall submit a completed subdivision application form that is signed by the landowner(s) of record.

2. Preliminary Plat Review Fee:

The subdivider shall submit the required review fee as identified in the pre-application meeting and in Section XI-A of the subdivision regulations.

3. Preliminary Plat Form, Contents, and Supplements:

The subdivider shall submit an 11” by 17” and an 18” by 24” (or 24” by 36”) preliminary plat completed by a land surveyor.

The following information must be provided on the preliminary plat or in supplements to the preliminary plat:

- a. The subdivision or development name (the title must contain the words “plat” and/or “subdivision”)
- b. The legal description, including Section, Township, and Range, and any underlying survey data;
- c. A north arrow;
- d. The scale used on the plat;
- e. The certification of a professional land surveyor;
- f. The certification of a professional engineer (if the preliminary plat application or data includes engineering plans or specifications);
- g. The names of all owners of record and the subdivider [if different from the owner(s)];
- h. The date the preliminary plat is completed;
- i. Proposed lot layout with approximate dimensions and sizes;
- j. Lots and blocks identified by number or letter;
- k. The use of each lot, if other than for single-family residential;
- l. The exterior boundaries of the parcel proposed for subdivision with bearings, distances, and curve data indicated outside of the boundary lines. When the plat is bounded by an irregular shoreline or body of water, the bearings and distances of a closing meander traverse shall be given;
- m. All existing streets, roads, highways, avenues, alleys, and/or access easements within or adjacent to the subject property;
- n. All proposed streets, roads, alleys, avenues, and easements; the width of the easement or right-of-way, grades, curvature of each;
- o. Existing and proposed road and street names;
- p. Proposed location of intersections for any subdivision requiring access to state or local streets, roads, avenues, alleys, or highways;
- q. The names of adjoining platted subdivisions and recording information from adjoining subdivisions, certificates of survey, or unplatted lands;
- r. The approximate location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary;
- s. Approximate area, location, boundaries, and dimensions of all parks, common grounds, and other grounds dedicated for public use;
- t. The total gross area of the subdivision and the total net area, exclusive of public areas and rights-of-way;
- u. Existing and proposed infrastructure and proposed utilities including:
 - i. The approximate location, size, and depth of existing and proposed sanitary and storm sewers;

- ii. The approximate location, size, and depth of existing and proposed water mains, lines, wells, and facilities; and
 - iii. The approximate locations of gas lines, fire hydrants or firefighting water storage facilities, electric and telephone lines, and street lights.
- 4. A vicinity sketch showing:
 - a. The approximate locations of all existing buildings, structures, and other improvements;
 - b. Ownership of lands immediately adjoining a subdivision, and existing buildings, structures and other improvements on those lands; and
 - c. Any existing or proposed zoning of the tract and adjacent lands, if applicable.
- 5. A topographic map:
 - a. For any land area which will be subdivided or disturbed, contour intervals of 2' where the average slope is less than 10%; intervals of five feet where the average slope is greater than 10% and less than 15%; and intervals of ten feet where the average slope is 15% or greater.
 - b. Slopes greater than 25% shall be shown as no-build zones.
- 6. A grading and drainage plan that includes:
 - a. Proposed grades of all streets and roads;
 - b. Proposed drainage facilities for all lots, blocks, and other areas displaying accurate dimensions, courses, and elevations;
 - c. Existing and proposed contours, using the contour requirements of a topography map;
 - d. Graded slopes;
 - e. Calculations for a ten year frequency one-hour storm and a method to mitigate adverse impacts for a 100-year frequency one-hour storm; and
 - f. Construction procedures, slope protection, or information describing the ultimate destinations of storm runoff used to minimize erosion; and
 - g. Slope Stability Report shall be completed if the proposed subdivision includes areas with the potential for landsliding or slope instability. The report must be completed by a qualified soil or geotechnical engineer and indicate the locations, character, and extent of all areas of all slope stability, and these areas shall be shown on the plat.
- 7. Engineering plans for all public and private improvements;
- 8. Overall development plan and if the improvements are to be completed in phases, the approximate area of each phase shall be shown on the plat.
- 9. Abstract of Title (or Title Report) dated not more than 90 days prior to the date of submittal;
- 10. Lienholders' Acknowledgement of Subdivision for each lienholder identified on the Abstract of Title or Title Report;
- 11. Documentation of legal and physical access;
- 12. Documentation of existing easements, including those for Agricultural Water User Facilities;
- 13. Existing covenants and deed restrictions;
- 14. Existing water rights;
- 15. Existing mineral rights;
- 16. Names and addresses of all adjoining property owners;
- 17. A proposed road plan and profile that includes:
 - a. Street names.
 - b. Right-of-way or easement widths;
 - c. Pavement widths;
 - d. Street grades;
 - e. Pavement and base thickness;
 - f. Typical cross sections for each type of road;
 - g. Road profiles and cross sections for all proposed streets and roads which have grades exceeding 5%, or cuts and fills exceeding 3'.
 - h. The type and location of sidewalks and curbs (where required);
 - i. The minimum site distances at corners;
 - j. The minimum curb radiuses at corners;

- k. For cul-de-sac streets:
 - i. widths of turn around radiuses;
 - ii. minimum right-of-way widths at the turnarounds;
 - iii. minimum pavement or road surface width at the turnarounds;
 - iv. total lengths of the streets.
 - l. The locations and characteristics of bridges and culverts;
 - m. The locations and dimensions of adjoining lots and open spaces;
 - n. The locations and widths of easements and dedicated land, which provide a buffer between the subdivision lots and streets;
 - o. Typical grading and location of intersections with private driveways; and
 - p. Description of how the roads will be maintained.
18. Encroachment permits from Montana Department of Transportation or the local jurisdiction;
 19. Proposed easements;
 20. Proposed disposition of water rights, as required by Section VI-O of the subdivision regulations;
 21. Proposed disposition of mineral rights;
 22. Parkland dedication calculations, including a property valuation assessment or appraisal if cash-in-lieu of parkland is proposed;
 23. Environmental Assessment and/or Summary of Probable Impacts including:
 - a. proof that the subdivider has submitted for review copies of the subdivision application and environmental assessment, if applicable, to the public utilities and agencies of the local, state, and federal government identified during the pre-application meeting or subsequently identified as having an interest in the proposed subdivision; and
 - b. an explanation of how the subdivider has responded to the comments of the subdivision administrator at the pre-application meeting.
 24. Transportation Impact Analysis or Transportation Plan;
 25. Fire Risk Rating Analysis and Fire Prevention Plan as required in Section VI-R of the subdivision regulations;
 26. Weed Management Plan and Re-vegetation Plan;
 27. Property owners' Association Documents shall accompany the preliminary plat, and at a minimum shall provide the information, form, and contents included in Section II-B-3 of the subdivision regulations;
 28. FIRM or FEMA panel map and/or letter identifying floodplain status and other hydrologic characteristics including surface water bodies, designated floodplain and areas of riparian resource, as required in Section VI-D of the subdivision regulations and paragraph 35 of this Part II.
 29. Required water and sanitation information, including:
 - a. Provide the following attachments to the preliminary plat:
 - i. A vicinity map or plan that shows:
 - A. The location, within 100 feet outside of the exterior of the property line of the subdivision and on the proposed lots, of:
 1. floodplains;
 2. surface water features;
 3. springs;
 4. irrigation ditches;
 5. existing, previously approved, and for parcels less than 20 acres, proposed water wells and wastewater treatment systems;
 6. for parcels less than 20 acres, mixing zones identified as provided in subsection (X); and
 7. the representative drainfield site used for the soil profile description as required under subsection (C)(4); and
 - B. The location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities.

- ii. A description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, as provided below, including whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rule published by the DEQ;
- iii. A drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by DEQ pursuant to 76-4-104;

b. Water Supply

- i. High Groundwater Report indicating there is not a problem with high groundwater present on the property proposed for subdivision. When evidence of high groundwater is present, the developer must submit plans that are prepared by a professional engineer to mitigate the problem;
- ii. A vicinity map or plan that shows:
 - A. the location, within 100' outside of the exterior property line of the subdivision and on the proposed lots of:
 - 1. floodplains;
 - 2. surface water features;
 - 3. springs;
 - 4. irrigation ditches;
 - 5. existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems;
 - 6. for parcels less than 20 acres, mixing zones identified as provided in subsection c.i.C.1 below.
 - B. the location, within 500' outside the exterior property line of the subdivision, of public water and sewer facilities;
- iii. A description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the Department of Environmental Quality in the Administrative Rules of Montana, or 76-4-101 et seq., MCA, including the following information:
 - A. If an **individual water supply system** is proposed for each parcel:
 - 1. Indicate the distance to the nearest public water system.
 - 2. Attach a copy of the lot layout showing the proposed location of each spring, well, or cistern and indicating the distance to existing or proposed wastewater treatment systems.
 - 3. Evidence of sufficient water quality in accordance with rules adopted by the DEQ pursuant to 76-4-104;
 - B. For a **multiple user water system**:
 - 1. If an existing system is to be used:
 - a. identify the system and the person, firm, or agency responsible for its operation and maintenance;
 - b. indicate the system's capacity to handle additional load and its distance from the development;
 - c. provide evidence that permission to connect to the system has been granted;
 - 2. provide the following attachments:

- a. map or plat showing location, sizes, and depth of any existing water supply lines and facilities which may directly serve parcels within the proposed development;
 - b. provide plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.38.305 and Circular DEQ 3.
 - 3. evidence of sufficient water quality in accordance with rules adopted by the DEQ pursuant to 76-4-104;
 - iv. Where a new system is proposed:
 - a. Provide evidence of adequate water availability, unless cisterns are proposed:
 - i. obtained from well logs or testing of onsite or nearby wells;
 - ii. obtained from information contained in published hydrogeological reports; or
 - iii. as otherwise specified by rules adopted by the DEQ pursuant to 76-4-104;
 - b. indicate who will install the system, who will bear the costs, when it will be completed, and who will own it;
 - c. provide all information required in ARM 17.36.330-336 and Circular DEQ-3.
 - d. Evidence of sufficient water quality in accordance with rule adopted by the DEQ pursuant to 76-4-104;
- C. For a **public water system**:
 - 1. If an existing system is to be used:
 - a. identify the system and the person, firm, or agency responsible for its operation and maintenance;
 - b. indicate the system's capacity to handle additional load and its distance from the development;
 - c. provide evidence that permission to connect has been granted;
 - d. provide the following as attachments:
 - i. a map or plat showing the location, sizes, and depth of any existing water lines and facilities which will directly serve parcels within the proposed development;
 - ii. plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.328-330 and Circular DEQ-1 or Circular DEQ-3.
 - iii. Evidence of sufficient water quality in accordance with rule adopted by the DEQ pursuant to 76-4-104;
 - 2. If a new system is proposed:
 - a. Provide evidence of adequate water availability:
 - i. obtained from well logs or testing of onsite or nearby wells;
 - ii. obtained from information contained in published hydrogeological reports; or
 - iii. as otherwise specified by rules adopted by the DEQ pursuant to 76-4-104;
 - b. indicate who will install the system, who will bear the costs, when it will be completed, and who will own it;
 - c. provide plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.328-330 and Circular DEQ-1 or Circular DEQ-3.

- d. Evidence of sufficient water quality in accordance with rules adopted by the DEQ pursuant to 76-4-104;
- c. Wastewater Treatment System
- i. For new onsite wastewater treatment systems, evidence of suitability that at a minimum includes:
 - A. a soil profile description from a representative drainfield site identified on the vicinity map, as provided in section C.1.(a)(i)(G), that complies with the standards published by DEQ;
 - B. demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and
 - C. in cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in section (ii) above.
 - 1. For all new wastewater treatment systems a preliminary analysis of potential impacts to ground water quality using as guidance rules adopted by the board of environmental review pursuant to 75-5-301 and 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.
 - ii. If **individual wastewater treatment systems** are proposed for each parcel:
 - A. Indicate the distance to the nearest public wastewater treatment system.
 - B. Provide all information required in ARM 17.36.320-345 and in Circular DEQ-4 for conventional systems or Circular DEQ 5 for alternative systems.
 - C. evidence of suitability as provided in subsection (a) of this section
 - D. preliminary analysis of potential impact to ground water as provided in subsection (b) of this section.
 - iii. For a **multiple-user wastewater treatment** system:
 - A. If an existing system is to be used:
 - 1. identify the system and the person, firm, or agency responsible for its operation and maintenance;
 - 2. indicate the system's capacity to handle additional load and its distance from the development;
 - 3. provide evidence that permission to connect to the system has been granted;
 - 4. provide the following attachments:
 - a. a map or plat showing the location, sizes, and depth of any existing sewer lines and facilities which will directly serve parcels within the proposed development; and
 - b. plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.320-345 and Circular DEQ-4 or Circular DEQ-5.

- B. If a new system is proposed:
 - 1. indicate who will install the system, who will bear the costs, when it will be completed, and who will own it;
 - 2. provide all information required in ARM 17.36.320-326 and Circular DEQ-4 or Circular DEQ-5.
 - 3. evidence of suitability as provided in subsection (a) of this section.
 - 4. preliminary analysis of potential impact to ground water as provided in subsection (b) of this section.
- iv. For a **public wastewater treatment system**:
 - A. If an existing system is to be used:
 - 1. identify the system and the person, firm, or agency responsible for its operation and maintenance;
 - 2. indicate the system's capacity to handle additional load and its distance from the development;
 - 3. provide evidence that permission to connect to the system has been granted;
 - 4. provide the following attachments:
 - a. a map or plat showing the location, sizes, and depth of any existing sewer lines and facilities which will directly serve parcels within the proposed development;
 - b. plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.328 and Circular DEQ-2 or Circular DEQ-4.
- d. Storm Water
 - i. Describe measures for the collection and disposal of storm run-off from streets and roads within the subdivision.
 - ii. Indicate the type of road surface proposed.
 - iii. Describe facilities for stream or drainage crossing (e.g., culverts, bridges).
 - iv. Describe how surface run-off will be drained or channeled from parcels.
 - iv. Indicate whether storm run-off will enter state waters and describe any proposed treatment measures. (A storm-water discharge permit may be required)
 - iv. Describe any existing or proposed streambank or shoreline alteration, and any proposed construction or modification of lake beds or stream channels. Provide information on location, extent, type, and purpose of alteration.
 - iv. Provide the grading and storm water or drainage plan as required by section II-3 Preliminary Plat Supplements, subsection (e) of this appendix.
- e. Solid Waste
 - i. Describe the proposed method of solid waste collection and disposal.
 - ii. If use of an existing collection system or disposal facility is proposed, indicate the name and location of the facility.
 - iii. If on-site disposal of solid waste is proposed, provide the information required in ARM 17.36.309(2).
- 30. A form of Subdivision Improvements Agreement, if proposed;
- 31. Letter requesting a revocation of agricultural covenants;
- 32. Letter indicating locations of cultural or historic resources;
- 33. Variance request or approval;
- 34. Re-zoning application or approval;
- 35. When required, a flood hazard evaluation which contains the following detailed information:[to be submitted to the Water Resources Division, Department of Natural Resources]:
 - a. Certification by a registered professional engineer;
 - b. An overall scaled plan view with identified scale for vertical and horizontal distance showing the following:

- i. Watercourse
 - ii. floodplain boundaries
 - iii. location of property
 - iv. contours
 - v. cross-sections
 - vi. bridges or other contractions in the floodplains
 - vii. USGS gauging stations (if any);
- c. The location and elevation of a temporary benchmark(s) established within the subdivision and referenced to mean sea level with appropriate elevation adjustment.
- d. Cross-sectional information which contains the following information:
- i. Elevations and stations that are determined at points representing significant breaks in ground slope and at changes in the hydraulic characteristics of the floodplain (i.e., points where ground cover, soil, or rock conditions change). Elevations must be reported in NAVD 88 or NGVD 29 datum.
 - ii. Each cross-section must cross the entire floodplain. The cross-section alignment should be perpendicular to the general flow of the watercourse (approximately perpendicular to contour lines). Occasionally, wide floodplains require a dog-leg alignment to be perpendicular to the anticipated flow lines. Shots should be taken at the water's edge and measurements taken (if elevation shots cannot be taken) to determine the channel bottom shape. Cross sections must be accurately located on a USGS 7 ½ minute quad sheet.
 - iii. The number of cross-sections needed, and the distance between cross-sections, will vary depending on the site, the slope of the watercourse, the slope of the channel, and the hydraulic characteristics of the reach. A minimum of four cross sections are required over the entire reach with at least two cross-sections at the property where the elevations are desired. Additional cross-sections must be taken at bridges, control structures, or natural constrictions in topography. [Photogrammetric methods may be used in lieu of cross sections whenever appropriate and when reviewed and approved by the county.]
- e. A description and sketch of all bridges within the reach, showing unobstructed waterway openings and elevations.
- f. Elevation of the water surface is to be determined by survey as part of each valley cross section.
- g. Supporting Documentation, such as engineering reports of computer computations, calculations, and assumptions that may include:
- i. Hydrology (research of published hydrology or calculations showing how hydrology was derived)
 - ii. Input files (hardcopy and on diskette)
 - iii. Output files (diskette only)
36. Letter identifying and proposing mitigation for potential hazards or other adverse impacts as identified in the pre-application meeting and not covered by any of the above required materials; and
37. Such additional relevant and reasonable information as identified by the Subdivision Administrator during the pre-application meeting that is pertinent to the required elements of this section.

PART III ENVIRONMENTAL ASSESSMENT

Information specified in this Part must be provided in addition to that required in parts I and II of this application form, unless the proposed subdivision qualifies for an exemption under Section IV-A-1(b) of the subdivision regulations.

Describe the following environmental features, provide responses to each of the following questions and provide reference materials as required.

1. Surface Water

Locate on a plat overlay or sketch map:

- a. Any natural water systems such as streams, rivers, intermittent streams, lakes or marshes (also indicate the names and sizes of each).
- b. Any artificial water systems such as canals, ditches, aqueducts, reservoirs, and irrigation systems (also indicate the names, sizes and present uses of each).
- c. Time when water is present (seasonally or all year).
- d. Any areas subject to flood hazard, or in delineated 100 year floodplain.
- e. Describe any existing or proposed streambank alteration from any proposed construction or modification of lake beds or stream channels. Provide information on location, extent, type and purpose of alteration, and permits applied for.

2. Groundwater

Using available data, provide the following information:

- a. The minimum depth to water table and identify dates when depths were determined. What is the location and depth of all aquifers which may be affected by the proposed subdivision? Describe the location of known aquifer recharge areas which may be affected.
- b. Describe any steps necessary to avoid depletion or degradation of groundwater recharge areas.

3. Topography, Geology and Soils

- a. Provide a map of the topography of the area to be subdivided, and an evaluation of suitability for the proposed land uses. On the map identify any areas with highly erodible soils or slopes in excess of 15% grade. Identify the lots or areas affected. Address conditions such as:
 - i Shallow bedrock
 - ii Unstable slopes
 - iii Unstable or expansive soils
 - iv Excessive slope

- b. Locate on an overlay or sketch map:
 - i Any known hazards affecting the development which could result in property damage or personal injury due to:
 - A. Falls, slides or slumps -- soil, rock, mud, snow.
 - B. Rock outcroppings
 - C. Seismic activity.
 - D. High water table
- c. Describe measures proposed to prevent or reduce these dangers.
- d. Describe the location and amount of any cut or fill more than three feet in depth. Indicate these cuts or fills on a plat overlay or sketch map. Where cuts or fills are necessary, describe plans to prevent erosion and to promote vegetation such as replacement of topsoil and grading.

4. Vegetation

- a. On a plat overlay or sketch map:
 - (i) Indicate the distribution of the major vegetation types, such as marsh, grassland, shrub, coniferous forest, deciduous forest, mixed forest.
 - (ii) Identify the location of critical plant communities such as:
 - A. Stream bank or shoreline vegetation
 - B. Vegetation on steep, unstable slopes
 - C. Vegetation on soils highly susceptible to wind or water erosion
 - D. Type and extent of noxious weeds
- b. Describe measures to:
 - (i) Preserve trees and other natural vegetation (e.g. locating roads and lot boundaries, planning construction to avoid damaging tree cover).
 - (ii) Protect critical plant communities (e.g. keeping structural development away from these areas), setting areas aside for open space.
 - (iii) Prevent and control grass, brush or forest fires (e.g. green strips, water supply, access.)
 - (iv) Control and prevent growth of noxious weeds

5. Wildlife

- a. Identify species of fish and wildlife use the area affected by the proposed subdivision.
- b. On a copy of the preliminary plat or overlay, identify known critical wildlife areas, such as big game winter range, calving areas and migration routes; riparian habitat and waterfowl nesting areas; habitat for rare or endangered species and wetlands.
- c. Describe proposed measures to protect or enhance wildlife habitat or to minimize degradation (e.g. keeping buildings and roads back from shorelines; setting aside wetlands as undeveloped open space).

Part IV SUMMARY OF PROBABLE IMPACTS

Summarize the effects of the proposed subdivision on each topic below. Provide responses to the following questions and provide reference materials as required:

1. Effects on Agriculture

- a. Is the proposed subdivision or associated improvements located on or near prime farmland or farmland of statewide importance as defined by the Natural Resource Conservation Service? If so, identify each area on a copy of the preliminary plat.
- b. Describe whether the subdivision would remove from production any agricultural or timber land.
- c. Describe possible conflicts with nearby agricultural operations (e.g., residential development creating problems for moving livestock, operating farm machinery, maintaining water supplies, controlling weeds or applying pesticides; agricultural operations suffering from vandalism, uncontrolled pets or damaged fences).
- d. Describe possible nuisance problems which may arise from locating a subdivision near agricultural or timber lands.
- e. Describe effects the subdivision would have on the value of nearby agricultural lands.

2. Effects on Agricultural Water User Facilities

- a. Describe conflicts the subdivision would create with agricultural water user facilities (e.g. residential development creating problems for operating and maintaining irrigation systems) and whether agricultural water user facilities would be more subject to vandalism or damage because of the subdivision.
- b. Describe possible nuisance problems which the subdivision would generate with regard to agricultural water user facilities (e.g. safety hazards to residents or water problems from irrigation ditches, head gates, siphons, sprinkler systems, or other agricultural water user facilities).

3. Effects on Local Services

- a. Indicate the proposed use and number of lots or spaces in each:
 - _____ Residential, single family
 - _____ Residential, multiple family
 - _____ Types of multiple family structures and number of each (e.g. duplex, 4-plex)
 - _____ Planned unit development (No. of units)
 - _____ Condominium (No. of units)
 - _____ Mobile Home Park
 - _____ Recreational Vehicle Park
 - _____ Commercial or Industrial
 - _____ Other (Please describe _____)

- b. Describe the additional or expanded public services and facilities that would be demanded of local government or special districts to serve the subdivision.
 - i. Describe additional costs which would result for services such as roads, bridges, law enforcement, parks and recreation, fire protection, water, sewer and solid waste systems, schools or busing, (including additional personnel, construction, and maintenance costs).
 - ii. Who would bear these costs (e.g. all taxpayers within the jurisdiction, people within special taxing districts, or users of a service)?
 - iii. Can the service providers meet the additional costs given legal or other constraints (e.g. statutory ceilings on mill levies or bonded indebtedness)?
 - iv. Describe off-site costs or costs to other jurisdictions may be incurred (e.g. development of water sources or construction of a sewage treatment plant; costs borne by a nearby municipality).
- c. Describe how the subdivision allows existing services, through expanded use, to operate more efficiently, or makes the installation or improvement of services feasible (e.g. allow installation of a central water system, or upgrading a country road).
- d. What are the present tax revenues received from the unsubdivided land?
 - i. By the County \$ _____
 - ii. By the municipality if applicable _____
 - iii. By the school(s) \$ _____
- e. Provide the approximate revenues received by each above taxing authority if the lots are reclassified, and when the lots are all improved and built upon. Describe any other taxes that would be paid by the subdivision and into what funds (e.g. personal property taxes on mobile/manufactured homes are paid into the County general fund).
- f. Would new taxes generated from the subdivision cover additional public costs?
- g. How many special improvement districts would be created which would obligate local government fiscally or administratively? Are any bonding plans proposed which would affect the local government's bonded indebtedness?

4. Effects on the Historic or Natural Environment

- a. Describe and locate on a plat overlay or sketch map known or possible historic, paleontological, archaeological or cultural sites, structures, or objects which may be affected by the proposed subdivision.
- b. How would the subdivision affect surface and groundwater, soils, slopes, vegetation, historical or archaeological features within the subdivision or on adjacent land? Describe plans to protect these sites.

- i Would any streambanks or lake shorelines be altered, streams rechanneled or any surface water contaminated from sewage treatment systems, run-off carrying sedimentation, or concentration of pesticides or fertilizers?
 - ii Would groundwater supplies likely be contaminated or depleted as a result of the subdivision?
 - iii Would construction of roads or building sites require cuts and fills on steep slopes or cause erosion on unstable, erodible soils? Would soils be contaminated by sewage treatment systems?
 - iv Describe the impacts that removal of vegetation would have on soil erosion, bank, or shoreline instability.
 - v Would the value of significant historical, visual, or open space features be reduced or eliminated?
 - vi Describe possible natural hazards the subdivision be could be subject to (e.g., natural hazards such as flooding, rock, snow or land slides, high winds, severe wildfires, or difficulties such as shallow bedrock, high water table, unstable or expansive soils, or excessive slopes).
- c. How would the subdivision affect visual features within the subdivision or on adjacent land? Describe efforts to visually blend the proposed development with the existing environment (e.g. use of appropriate building materials, colors, road design, underground utilities, and revegetation of earthworks).

5. Effects on Wildlife and Wildlife Habitat

- a. Describe what impacts the subdivision or associated improvements would have on wildlife areas such as big game wintering range, migration routes, nesting areas, wetlands, or important habitat for rare or endangered species.
- b. Describe the effect that pets or human activity would have on wildlife.

6. Effects on the Public Health and Safety

- a. Describe any health or safety hazards on or near the subdivision, such as: natural hazards, lack of water, drainage problems, heavy traffic, dilapidated structures, high pressure gas lines, high voltage power lines, or irrigation ditches. These conditions, proposed or existing should be accurately described with their origin and location identified on a copy of the preliminary plat.
- b. Describe how the subdivision would be subject to hazardous conditions due to high voltage lines, airports, highways, railroads, dilapidated structures, high pressure gas lines, irrigation ditches, and adjacent industrial or mining uses.
- c. Describe land uses adjacent to the subdivision and how the subdivision will affect the adjacent land uses. Identify existing uses such as feed lots, processing plants, airports or industrial firms which could be subject to lawsuits or complaints from residents of the subdivision.

- d. Describe public health or safety hazards, such as dangerous traffic, fire conditions, or contamination of water supplies which which would be created by the subdivision.

PART V COMMUNITY IMPACT REPORT

Provide a community impact report containing a statement of estimated number of people coming into the area as a result of the subdivision, anticipated needs of the proposed subdivision for public facilities and services, the increased capital and operating cost to each affected unit of local government. Provide responses to each of the following questions and provide reference materials as required.

1. Education and Busing

- a. Describe the available educational facilities which would serve this subdivision.
- b. Estimate the number of school children that will be added by the proposed subdivision. Provide a statement from the administrator of the affected school system indicating whether the increased enrollment can be accommodated by the present personnel and facilities and by the existing school bus system. If not, estimate the increased expenditures that would be necessary to do so.

2. Roads and Maintenance

- a. Estimate how much daily traffic the subdivision, when fully occupied, will generate on existing streets and arterials.
- b. Describe the capability of existing and proposed roads to safely accommodate this increased traffic.
- c. Describe increased maintenance problems and increased cost due to this increase in volume.
- d. Describe proposed new public or private access roads including:
 - i. Measures for disposing of storm run-off from streets and roads.
 - ii. Type of road surface and provisions to be made for dust.
 - iii. Facilities for streams or drainage crossing (e.g. culverts, bridges).
 - iv. Seeding of disturbed areas.
- e. Describe the closing or modification of any existing roads.
- f. Explain why road access was not provided within the subdivision, if access to any individual lot is directly from arterial streets or roads.

- g. Is year-round access by conventional automobile over legal rights-of-way available to the subdivision and to all lots and common facilities within the subdivision? Identify the owners of any private property over which access to the subdivision will be provided.
- h. Estimate the cost and completion date of the system, and indicate who will pay the cost of installation, maintenance and snow removal.

3. Water, Sewage, and Solid Waste Facilities

- a. Briefly describe the water supply and sewage treatment systems to be used in serving the proposed subdivision (e.g. methods, capacities, locations).
- b. Provide information on estimated cost of the system, who will bear the costs, and how the system will be financed.
- c. Where hook-up to an existing system is proposed, describe estimated impacts on the existing system, and show evidence that permission has been granted to hook up to the existing system.
- d. All water supply and sewage treatment plans and specifications will be reviewed and approved by the Department of Environmental Quality (DEQ) and should be submitted using the appropriate DEQ application form.
- e. Describe the proposed method of collecting and disposing of solid waste from the development.
- f. If use of an existing collection system or disposal facility is proposed indicate the name and location of the facility.

4. Fire and Police Protection

- a. Describe the fire and police protection services available to the residents of the proposed subdivision including number of personnel and number of vehicles or type of facilities for:
 - i. Fire protection -- is the proposed subdivision in an existing fire district? If not, will one be formed or extended? Describe what fire protection procedures are planned?
 - ii. Law --Enforcement protection – Which of --is the proposed subdivision within the jurisdiction of a County Sheriff or municipal police department
- b. Can the fire and police protection service needs of the proposed subdivision be met by present personnel and facilities? If not, describe the additional expenses that would be necessary to make these services adequate, and who would pay the costs?

5. Payment for extension of Capital Facilities

Indicate how the subdivider will pay for the cost of extending capital facilities resulting from expected impacts directly attributable to the subdivision.