

Subdivision and Development Advisory Council Meeting

Room 111 DEQ HQ

Monday, May 4th

12:00 - 2:00 pm Call-in meeting only

Conference Call in number: 1-866-906-9888, passcode: 5969240

Agenda

1. Introductions
2. Subdivision Comprehensive Rule Update (Rachel)
 - a. Revised Schedule
3. Four-foot separation to groundwater – counting ESM key depth (Tim)
 - a. January 7, 2020 Memo
 - b. Drawing 6.7-1
4. Sanitation Act Changes (Tim and Rachel)
 - a. Summary of Department proposed changes
 - b. Department proposed changes
 - c. County responses memo
 - d. Email from Jeff Larsen

Mission Statement

The Subdivision and Development Advisory Council's mission is to act as a liaison between DEQ, counties and sanitarians, and the public as part of the Department's continual improvement process focused on improving subdivision and development related processes and policies while protecting public health and the environment. The Subdivision and Development Advisory Council's work is guided by the policies set out under the Water Quality Act MCA 75-5-101 and the Sanitation in Subdivisions MCA 76-4-101.

TO: DEQ Staff, Contracted Counties, County Sanitarians and Interested Parties

FROM: Rachel Clark, Public Water and Subdivisions Section Supervisor *RC*

DATE: January 7, 2020

SUBJECT: Separation to a limiting layer

The Department has received several recent questions regarding how to measure the separation distance from an absorption system to a limiting layer. Since 2002, the standards have required measurement from the bottom of the infiltrative surface (below placed drain rock or sand) to the limiting layer.

History

The Department has had regulations since the 1970s governing the minimum vertical distance between an absorption system and groundwater or another limiting layer. Although the minimum required distance has consistently been 4 feet, the place of measurement has not. In the 1990s, the standard specified four feet of soil from the natural ground surface to the limiting layer. In 2002, the rule and standards were changed from "natural ground surface" to "infiltrative surface" as follows:

ARM 17.36.320(2) A minimum separation of at least 4 feet of natural soil must exist between the infiltrative surface or the liner of a lined system and a limiting layer, except that at least 6 feet of natural soil must exist on a steep slope (15% to 25%).

"Infiltrative surface" means the soil interface that receives the effluent wastewater below the drain rock or sand.

"Limiting layer" means bedrock, an impervious layer, or seasonally high ground water.

"Natural soil" means soil that has developed through natural processes and to which no fill material has been added.

The 2002 rule amendment thus required that the vertical distance be measured from the infiltrative surface at the bottom of the drain rock or sand fill to the limiting layer. This requirement also was included in several standards in the 2013 revisions to Circular DEQ-4. For instance, DEQ-4, Standard 6.2.1 along with Illustration 6.2-1 and Standard 6.7.4.1 along with Illustration 6.7-1 both clearly indicate the measurement point begins at the soil interface below the drain rock or sand fill.

In addition, the following Response to Comments from the 2013 rule package indicates the Board of Environmental Review and the Department's intent.

COMMENT NO. 71: Does the second paragraph of section 2.2.5 conflict with the design nature of elevated sand mounds? Isn't the infiltrative surface the bottom of the sand bed, not native soil? Is minor leveling allowed for mounds?

RESPONSE: The board and department agree that the second paragraph of section 2.2.5 may conflict with the design of an elevated sand mound and the circular has been amended in response to this comment. After site modification, the soil that has been cut or filled is not considered to be native or natural. In the case of an elevated sand mound, soil that has undergone minor leveling may be considered part of the infiltrative surface. Plowing or keying an uneven surface for an elevated sand mound is allowed if four feet of unmodified or natural soil from the bottom of the key or plowed area to a limiting layer is maintained. Section 2.2.5 has been changed to clarify that soil that has undergone minor leveling is not considered natural soil.

COMMENT NO. 199: Subsection 6.7.4.1 should clarify if the key can infringe upon the four feet of natural soil separation. The potential to key into the four-foot separation and meet the separation regulation must be understood.

RESPONSE: A minimum of four feet of natural soil between the bottom of the key or scarified area to a limiting area must be maintained for all elevated sand mounds. The board and department agree that the requirement should be clarified and the circular has been amended in response to this comment. Subsection 6.7.4.1 has been amended to state "[a] minimum of 4 feet of natural soil from the bottom of the plowed surface, scarified surface, or key to the limiting layer must be maintained."

Application:

For all subsurface absorption and lined systems, including elevated sand mounds submitted for review after the 2002 rule changes, a minimum of four feet of separation is required between the bottom of the placed sand or drain rock and a limiting layer. While this rule has been in place since 2002, the Department will not seek to invalidate prior approvals where the depth to a limiting layer was calculated incorrectly unless the Department receives a complaint or other evidence that there is a threat to public health or the environment or if there are proposed changes the absorption system.

Waivers and deviations:

This rule and associated definitions are not waivable except for public wastewater treatment systems, as provided for in ARM 17.38.101(4)(j). An applicant is welcome, however, to submit a waiver or deviation request to modify the depth of placed material below an absorption system. For example, a non-public system with groundwater at 51" can request a waiver to only have a 3" key depth below an elevated sand mound, thereby leaving 48" between the bottom of the key depth and a limiting layer.

Waivers are reviewed on a project-by-project basis and decisions are made based on site-specific circumstances but several waivers like this have been approved by the Department in the past. In order to receive a waiver for this situation, the applicant must provide site-specific evidence and analysis that a lesser depth of placed material will not negatively impact public health, the environment, or the quality of state waters. In cases where the limiting layer is groundwater, the Department typically requires a pathogen analysis, as described in the Nondegradation Guidance Manual for source-specific mixing zones, to support the waiver request.

Thank you for your time and consideration and feel free to let me know if you have any additional questions regarding this issue.

Sand Mound Material Specifications:

Sand must be washed free of silts and clays.

The In-place fill material must meet one of the following specifications:

A. ASTM C-33 for fine aggregate, with a maximum of 2 percent passing the No. 100 sieve, or

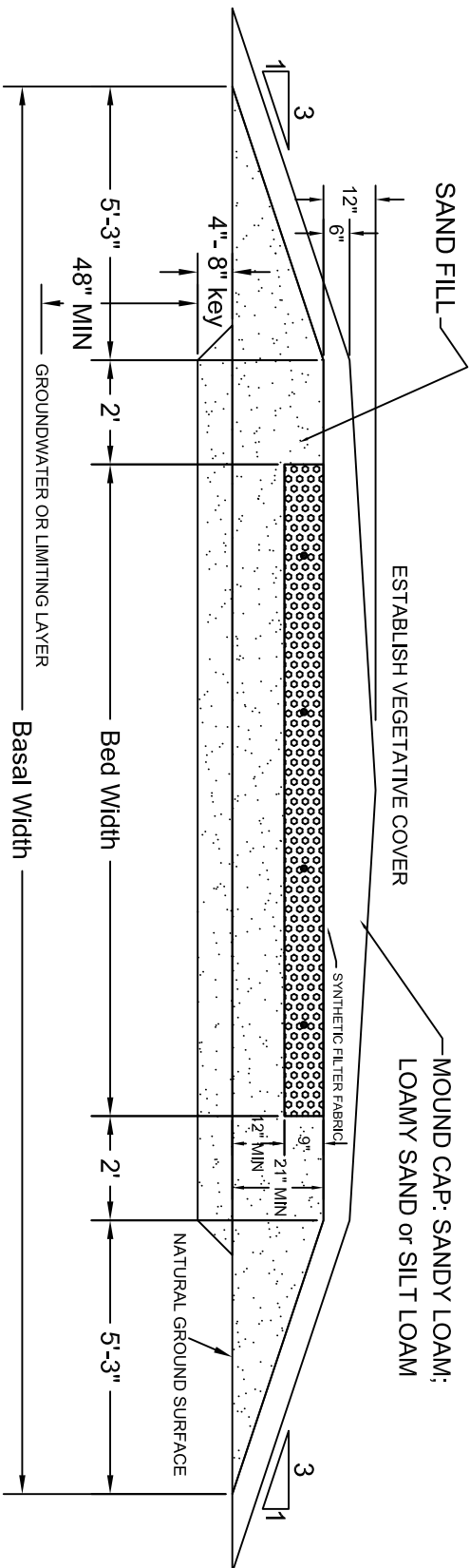
B. Fit within the following particle size distribution:

Sieve	Particle Size (mm)	Percent Passing
3/8 In	9.50	100
No. 4	4.75	95 to 100
No. 8	2.36	80 to 100
No. 16	1.18	45 to 85
No. 30	0.60	20 to 60
No. 50	0.30	10 to 30
No. 100	0.15	0 to 2

C. Have an effective size (D10) of 0.15 mm to 0.30 mm with a Uniformity

Coefficient (D60/D10) of 4 to 6, with a maximum of 3 percent passing the No. 100 sieve.

Drain rock must be washed and range in size from 3/4 to 2-1/2 inches.



Montana Department of
Environmental Quality

Scale:
NTS

Elevated Sand Mound - Bed Design
Section View

Dwg. No.
6.7-1

TO: Subdivision and Development Advisory Council

FROM: Rachel Clark, Subdivision Supervisor

DATE: April 27, 2020

SUBJECT: Explanation of Department proposed changes to MCA 76-4

The Department is proposing the following changes to MCA 76-4 for the Subdivision and Development Advisory Council's consideration.

1. **Throughout:** Change: Substitute "certifying authority" for "municipal and county water and/or sewer district" throughout the Act. Reason: Clarity and brevity.
2. **Throughout:** Change: Add "storm water" to various places throughout the Act. Reason: This change clarifies Sanitation Act authority.
3. **76-4-102:** Change: Add definition of "permanent multiple spaces." Reason: This definition will help clarify what circumstances trigger a Sanitation Act review.
4. **76-4-102:** Change: Add definition of "recreational camping vehicle." Reason: This definition will help clarify what circumstances trigger a Sanitation Act review.
5. **76-4-102:** Change: Add definition of "Regional authority." Reason: Lots with existing on-site facilities occasionally connect to regional systems. The ability to connect to these systems without triggering a re-write will be added to 76-4-130.
6. **76-4-102:** Change: Delete "area" and substitute "lot." Reason: This change will clarify that multiple permanent spaces on a lot trigger Sanitation Act review, instead of the undefined term "area."
7. **76-4-102:** Change: Allow source-specific well isolation zones. Reason: In some circumstances (like a confined aquifer), a full 100-foot well isolation zone may not be necessary to protect public health.
8. **76-4-103:** Change: Reword to clarify lots that are greater than 20 acres are exempt from Sanitation Act review unless they have multiple permanent spaces for RVs or mobile homes. Reason: This section does not currently mesh well with the definition of a subdivision in 76-4-102 and may lead to confusion.
9. **76-4-104:** Change: In (6)(a)(ii) change "dwelling" to "living or commercial" units. The subdivision rules address both living and commercial units.
10. **76-4-104:** Change: Delete the term "on-lot." Reason: Some subdivisions are connected to a central treatment and disposal system.
11. **76-4-104:** Change: Add department rule authority to exempt some subdivisions that serve single living units from storm water review. Reason: Small subdivisions serving

single living units rarely result in storm water issues. (The Department is open to using other criteria for this exemption if the group feels minimum lot size or 25% impervious area is problematic).

12. **76-4-104:** Change: Add department rule authority for Sanitation Act exemption evasion criteria. Reason: Sanitation Act exemptions are interpreted and enforced differently by different Counties. State-wide criteria will assist Clerks in determining when an exemption is being used to evade the Sanitation Act.
13. **76-4-104:** Change: Add department rule authority for source-specific well isolation zones. Reason: See item 5, above.
14. **76-4-105:** Change: Allow a contracted county to impose a surcharge for files or portions of files reviewed, not to exceed 25% of the fee under 76-4-105. Reason: Most contracted counties subsidize subdivision review because the fees established under 76-4-105 do not cover their costs. This change would allow contracted counties to recoup some of the subsidies and promote more files being reviewed locally.
15. **76-4-105:** Change: Allow the governing body to charge a fee for reviewing Sanitation Act exemptions. Reason: This change is proposed to allow local government to recoup some of the costs associated with exemption review, mirroring 76-3-203 (5) fees for Platting Act exemption review.
16. **76-4-111:** Change: Clarify the condo exemption can be used when land has been previously divided. Clarify that condominiums may be used for residential or commercial development. Reason: These changes clarify the legislatures intent for this exemption.
17. **76-4-121:** Change: Consolidates the certified authority facilities exemption (CAFÉ) with other exemptions in (3). Reason: The current language appears to treat a CAFE differently than other exemptions, which it is not.
18. **76-4-122:** Change: Require that a CAFÉ must be shown on the plat or COS, like all other exemptions. Reason: This section currently has a potential conflict between (b) and (c) as to whether the CAFÉ language needs to be shown on the Plat, COS or declaration. This change will clarify that all exemptions, including the CAFÉ need to be shown on the Plat, COS or declaration.
19. **76-4-125:** Change: Require a conspicuous statement on a plat or COS that notifies purchasers the lot may not be developable. Reason: People occasionally buy lots with the expectation that they can build on them and are not aware that some lots are undevelopable.
20. **76-4-125:** Change: Clarify that if a no-facilities exemption is used, the parcel must still comply with MCA 76-4-104 (6)(i) if it is later submitted for development. Reason: This will close the major loophole that is occasionally used to evade having a mixing zone or well isolation zone within the subdivision boundaries.
21. **76-4-125:** Change: Allow use of an exemption notice if the parcel in question qualifies for a current exemption. Reason: In some cases, a parcel did not qualify for an exemption when it was created but did not get a COSA. If the parcel qualifies for an exemption now, allowing use of a current exemption in lieu of a subdivision review would eliminate unnecessary review.

22. **76-4-127:** Change: Delete the requirement for a copy of the applicable zoning ordinances and how construction will be financed. Add name and address of the property owner. Reason: DEQ cannot deny use of a CAFÉ regardless of how the project is financed or whether it complies with zoning so these requirements are not useful. It is important to know the property owner's name and address in addition to that of the consultant preparing the application.
23. **76-4-129:** Change: Delete the first section regarding preparation of a joint application and the department and local government forwarding parts of the application to the other entity. Change part (2) to say a concurrent review may occur subject to the requirements in 76-4-115. Reason: In practice, developers generally apply for and receive preliminary plat approval prior to submitting a Sanitation Act application and that timing is mandatory in 76-4-127. In addition, 76-4-115 requires preliminary plat approval before Sanitation Act approval.
24. **76-4-131:** Change: Strike law citations and just say Sanitation Act exclusions do not relieve a person from complying with the Public Water and Wastewater Laws. Reason: Some of the citations listed are not exemptions leading to confusion about the applicability of this section. This change clarifies that all exclusions do not alter compliance with the public water and wastewater laws.

Effective date: Changes that require new rules (those in 76-4-104) should become effective on January 1, 2022 to allow the department time to adopt the new rules.

76-4-102. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Adequate county water and/or sewer district facilities" means facilities provided by a county water and/or sewer district incorporated under Title 7, chapter 13, that operate in compliance with Title 75, chapters 5 and 6.

(2) "Adequate municipal facilities" means municipally, publicly, or privately owned facilities that supply water, treat sewage, or dispose of solid waste for all or most properties within the boundaries of a municipality and that are operating in compliance with Title 75, chapters 5 and 6.

(3) "Board" means the board of environmental review.

(4) "Certifying authority" means a municipality or a county water and/or sewer district that meets the eligibility requirements established by the department under **76-4-104(6)**.

(5) "Department" means the department of environmental quality.

(6) "Extension of a public sewage system" means a sewerline that connects two or more sewer service lines to a sewer main.

(7) "Extension of a public water supply system" means a waterline that connects two or more water service lines to a water main.

(8) "Facilities" means public or private facilities for the supply of water or disposal of sewage, storm drainage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, storm drainage or solid wastes might be transported or distributed.

(9) "Individual water system" means any water system that serves one living unit or commercial unit and that is not a public water supply system as defined in **75-6-102**.

(10) "Mixing zone" has the meaning provided in **75-5-103**.

(11) "Permanent multiple spaces" means two or more locations with parking areas or electrical, water or sewer services.

(11) (a) "Proposed drainfield mixing zone" means a mixing zone submitted for approval under this chapter after March 30, 2011.

(b) The term does not include drainfield mixing zones that existed or were approved under this chapter prior to March 30, 2011.

(12) (a) "Proposed well isolation zone" means a well isolation zone submitted for approval under this chapter after October 1, 2013.

(b) The term does not include well isolation zones that existed or were approved under this chapter prior to October 1, 2013.

(13) "Public sewage system" or "public sewage disposal system" means a public sewage system as defined in **75-6-102**.

(14) "Public water supply system" has the meaning provided in **75-6-102**.

(15) "Recreational camping vehicle" means a vehicular unit designed primarily as temporary living quarters for recreational, camping, travel or seasonal use and that either has its own power or is mounted on, or towed by, another vehicle.

(15) "Regional authority" has the meaning provided in 76-4-304.

(15) "Registered professional engineer" means a person licensed to practice as a professional engineer under Title 37, chapter 67.

(16) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter 40.

(17) "Reviewing authority" means the department or a local department or board of health certified to conduct a review under **76-4-104**.

(18) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building requiring facilities for the supply of water or the disposition of sewage, storm drainage or solid waste or the construction of water supply or sewage, storm drainage or solid waste disposal facilities until the department has approved plans for those facilities.

(19) "Sewage" has the meaning provided in **75-5-103**.

(20) "Sewer service line" means a sewerline that connects a single building or living unit to a public sewage system or to an extension of a public sewage system.

(21) "Solid waste" has the meaning provided in **75-10-103**.

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

(23) "Water service line" means a waterline that connects a single building or living unit to a public water supply system or to an extension of a public water supply system.

(24) "Well isolation zone" means the area within a 100-foot radius of a water well or a smaller source-specific well isolation zone approved by the department.

76-4-103. What constitutes subdivision. Parcels that are greater than 20 acres, exclusive of public roadways are not subject to review under this part unless they provide permanent multiple spaces for recreational camping vehicles or mobile homes. The plat for a subdivision must show all of the parcels, including those over 20 acres, whether contiguous or not. The rental or lease of one or more parts of a single building, structure, or other improvement, whether existing or proposed, is not a subdivision, as that term is defined in this part, and is not subject to the requirements of this part.

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.

(3) (a) Except as provided in subsection (3)(b), the rules must provide for the review of subdivisions consistent with **76-4-114** by a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board of health employs a registered sanitarian or a registered professional engineer and if the department certifies under subsection (4) that the local department or board is competent to conduct the review.

(b) (i) Except as provided in **75-6-121** and subsection (3)(b)(ii) of this section, a local department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems.

(ii) A local department or board of health may be certified by the department to review subdivisions proposed to connect to existing certifying authority facilities previously approved by the department if no extension of the systems is required. (4) The department shall also adopt standards and procedures for certification and maintaining certification to ensure that a local department or board of health is competent to review the subdivisions as described in subsection (3).

(5) The department shall review those subdivisions described in subsection (3) if:

(a) a proposed subdivision lies within more than one jurisdictional area and the respective governing bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision; or

(b) the local department or board of health elects not to be certified.

(6) The rules must further provide for:

(a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review under this part and other documentation showing the layout or plan of development, including:

(i) total development area; and

(ii) total number of proposed living and commercial units and structures requiring facilities for water supply or sewage or storm water disposal;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil testing and site design standards for sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) adequate evidence that a proposed drainfield mixing zone and a proposed well isolation zone are located wholly within the boundaries of the proposed subdivision where the proposed drainfield or well is located or that an easement or, for public land, other authorization has been obtained from the landowner to place the proposed drainfield mixing zone or proposed well isolation zone outside the

boundaries of the proposed subdivision where the proposed drainfield or proposed well is located. A proposed mixing zone or a proposed well isolation zone for an individual water system well that is a minimum of 50 feet inside the proposed subdivision boundary may extend outside the boundaries of the proposed subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities. This subsection (6)(i) does not apply to the divisions provided for in **76-3-207** except those under **76-3-207(1)(b)**. Nothing in this section is intended to prohibit the extension, construction, or reconstruction of or other improvements to a public sewage system within a well isolation zone that extends onto land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

(j) criteria for exempting subdivisions from storm water review under this part for individual living units when the lots meet a minimum size established by the department and the proposed impervious area will be no greater than 25% of the entire subdivision area.

(j) criteria for granting waivers and deviations from the standards and technical procedures adopted under subsections (6)(e) through (6)(i);

(k) evidence to establish that, if a public water supply system or a public sewage system is proposed, provision has been made for the system and, if other methods of water supply or sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations that are in effect at the time of submission of the subdivision application under this chapter. Evidence that the systems will comply with local laws and regulations must be in the form of a certification from the local health department as provided by department rule.

(l) evidence to demonstrate that appropriate easements, covenants, agreements, and management entities have been established to ensure the protection of human health and state waters and to ensure the long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities;

(m) eligibility requirements for municipalities and county water and/or sewer districts to qualify as a certifying authority under the provisions of **76-4-127**.

(n) criteria for county clerk and recorders to use in determining whether a proposed method of disposition using the exemptions provided in 76-4-125 creates a presumption of evasion to the requirements of this chapter. A person who is aggrieved by the denial of the use of an exemption may appeal the county clerk and recorders decision to the department. The request must be filed, in writing, within 30 days after county clerk and recorder's decision and must state the reason for the appeal. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

(o) criteria for granting source-specific well isolation zones.

(7) Review and certification or denial of certification that a division of land is not subject to sanitary restrictions under this part may occur only under those rules in effect when a complete application is submitted to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality apply.

(8) The reviewing authority may not deny or condition a certificate of subdivision approval under this part unless it provides a written statement to the applicant detailing the circumstances of the denial or condition imposition. The statement must include:

- (a) the reason for the denial or condition imposition;
- (b) the evidence that justifies the denial or condition imposition; and
- (c) information regarding the appeal process for the denial or condition imposition.

(9) The department may adopt rules that provide technical details and clarification regarding the water and sanitation information required to be submitted under **76-3-622**.

76-4-105. Subdivision fees -- subdivision program funding. (1) The department shall adopt rules setting forth fees that do not exceed actual costs for reviewing plats and subdivisions, conducting inspections pursuant to **76-4-107**, and conducting enforcement activities pursuant to **76-4-108**. The rules must provide for a schedule of fees to be paid by the applicant to the department. The fees must be used for review of plats and subdivisions, conducting inspections pursuant to **76-4-107**, and conducting enforcement activities pursuant to **76-4-108**. The fees must be based on the complexity of the subdivision, including but not limited to:

- (a) number of lots in the subdivision;
- (b) the type of water system to serve the development;
- (c) the type of sewage and storm water disposal to serve the development; and
- (d) the degree of environmental research necessary to supplement the review procedure.

(2) The department shall adopt rules to determine the distribution of fees to the local reviewing authority for reviews conducted pursuant to **76-4-104**, inspections conducted pursuant to **76-4-107**, and enforcement activities conducted pursuant to **76-4-108**.

(3) The governing body may establish a surcharge for each file reviewed by the local department or board of health under this chapter to be paid directly to the governing body. The surcharge may not exceed 25% of the review fee established under this section.

(4) The governing body may examine a subdivision to determine whether or not the lot qualifies for an exemption under 76-4-125 and may establish reasonable fees, not to exceed \$200 for the examination.

76-4-111. Exemption for certain condominiums, townhomes, and townhouses. (1) Condominiums, townhomes, or townhouses, as those terms are defined in **70-23-102**, constructed on land previously divided in compliance with the Montana Subdivision and Platting Act and this part are exempt from the provisions of this part.

(2) Whenever a parcel of land has previously been reviewed under either department requirements or local health requirements and has received approval for a given number of living or commercial units, the construction or conversion of the same or a fewer number of condominium units, townhomes, or townhouses on that parcel is not subject to the provisions of this part, provided that, if a new extension of a public water supply system or extension of a public sewage system is required to serve the development, the department reviews and approves plans for the extension.

76-4-113. Notification to purchasers. The developer or owner of an approved subdivision shall provide each purchaser of property within the subdivision with a copy of the plat or certificate of survey and the certificate of subdivision approval specifying the approved type and locations of water supply, storm water drainage, and sewage disposal facilities and information regarding connection to certifying or regional authority facilities provided for under **76-4-130**. Each subsequent seller of property within the subdivision shall include within the instruments of transfer a reference to the conditions of the certificate of subdivision approval. A written verification of notice that is signed by both the seller and the purchaser and is recorded with the county clerk and recorder constitutes conclusive evidence of compliance with this section for that transaction.

76-4-121. Restrictions on subdivision activities. A person may not dispose of any lot within a subdivision, erect any facility for the supply of water or disposal of sewage, storm water or solid waste, erect any building or shelter in a subdivision that requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent buildings in a subdivision until:

(1) a certificate of subdivision approval has been issued pursuant to **76-4-114** indicating that the reviewing authority has approved the subdivision application and that the subdivision is not subject to a sanitary restriction;

(2) the subdivision is otherwise exempt from review under **76-4-125**.

76-4-122. Certain filings prohibited. (1) The county clerk and recorder may not file or record any plat, certificate of survey, or townhome, townhouse, or condominium declaration subject to review under this part showing a subdivision unless it complies with the provisions of this part.

(2) A county clerk and recorder may not accept a subdivision plat, certificate of survey, or townhome, townhouse, or condominium declaration subject to review under this part for filing until one of the following conditions has been met:

(a) the person wishing to file the plat, certificate of survey, or townhome, townhouse, or condominium declaration has obtained approval of the local health officer having jurisdiction and has filed the approval with the reviewing authority and a certificate of subdivision approval has been issued pursuant to **76-4-114** indicating that the reviewing authority has approved the subdivision application and that the subdivision is not subject to a sanitary restriction; or

(b) the person wishing to file the plat, certificate of survey, or townhome, townhouse, or condominium declaration has placed on the plat, certificate of survey, or townhome, townhouse, or condominium declaration an acknowledged certification that the subdivision is exempt from review under this part. The certification must quote in its entirety the wording of the applicable exemption.

(3). For lots filed with a 76-4-125 (1)(c) exemption, the county clerk and recorder shall require a conspicuous statement be placed on the plat or certificate of survey to notify purchasers that the property has not been reviewed for sanitation facilities and may not be suitable for development.

76-4-125. Land divisions excluded from review. (1) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusion cited in **76-3-201**;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage, storm water and solid waste disposal facilities as the department specifies by rule. If lots using this exemption are subsequently submitted for review, they are required to comply with the provisions in 76-4-104 (6)(i);

(d) as certified pursuant to **76-4-127**:

(i) new divisions subject to review under the Montana Subdivision and Platting Act;

(ii) divisions or previously divided parcels recorded with sanitary restrictions; or

(iii) divisions or parcels of land that are exempt from the Montana Subdivision and Platting Act review under **76-3-203** or **76-3-207**(1)(a), (1)(b), (1)(d), (1)(e), or (1)(f);

(e) subject to the provisions of subsection (2), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant to local regulations or this chapter; and

(f) the sale of cabin or home sites as provided for and subject to the limitations in **77-2-318(2)**.

(2) Consistent with the applicable provisions of **50-2-116**, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (1)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield.

(3) A previously divided lot that meets the eligibility criteria for an existing exemption from this part may use the exemption in lieu obtaining a certificate of subdivision approval if an exemption notice is filed with the county clerk and recorder.

76-4-127. Notice of certification that adequate storm water drainage and adequate municipal facilities will be provided. (1) To qualify for the exemption from review set out in **76-4-125(1)(d)**, the certifying authority shall send notice of certification to the reviewing authority that adequate storm water drainage and adequate municipal facilities will be provided for the subdivision. For a subdivision subject to Title 76, chapter 3, the certifying authority shall send notice of certification to the reviewing authority prior to final plat approval.

(2) The notice of certification must include the following:

(a) the name and address of the applicant and property owner;

(b) a copy of the preliminary plat included with the application for the proposed subdivision or a final plat when a preliminary plat is not necessary or, for a subdivision not subject to Title 76, chapter 3, a copy of the certificate of survey map or amended plat map or a declaration and floor plan, including the layout of each unit proposed to be recorded, under Title 70, chapter 23, part 3;

(c) the number of parcels and living and commercial units in the subdivision;

(f) the relative location of the subdivision to the city or the county water and/or sewer district;

(g) certification that adequate certifying authority facilities for the supply of water and disposal of sewage and solid waste will be provided. Facilities for subdivisions subject to **76-3-507** must be provided within the time that section provides.

(h) if water supply, sewage disposal, or solid waste facilities are not municipally owned, certification from the facility owners that adequate facilities will be available; and

(i) certification that the certifying authority has or will review and approve plans to ensure adequate storm water drainage.

76-4-129. Joint application form and concurrent review.

(2) The review required by this part and the provisions of chapter 3 may occur concurrently subject to the requirements in 76-4-115 (2),.

76-4-130. Deviation from certificate of subdivision approval. (1) Except as provided in subsection (2), a person may not construct or use a facility that deviates from the certificate of subdivision approval until the reviewing authority has approved the deviation.

(2) A person may deviate from the certificate of subdivision approval without approval by the reviewing authority if the deviation consists solely of connecting to certifying or regional authority facilities in place of previously approved facilities. The department may require notification when a person connects to certifying or regional authority facilities.

76-4-131. Applicability of public water supply laws. The exclusions provided for in this part do not relieve any person of the duty to comply with the requirements of Title 75, chapter 6. An extension of a public water supply system or an extension of a public sewage system to serve a subdivision must be reviewed in accordance with the provisions of Title 75, chapter 6.

TO: Subdivision and Development Advisory Council

FROM: Rachel Clark, Subdivision Supervisor

DATE: April 27, 2020

SUBJECT: Contracted County responses to proposed Sanitation Act changes

In preparation for developing proposed statutory changes to the Sanitation Act, DEQ solicited responses from Contracted Counties for the topics listed below because they are an integral part of our review process. Jeff Larsen's proposed changes are topics 1 and 2. DEQ's proposed changes are topics 3, 4. Senator Esp's proposed change is topic 5. I have included the Department's recommendation for each topic.

Topic 1: Eliminate drainfield "designs" at the time a COSA is issued and perform this review at the time a permit is granted.

Response: The response from Contracted Counties was mixed with some Counties preferring to review designs at the time of permitting and some not wanting to review designs at all. The general consensus was to let each County decide whether they want to review designs or not.

Recommendation: Technically, Title 50 does not require that Counties issue a septic permit for facilities reviewed under the Sanitation Act, although most (perhaps all) Counties do issue permits for these facilities. If the SDAC decides to go forward with this topic, Title 50 will need to be changed to require that all Counties who want to shift design review to the permitting stage have to issue septic permits for Sanitation Act reviews in perpetuity. Poll the SDAC to determine if they want to delve into Title 50, Local Boards of Health. If so, DEQ can provide draft language at the next SDAC meeting.

50-2-116. Powers and duties of local boards of health. (1) In order to carry out the purposes of the public health system, in collaboration with federal, state, and local partners, each local board of health shall: (k) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings and facilities that are not regulated by Title 75, chapter 6, or Title 76, chapter 4.

Topic 2: Eliminate detailed lot layouts because so much is unknown at the time a COSA is issued. Don't require building location, driveway, septic tank location or water lines.

Response: The Counties were unanimously against this change.

Recommendation: Do not pursue this change further.

Topic 3: Give the Department rule authority to adopt state-wide evasion criteria for County Clerks and Recorders to use. Allow local government to charge up to \$200 for Sanitation Act exemption review (to match the Platting Act exemption fee).

Response: A majority of Counties were in favor of these changes.

Recommendation: These changes have been incorporated into the draft law changes distributed for this meeting. Poll the SDAC to determine if they agree.

Topic 4: Allow local governments to impose a surcharge on files or portions of files they review. Set a maximum surcharge rate, e.g. up to 25% of the subdivision fee.

Response: A majority of Counties were in favor of this change but some expressed concerns that the legislature could decide to no longer allow County reviews.

Recommendation: This change has been incorporated into the draft law changes distributed for this meeting. Poll the SDAC to determine if they agree. While I understand the sentiment behind the concern, I think this is worth pursuing.

Topic 5: Categorically exempt some subdivisions from stormwater review. Allow the Department to adopt rules governing criteria for the Cat Ex, like: minimum lot size, maximum number of lots, proposed use (not for commercial properties), maximum impervious area and maximum slope.

Response: Most Counties were in favor of this change.

Recommendation: This change has been incorporated into the draft law changes distributed for this meeting. Poll the SDAC to determine if they agree.