

SUBDIVISIONS

Application & Review

Title 76, Chapter 3 MCA

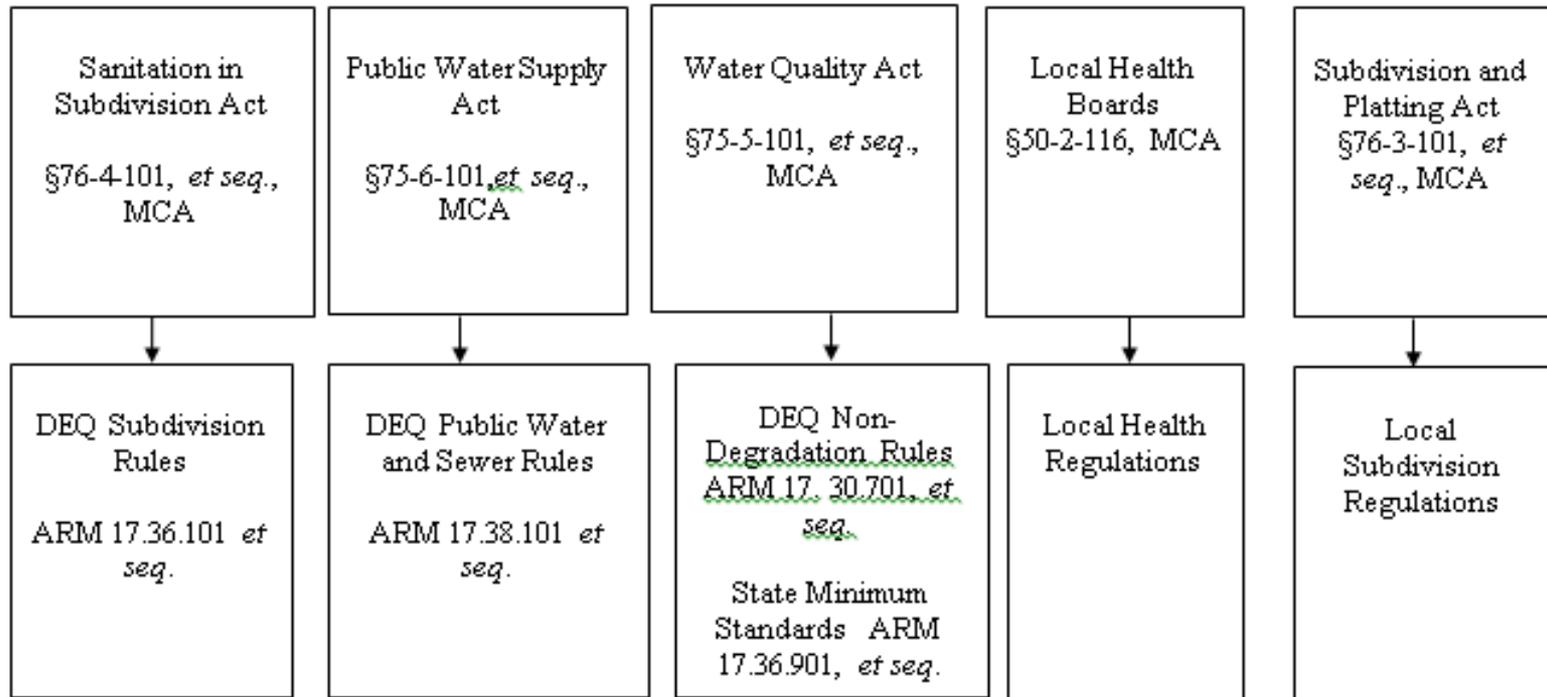
Title 76, Chapter 4 MCA



GENERAL

- Subdivisions in Montana are regulated by two separate laws
 - The Subdivision and Platting Act covers how the division of land impacts public health, safety and general welfare;
 - The Sanitation in Subdivisions Act pertains to the water supply, wastewater system and storm drainage in a subdivision.

STATUTORY AUTHORITY



DEFINITION OF A SUBDIVISION

- MPSA 76-3-103
 - (15) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed.

- Sanitation in Subdivision Act 76-4-102
 - (16) "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 and any condominium or area, regardless of size, that provides permanent multiple space for recreational camping vehicles or mobile homes.

EXCEPTIONS TO SUBDIVISION REVIEW PROCESS

- Exemptions
 - ▣ Subdivision & Platting Act – Sections 76-3-201, 203, 205, 207 and 209, MCA
 - ▣ Sanitation in Subdivisions Act – Section 76-4-125

- Buildings for Lease or Rent (BLR) – Title 76, Chapter 8 MCA

THE MONTANA SUBDIVISION & PLATTING ACT (MSPA)

(Title 76, Chapter 3, Parts 1-6 MCA)

- Subdivision requirements under state statute:
 - Counties
 - Incorporated municipalities
 - Must adopt local regulations

- Regulates the process of creating new lots
 - Does not strictly govern use on new lots unless the property is zoned or has enforceable covenants;
 - Guides design of lots, roads, parkland etc.

- Mitigate impacts resulting from development

PURPOSE & IMPACT

- Subdivisions determine the long-term pattern of land development and how services and infrastructure are provided, including:
 - Street/road maintenance;
 - Fire protection;
 - Police/sheriff response;
 - Solid waste;
 - Water & wastewater;
 - Emergency services
 - Education
 - Recreation
 - And more...

DEQ REVIEW

- Part of subdivision review application & process:
 - Water
 - Wastewater
 - Storm Drainage
 - Solid Waste

JOINT APPLICATION FORM

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY/ LOCAL GOVERNMENT JOINT APPLICATION FORM

PART I GENERAL DESCRIPTION AND INFORMATION

1. Name of proposed development _____
2. Location: City and/or county _____
Legal description: _____ 1/4 _____ 1/4 of Section _____ Township _____ Range _____
3. Is concurrent review by local governing body and DEQ requested? Yes _____ No _____
4. Type of water supply system
____ Individual well
____ Individual cistern
____ Individual surface water supply or spring
____ Shared well (2 connections)
____ Multiple-user water supply system (3-14 connections and fewer than 25 people)
____ Service connection to multiple-user system
____ Service connection to public system
____ Extension of public main
____ New public system (15 or more connections or serving 25 or more people)
5. Type of wastewater treatment system
____ Individual wastewater treatment system
____ _____ Number of bedrooms (3 bedrooms will be used if unknown)
____ Shared wastewater treatment system (2 connections)
____ Multiple-user system (3-14 connections and fewer than 25 people)
____ Service connection to multiple-user system
____ Service connection to public system
____ Extension of public main
____ New public system (15 or more connections or serving 25 or more people)
6. Name of solid waste (garbage) disposal site _____
7. Nondegradation
Yes _____ No _____ Is information included which substantiates that there will be no degradation of
state waters or that degradation will be nonsignificant?
Yes _____ No _____ If not, have you enclosed an Application to Degrade?
8. Descriptive Data
____ Number of lots or rental spaces
____ Total acreage in lots being reviewed
____ Total acreage in streets or roads
____ Total acreage in parks, open space, and/or common facilities
____ Total gross acreage of subdivision
____ Minimum size of lots or spaces
____ 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 Number of units _____
____ Type of multiple family structure (e.g. duplex) _____ Number of units _____
____ Planned unit development Number of units _____
____ Condominium Number of units _____
____ Mobile home park Number of units _____
____ Recreational vehicle park Number of units _____
____ Commercial or industrial _____
____ Other (please describe) _____

TYPES OF SUBDIVISIONS

Minor subdivision: (5 or fewer lots)

- ▣ Statutory 35 working day review period
- ▣ No public hearing
- ▣ No environmental assessment
- ▣ No review of 608 criteria if subdivision is zoned

Major subdivisions: (6 or more lots)

- ▣ Statutory review period 60 working days for 49 lots or less
- ▣ Review period 80 working days for 50 + lots
- ▣ At least one public hearing required.

TYPES OF SUBDIVISIONS (cont'd)

- ❑ Subsequent minor subdivision:
 - ❑ Subdivision from a tract of record that has been previously subdivided since July 1, 1973 or a subdivision from a tract of record that has had more than five (5) parcels created from the tract using exemptions found under 76-3-201 and 76-3-207, MCA, since July 1, 1973.
 - ❑ Review period, process and requirement for a public hearing depend upon the regulations adopted by a local jurisdiction:
 - ❑ Default is review as a major subdivision; minimum is to treat as minor;
 - ❑ Local government can adopt regulations establishing alternative requirements for subsequent minors;
 - ❑ Codify in your regulations.

DEQ TIME FRAMES

- DEQ Subdivision Section has 55 days to make comments on the proposed subdivision.
- Once DEQ sends a comment letter, that time frame stops.
- If you send in a reply to the comment letter within 30 days, the review is on a 30 day clock
- If you send a reply to the comment letter after 30 days, the review is on a 60 day clock
- Applications held for 1 year beyond last denial date

MINOR SUBDIVISION REVIEW PROCESS

1. Pre-application meeting
2. Submittal of subdivision application...preliminary plat, summary of probable impacts, DEQ info, Impact Criteria Report (or similar), etc.
3. Staff analysis of the application, preparation of staff report & findings, recommendation
4. No public hearing
5. Governing body decision within 35 working days
6. Expedited review option [§76-3-609(2)(f) MCA]

MAJOR SUBDIVISION REVIEW PROCESS

1. Pre-application meeting
2. Submittal of subdivision application...preliminary plat, DEQ info, environmental assessment, etc.
3. Staff analysis of the application, preparation of staff report & findings, recommendation
4. At least one public hearing required.
5. Governing body decision within:
 - 60 working days if 49 lots or less;
 - 80 working days if 50 or more lots.
 - Clock starts at date of sufficiency.
 - Penalties apply

PRE-APPLICATION MEETING

- ❑ Upon written request by subdivider, staff must hold a meeting within 30 days
- ❑ Typically good for 6 mos. – 1 yr. (local regs determine)
- ❑ “Staff” must identify:
 - Applicable laws and regulations...including zoning or floodplain etc.;
 - Applicable growth policy provisions;
 - Agencies to contact for comments:
BLM, DEQ, USFS, County Road Department etc.
 - Time limit for submittal of an application after pre-app meeting.

APPLICATION TO INCLUDE...

- Completed application form
- Appropriate fee (without fee, application has not been 'submitted')
- Variance request & documentation
- Environmental Assessment (major); Impact Criteria Report (minor)
- Preliminary water & sanitation information required under 76-3-622 MCA
- Preliminary plat
- Required documentation

ELEMENT & SUFFICIENCY REVIEW

- Upon submittal & receipt of an application, to determine if the application is “ready” for review:

- Element review – 5 working days to determine if the application contains all the basic elements necessary and required under statute and local regulations:
 - If no, notify the subdivider in writing and stop processing the application;

 - If yes, then move onto sufficiency review.

ELEMENT & SUFFICIENCY REVIEW

- ❑ Sufficiency review – 15 working days to determine if the material provided is sufficient for agency to review the application and make a decision:
 - If no, notify the subdivider in writing and stop processing the application.
 - If yes, then the statutory review period begins....“the clock starts ticking.”
- ❑ Provides the ability to require and to obtain adequate applications;
- ❑ Does not limit ability to ask for more info later on...

PUBLIC NOTICE REQUIREMENTS – MINOR

- ❑ No public hearing; no adjacent property notification
- ❑ Recommendations:
 1. Only notice for a first minor should be that which is placed on the governing body's official published agenda.
 2. Public comment may be permitted in order for the governing body to take action.
 - Consult with local attorney;
 - Comments should be recorded on the public record.

PUBLIC HEARING REQUIREMENTS (cont'd)

- ❑ §76-3-605 et. al.
- ❑ For major subdivisions (subsequent minor, as applicable)
- ❑ Section 2-3-103, MCA, clearly provides that the public has the right to participate (i.e., comment) on actions being taken by their elected officials.
 - ❑ *“However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in 2-3-212.”)*
- ❑ Typically, public hearings held by Planning Board

PLANNING BOARD & SUBDIVISION REVIEW

- If a growth policy exists in a jurisdiction.
 - Governing body (GB) required to seek the recommendation of the board on all subdivision applications (§76-1-107(1), MCA)
 - Planning board can delegate review of minor subdivisions to staff....not majors (§76-1-107(2), MCA)

- If no growth policy adopted, the GB has the discretion to ask the planning board for recommendations.
 - Codify in regulations.

PLANNING BOARD & SUBDIVISION REVIEW

- ❑ Follow notice requirements under §76-3-605(3)
- ❑ Planning board serves in advisory capacity; makes recommendation to governing body following:
 - ❑ Staff report & presentation of findings, conditions
 - ❑ Applicant summary
 - ❑ Agency comment
 - ❑ Public comment
 - ❑ Closing of the public hearing
 - ❑ Board deliberation
 - ❑ Formal motion on approval, approval with conditions or denial of application
- ❑ Board's ability to table the application
- ❑ Recommendation to governing body within 10 working days

GOVERNING BODY DECISION

- Following Planning Board recommendation, governing body considers application, staff report, draft findings & conditions of approval.
 - Follow standard notice requirements for governing body agenda
 - May hold subsequent public hearing if desired
- Governing body may approve, conditionally approve or deny a subdivision based on the regulations, review criteria, mitigation, public comments, etc.
- Decision must be based on findings of fact; findings should support any conditions of approval required.

GOVERNING BODY DECISION

- If the Governing body does not make a decision within the review period, it must pay the subdivider a penalty of \$50 per lot per month or a pro rata portion of a month until a decision is made (major subdivisions only).
 - Penalty not to exceed the total amount of the subdivision review fee for the application.
- Governing body must provide written findings and decision to subdivider 30 days after its decision.

TIMING & EXPECTATIONS

- From date of submittal:
 - Minor subdivisions – approx. 3 months
 - Major subdivisions – 5 to 6 months, generally
- Best case scenario – timelines often longer
- Final plat submitted after conditions of approval have been met (§76-3-610 MCA)

SANITATION IN SUBDIVISIONS

- DEQ will be concerned about:
 - Proper formatting of the lot layout;
 - Water quality, quantity, and dependability;
 - Proper functioning of the wastewater system;
 - Non-degradation of state waters;
 - Storm water drainage.

PROPER LOT LAYOUT

□ Must Contain:

- The name of the subdivision, and the county, section, township and range (e.g., "Sec. 12 T27N R6E") in which the proposed subdivision is located;
- A north arrow and scale;
- The boundaries, dimensions, and total area of each lot with an identifier or number for each lot (e.g., "Lot 1, Lot 2");
- Locations of existing and proposed easements;
- Locations of existing and proposed roads, driveways, building envelope;
- Locations and sizes of existing and proposed storm water structures (culverts, ponds, dry wells, etc.);
- Locations of drainage ways;
- Name and affiliation of the person who prepared the lot layout;

□ May Contain:

- Existing and proposed wells and 100-ft setback
- Water lines (suction and pressure)
- Water lines (extension and connections)
- Existing and proposed wastewater systems (drainfield, replacement area, and existing septic tanks)
- Percent and direction of slope across the drainfield
- Sewer lines (extensions and connections)
- Lakes, springs, irrigation ditches, wetlands and streams
- Percolation test locations, if provided, keyed to result form
- Soil pit locations keyed to soil profile descriptions
- Ground water monitoring wells keyed to monitoring results form
- Floodplain boundaries
- Cisterns
- Road cuts and escarpments or slopes > 25%
- Mixing zone boundaries and direction of ground water flow

FOLLOW THE LOT LAYOUT

- Construction of water, wastewater, and storm drain components must be placed in their approved locations.
- If they can't be placed there, then the engineer should get an amended lot layout.
- Problems may not arise for many years.

WATER

- Most Subdivisions provide water either by connecting to a Public Water Supply or they have on-site wells for water supply.
- A few alternatives, on-site PWS or cisterns exist.
- Connections to a PWS must be done at least with MPWSS.
- Well locations are on the lot layout for a reason.

WELLS

- Dept. reviews well location to ensure they are not placed where they can be contaminated;
- Wells must be drilled where they are located on the lot layout;
- If changes need to be made, DEQ must review those changes;
- Wells are reviewed for their ability to provide enough water, at a sufficient quality, for as long as the well is needed to be a water source for that home;
- Pump test requirement for dependability.

WASTEWATER SYSTEMS

- The ability of the wastewater system is reviewed to ensure it will handle the quantity of wastewater generated and will sufficiently treat the wastewater.
- Each component of the system is reviewed: septic tank, dosing tank, pipe, manifold, drainfield pipe, drainfield soils, gravelless chambers, etc., to ensure a proper functioning system

WASTEWATER SYSTEM BREAKDOWN

- DEQ-2 systems
 - ▣ Public Connections through existing or future main extensions
 - ▣ Mechanical Treatment Plants
 - ▣ Lagoons
- DEQ-4 systems (Subsurface Systems)
 - ▣ Conventional Systems
 - ▣ Trickling Filters
 - ▣ Sand Filters

NON-DEGRADATION ANALYSIS

- Nitrate analysis
 - ▣ Individual and cumulative effects

- Phosphorous breakthrough
 - ▣ Individual and cumulative effects

- Adjacent to state waters
 - ▣ When to analyze and how

STORM WATER DRAINAGE

- Each Subdivision is reviewed to ensure that proper drainage of storm water occurs;
- Storm water runoff generated by the subdivision is required to be retained by the subdivision;
- If you don't complete the storm water drainage that is spelled out on the lot layout, you can cause a lot of damage to future homeowners.

CERTIFICATE OF SUBDIVISION APPROVAL (COSA)

STATE OF MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY
CERTIFICATE OF SANITARY RESTRICTION REMOVAL
(Section 76-4-101 et seq., MCA)

To: Clerk and Recorder
Flathead County
Kalispell, MT

EQ# 16-1010

THIS IS TO CERTIFY THAT the plans and supplemental information relating to the subdivision known as Sanitary Restriction Removal of Parcels B&C of COS 6229, located in the SE¼, Section 8, T28N, R21W, Flathead County, Montana,

See Exhibit A for metes and bounds description

consisting of two (2) parcels have been reviewed by personnel of the Permitting and Compliance Division, and,

THAT the documents and data required by ARM Chapter 17, Section 36, have been submitted and found to be in compliance therewith, and,

THAT approval of the COS is made with the understanding that the following conditions shall be met:

THAT the parcel size as indicated on the COS to be filed with the County Clerk and Recorder will not be altered without approval, and,

THAT each parcel shall be used for one individual living unit, and,

THAT each individual water system will consist of a well drilled to a minimum depth of 25 feet constructed in accordance with the criteria established in Title 17, Chapter 36, Sub-chapters 1, 3 & 6 ARM and the most current standards of the Department of Environmental Quality, and,

THAT data provided indicates an acceptable water source at a depth of approximately 250 feet, and,

THAT each individual sewage treatment system will consist of a septic tank and subsurface drainfield of such size and description as will comply with Flathead City-County Regulations for Sewage Treatment Systems and Title 17, Chapter 36, Sub-chapters 1, 3 & 6 ARM and the most current standards of the Department of Environmental Quality, and,

THAT the subsurface drainfield shall have an absorption area of sufficient size to accommodate an application rate no greater than 0.6 gpd/ft², and,

THAT the bottom of the drainfield shall be at least four feet above the water table, and,

Page 2 of 3
Sanitary Restriction Removal of Parcels B&C of COS 6229
Flathead County

EQ# 16-1010

THAT the trenches of the drainfield for Parcel B shall be no deeper than 12 inches below the natural ground surface, and

THAT the bottom of the absorption trenches of the drainfield for Parcel C shall be no deeper than 24 inches below the natural ground surface, and,

THAT no sewage treatment system shall be constructed within 100 feet of the maximum high water level of a 100 year flood of any stream, lake, watercourse or irrigation ditch, nor within 100 feet of any domestic water supply source, and,

THAT water supply, sewage treatment systems and storm drainage systems will be located as shown on the approved plans, and,

THAT all sanitary facilities must be located as shown on the attached lot layout, and,

THAT construction, operation and maintenance of the storm water structures shall be as submitted in the design report and shall be performed by the owner of applicable Parcels, and,

THAT the developer and/or owner of record shall provide any purchaser of the property with a copy of the COS, approved location of water supply and sewage treatment system and a copy of this document, and,

THAT instruments of transfer for this property shall contain reference to these conditions, and,

THAT plans and specifications for any proposed sewage treatment systems will be reviewed and approved by the county health department and will comply with local regulations and ARM, Title 17, Chapter 36, Subchapters 3 and 9, before construction is started.

THAT departure from any criteria set forth in the approved plans and specifications and Title 17, Chapter 36, Sub-Chapters 1, 3 & 6 ARM when erecting a structure and appurtenant facilities in said subdivision without Department approval is grounds for injunction by the Department of Environmental Quality.

NOW, THEREFORE, the sanitary restriction imposed by said Section 76-4-101 through 76-4-131, MCA 1979 upon said tract is hereby and herewith removed.

Pursuant to Section 76-4-122(2)(a), MCA, a person must obtain the approval of both the reviewing authority under Title 76, Chapter 4, MCA, and local Board of Health under section 50-2-116(1)(i), before filing a subdivision plat with the County Clerk and Recorder.

YOU ARE REQUESTED to record this certificate by attaching it to the COS filed in your office as required by law.

Page 3 of 3
Sanitary Restriction Removal of Parcels B&C of COS 16229
Flathead County

EQ# 16-1010

DATED this 14th day of July, 2015

Flathead City-County Health Officer

Tom Livers, Director

By: 
Wendee Jacobs, R.S.
Flathead County Sanitarian


By: Barbara Kingery, P.E., Supervisor
SUBD & PWS Plan Review Section
Permitting and Compliance Division
Department of Environmental Quality

Co. No. 15/64
Owner's Name: Clothier

FINAL PLAT APPROVAL AND FILING

- Governing body shall examine final plat and approve it only if:
 - Conforms to the conditions of approval;
 - Conforms with statute and local regulations;
 - All taxes and special assessments have been paid;
 - Written consent to the subdivision by lienholders;
 - Can require review of abstract by county attorney;
 - Documentation required!

Final plat filed with Clerk & Recorder

BUILDINGS FOR LEASE OR RENT (BLR)

Overview:

- ❑ Chapter 8 under Title 76, Land Resources & Use;
- ❑ Review process established for the rent or lease of buildings or units within a building, to consider impact of development;
- ❑ Identifies exemptions to the new review process;
- ❑ Removes subdivisions for lease or rent from MSPA, except for RVs and campgrounds (rent of land).

BLR EXEMPTIONS

- ❑ Where zoning is in place – no BLR review required, just follow what is required under zoning regulations (§ 76-8-103(1)(a), MCA) & follow applicable DEQ requirements.
- ❑ Where zoning is not in place (§ 76-8-103(1)(b), MCA):
 - ❑ One of 3 or fewer buildings in existence or under construction prior to September 1st, 2013;
 - ❑ Subject to lodging facility tax (except RVs and mobile home parks);
 - ❑ The building is for farm or agricultural use;
 - ❑ If proposed to be served by water/wastewater but not intended for lease or rent – owner declaration to run with land ensuring building(s)/unit(s) will not be leased or rented. (§ 76-8-103(1)(b), MCA).
- ❑ First three (3) or fewer buildings in existence or under construction prior to September 1st, 2013, do not count toward BLR local review requirements.

BLR REVIEW PROCESS

- ❑ First three (3) or fewer BLRs on a single tract of record requires review and approval pursuant to Title 50 and Title 76, as applicable (§ 76-8-106, MCA).
- ❑ Four (4) or more BLRs on a single tract of record require local review per (§ 76-8-102, MCA).
- ❑ Application requirements – details in local regulations. Generally requires review fee, deed, evidence of ownership, detailed site plan and narrative addressing:
 - ❑ Existing and proposed buildings and their location on the subject property;
 - ❑ Proposed water, sewer, and solid waste disposal facilities;
 - ❑ Emergency medical, fire, and police services;
 - ❑ Existing and proposed access to and from the site, and onsite circulation;
 - ❑ Potential significant impacts on the surrounding physical environment or human population as a result of the proposed building for lease or rent, including proposed mitigation measures.

BLR REVIEW PROCESS

- ❑ Ten (10) working days to determine whether application is complete;
 - ❑ If application incomplete, written notification of missing or insufficient information.
- ❑ Sixty (60) working days from complete to approve, conditionally approve, or deny application.
- ❑ To approve, application must:
 - ❑ Comply with the BLR regulations and other regulations applicable to the property;
 - ❑ Minimize potential significant impacts on the physical environment and human population in the area;
 - ❑ Provide adequate access, emergency, medical, fire protection, police, water, sewer, and solid waste facilities;
 - ❑ Comply with any applicable flood plain regulations.
- ❑ Decision must be provided in writing to applicant within 60 day review timeframe.

BLR ADOPTION PROCESS

- ❑ Local jurisdictions were required to adopt regulations by September 1st, 2013.
- ❑ Regulations must contain requirements of (§ 76-8-107, MCA).
- ❑ 30 day notice prior to public hearing to consider comment and adopt/modify regulations.
- ❑ Governing body can increase number at which local review begins for all or certain types of BLR by majority vote (§§ 76-8-108(1)(a) and (b), MCA)
- ❑ Governing body can adopt additional regulations for local review by supermajority vote (§ 76-8-108(2), MCA)

MONTANA COMMUNITY TECHNICAL ASSISTANCE PROGRAM

Allison Mouch, AICP
Planning Bureau Chief

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SUBDIVISION SECTION

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