Legislative Audit Division
Performance Audit Summary

Subdivision Approval Process

June 2000

Introduction

The Legislative Audit Committee asked for a performance audit of the subdivision approval process. The subdivision approval process is administered jointly through local governments and the Montana Department of Environmental Quality (DEQ). The process is governed by the Montana Subdivision and Platting Act (Platting Act) and the Montana Sanitation in Subdivisions Act (Sanitation Act). Performance audit work concentrated on the Sanitation Act. Areas relating to growth management, land use policies, zoning, or comprehensive planning were not evaluated. We directed our efforts to the following two areas:

1. How efficient is the current subdivision approval process?
2. Are statutory changes needed to improve the process?

Summary of Findings

- - Duplication of effort should be eliminated and local health officials should be the approval authority for subdivision sanitation reviews.

- - DEQ's role should be redirected toward developing procedures, updating regulations, and providing technical assistance to ensure a venue for statewide consistency.

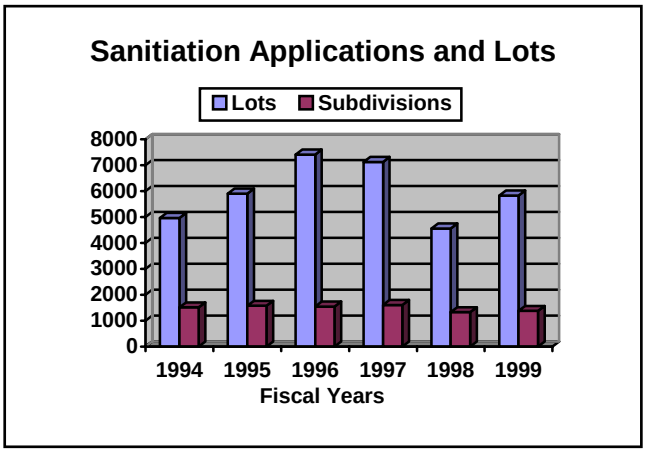
- - Redirect fee support to the local level.

- - Legislative clarification is needed on sanitation review time limits as to what constitutes 60 days.

- - Local governments expressed concern that many common boundary relocations and family transfers appear to be for the purpose of by-passing formal subdivision review of the land division when the land is quickly sold to a third party. In Gallatin County documentation indicated the median length of time to sell the land after a family transfer is 4.3 months.

Montana Subdivision and Platting Act (Platting Act) Activity

The amount of subdivision activity occurring under the Sanitation Act in Montana peaked during 1996 with over 1,500 applications for 7,000+ lots. During fiscal year 1998-99, there were 1,378 applications for new subdivisions creating 5,829 new lots. Lots created under the Sanitation Act are less than 20 acres.



Ninety percent of the subdivision activity that occurred in fiscal year 1998-99 was related to minor subdivisions -- those creating five or fewer lots. In fiscal years 1997-98 and 1998-99, the majority of proposals for new subdivisions originated in the following counties: Flathead, Ravalli, Missoula, Lincoln, Gallatin, Lake, and Yellowstone.

Duplication of Effort Occurs in Sanitation Reviews

During the subdivision approval process, reviews are completed to determine the type and size of sanitation systems needed. Currently, local health officials and Department of Environmental Quality (DEQ) staff complete similar reviews. At the local level, health officials visit proposed sites, meet with developers/consultants, provide information at public hearings, and work with other local agencies when reviewing sanitation systems. Local reviews confirm site conditions and site tests for reasonableness. Local officials display a familiarity with state program requirements as well as knowledge of local regulations and special conditions impacting subdivision proposals. Local officials review applications to determine completeness and deny applications when information is incomplete or does not ensure compliance with state and local regulations. Counties with limited resources have the option to address sanitation reviews through contracts with other counties or qualified private consultants.

DEQ's evaluation of proposed subdivision sanitation systems is generally a paperwork review. Its analysis is based on information received after local officials conduct their review and make a determination whether standards were met. DEQ staff does not visit proposed sites and/or observe site evaluation tests.

- In the 85 files we reviewed, 41 percent were initially denied for noncompliance with non-degradation calculations. However, 100 percent of those files were given final approval after providing new documentation or new data.
- Sanitation approval certificates do not generally reflect DEQ review.
- DEQ specifications or denials were not always followed or implemented.
- DEQ review accounted for 64 days of the 98 days average processing time.
- DEQ denials were issued in 78 percent of the files reviewed. However, the majority of these denials related to non-sanitation issues such as the need for property legal descriptions. In all cases, DEQ approval was eventually obtained.

Overall, it appears DEQ reviews are not adding value to the sanitation review and approval process. The current dual review creates time delays. ***We recommend the duplication of effort should be eliminated and local health officials should be the approval authority for subdivision sanitation reviews. These changes should be taken in conjunction with our other recommendations to strengthen the overall subdivision approval process.***

Change DEQ Role

Eliminating the Department of Environmental Quality's (DEQ) review in the sanitation review process would significantly change DEQ's current role and the fee amount needed to support it. ***DEQ's role should be redirected toward developing procedures, updating regulations, and providing technical assistance to ensure a venue for statewide consistency. DEQ will also need to rethink the level of resources needed to support these responsibilities related to Sanitation Act activities***. A funding structure must be in place to ensure local officials can pursue all options to conduct sanitation reviews.

By eliminating DEQ's review, the majority of review costs are shifted to the counties. Currently, sanitation review fees are established by DEQ in ARMs and are primarily used to fund DEQ reviews. In the past two fiscal years, the department collected between $500,000 and $700,000 in fees. Total disbursement to counties ranged from $136,000 to $183,000. In fiscal year 1998-99, seventeen counties conducted sanitation reviews for 82 percent of the subdivision applications submitted. However, these counties received limited funding support. In addition, local officials are generally not charging a local sanitation review fee to separately fund their own operations.

Although a portion of sanitation review fees could continue to fund DEQ Sanitation Act activities, ***we believe the legislature should redirect fee support to the local level.*** The following table is one approximate scenario to changing DEQ resource levels and allocating fee revenue differently.

	Current DEQ Resource Allocation	*DEQ Resources with 4 FTE*	*DEQ Resources with 3 FTE*
Personal Services	$300,000	$184,000	$138,000
Operating Costs	$111,000	$ 51,000	$ 39,000
Local Funding Support	$183,000	$358,000	$415,000

Without local funding support, the recommendations to streamline this process and eliminate DEQ's review role cannot be implemented.

Legislative Clarification Needed on Review Time Frames

The law requires the reviewing authority take final action on proposed sanitation plans within 60 days unless an environmental impact statement is required; then the deadline may be increased to 120 days. These time frames in the Sanitation Act do not allow for review flexibility. Statute does not address incomplete applications, requests for additional information, or even when the clock should start or stop due to the need for additional information. We found the actual average length of time for processing sanitation reviews for sampled files was 98 days. In some cases, final approval was not received for over 200 days. Timely reviews were also the primary concern raised by landowners and developers because application delays increase project costs. Regardless of who is completing these reviews, DEQ or local officials, this is an area that should be addressed. ***We believe legislative clarification is needed on sanitation review time limits as to what constitutes 60 days.***

For a complete copy of the report (00P-01) or for further information contact the Legislative Audit Division at 406-444-3122; e-mail to lad@mt.gov; or check the web site at http://leg.mt.gov/audit.