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RESOLUTION 2024-03

SUBDIVISION APPLICATIONS REGARDING LEGAL AVAILABILITY OF WATER & WASTEWATER FACILITIES

It is the intent of the Montana Association of counties to clarify laws pertaining to the review of subdivision applications by counties, specifically in the realm of determining the legal availability of water, because current statutes require counties to review subdivision applications; but counties do not have the authority to approve or enforce the legal right to water as the Montana Department of Natural Resources and Conservation does; and counties do not have the authority to review wastewater facilities that the Montana Department of Environmental Quality reviews.

WHEREAS, counties are required by MCA 76-3-101 through MCA 76-3-625, also known as the Montana Subdivision and Platting Act (MSPA), to promote the public health, safety, and general welfare by regulating the subdivision of land; and

WHEREAS, the MSPA sets forth the requirements of an environmental assessment but does not provide guidance to counties on determining the sufficiency of an environmental assessment; and

WHEREAS, the MSPA does not limit the liability to counties if an environmental assessment is later deemed insufficient; and

WHEREAS, the Montana Department of Environmental Quality (DEQ) reviews wastewater facilities pursuant to MCA Title 76, Chapter 4, and the MSPA does not require counties to complete the same review as the DEQ review; and

WHEREAS, the Montana Department of Natural Resources and Conservation (DNRC) determines the legal availability of water pursuant to the Montana Water Use Act, MCA 85- 2-101 through 85-2-1001, and the MSPA does not require counties to complete the same determination; and

WHEREAS, a recent district court decision held that counties must determine the legal availability of water for subdivisions and that counties must review wastewater facilities that DEQ reviews.

NOW, THEREFORE BE IT RESOLVED, that the Montana Association of Counties seeks to clarify the law by expressly authorizing local governments in Montana to collect information on new water supply or wastewater facilities pursuant to the MSPA in the subdivision application process and transmit that information to DEQ for review.

SPONSOR	BROADWATER COUNTY
REFERRED TO	LAND USE, PLANNING & DEVELOPMENT (LUPD) COMMITTEE
ADOPTED BY MEMBERSHIP	MACO'S 115TH ANNUAL CONFERENCE – SEPTEMBER 18, 2024