

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R020-15

Effective October 27, 2015

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted-material~~] is material to be omitted.

AUTHORITY: §§1-6, NRS 445A.855 and 445A.860.

A REGULATION relating to land use planning; revising provisions relating to the period during which a developer may submit certain plans for improvements for a proposed subdivision; revising provisions relating to analyses of water quality; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the State Environmental Commission to adopt standards for drinking water and regulations for community and public water systems. (NRS 445A.855, 445A.860) **Section 2** of this regulation provides that a developer of a subdivision may, before submitting a final map of a proposed subdivision, submit to the Division of Environmental Protection of the State Department of Conservation and Natural Resources or the district board of health a plan for improvements which shows the systems of water supply and sewage disposal for the area to be developed. If a developer submits the plan for improvements before submitting the final map, **section 4** of this regulation provides that the developer may begin construction once the plan for improvements is approved by the Division or local agency. **Section 5** of this regulation requires a developer to submit to the Division or local agency the quantity of water necessary to conduct analyses of water quality.

Section 1. NAC 278.260 is hereby amended to read as follows:

278.260 A developer shall submit all the following items of information to the Division or local agency for its review of a tentative map:

1. A map showing the topographic features of the subdivision, including contours at intervals of 2 feet for slopes of 10 percent or less and intervals of 5 feet for slopes of over 10 percent.
2. Two copies of the map showing the tentative design of the subdivision, including the arrangement of lots, the alignment of roads and easements.
3. If a system for subsurface disposal of sewage will be used in the subdivision, a report on the soil, including the types of soil, a table showing seasonal high water levels and the rate of percolation at the depth of any proposed system for absorption by soil.
4. A statement of the type of water system to be used and the water source, for example, private wells or a public water system.
5. Unless water for the subdivision is to be supplied from an existing public water system, a report of the analyses , *performed pursuant to NAC 278.390*, of four ~~1-gallon~~ samples taken in or adjacent to the subdivision from different wells. The analyses must show that the water meets the standards prescribed in NAC 445A.450 to 445A.492, inclusive.
6. A map of the 100-year floodplain for the applicable area. The map must have been prepared by recognized methods or by an appropriate governmental agency for those areas subject to flooding.
7. A description of the subdivision in terms of 40-acre parts of a designated section, township and range, or any other description which provides a positive identification of the location of the subdivision.
8. A map of the vicinity of the subdivision, showing the location of the proposed subdivision relative to the nearest city or major highway.

9. The names and addresses of the owners and developers of the subdivision.

10. A master plan showing the future development and intended use of all land under the ownership or control of the developer in the vicinity of the proposed subdivision.

Sec. 2. NAC 278.290 is hereby amended to read as follows:

278.290 ~~{When}~~

*1. Except as otherwise provided in subsection 2, when a developer submits a final map of his or her subdivision for review, the developer must also provide a complete plan **for improvements** showing the systems of water supply and sewage disposal for the area to be developed.*

2. A developer may submit a plan for improvements for review before submitting the final map. If such a plan for improvements is approved before the final map is submitted:

(a) The plan for improvements must be resubmitted for review to the Division or local agency if any changes are made to the plan before the final map is submitted. The changes must be clearly identified on the plan when it is resubmitted to the Division or local agency.

(b) When submitting the final map for review, the developer must include a certification by the professional engineer of record for the subdivision stating that no changes have been made to the plan for improvements, except for any changes approved in accordance with paragraph (a).

Sec. 3. NAC 278.330 is hereby amended to read as follows:

278.330 1. The Division or local agency shall review and either approve or disapprove the ~~{plans for improvements shown on the}~~ final map and related plans *or the plan for*

improvements submitted in accordance with subsection 2 of NAC 278.290 within 30 days after receipt of the map and *related plans* ~~{}~~ *or the plan for improvements.*

2. The Division or local agency shall give written notice of its approval or disapproval to the developer. If the Division or local agency disapproves the map or *related plans* ~~{}~~ *or the plan for improvements*, its notice must include the reasons for its action.

3. If the developer fails to record an approved final map within the time allowed by NRS 278.360, the developer must resubmit a tentative map through the governing body to the Division or local agency for its review and approval.

Sec. 4. NAC 278.340 is hereby amended to read as follows:

278.340 The developer shall not perform any construction on the site of a subdivision, except that necessary to evaluate the subdivision, until the Division or local agency approves the ~~{final map}~~ *plan for improvements.*

Sec. 5. NAC 278.390 is hereby amended to read as follows:

278.390 Analyses of water quality may be performed in the State Public Health Laboratory, or any other laboratory certified by the ~~{State Health Officer}~~ *Division*, upon the developer's submission, *in sample containers that are appropriate for such analyses*, of an adequately identified sample consisting of ~~{1-gallon-of-water}~~ *the volume of water necessary to conduct analyses of water quality.*

Sec. 6. NAC 278.510 is hereby amended to read as follows:

278.510 1. Before the developer begins construction of any improvements based on the final map ~~{}~~ *or the plan for improvements*, the developer must be able to show proof that ~~{the}~~ :

(a) The map includes a certificate of approval issued by the Division or local agency pursuant to NRS 278.377 and NAC 278.310 [†] ; or

(b) The plan for improvements includes a written notice of approval issued by the Division or local agency in accordance with subsection 2 of NAC 278.330.

↪ The proof must be available at the jobsite.

2. If the proof is not available at the jobsite, the health authority or other enforcing officer shall issue an order to the developer to cease and desist until such time as proper proof is available.

3. If the developer fails to comply with the order to cease and desist, the enforcing officer shall seek injunctive relief through a court of competent jurisdiction.

Permanent Regulation - Informational Statement

A Regulation Relating to the Bureau of Corrective Actions

Legislative Review of Adopted Regulations as Required
by Administrative Procedures Act, NRS 233B.066

State Environmental Commission (SEC) LCB File No: R020-15

Regulation R020-15:

The Nevada State Environmental Commission adopted regulatory amendments governing the subdivision process found in Chapter 278 of the Nevada Administrative Code (NAC). Statutory authority to adopt these amendments is contained in NRS 445A.855 and 445A.860.

The regulation amendments to NAC 278 serve several functions:

- 1) A temporary amendment related to this regulation was adopted by the State Environmental Commission on May 6, 2015. The primary amendment addresses NAC 278.340. Prior to May 6, 2015, the existing regulation prohibited *any* construction from occurring at a proposed subdivision until a Final Map was approved. An alternative was requested by interested parties to consider allowing mass grading of a proposed subdivision earlier in the review and approval process. The Amendments were crafted to ensure the protection of public health, and to maintain a mechanism to ensure that land grading will not negatively impact the engineering design of water and wastewater infrastructure. The adopted regulation permits grading and construction to begin upon Agency review and approval of water and wastewater utility engineering design "plan for improvements," without having to wait for Final Map approval.

Sections 1, 2 and 5 of the regulation also pertain to Final Map and improvement plan approval processes that are associated with NAC 278.340.

- 2) Section 4 of the adopted regulation cleans up an old reference to the State Health Officer's certification of laboratories. This function is now performed by the Division of Environmental Protection, Bureau of Safe Drinking Water. Section 6 proposes a similar consistent amendment.

1. Need for Regulation:

The NDEP, the Washoe County Health District and the Southern Nevada Health District

(the Agencies) have an existing role in review and approval of subdivisions in Nevada. The programs regulate drinking water supply and wastewater collection and treatment, and are responsible for review and approval of subdivision maps and utility plans for improvement for conformance with engineering design regulations. The regulatory process requires a developer to submit a subdivision Tentative Map for review and approval, followed by later submittal of a Final Map for review and approval. Prior to the May 6, 2015 adoption of the Temporary Amendments, detailed engineering plans for utility improvement were required to be submitted with the Final Map; they now may be submitted for review and approval separate from the Final Map.

Prior to the May 6, 2015 adoption of the Temporary Amendments, regulation in NAC 278.340 prohibited any construction from occurring prior to the developer receiving Agency approval of a subdivision Final Map. In 2014, interested parties approached NDEP with a desire to be able to perform mass grading for land development projects before the Final Map is approved. The NDEP and Washoe County were concerned that checks and balances must remain in place to ensure that grading of land would not impede proper engineering design of water and wastewater infrastructure for protection of public health. Under the new process provided in the regulation amendment, a developer may choose to submit a utility plan for improvements before submittal of a Final Map for a subdivision. The regulations permit the developer to begin grading and utility construction on the site prior to Final Map approval.

In order to prevent an increased project tracking burden on the Agencies, the adopted regulation provides that if the developer chooses to use this process instead of submitting utility improvement plans with the subdivision Final Map, then the developer shall certify that nothing was changed on the improvement plans subsequent to Agency approval. Any changes to the engineering design that occur prior to Final Map approval will require re-submittal of plans for review and approval, with specific identification of the changes to facilitate Agency review.

2. A description of how public comment was solicited, a summary of public response and an explanation of how other interested persons may obtain a copy of the summary.

On August 27, 2015 NDEP conducted a public workshop on Regulation R020-15. The workshop was held in Carson City and video conferenced to Las Vegas. The Carson City workshop was located at the Bryan Building located at 901 S. Stewart Street.

Three (3) members of the public attended the workshop in Carson City. There were no workshop attendees in Las Vegas.

Questions from the public presented at the workshop were addressed by NDEP staff; summary minutes of the workshop are posted on the SEC website at: http://www.sec.nv.gov/main/hearing_1015.htm .

Following the workshop, the SEC held a formal regulatory hearing on October 14, 2015 at the Nevada Legislative Building located at 401 South Carson Street, Room 2135. A public notice for the regulatory meeting was posted at the meeting location, at the State Library in Carson City, at the Office of the Division of Environmental Protection in Las Vegas, at the Division of Minerals in Carson City, at the Department of Wildlife, on the LCB website, on the Division of Administration website and on the SEC website.

Copies of the agenda, the public notice, and the proposed permanent regulation R020-15 were also made available at all public libraries throughout the state as well as to individuals on the SEC mailing list.

The public notice for the proposed regulation was published in the Las Vegas Review Journal and Reno Gazette Journal newspapers once a week for three consecutive weeks prior to the SEC regulatory meeting. Other information about this regulation was made available on the SEC website at: http://www.sec.nv.gov/main/hearing_1015.htm .

3. The number of persons who attended the SEC Regulatory Hearing:

- (a) Attended October 14, 2015 hearing: 21 (approximately)
- (b) Testified on this Petition at the hearing: 0
- (c) Submitted to the agency written comments: 1

The name of the person who submitted written comments was not present at the hearing:

Daniel Rotter, P.E., Engineering Manager
Carson City Public Works
3505 Butti Way
Carson City, NV 89701
(775) 283-7084

Mr. Rotter stated in his comments that Carson City supported making the temporary regulations permanent. He further stated that he appreciated the Bureau's effort towards involving the local municipalities and believed that it was a good combined effort.

4. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses through e-mail, public workshops and at the October 14, 2015 SEC hearing as noted in number 2 above.

5. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulation was adopted with changes as noted in the regulation erratum. The changes were non substantive and LCB concurred.

6. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.

Regulated Business/Industry. The regulation will have no economic effect on Regulated Businesses/Industries.

Public. The regulation will have no economic effect on the public.

7. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the Division for enforcement of the regulation.

8. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The regulation does not overlap or duplicate any regulations of other state or government agencies.

9. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

The regulation is no more stringent than what is established by federal law.

10. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The regulation does not address fees.