

Chapter 278 of NAC

ADOPTED TEMPORARY REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION

LCB File No. T008-15

(Filed with the Secretary of State on June 10, 2015)

Updated March 12, 2015

P2014-11

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

AUTHORITY: NRS 439.150, 439.200, 445A.855, and 445A.860.

Section 1. NAC 278.290 is hereby amended to read as follows:

NAC 278.290 When a developer submits a final map of his or her subdivision for review, the developer must also provide a complete plan showing the systems of water supply and sewage disposal for the area to be developed. *If improvement plans were approved by the Division or local agency prior to final map submittal, the developer shall provide certification by the Professional Engineer of record that the improvement plans were not altered subsequent to approval. Any changes to approved improvement plans require re-submittal for review and approval by the Division or local agency with clear indication on the plans regarding all changes.*

Sec. 2. NAC 278.330 is hereby amended to read as follows:

NAC 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~~ *or* related *improvement* plans within 30 days after receipt of the map ~~and~~ *or* plans.

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 plans, 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. 3. NAC 278.340 is hereby amended to read as follows:

NAC 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}~~ *improvement plans to be associated with a final map.*

Sec. 4. NAC 278.390 is hereby amended to read as follows:

NAC 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 of an adequately identified sample consisting of ~~{1 gallon of water}~~ *a volume of water necessary to conduct drinking water quality analyses, in sample containers appropriate for the analyses.*

Sec. 5. NAC 278.490 is hereby amended to read as follows:

NAC 278.490 The following fees are prescribed for services performed by the Division:

For reviewing a tentative map..... \$400

Plus \$3 for each building lot shown on the map.

For reviewing improvement plans..... 300

For reviewing a final map..... ~~{400}~~ *100*

Plus \$3 for each building lot shown on the final map.

For a preliminary evaluation of a plant for water treatment for a subdivision, an additional fee of.....	50
For requesting and considering information which the subdivider has failed to submit in accordance with NAC 278.260 to 278.370, inclusive, each request	100

Temporary Regulation – Informational Statement

A Temporary Regulation Related to the Safe Drinking Water Bureau

Submittal to the Secretary of State as Required
by Administrative Procedure Act, NRS 233B.070.2

State Environmental Commission (SEC)
LCB File No: T008-15

Temporary Regulation P2014-11:

On May 6, 2015, the SEC adopted a temporary regulation modification related to the NDEP Bureau of Safe Drinking Water. The proposed temporary regulation amendment addresses NAC Chapter 278. The NDEP considered this amendment at the request of the Builder’s Association of Northern Nevada and the Washoe County Health District. The existing regulation prohibits any construction from occurring at a proposed subdivision until a Final Map is approved. An alternative was requested to consider allowing mass grading of a proposed subdivision earlier in the review and approval process. To ensure the protection of public health, the NDEP and Washoe County wanted to maintain mechanisms to ensure that land grading would not negatively impact the engineering design of water and wastewater infrastructure. The proposed amendment will permit grading and construction to begin upon Agency review and approval of water and wastewater utility engineering design “improvement plans” prior to Final Map approval.

1. Need for Regulation:

The Nevada Division of Environmental Protection (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 improvement plans for conformance with engineering design regulations. The current 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. The Final Map submittal includes detailed engineered plans for utility improvements (improvement plans).

Current regulation in NAC 278.340 prohibits any construction from occurring prior to the developer receiving Agency approval of a subdivision Final Map. The Builder’s Association of Northern Nevada approached the Washoe County Health District with a desire to be able to perform mass grading for land development projects before the Final Map is approved by the health authority. The NDEP and the 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 proposed process provided in the regulation amendment, a developer may choose to submit a utility improvement

plan before submittal of a Final Map for a subdivision. The regulations, as drafted, would 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 amendment proposes 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 November 18, 2014, NDEP conducted a public workshop on Proposed Draft Temporary Regulation P2014-11. The workshop was held in Carson City and video-conferenced in Las Vegas. The meeting location in Carson City was at the Bryan Building located at 901 S. Stewart Street (Tahoe Conference Room) and the location of the videoconference in Las Vegas was in the NDEP facility at 2030 East Flamingo Rd. Suite 230.

Three (3) members of the public commented at the workshop. Those people were:

Walter Ross, Southern Nevada Health District
Aaron West, Builders Association of Western Nevada
Doa Meade, Las Vegas Valley Water District

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://sec.nv.gov/main/hearing_0515.htm .

Following the workshop, the SEC held a formal regulatory hearing on May 6, 2015 at the Nevada Department of Conservation and Natural Resources, 901 South Stewart Street, Carson City, Nevada. A public notice and agenda 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 Division 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 temporary regulation P2014-11 were also made available at all public libraries throughout the state as well as to individuals on the SEC mailing.

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://sec.nv.gov/main/hearing_0515.htm .

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

- (a) Attended May 6, 2015 hearing: 12 (approximately)
- (b) Testified on this Petition at the hearing: 3
- (c) Submitted to the agency written comments: 5

Names of the people who submitted written comments who were not present at the hearing:

Daniel Rotter, Engineering Manager
Carson City Public Works
3505 Butti Way, Carson City, NV 89701
(775) 283-7084
DRotter@carson.org

Joe Pantuso, Affairs Specialist
Southern Nevada Homebuilders Association
4175 S. Riley St. Suite 100, Las Vegas, NV 89147
(702) 794-0117
joe@snhba.org

Erik Nilssen
Douglas County
1616 8th St., Minden, NV 89423
(775) 782-9063
ENilssen@douglasnv.us

Kevin Dick, District Health Officer
Washoe County Health District
(775) 328-2416
kdick@washoecounty.us

Eleanor Lockwood, County Manager
Churchill County
155 N. Taylor St. Suite 153, Fallon, NV
(775) 423-5136
countymanager@churchillcounty.org

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, a public workshop and at the May 6, 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 temporary regulation was adopted without changes as the SEC determined that the comment received did not necessitate a change (see Number 2 above). All comments received prior to, and at the SEC hearing, were in support of the amendments.

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

(a) Regulated Business/Industry. The proposed amendment will involve the Agencies in the review and approval process earlier in the planning and design timeline and will provide more time for addressing engineering concerns before a developer submits a the Final Map, resulting in both immediate and long-term beneficial effects. The proposal would allow developers to begin grading and utility construction earlier, if desired, potentially moving development along more quickly. No adverse effects are anticipated.

(b) Public. The proposed amendment is not expected to have an economic effect on the public.

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

There will be no additional cost to the Agency for enforcement. The proposed amendment only changes the process of document submittal and review in order to be responsive to land developers who wish to perform grading and construction prior to Final Map approval for a subdivision. The amendment does not change the overall agency program requirements.

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.

This regulation amendment will not overlap or duplicate any Local, State or Federal regulation. The Division and the local health authorities operate under the same provisions.

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

This regulation amendment will not be more stringent than federal regulations.

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.

This regulation amendment does not propose new or increased fees. Section 5 of the amendment proposes to split an existing fee into two parts to reflect the proposed improvement plan and Final Map processing sequence. The respective level of effort involved in each portion of the plan review process is reflected in the split.