



**MONTANA
ADMINISTRATIVE
REGISTER**



DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTION

MAR NOTICE NO. 2026-319.2

Summary

The department adopts NEW RULES 1 through 4 to implement Section 1(2) of Senate Bill 553, (2025), detailing the criteria and process for assessing impact fees on platted residential developments.

Previous Notice(s) and Hearing Information

On July 10, 2026, the department published MAR Notice No. 2026-319.1 regarding the public hearing on the proposed adoption of the above-stated rules in the 2026 Montana Administrative Register, Issue No. 13. An in-person and virtual hearing was held July 30, 2026. Comments were received by the comment deadline of August 7, 2026.

Final Rulemaking Action – Effective September 26, 2026

ADOPT AS PROPOSED

The agency has adopted the following rule as proposed:

NEW RULE 4 (18.5.204) AGREEMENTS WITH LOCAL GOVERNMENTS

ADOPT WITH CHANGES

The agency has adopted the following rules with changes from the original proposal, stricken matter interlined, new matter underlined:

NEW RULE 1 (18.5.201) DEFINITIONS

- (1) "Background traffic" means existing and forecast traffic on the roadway network from all sources other than the proposed development, including normal growth and other approved developments, represented by traffic volumes on roadways and intersections.
- (2) "Beneficiary" means any ~~permit~~ applicant for a department approach or encroachment permit that receives a benefit from a transportation mitigation through this rule, including improving capacity, safety, or level of service, and that may be allocated a share of the mitigation cost.
- (3) "Capacity" means the maximum traffic flow that can be accommodated in a highway facility during a given period under prevailing roadway, traffic, and control conditions.
- (4) "Department" means the Montana Department of Transportation.
- (4~~5~~) "Designated impact area (DIA)" means a specific segment of the state highway system including a mitigation node(s) as established by a traffic impact study.
- (5~~6~~) "Developer" means any person, partnership, corporation, or other private entity, or its authorized agent, that initiates a development requiring a permit and approval under applicable subdivision, zoning, or development regulations.
- (6~~7~~) "Development" means a platted project that constructs, renovates, or installs building(s) or other improvements by a developer on any parcel adjacent to or accessing a segment of state highway, including changes in how a building, structure, or the land is used, and may be residential, commercial, or mixed-use in nature requiring a department approach or encroachment permit.
- (7~~8~~) "Impact fee" means an exaction in the form of a fee charged by the department as a condition of approving a permit and where the fee is used to pay for mitigations needed as a result of that development, which is the allocated future cost share of present day intersection or other improvements.
- (9) "Intersection control evaluation" means a traffic engineering process used to assess how well a roadway intersection operates, and to determine what type of traffic control is most appropriate.
- (8~~10~~) "Lead party" means the entity constructing a mitigation eligible for reimbursement.
- (11) "Local government" means a municipality, a county, or a consolidated city-county government, as defined in 2-1-601, MCA.
- (9~~12~~) "Mitigation" or "mitigate" means action taken to offset or compensate for the impacts a development or infrastructure project has on state highway system resources, such as roadways, intersections, and pedestrian crossings.
- (13) "Mitigation node" means a single mitigation, built by a developer on the state highway system to resolve an operational deficiency identified as a result of the

development that may not have been captured in the developer's traffic impact study.

- (~~10~~14) "Mixed-use" means a development that includes both residential and commercial lots, whether as part of a subdivision plat, boundary relocation, or other development approved by a local government.
- (~~11~~15) "Node" means any location on the state highway system route, including any highway mitigation proposed by a developer to mitigate impact(s) caused by the development.
- (~~15~~16) "Node method formula" means the formula calculation described in POL 6-05-001 Node Method Formula Policy and Procedure.
- (~~12~~17) "Permit" means an encroachment or approach permit issued by the department.
- (~~13~~18) "Proportionate share" means the share of a mitigation cost for any node attributable to the service demands and needs created by a developer and subsequent beneficiaries.
- (~~14~~19) "Residential" means the use of land or type of development for housing, including single or multi-family dwellings, related structures, and facilities, new construction on an existing development, or changes in use that increase the number of housing units.
- (20) "State highway system" means "commission-designated highway systems" and "state highways" as defined in 60-1-103, MCA.
- (~~15~~21) "Traffic impact study (TIS)" means a technical evaluation conducted to forecast how a proposed development will alter traffic patterns on the state highway system.
- (~~16~~22) "Trip" means a single, one-way vehicle or multimodal movement that either starts or ends at a specific project site. One visit to a site is considered two trips: one to and one leaving the site.

Authorizing statute(s): 76-3-512, MCA

Implementing statute(s): 76-3-512, MCA

NEW RULE 2 (18.5.202) MITIGATION REIMBURSEMENT MODELS

- (1) The department, in consultation with the developer, shall determine which of the following models is appropriate for a proposed development:
 - (a) Developer Constructed Mitigation ~~Project~~ Eligible for Reimbursement Criteria:

- (i) Before a local government approves a preliminary plat, boundary relocation, or other type of development, the developer, as the lead party, must submit a permit application to the department that includes a request to establish the reimbursement criteria, as set forth in this subchapter.
- (ii) To be eligible for reimbursement, the proposed mitigation ~~project~~ must:
 - (A) demonstrate that the need for the proposed mitigation ~~project~~ is due to the proposed residential development;
 - (B) mitigate adverse impact(s) ~~to~~ of the proposed residential development ~~and~~ to the state highway system;
 - (C) provide additional capacity to the node(s) beyond traffic volumes from the development and existing background traffic, as determined by a TIS;
 - (D) show, based on a TIS, that more than half of all trips leaving the development are from residential use of the development;
 - (E) be constructed on real property or right-of-way that the developer owns or will acquire; and
 - (F) comply with the provisions of this subchapter.
- (b) Department Constructed Mitigation ~~Project~~ Eligible for Reimbursement Criteria:
 - (i) ~~If the department, in its sole discretion, determines that the mitigation will have a significant impact on the state highway system, it may modify a project in its Tentative Construction Plan, found on the department website, to include mitigation related to a developer's project.~~
 - (ii) The mitigation ~~project~~ must:
 - (A) demonstrate that the need for the ~~project~~ mitigation is due to the proposed residential development;
 - (B) mitigate adverse impact(s) ~~to~~ of the proposed residential development ~~and~~ to the state highway system;
 - (C) provide additional capacity to the node(s) beyond traffic volumes from the development and existing background traffic, as determined by a TIS;
 - (D) show, based on a TIS, that more than half of all trips leaving the development are from residential use of the development.
 - (iii) The developer shall agree:

- (A) that the department is the lead party;
 - (B) to pay its proportionate share of all eligible costs attributable to the mitigation to the department; and
 - (C) to comply with the provisions of this subchapter.
- (c) Department Constructed Future Mitigation ~~Project~~ Eligible for Reimbursement Criteria:
 - (i) The department may, ~~in its sole discretion,~~ agree to design, finance, and construct a project on the state highway system to mitigate impacts attributable to a developer who is seeking a permit.
 - (ii) The mitigation ~~project~~ must:
 - (A) demonstrate that the need for the project is due to the proposed residential development;
 - (B) mitigate adverse impact(s) to the proposed residential development and to the state highway system;
 - (C) provide additional capacity to the node(s) beyond traffic volumes from the development and existing background traffic, as determined by a TIS;
 - (D) show, based on a TIS, that more than half of all trips leaving the development are from residential use of the development.
 - (iii) The developer shall agree:
 - (A) that the department is the lead party;
 - (B) to pay its proportionate share of all eligible costs attributable to the mitigation to the department; and
 - (C) to comply with the provisions of this subchapter.
- (2) The department adopts by reference the current POL 6-05-001 Node Method Formula Policy and Procedure, as ~~posted~~ published on the department web page.
 - (a) ~~The~~ POL 6-05-001 Node Method Formula Policy and Procedure details the factors for each calculation and describes additional parameters including, but not limited to, beneficiary obligation and node life cycle.
 - (b) The department shall review ~~the~~ POL 6-05-001 Node Method Formula Policy and Procedure biennially, or when deficiencies are identified, to determine whether revisions are needed. If revisions are deemed necessary, the department shall convene a stakeholder group to provide input on the proposed revisions.

- (c) Developers and beneficiaries are responsible for referring to the POL 6-05-001 Node Method Formula Policy and Procedure when calculating project costs and reimbursement amounts.
- (d) Lead party eligibility for reimbursement is limited to the earliest of:
 - (i) a sunset date 20 years after the date the reimbursement is approved;
 - (ii) the date node capacity is reached; or
 - (iii) the date a new capital project is constructed at the intersection.

Authorizing statute(s): 76-3-512, MCA

Implementing statute(s): 76-3-512, MCA

NEW RULE 3 (18.5.203) TRAFFIC IMPACT STUDY AND DESIGNATED IMPACT AREA

- (1) The proportionate share shall be determined based on a TIS conducted by the developer or local government prior to preliminary plat approval or boundary relocation(s).
- (2) The TIS shall:
 - (a) be approved by the department;
 - (b) be provided by the party requesting a permit;
 - (c) be determined using the current edition of the ITE trip generation manual or department-approved standards;
 - (d) include a proportionate share calculation detailing how traffic volumes at each proposed mitigation node in the DIA are divided among the developer, the beneficiaries, and background traffic;
 - (e) determine the additional capacity available for beneficiaries at each node after mitigations ~~projects~~ are constructed.;
 - (f) contain an Intersection Control Evaluation (ICE) for each node, when applicable;
 - (g) propose DIA boundaries, if a DIA is not already established; and
 - (h) require a report of estimated eligible costs for each mitigation node.
- (3) The department shall establish a DIA, limited to routes on the state highway system, by considering:

- (a) a TIS that includes proposed DIA limits provided by the developer, and approved by the department;
 - (b) input from affected local government(s); and
 - (c) public comment.
- (4) Notice of a proposed DIA shall explain how, where, and by when to submit comments, and shall be published in, or provided to, any or all of the following:
 - (a) a newspaper of general circulation in the community where the DIA is proposed or located,
 - (b) the department website and social media pages;
 - (c) gathering places in the community where the proposed DIA is located; and
 - (d) developers ~~and~~ beneficiaries, and local governments with a known interest in the area.
- (5) Once established, the DIA shall be recorded with the applicable County Clerk and Recorder, and notifications will be provided by the department to landowners with properties adjacent to the DIA, which ~~impacted parties~~ shall, at a minimum:
 - (a) describe the location and boundaries of the DIA;
 - (b) identify the beneficiary reimbursement model used to determine payment;
 - (c) provide instructions for making beneficiary reimbursement payments to the developer;
 - (d) include directions for providing proof to the department that the beneficiary reimbursement payment has been made; and
 - (e) state that department approval of an affected landowner's future developments is dependent upon the payment of the assessed proportionate share.

Authorizing statute(s): 76-3-512, MCA

Implementing statute(s): 76-3-512, MCA

Statement of Reasons

The agency has considered the comments and testimony received. A summary of the comments received, and the agency's responses are as follows:

GENERAL COMMENTS ON THE RULES

Comment 1: Several commenters expressed concerns regarding the scope, applicability, and anticipated effect of the rules, and requested clarification regarding whether the rules are intended to take precedence over, or cause adverse impact to, a local jurisdiction's ability to assess fees and review and approve plan proposals.

Response 1: The department worked extensively with stakeholders and interest groups over several months to discuss goals, concerns, and ideas, and to collaboratively draft these rules to allocate a future cost share of present-day intersection or other improvements in locally approved and platted residential developments to reduce the undue hardship and associated cost barriers for residential developments.

The rules are intended to provide an equitable and predictable process for developers and future beneficiaries when planning residential developments adjacent to, or accessed by, the state highway system, consistent with SB 553 (2025), codified as 76-3-512, MCA.

The rules are not intended to impose upon, or conflict with, any local jurisdiction's ability to assess fees or review and approve residential development projects, nor to impose undue burden on property owners.

The department provides the following additional responses to specific issues raised by commenters.

Comment 2: One commenter stated their appreciation at having been included in the stakeholder group that put together the early drafts of these rules.

Response 2: The department thanks the commenter for their participation, suggestions, and observations throughout the development of these rules.

Comment 3: Several commenters expressed support for the rules and department efforts to implement SB 553, Section 1(2), noting that the rules offer a balanced approach that supports residential growth, fairly addresses the cost of related offsite infrastructure, and advances highway safety measures.

Response 3: The department thanks the commenters for their support.

Comment 4: Several commenters expressed willingness to work with the department to further refine the rules before adoption, or during implementation of the rules.

Response 4: The department thanks the commenters for their support. The collaborative efforts of the stakeholder working groups were critical to drafting these rules, and there was discussion about continuing to discuss implementation and refinements after the adoption of these rules.

Comment 5: Several commenters noted that the proposed rules could overlap with local impact fees, payback districts, and other existing cost-sharing processes, potentially creating duplication and confusion, and requested clarification of how the department's requirements

relate to separate local impact fees; commenters also encouraged the department to conduct additional work with cities, counties, development professionals, and other stakeholders before final adoption.

Response 5: The department appreciates the comments. These rules do not duplicate or restrict local governments' existing authority to collect impact fees. These rules were developed through significant engagement with stakeholders, developers, and interest groups during multiple meetings held over several months, with the goal of providing equitability and predictability for developers and beneficiaries. The department recognizes that not all commenters participated in the rule-development process and therefore may not be familiar with the scenarios, exceptions, and qualifying factors considered. The department will continue working with stakeholders during implementation and will consider addressing identified concerns in future rulemakings.

Comment 6: A commenter asked if the department planned to consider the issuance of a zoning or building permit for residential projects such as apartment buildings that may not require subdivision review.

Response 6: The department appreciates the comment. Considering the issuance of a zoning or building permit for residential projects such as apartment buildings that may not require subdivision review is outside the scope of the authority granted by SB 553 to draft rules for "locally approved and platted residential developments."

Comment 7: Several commenters indicated that the rules should identify which development types are covered, including whether they apply to subdivisions, subdivision exemptions, zoning approvals, building permits, changes of use, RV parks, mobile-home parks, and projects that do not require subdivision review.

Response 7: These rules only apply to a residential developer who requests reimbursement in conjunction with an approach or encroachment permit issued by the department, and as such, the department believes that the definition of "development" in NEW RULE 1 (18.5.201) is sufficient. The department may consider revisions in a future rulemaking if a need is identified.

Comment 8: Several commenters expressed concern about whether the proposed rules can apply to local governments that operate under the Montana Land Use Planning Act (MLUPA), including asking whether the rules should expressly exclude MLUPA-compliant communities if the governing statutes do not apply to them, and whether the department has the authority to require local governments to delay statutory subdivision, zoning, or building-permit decisions while the department acts.

Response 8: Nothing in these rules requires the department to complete its review prior to local government approval. The department has no authority to require local governments to delay statutory subdivision, zoning, or building-permit decisions while the department acts. Further, the department believes that these rules will not delay subdivision, zoning, or building-

permit decisions, as these processes can take place outside of, and concurrent to, the department's review and approval process.

Comment 9: One commenter noted that the addition of an explicit applicability statement that clearly excludes MLUPA-compliant communities would be beneficial

Response 9: The department appreciates the comment and may consider it in a future rulemaking.

Comment 10: Several commenters expressed concern that the rules could create meaningful and significant delays when MDT review must be completed before a local government can act. A commenter asked why that was not addressed in the small-business analysis. Another commenter stated that local governments should not be placed in the position of enforcing an unclear process or delaying locally regulated development while applicants await an MDT determination

Response 10: As noted in Response 9, the department anticipates no meaningful delay to subdivision review, and as such it was not included in the small business impact analysis.

Comment 11: A commenter asked the department to acknowledge that local impact-fee revenue may be legally limited to particular facilities and service areas and may not be available to fund a department-constructed improvement.

Response 11: Nothing in these rules impacts or restricts the collection of impact fees by local governments. A reimbursement obligation only arises under these rules when a developer applies for a department approach or encroachment permit.

Comment 12: Several commenters noted the need for the addition of an applicability section in the rules to detail when, where, and to which development projects the requirements apply.

Response 12: The department appreciates the comments and may consider it in a future rulemaking.

Comment 13: A commenter noted the rule and the incorporated policy use important terms differently, including "mixed-use" and "trip."

Response 13: The department agrees and has made revisions to POL 6-05-001 Node Method Formula Policy and Procedure to ensure consistency between the rules and the policy.

Comment 14: A commenter stated that, likely due to the wording of 76-3-512, MCA, the rules as proposed only address subdivision development, an approach that leaves out a large contributor of travel demand through other development types. The commenter noted that the rules do not address how demand from background traffic or other new demand from non-subdivision development will contribute appropriate shares of funding and asked how the department will address that funding gap.

Response 14: Section 76-3-512, MCA, does not give the department rulemaking authority to address anything other than residential developments.

Comment 15: A commenter suggested that the department should provide time, training, guidance, and standard materials before the rules take effect.

Response 15: The suggestion is outside the scope of this rulemaking.

Comment 16: A commenter requested clarification on how the department will coordinate with existing local government impact fees, payback districts, and other revenue programs, and practices to avoid duplication, conflicts, and unnecessary review complexity.

Response 16: Nothing in these rules impacts or restricts how local governments determine impact fees. A developer's reimbursement obligation under these rules only arises when they apply to the department for an approach or encroachment permit within a designated impact area.

Comment 17: Several commenters noted local governments need a clear way to know when a project is subject to the rules.

Response 17: The department believes that the rules sufficiently detail the eligibility criteria for a development subject to these rules. Any development outside the criteria in these rules is not subject to them.

Comment 18: The department should be required to consult with affected jurisdictions early in the process, particularly where the rules intersect with local subdivision review, zoning, building permits, capital planning, transportation impact fees, existing infrastructure maintenance agreements, or infrastructure requirements.

Response 18: While the department believes that early coordination between the department and local governments is desirable and preferable, it has no authority to require local government consultation with the department, and as such, cannot include such a requirement in these rules.

Comment 19: One commenter recommended spelling out acronyms.

Response 19: NEW RULE 1 (18.5.201) defines the acronyms used throughout the rules.

Comment 20: A commenter asked how rural developers will obtain the technical expertise needed to complete traffic studies and other requirements outlined in the rule.

Response 20: This question is outside the scope of the rulemaking.

Comment 21: A commenter noted the small business impact statement acknowledges significant impacts, which are not answered by characterizing the costs.

Response 21: The cumulative impact amount for all persons subject to the impact fee and the number of persons affected under these rules cannot be estimated, as there is no way of knowing how many, or when, developers may embark on a residential project requiring a mitigation as part of the department's permitting process.

COMMENTS ON NEW RULE 1 (18.5.201)

Comment 22: Several commenters noted the need for additional definitions, and revising other definitions, to provide greater clarity.

Response 22: The department agrees and has made revisions to NEW RULE 1 (18.5.201).

Comment 23: A commenter asked that the definition of "beneficiary" make clear it applies only to transportation mitigation created under these rules.

Response 23: The department has added clarifying language to the definition.

Comment 24: Two commenters recommended that the definition for designated impact area (DIA) be revised to include the geographic area and affected properties or add a separate "impacted parties" definition.

Response 24: The department appreciates the comment but declines to revise the definition as it correctly identifies a DIA as limited to a state-highway segment and its right of way boundaries. It does not include parcels surrounding the identified segment and right-of-way boundaries.

Comment 25: Two commenters asked why mixed-use development is considered when the bill appears intended for only residential development.

Response 25: There is no definition for "residential development" in the bill, the Montana Code Annotated, or the Administrative Rules of Montana. The inclusion of mixed-use developments was agreed upon through substantial collaboration with stakeholders and interest groups as it allows a developer greater flexibility when planning projects.

Comment 26: A commenter stated that "impact fee as used in these rules does not conform to the requirements of or restrict any other impact fee established in conformance with 7-6-16 MCA."

Response 26: The definition of "impact fee" in these rules is distinguished from the definition found in 7-6-1601, MCA. The department has added clarifying language to the definition.

Comment 27: A commenter states that there is no description or definition of the land area to which an impact fee will be applied.

Response 27: The impact fee applies to the mitigation node. It does not apply to a specific land area. A definition of "mitigation node" has been added to NEW RULE 1 (18.5.201).

Comment 28: A commenter noted that the rule omits SB 553’s reference to locally approved and platted residential developments.

Response 28: The department agrees and has revised the definition of “impact fee” to refer to the bill text.

Comment 29: A commenter observed that the rules and policy do not define the physical limits of a mitigation node.

Response 29: A definition of “mitigation node” has been added to NEW RULE 1 (18.5.201) to provide greater clarity.

Comment 30: A commenter requested a definition for “project” as used in NEW RULE 2 (18.5.202).

Response 30: The department has replaced “project” with “mitigation” in the rules, where applicable, to provide greater clarity.

Comment 31: A commenter asked that the rules define “tentative construction plan,” as referenced in NEW RULE 2 (18.5.202), identify where it can be found, and direct readers to the process for adding or modifying projects.

Response 31: The tentative construction plan (TCP) is a five-year construction plan developed each year by the department, and approved by the Montana Transportation Commission, to schedule and prioritize state and federal highway, bridge, and pavement projects. The TCP is available for viewing on the department’s website. Any modifications to the TCP are subject to approval by the Transportation Commission. As the term is only used once in these rules, the department believes the inclusion of a definition in rule is unnecessary.

COMMENTS ON NEW RULE 2 (18.5.202)

Comment 32: A commenter asked if the department believes it has the authority to use these rules to influence the statutory review of subdivisions and other projects by local governments.

Response 32: The department does not have any authority to influence a local government’s statutory review of subdivisions.

Comment 33: A commenter suggested the rule would also likely result in a delay in the developer’s timeline for getting a project reviewed and approved and thus increased costs.

Response 33: The department disagrees with this characterization. These rules were developed with extensive input from stakeholders, including developers, who expressed the need for assurance and predictability to plan, budget, and schedule developments without unexpected delays or costs regarding the need for identified mitigation(s). See also Response 9.

Comment 34: A commenter requested that the department complete its initial review of an application permit before the applicant may submit a preliminary plat application to the local government.

Response 34: The department notes the request but declines to revise the rules. The department review process can take place outside of, and concurrently to, the local government review of a developer's preliminary plat application.

Comment 35: A commenter suggested moving the permit-application deadline to final-plat approval to reflect the traffic patterns more accurately in time because that is closest to when the impacts will occur.

Response 35: The department declines the suggested revision. The reimbursement process is not viable once a plat is finalized, as it limits the ability of both developers and the department to resolve issues and concerns.

Comment 36: A commenter noted the rules should clearly separate the points when a developer contacts the department, completes a traffic study, establishes a DIA, calculates a charge, and makes a payment.

Response 36: The department appreciates the comments and may consider it in a future rulemaking. Some of the identified actions may take place concurrently, and the department believes the rules and policy provide sufficient detail to navigate the process.

Comment 37: A commenter asked how public comment works if the traffic impact study must be filed with the subdivision application.

Response 37: The department does not solicit public comment on traffic impact studies.

Comment 38: A commenter said the rules could be interpreted to assume that every development requires a TIS.

Response 38: A TIS is only required for a development if the developer wants to be eligible for reimbursement under these rules.

Comment 39: Several commenters asked why the department included boundary line relocations in the list of developments subject to the impact fee when they are commonly subdivision exemptions with limited local review.

Response 39: The department appreciates the question. These rules are intended to provide direction to a developer for what is required to be eligible for reimbursement, noting that the reimbursement request is voluntary. These rules are not intended to exclude large developments operating with a boundary relocation from being eligible to apply for reimbursement under these rules.

Comment 40: A commenter asked whether the rules should say mitigation addresses impacts “of” a development rather than impacts “to” a development.

Response 40: The department agrees with the comment and has revised NEW RULE 2 (18.5.202) accordingly.

Comment 41: A commenter noted the eligibility requirement of more than half of all trips leaving the development are from residential use does not detail how or when trips will be counted.

Response 41: The department believes that the plain language reading of the rules is sufficiently clear for a traffic engineer developing a TIS to detail the method used to determine what percentage of all trips leaving the development is from residential use.

Comment 42: Two commenters noted the ownership/acquisition requirement in NEW RULE 2 (18.5.202) may exclude qualified public right-of-way or offsite improvements for reimbursement, as there may be situations where the identified mitigation project is not on property that the developer owns or will acquire

Response 42: The department does not believe revisions to the rule are warranted at this time but may consider revisiting the subject in a future rulemaking.

Comment 43: A commenter noted the two department-constructed reimbursement models turn on unbounded discretion without decision criteria, a standard, or a time for action, and requested the department state the criteria and timeframe governing those decisions.

Response 43: The department appreciates the comment and has revised the rule to address the concern. All department-constructed mitigations and any future mitigations associated with reimbursement that are undertaken by the department as part of its project development process will be done in coordination with the existing permit process, decision criteria, and timelines for project delivery.

Comment 44: Several commenters referred to the Node Method Formula policy adopted by reference in NEW RULE 2 (18.5.202) and asked for assurance that the policy will not be changed outside the rulemaking process.

Response 44: The department appreciates the comments. The department will follow the guidance detailed in NEW RULE 2 (18.5.202) to identify any deficiencies in POL 6-05-001 Node Method Formula Policy and Procedure. Should revisions be needed, the department will adhere to the rulemaking requirements set forth in 2-4-307, MCA.

Comment 45: A commenter asked whether the formula for a project remains fixed after approval or changes when the Node Method Formula Policy changes.

Response 45: The reimbursement rate will remain fixed for the life of the node and will not change, regardless of a developer's actual costs to build or subsequent revision(s) to POL 6-05-001 Node Method Formula Policy and Procedure.

Comment 46: Two commenters noted that the lead party's traffic study establishes the cost and capacity inputs used to determine later developers' rates, without a stated evidentiary review standard or process for beneficiaries to examine and challenge the rate. Commenters further noted that the per-trip rate is fixed using estimated rather than actual construction costs, that the formula places the cost of public-serving capacity on the developer, and that the party with the financial interest establishes a rate that binds other developers.

Response 46: The department confirms the accuracy of the comments. These rules were developed with extensive input from stakeholders, including developers, who agreed that the rate determination method was the most equitable and predictable for the developer and future beneficiaries, as the developer establishes the rate but also assumes the financial risk to which the beneficiaries are not exposed. In turn, the predictability of the model, including the rate, allows future developing beneficiaries to assess upfront costs using the node method to calculate their contribution.

COMMENTS ON NEW RULE 3 (18.5.203)

Comment 47: A commenter asked how entities within a DIA will know that the reimbursement eligibility or fee applicability has ended due to sunset, node capacity is reached, or a new capital project is built.

Response 47: Impacted parties will know if they inquire with the department, apply for a permit, or check with the Clerk and Recorder of the applicable county.

Comment 48: A commenter noted that affected local governments should receive notice when a DIA is proposed or established.

Response 48: The department has revised NEW RULE 3 (18.5.203) to include local governments.

Comment 49: Two commenters suggested the department develop and maintain a publicly accessible, per-node register showing remaining capacity and reimbursement costs before developers commit to a project.

Response 49: The department thanks the commenter for the suggestion and will consider developing such a tool as implementation of these rules unfolds.

Comment 50: A commenter noted the rules need clear thresholds and procedures for traffic impact studies and intersection control evaluations, including scope, cost, reuse of prior studies, and dispute resolution.

Response 50: The department thanks the commenter. The majority of the subjects noted in the comment are undertaken by the department's system impact program as part of its existing

internal operating process. The program makes determinations regarding what documentation and thresholds may be needed, based on each individual development's potential for impacts.

Comment 51: A commenter expressed concern that requiring a full traffic impact study or intersection control evaluation for relatively small projects could add substantial cost and delay without a corresponding transportation benefit.

Response 51: Consistent with the department's existing practice, a TIS is not required for every development. When a developer needs a permit, they can request a pre-scoping meeting with the department prior to applying for the permit where most small developments receive a waiver from the TIS requirement. These rules will not change this existing process.

Comment 52: Several commenters noted the rules need clear standards for establishing, changing, ending, and challenging a designated impact area.

Response 52: The department appreciates the comments but believes that NEW RULE 3 (18.5.203) clearly detail the criteria for establishing, changing, and ending designated impact areas under this rule. Any opposition or challenge to the establishment of a designated impact area would be captured during the considerations detailed in NEW RULE 3(3).

Comment 53: A commenter asked who is responsible for preparing and distributing DIA notice and noted that a single method of notification may not adequately inform affected people.

Response 53: The department is responsible for preparing and distributing notice of a DIA and believes that the four notification methods detailed in NEW RULE 3 (18.5.203) provide multiple methods of notification and sufficient opportunity for landowners and other affected entities to be informed of the DIA.

Comment 54: Two commenters indicated that the meaning of "impacted party," was unclear, and undistinguished from "beneficiary" and "permit applicant."

Response 54: The department has removed the term "impacted party" from NEW RULE 3 (18.5.203) to eliminate ambiguity.

Comment 55: Several commenters noted recording a DIA against a broad area may not alert purchasers during a normal title search and recommended parcel-level notice.

Response 55: The department appreciates the comments and may consider the comments in a future rulemaking. See also Response 49.

Comment 56: Several commenters asked how affected parties will be notified when a DIA ends and whether an area-wide recording is legally enforceable.

Response 56: A developer's reimbursement obligation under these rules only arises when the developer applies for a department approach or encroachment permit, and these rules do not

place area-wide encumbrances on all property within an established DIA. See also Response 49.

COMMENTS ON NEW RULE 4 (18.5.204)

Comment 57: A commenter asked what benefits to local governments are expected from entering into the referenced agreement.

Response 57: The department appreciates the question but notes that it is outside the scope of the language of SB 553 (2025) and these rules.

Comment 58: A commenter asked how the department will administer the rules if a local government does not enter into an agreement.

Response 58: The department believes that early coordination between the department and local governments is desirable and preferable; however, administration of these rules is not predicated on an agreement with a local government. These rules only apply to developers requesting a department approach or encroachment permit. NEW RULE 4 (18.5.204) purposely reads “may” and the department has no authority to impose any requirements on a local government.

Comment 59: Several commenters asked how reimbursement obligations will be tracked and enforced when future development does not need department approval or when a later developer does not know about, or refuses to pay, the obligation.

Response 59: These rules only apply to developers requesting an approach or encroachment permit from the department. The department may not issue a permit if the developer chooses not to participate in the beneficiary reimbursement process.

Comment 60: Several commenters asked for clarity about the state routes included in agreements under NEW RULE 4 (18.5.204) and opined that local governments should not be assigned maintenance responsibility without a separate maintenance agreement.

Response 60: The department appreciates the comments and confirms that local governments will not be assigned maintenance responsibility without a separate maintenance agreement. Nothing in these rules provides for a change to the existing practice of how maintenance agreements are developed.

Comment 61: One commenter suggested that the rule contemplates local revenue reimbursing an improvement on the state highway system, noting that such revenue cannot be redirected to the department node merely because a designated impact area overlaps the jurisdiction.

Response 61: The department disagrees with the interpretation of the commenter. Nothing in these rules redirects or utilizes revenues or fees assessed by local governments, and the department has no authority to do otherwise. A reimbursement obligation only arises when a

developer applies for a department approach or encroachment permit and makes a request for reimbursement under these rules.

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Approval

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