

APPENDIX I

CRITERIA FOR REVIEW OF CLAIMED EXEMPTIONS FROM PROVISIONS OF SUBDIVISION AND PLATTING ACT

STATEMENT OF INTENT

The intent and purpose of this document is to provide administrative procedures for implementing Sections 76-3-201 and 207, MCA, of the Montana Subdivision and Platting Act (the Act). These procedures are designed to provide persons administering the Act criteria for evaluating the purpose of claimed exemptions, and further, to provide persons claiming an exemption opportunities for demonstrating their eligibility for such claims. The criteria set forth herein, are to be used as guidelines for evaluation of such eligibility and are not in themselves conclusive. Further, said criteria do not presume that prior uses of exemptions were unlawful.

SECTION A. APPLICATION AND INITIAL REVIEW

1. Any person (which term includes an individual, firm, association, partnership, corporation, and public agency) seeking exemption from the subdivision review requirements of the Montana Subdivision and Platting Act, Section 76-3-101 et seq., MCA (the Act), and/or the Lewis and Clark County Subdivision Regulations (the Regulations), shall apply for the exemption by furnishing evidence of entitlement to the claimed exemption to the Clerk and Recorder. Such evidence may include, but is not limited to, a certificate of survey, a completed and signed "certificate of survey exemption affidavit," and documentation of ownership. Any person going through this process must first attend a pre-application conference first.
2. A Review Committee, consisting of the Clerk and Recorder, Planning Director, and County Attorney (or their designees), shall review evidence submitted by the applicant on the basis of the criteria set forth in these regulations and in other pertinent law. Within twenty (20) working days after submission of the required documents, the Committee shall make a determination on the application or, if necessary, request additional information from the applicant. If the Committee denies the application the Committee will notify the applicant in writing of the decision, including the Committee's reasoning.

3. If the Committee determines that the applicant is eligible for the claimed exemption under these criteria and if the certificate of survey complies with all other applicable statutes and regulations, the certificate of survey may be filed. The certificate of survey must be filed within two (2) years of the initial approval date, or the application must be resubmitted with the applicable fees and documentation.
4. If the Committee determines that the applicant is not eligible for the claimed exemption, it shall notify the applicant by certified mail of the reasons for the denial. The applicant shall have twenty (20) working days from the date of denial to provide the Committee any additional evidence to prove the applicant is eligible for the exemption. The Committee shall have twenty (20) working days to review any new evidence. In accordance with Section B. below, the applicant may also within twenty (20) working days from the date of denial, withdraw the application or submit to the Board a written request to appeal the decision of the Committee and to hold a hearing. An appeal request must include a copy of the Committee's written findings.
5. If the applicant provides additional evidence and the Committee reaffirms that the applicant is not eligible for an exemption, it shall notify the Board and notify the applicant by certified mail of the Committee's reasons for its determination. Thereafter, the applicant may withdraw the application or, within twenty (20) working days from the date of denial, submit to the Board, a written request to appeal the decision of the Committee and to hold a hearing. An appeal request in this instance must include a copy of the Committee's written findings.

SECTION B. HEARING PROCEDURE

1. Upon receipt of a written request for a hearing, the Board shall set a time and place for the hearing. At least five (5) days prior to the date set for the hearing the Board shall send notice of the hearing to the applicant by certified mail.
2. At the hearing, the applicant has the burden of proof by a preponderance of the evidence and shall first present evidence. Such evidence should include response to the criteria identified as reasons for denial and any other pertinent information to demonstrate that the use of the proposed exemption would not be an evasion of the Act. The Committee shall then present its evidence. The applicant may then present rebuttal evidence. The hearing shall then be closed.
3. The Board shall approve or disapprove the proposed exemption within fifteen (15) working days of the receipt of the request for hearing unless the applicant agrees to a hearing date beyond fifteen (15) working days. The

Board shall provide written notification of its decision and the reasons therefore, to the applicant and the Clerk and Recorder.

SECTION C. GENERAL REQUIREMENTS

1. The use of any exemption set forth in Sections 76-3-201 and 76-3-207, MCA, for the purposes of evading subdivision review under the Act or the Regulations is prohibited. These exemptions are listed below:

Section 76-3-201, MCA. Exemption for certain divisions of land.

- (1) order of a court, operation of law, or eminent domain;
- (2) security for construction mortgages, liens, or trust indentures;
- (3) interest in oil, gas, minerals, or water severed from the surface ownership of real property;
- (4) cemetery lots;
- (5) reservation of a life estate; and
- (6) lease or rental for farming and agricultural purposes;
- (7) is in a location over which the state does not have jurisdiction; or
- (8) is created for rights-of-way or utility sites.

Section 76-3-207, MCA. Subdivisions exempted from review but subject to survey requirements.

- (1)
 - (a) relocation of common boundary lines outside of platted subdivisions;
 - (b) outside of platted subdivisions a single gift or sale to a member of the landowner's immediate family;
 - (c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;
 - (d) relocation of common boundaries for five or fewer lots within a platted subdivision;
 - (e) relocation a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision; and

- (f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.
- (2) In determining whether an exemption is claimed to evade subdivision review the Committee, and when necessary, the BOCC, shall consider the specific exemption criteria and presumptions set forth in these criteria and may also consider other evidence including but not limited to:
 - (a) The prior history of the tract;
 - (b) The proposed configuration of the particular tract to adjacent tracts, if the proposed exemptions were to be granted; and,
 - (c) The pattern, if any, of exemptions used by the applicant and/or the applicant's immediate family, and/or other persons having any business, economic, ownership or other relationship with the applicant that has or will result in the creation of a subdivision without review by the Board.
- (3) A certificate of survey for which an exemption is claimed may not be filed by the Clerk and Recorder unless it bears a certificate acknowledged by all owners of record stating that the division is exempted from review as a subdivision and quoting the applicable exemption and citing the appropriate MCA section. A certificate of survey claiming an exemption other than a gift or sale to a member of the immediate family may divide a parcel once only. Submittal of a certificate of survey to the Clerk and Recorder must be accompanied by a completed and signed Certificate of Survey Exemption Affidavit form and a Certificate of Survey Report form.

SECTION D. EXEMPTION CRITERIA

- 1. RELOCATION OF COMMON BOUNDARY LINES [Section 76-3-207(1)(a),(d), and/or (e), MCA]:
 - a. The relocation of common boundary lines exemption is used to change the location of a boundary line between adjacent parcels of record.

- b. Certificates of survey showing the boundaries and areas of land, shall be accompanied by a deed transferring interest in the parcel being created, or a contract for deed or a notice of purchaser's interest. If no such document can be recorded prior to the filing of the certificate of survey, the applicant must submit an acknowledged statement from an escrow agent setting forth the location of the deed or contract being held in escrow and how long it will be held in escrow and a photocopy of the document.

- c. There is a rebuttable presumption that any boundary relocation is or will be an inappropriate use of the exemption, under the Act or the Regulations, thereby making the proposed division and transfer subject to subdivision review, if after July 1, 1973:
 - (1) It creates a parcel of less than 160 acres which, prior to the relocation, had more than 160 acres; or
 - (2) It creates any additional parcel of land less than 160 acres in size; or
 - (3) It fits a previously established pattern of land divisions and land transfers; or
 - (4) It will create three or more parcels that were subdivided from the original tract; or
 - (5) The applicant has used exemptions to create parcels from the original tract or other tracts; or
 - (6) The use of the exemption is in violation of statutes, case law, administrative rules, or Attorney General opinions; or
 - (7) The proposed division of land has been previously denied under any other exemption.

- 2. EXEMPTION AS A SINGLE GIFT OR SALE TO A MEMBER OF THE IMMEDIATE FAMILY [Section 76-3-207(1)(b), MCA]:
 - a. A "member of the immediate family" may include only the grantor's spouse, children by blood or adoption, and parents.

 - b. There is a rebuttable presumption that a division of land and

a transfer, proposed as an exempt "gift or sale to family member," is or will be an inappropriate use of the exemption under the Act and the Regulations, thereby making the proposed division and transfer subject to subdivision review, if after July 1, 1973:

- (1) The original or any subsequent tract, from which the parcel created for transfer is to be segregated, was exempted from subdivision review pursuant to the exemptions listed in Section C.1.; or
- (2) The parcel to be transferred is not intended for a homesite for the transferee; or
- (3) The transfer could be accomplished by a "relocation of common boundary lines" under Section C.1.; or
- (4) It will become one of three or more parcels that were subdivided from the original tract; or
- (5) The use of the exemption is in violation of statutes, case law, administrative rules, or Attorney General opinions; or
- (6) The proposed division of land fits a pattern of land divisions and land transfers; or
- (7) The applicant has used exemptions to create parcels from the original tract or other tracts; or
- (8) The proposed division of land has been previously denied under any other exemption; or
- (9) The parent purports to act as a guardian for a minor child without a trust instrument.
- (10) The grantor intends to divide land for the purpose of a gift or sale to the grantor's spouse.

3. AGRICULTURAL EXEMPTION [Section 76-3-207(1)(c), MCA]:

- a. An agricultural exemption is a division of land made outside of a platted subdivision by sale or agreement to buy and sell where the parties to the transaction and the governing body

enter a covenant running with the land, revocable only by mutual consent of the governing body and the property owners, that the divided land will be used exclusively for agricultural purposes.

- b. Creation, Revocation, and Retention of the Agricultural Exemption:

Creation of parcels by use of the agricultural exemption, and the subsequent revocation or retention of the agricultural covenant, shall be subject to the provisions of Resolution 1986-55, entitled "Resolution of the Board of County Commissioners Setting Forth a Policy Relating to Divisions of Land for Agricultural Purposes, Exempt From Review under the Montana Subdivision and Platting Act."

4. EXEMPTION TO PROVIDE SECURITY FOR CONSTRUCTION MORTGAGES, LIENS, OR TRUST INDENTURES [Section 76-3-201(1)(b), MCA]:

- a. The construction mortgage exemption is used to segregate land for the purpose of providing security for construction mortgages, liens, or trust indentures.
- b. There is a rebuttable presumption that a proposed use of this exemption, or a division of land by use of this exemption, is subject to subdivision review, if after July 1, 1973:
- (1) The proposed division, by its location or configuration could become or create three or more parcels that were subdivided from the original tract; or
 - (2) The applicant has used exemptions to create parcels from the original tract or other tracts; or
 - (3) The proposed division of land has been previously denied under any other exemption; or
 - (4) Upon foreclosure of the security, three or more parcels would be created.
 - (5) There is no evidence of foreclosure of the mortgage, lien, or trust indenture.

- c. Except as provided in subsection D.4.d., a transfer of the divided land, by the owner of the property at the time that the land was divided, to any party other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture subjects the division of land to the requirements of these regulations.

- d. If a parcel of land was divided pursuant to subsection D.4. and one of the parcels created by the division was conveyed by the landowner to another party without foreclosure before October 1, 2003, the conveyance of the remaining parcel is not subject to the requirements of these regulations.