

Appendix E
CITY OF GREAT FALLS EVASION CRITERIA FOR LOCAL
DETERMINATION OF EVASION OF THE
SUBDIVISION AND PLATTING ACT

Legislative findings.

The City Commission makes the following findings:

1. The legislature, in adopting and amending the Subdivision and Platting Act, 76-3-101 et seq., MCA, (ACT) has presumed:
 - a. that parcels of land containing less than 160 acres are building sites and that the creation of these parcels should be reviewed and approved by the local governing body applying the primary review criteria set forth in 76-3-608 MCA.
 - b. that the exemptions from subdivision review under 76-3-201 and 76-3-207 MCA, are intended to relieve a landowner from the requirements of local review when the division of land either creates no additional building sites or creates so few building sites that only minimal impact will likely result.
 - c. that the purpose of the exemptions is not to provide a means of creating numerous building sites without subdivision review, but rather to deal with the exceptional circumstances when subdivision review is unnecessary.
2. The Montana Supreme Court decisions in Florence-Carlton School District vs. Ravalli County Board of Commissioners, 1978; Leach v. Visser, 1989; and State ex rel. Dreher v. Fuller, 1993; have recognized a governing body's right to narrowly interpret and enforce the provisions of the Montana Subdivision and Platting Act, especially those pertaining to the use of exemptions.
3. The parcels of land created by exemptions often do not provide for:
 - a. the coordination of roads within the divided land or with other roads, both existing and planned.
 - b. the dedication of land for roadways and public utility easements.
 - c. the provision of adequate open spaces for travel, light, air, and recreation.
 - d. the provision of adequate transportation, water drainage, and sanitary facilities.
 - e. the avoidance of minimizing of congestion.
 - f. the avoidance of land division that would involve unnecessary environmental degradation.
 - g. the avoidance of danger or injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, schools or other public services, or would necessitate an excessive expenditure of public funds for the supply of such services.
4. The likelihood that land development problems will occur is greatly increased when building sites are created without public review and are further divided without review.
5. The City Commission of the City of Great Falls has established the necessary procedures for expedient review of subdivisions creating five or fewer parcels and thus has diminished justification for avoiding review through use of exemptions.

Purpose.

To provide criteria to guide the City of Great Falls in determining when the use of an exemption from subdivision review is adopted to evade the purpose of the Subdivision and Platting Act.

Procedures and general requirements.

- A. **Evidence of claimed exemption.** Any person seeking exemption from the requirements of the Subdivision and Platting Act (76-3-101 et seq., MCA) shall submit to the Planning Department or other designated agent:
 1. a certificate of survey or, where a survey is not required, an instrument of conveyance, and
 2. evidence of, and an affidavit affirming, entitlement to the claimed exemption.
- B. **Review of evidence.** When a certificate of survey or instrument of conveyance is submitted, the Planning Department or other designated agent shall cause the documents to be reviewed by the Planning Department and the City Engineer. The Planning Department and the City Engineer shall

- review the proposed land division to determine whether it complies with the requirements set forth herein, in the Montana Subdivision and Platting Act, and the Montana Sanitation in Subdivisions Act.
- C. **Written determination.** After the review to evaluate compliance with the requirements contained herein, the agents shall submit a written determination whether the use of the exemption is intended to evade the purposes of the Act.
 - D. **Following compliance determination.** If the designated agents find that the proposed use of the exemption complies with the statutes and these criteria, they shall advise the Clerk and Recorder to file the certificate of survey or record the instrument of conveyance and accompanying documents. If the agents find the proposed use of the exemption does not comply with the statutes and these criteria, they shall advise the Clerk and Recorder to not file or record the documents and the clerk shall return the materials to the landowner.
 - E. **Denial of exemption and rebuttable presumption - appeal.** Any person whose proposed use of exemption has been denied by the designated agents because the use of the exemption raised a rebuttable presumption established by these guidelines may appeal the agents' decision to the City Commission of the City of Great Falls. The person may request a hearing, and may submit additional evidence to show that the use of the exemption in question is not intended to evade the Act, and, thereby overcome the rebuttable presumption. If the governing body concludes that the evidence and information overcomes the presumption that the exemption is being invoked to evade the Act, they may authorize the use of the exemption in writing. A certificate of survey claiming such an exemption from the subdivision review, which otherwise is in proper form, may be filed (or an instrument of conveyance recorded) if it is accompanied by written authorization of the governing body. If the use of an exemption is determined to be an evasion of the Act, the landowner may submit a subdivision application for the proposed land division.
 - F. **Advisory Examination.** Landowners or their representatives are encouraged to meet with the City's designated agents to discuss whether a proposed land division or use of an exemption is in compliance with these criteria. The agents may issue an advisory opinion only, and the opinion creates no commitment on the local officials when the documents creating the proposed land division are submitted to the local governing body.
 - G. **Consideration of surrounding circumstances.** The City Commission of the City of Great Falls and its agents, when determining whether an exemption is claimed for the purpose of evading the Act, shall consider all of the surrounding circumstances. These circumstances may include but are not limited to: the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction are completed, and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review (State ex rel. Dreher v. Fuller, 50 St. Rptr 454, 1993).
 - H. **Development pattern equivalent to a subdivision.** Exempt divisions of land that would result in a pattern of development equivalent to a subdivision shall be presumed to be adopted for purposes of evading the Act. A "pattern of development" occurs whenever three or more parcels of less than 160 acres with common covenants or facilities have been divided from the original tract.
 - I. **Creation of non-conforming lots.** The City of Great Falls will not allow to be filed any subdivision plats or certificates of survey that create lots that are not conforming to the zoning district in which those lots are located. The City of Great Falls will not allow to be filed any subdivision plats or certificates of survey that further exacerbates an existing non-conforming parcel including but not limited to reducing the sizes of existing non-conforming parcels through boundary line changes, or creating parcels in which setbacks are in violation of the City Land Development Code.
 - J. **Physical access requirements.** The City of Great Falls will not allow to be filed any certificates of survey where legal and physical access is not provided to each lot shown on the certificate of survey. Legal and physical access shall be at least sixty (60) feet in width to allow for access to parcels for public health, safety, and welfare concerns. If a sixty (60) foot wide access is not physically possible, the City may, upon a showing of good cause, allow for an access of less than sixty (60) feet in width.

Pattern of development.

The scope of review of a pattern of development shall apply to the creation of a parcel of land or multiple divisions of land by use of or proposed use of an exemption(s).

- A. **Original tract less than twenty acres.** A pattern of development occurs whenever three or more parcels (i.e., two exempt parcels and a remaining parcel) have been divided from the original tract of less than twenty acres regardless of ownership by use of exemptions from the Act.
- B. **Original tract twenty acres or more.** A pattern of development occurs whenever more than four parcels under twenty acres (i.e., three exempt parcels and a remaining parcel) have been divided from the original tract of twenty acres or more, regardless of ownership, by use of exemptions from the Act. A pattern of development may be evidenced by the use of exemptions contiguous to platted lots where common roads are shared or the exempted tracts have similar shape or size to the platted lots, or the exempted tracts are being created by the same landowner who created the platted lots.

Exemption as a gift or sale to a member of the immediate family (76-3-207 (1)(b) MCA)

- A. **Statement of intent.** The intention of this exemption is to allow a landowner to convey one parcel to each member of the immediate family without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each County where the landowner owns property. A proposed division of land as a family transfer may be declared to be an evasion of the Act if it is determined that one of the following conditions exists:
 - 1. the proposed parcel would result in a pattern of development;
 - 2. the division is made for the purpose of speculation by the grantor, or for resale for the benefit of the grantor by using the grantee as a “strawperson;”
 - 3. the transfer is the second or subsequent family transfer to the same member of the immediate family where the first transfer occurred prior to April 7, 1993;
 - 4. the name of the grantee and relationship to the grantor do not appear on the face of the proposed certificate of survey;
 - 5. the grantee is also one of the grantors.
- B. **Immediate family definition.** The Montana Subdivision and Platting Act defines “immediate family” as the spouse, children by blood or adoption, and parents of the grantor.
- C. **Filing requirements.** Filing of any certificate of survey (or recording of an instrument of conveyance) that would use this exemption to create a parcel for conveyance to a family member must show the name of the grantee, relationship to the landowner, and the parcel to be conveyed under this exemption, and the landowner’s certificate of compliance. Also, the certificate of survey or instrument of conveyance shall be accompanied by a deed or other conveying document.
- D. **Family conveyance limitations.** One conveyance of a parcel to each member of the landowner’s immediate family is eligible for exemption from subdivision review in accordance with the provisions contained herein. However, the use of this exemption may not create more than one remaining parcel of less than 160 acres.
- E. **Evasion determination.** Any proposed use of family conveyance exemption to divide a tract that was created through use of an exemption will be presumed to be adopted for purposes of evading the Act. This presumption is in effect regardless of previous ownership of the tracts and pertains to remaining tracts of less than 160 acres as well as to those tracts that were created through the exemptions.
- F. **Family conveyance and development plans.** The use of the family conveyance exemption to divide tracts that were created as part of an overall development plan with such characteristics as common roads, utility easements, restrictive covenants, open space or common marketing or promotional plan shall constitute a rebuttable presumption that the use of the exemption is adopted for purposes of evading the Act.

Exemption to provide security for a construction mortgage, lien or trust indenture. See:76-3-201(1) MCA

- A. **Statement of intent.** Under policies by many lending institutions and federal home loan guaranty programs, a landowner who is buying a tract with financing or through a contract for deed is required to hold title to the specific site on which the residence will be built. The intended purpose of this exemption is to allow a landowner that is buying a tract using financing or contract for deed to segregate a smaller parcel from the tract for security for financing construction of a home on the property.
- B. **Portion of parcel excluded from mortgage.** That portion of the parcel not included in the mortgage cannot be conveyed in any manner without subdivision review and approval by the governing body. This exemption is not available to simply create a parcel without review by claiming that the parcel

will be used for security to finance construction of a home or other structure on the proposed lot. This exemption may not be properly invoked unless:

1. the claimant is purchasing a larger tract through financing or a contract for deed (and thus does not hold title); and
 2. a lending institution requires the landowner to hold title to a smaller parcel of the tract because the smaller tract is required as a security for a building construction loan.
- C. **Submittals required.** When this exemption is to be used, the landowner shall submit to the Cascade County Clerk and Recorder:
1. a statement of how many parcels within the original tract will be created by use of the exemption;
 2. the deed, trust indenture, or mortgage for the exempt parcel (which states that the tract of land is created only to secure a construction mortgage, lien, or trust indenture);
 3. a statement explaining who will have title to and possession of the balance of the original parcel after title to the exempted parcel is conveyed; and
 4. a signed statement from a lending institution that the creation of the exempted parcel is necessary to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes.
- D. **Evasion determination.** The use of this exemption is presumed to have been for the purpose of evading the Act if:
1. it will create more than one building site;
 2. the financing is not for construction on the exempted parcel;
 3. the person named in the statement explaining who would have possession of the remainder parcel, if title to the exempted parcel is conveyed, is anyone other than the borrower of funds for construction;
 4. title to the exempted parcel will not be initially obtained by the lending institution if foreclosure occurs; or,
 5. it appears that the principal reason the parcel is being created is to create a building site and using the parcel to secure a construction loan is a secondary purpose.
- E. **Requirements and status of exempted parcel boundaries upon satisfaction of construction mortgage, lien or trust indenture.** Once the loan for construction mortgage, lien or trust indenture has been satisfied, the exemption is no longer applicable and the boundaries delineating the exempt parcel are extinguished and the acreage previously identified reverts back into the acreage of the initial parcel. This will be accomplished by the filing of the warranty deed for the parent parcel when the conditions of the contract are satisfied, in the event that the parcel is being purchased in that manner.

Exemption for agricultural purposes. See: 76-3-207 (1)(c) MCA

- A. **Statement of Intent.** The intention of this exemption is to allow a landowner to create a parcel without local review where the parcel will be used only for production of livestock or agricultural crops and where no residential, commercial, or industrial buildings will be built.
- B. **Agricultural purposes.** For purposes of these evasion criteria, “agricultural purposes” means the use of land for raising crops or livestock, or for the preservation of open space, and specifically excludes residential structures or facilities for commercially processing agricultural products. Agricultural lands are exempt from review by the Montana Department of Environmental Quality, provided the property owner properly invokes the applicable exemption.
- C. **Conditions to be met.** The following conditions must be met or the use of the exemption will be presumed to have been adopted for the purposes of evading the Act:
5. The parties to the transaction must enter into a covenant running with the land and revocable only by mutual consent of the City Commission of the City of Great Falls and the property owner that the divided land will be used exclusively for agricultural purposes or open space. The property owner, the buyer or lessee, and the City Commission of the City of Great Falls or its designated agent must sign the covenant.
 6. The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial, or industrial buildings will be constructed; for example, a statement signed by the buyer.
 7. Any change in the use of the land for anything other than agricultural purposes subjects the parcel to review as a minor subdivision.

8. Residential, commercial, or industrial structures, including facilities for commercial processing of agricultural products are excluded uses on parcels created under this exemption unless the covenant is revoked.

Relocation of common boundary. See: 76-3-207 (1)(a) MCA

- A. **Statement of intent.** The intended purpose of this exemption is to allow a change of the location of a boundary line between two parcels and to allow a one-time transfer of a tract to effect that change in location without subdivision review.
- B. **Boundary identification requirements.** Certificates of survey claiming this exemption must clearly distinguish between the existing boundary location and the new boundary. This shall be accomplished by representing the existing boundary with a dashed line and the new boundary with a solid line. The appropriate certification must be included on the certificate of survey.
- C. **Deed required.** Certificate of survey showing the relocation of common boundary lines must be accompanied by a deed or from adjoining property owners for the entire newly described parcel(s) for that portion of the tract(s) that is being affected.
- D. **Additional parcel creation.** If the relocation of a common boundary would result in the permanent creation of an additional parcel of land, the division of land must be reviewed as a subdivision.
- E. **Evasion determination.** A proposed relocation of common boundary lines may be considered an evasion of the Act if it is determined that:
 1. the documentation submitted does not support the stated reason for relocation; or
 2. it creates a parcel of less than 160 acres in size, which prior to the relocation had more than 160 acres.

Court Order. A certificate of survey filed citing this exemption must be accompanied by a copy of the court order (see: 76-3-201).

Remainder Parcels.

- A. **Statement of intent.** A “remainder” parcel is that part of an original tract that is left following the segregation of other parcels from the tract for the purpose of transfer. A “remainder” may not be created for the purpose of conveyance and must be retained by the owner. A “remainder” that is created by the segregation of a subdivision from a larger original tract is not part of the subdivision nor is it subject to the surveying requirements of the Montana Subdivision and Platting Act (MSPA). Although the term “remainder” does not appear in the MSPA, the possibility that remainder parcels may exist is implicit in the express provisions of the MSPA (Attorney General Letter opinion to Robert McCarthy, April 22, 1987).
- B. **Evidence of remainder status required.** A landowner claiming that a parcel is a “remainder” must present evidence that the parcel is in fact intended to be retained and is not to be transferred. Examples of such evidence include the existence of the landowner’s residence on the parcel or building plans for a structure to be built by or for the landowner.