

CHAPTER 8

DIVISIONS OF LAND EXEMPT FROM REVIEW UNDER MSPA

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8.1 Purpose and Intent

Subdivision exemptions are intended to relieve landowners from the requirements of local review when the division of land either creates no additional building sites (*e.g.*, agricultural exemption or boundary line relocation) or creates so few building sites that minimal impact results. The likelihood that land development problems will occur greatly increases when building sites are created without public review and are further divided without local review. The purpose of exemptions is not to provide a means of creating building sites without subdivision review, but rather to accommodate the exceptional circumstances when plenary subdivision review is unnecessary. The Commission has the authority and duty to evaluate and determine from all circumstances whether the proposed division of land is based on an intent to evade subdivision review. The proper use of an exemption will not conflict with the purposes of the Montana Subdivision and Platting Act (MSPA) outlined in *Section 1.6* of these regulations or the Montana Sanitation in Subdivision Act (MSIS).

8.2 Definitions

The following definitions shall apply to divisions of land exempt from subdivision review. Where definitions are not listed herein, those contained in the MSPA and Chapter 2 of these regulations apply:

8.2.1 Agriculture

The use of land for growing, raising, or marketing of plants or animals to produce food, feed, and fiber commodities. Examples include, but are not limited to, cultivation and tillage of the soil; dairying; the raising of livestock, poultry, bees, fur-bearing animals, or biological control insects; timber and wildlife management areas; and the growing and harvesting of fruits, vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes. This definition specifically excludes gardening for personal use, keeping of house pets, kenneling, landscaping for aesthetic purposes, and residential, commercial, and industrial uses, including the commercial processing of agricultural products. This definition is not construed to exclude ancillary or accessory uses or improvements necessary or related to the function of a bona fide agricultural operation.

8.2.2 Agricultural Building

A structure designed and constructed to house farm implements, hay, grain, poultry, livestock, or other horticultural products. This structure shall not be a place of human habitation or a place of employment where agricultural products are processed, treated, or packaged, nor shall it be a place used by the public.

8.2.3 MSPA

The Montana Subdivision and Platting Act, MCA, Title 76, Chapter 3.

8.2.4 Original tract

A tract of land held in single and undivided ownership, as indicated by the official records filed with the Missoula County Clerk and Recorder, from which land is divided through the approval of subdivision exemption.

8.2.5 Rebuttable presumption

An assumption taken to be true unless evidence to the contrary is presented that would lead a reasonable person to logically conclude that the presumption is no longer valid.

8.2.6 Regulations

Missoula County Subdivision Regulations.

8.2.7 Remaining tract

The tract of land that “remains” after another tract has been segregated from an original tract.

8.2.8 Subdivision Administrator

Missoula County Community and Planning Services Chief Planning Officer or a designated representative of the department.

8.3 Authority

The authority in the MSPA for divisions as exemptions from subdivision is as follows:

- Title 76, Chapter 3, Part 2, MCA, identifies specific exemptions from subdivision review;
- §76-3-201(4), and §76-3-207(4), MCA, authorize the governing body to examine divisions of land to determine if the exemption is being used properly;
- §76-3-201(4) and §76-3-207(4), MCA, authorize the governing body to establish fees for review, not to exceed \$200;
- §76-3-504(1)(p), MCA, requires the local subdivision regulations to establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions is an attempt to evade the requirements of the MSPA; and,
- §76-3-504(1)(p), MCA, requires the regulations to include an appeals process to the governing body if the reviewing authority is not the governing body.

8.4 General Evasion Criteria

The following criteria shall be used when evaluating claimed exemptions under §76-3-201 and §76-3-207, MCA, to determine if the request is an evasion of these regulations or the MSPA. Exemptions not subject to these criteria include Condominiums, Townhouses, and Townhomes (§76-3-203, MCA), Airport Land (§76-3-205(1), MCA), and State-Owned Lands (§76-3-205(2), MCA). Specific exemptions listed in *Section 8.6, Exempt Divisions of Land*, may have additional review criteria in the form of rebuttable presumptions that also apply. These general evasion criteria and specific rebuttable presumptions are guides for the evaluation of evasion and should be used to determine from all circumstances whether the proposed division of land is based on an intent to evade subdivision review. They are not conclusive, and there is no specified threshold that will necessarily result in a determination of evasion. When a preponderance of evidence results in a conclusion that a proposed division by exemption is an attempt to evade the Missoula County Subdivision Regulations or the MSPA, the exemption may be denied. (See *State ex rel. Dreher v. Fuller, 50 St. Rptr 454, 1993.*)

8.4.1 Nature of Claimant's Business

Is the claimant in the business of construction or dividing, developing, or selling land?

8.4.2 Prior History of the Tract

- A. Was the original tract transferred to the claimant within the past two years?
- B. Has the proposed division for this tract been previously denied under review of the MSPA or any other exemption?
- C. Has the property been the subject of a scoping or pre-application meeting for subdivision prior to application for exemption?

8.4.3 Past Use of Exemptions

- A. Has the claimant engaged in prior exempt transactions involving the original tract or other tracts?
- B. Is there a pattern of exempt transactions used by the claimant or the claimant's immediate family, and/or other entities having any business, economic, ownership or other relationship with the claimant that will result in the equivalent of a subdivision without local government review?

8.4.4 Proposed Configuration of New Tracts

- A. Will the exemption result in a pattern of development equivalent to a subdivision without local government review? A pattern of development may be evidenced by:
 1. A division by exemption that affects or results in 6 or more tracts, each less than 160 acres divided from the original tract.
 2. An overall development plan which appears equivalent to a subdivision with characteristics such as common roads, utility easements, restrictive covenants, deed restrictions, shared parks and/or open space, or common marketing or promotional plan.
 3. A division that fits with a previously established pattern of land divisions or land transfers evidenced by:
 - a. the exempted tracts are contiguous to platted lots where common roads are shared or the exempted tracts share a common road with nearby platted lots;

- b. the new tract(s) have similar shape or size to adjacent or nearby platted lots;
- c. the exempted tracts are being created by the same landowner who created the platted lots;

8.4.5 Intended Use of the Tract(s)

- A. Is the reason stated for the exemption contrary to the documentation submitted with the application?
- B. Is the requested exemption unsuitable for the intended use or purpose of the division?
- C. Could the division be accomplished by a different exemption that would be more appropriate for the intended use?
- D. Does the proposed division violate applicable zoning regulations?
- E. Does the proposed division violate applicable floodplain regulations or create access/building sites within a flood hazard area, including within a mile of a Zone “A” designated floodplain?
- F. Does the proposed division violate subdivision approval, deed restrictions, and/or covenants that may exist on the property?
- G. Is the proposed division incompatible with the Growth Policy?

8.4.6 Violations

- A. Is the exemption in violation of statutes, case law, administrative rules, or Attorney General opinions?
- B. Will the division result in violation of federal, state or local regulations?
- C. Are there existing violations on the property that will be made worse or left unremedied by the proposed division?

8.4.7 Significant Impacts

The exemption would cause significant impacts relative to subdivision review criteria that would likely lead to the imposition of significant conditions of approval, or denial, of an equivalent subdivision proposal.

8.4.8 Intent to Evade

The information provided by the claimant or surrounding circumstances indicates the exemption is being used to evade the MSPA and these regulations.

8.4.9 Any Other Relevant Circumstances

8.5 Exemptions, Generally

- A. The regulations contained in this chapter (Chapter 8 *Divisions of Land Exempt from Review Under MSPA*) apply to all exemptions approved by Missoula County, including those approved prior to November 4, 2016, excepting the following sections which shall not apply to exemptions approved prior to November 4, 2016:
 1. *Section 8.4, General Evasion Criteria;*
 2. *Subsection 8.6.14 Family Transfer* - subsections 8.6.14.1 D. and E. only, related to two-year holding period for family transfers;

3. All Rebuttable Presumptions and Documents Required for Application listed under each exemption type;
 4. *Section 8.7, General Submittal Requirements;*
 5. *Section 8.8.1 Exemption Application Review Process; and,*
 6. *Subsection 8.8.6.11 Statements on Recording Documents* – subsections D. and E. only
- B. Montana law allows for the division of land that is exempt from subdivision review, under certain circumstances. The MSPA lists these exemptions in Title 76, Chapter 3, Part 2, MCA, and includes the following general categories of exemptions:

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| 8.5.1 Court-Ordered Division | 8.5.10 Condominiums, Townhouses, and Townhomes |
| 8.5.2 Mortgage Security | 8.5.11 Airport Land |
| 8.5.3 Severed Interest | 8.5.12 State-owned Lands |
| 8.5.4 Cemetery Lot | 8.5.13 Boundary Line Relocation |
| 8.5.5 Reservation of Life Estate | 8.5.14 Family Transfer |
| 8.5.6 Agricultural Lease | 8.5.15 Agricultural Covenant |
| 8.5.7 Federal or Tribal Land | 8.5.16 Aggregation |
| 8.5.8 Right-of-way | |
| 8.5.9 Utility Site | |

8.6 Exempt Divisions of Land

Exemptions listed in this section are exempt from subdivision review under the Missoula County Subdivision Regulations and the MSPA. Exemptions listed in §76-3-201, MCA, and §76-3-207, MCA, are subject to the general evasion criteria in *Section 8.4, General Evasion Criteria*. All other exemptions listed in MCA, Title 76, Chapter 3, Part 2, except for those found in Sections 201 and 207, are not subject to the general evasion criteria in *Section 8.4, General Evasion Criteria*.

- A. Missoula County shall consider the general evasion criteria in *Section 8.4, General Evasion Criteria*, when applicable, general requirements, and rebuttable presumptions relative to the applicable exemption when evaluating the claimed exemption.
- B. The claimant shall submit the required documentation relative to the specific claimed exemption, in addition to the general submittal requirements outlined in *Section 8.7, General Submittal Requirements*.
- C. When a rebuttable presumption is declared in these regulations, the presumption may be overcome by the claimant with evidence contrary to the presumption.
- D. If the County concludes that the evidence overcomes the presumption and that, from all the circumstances, the exemption is justified, the exemption may be approved.
- E. If the County concludes that the presumption is not overcome and that, from all the circumstances, the exemption is not justified, the exemption may be denied.

8.6.1 Court Ordered Division (§76-3-201(1)(a), MCA)

A division of land created by order of any court of record in the State of Montana or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state, pursuant to the law of eminent domain, found in Title 70, Chapter 30, MCA.

8.6.1.1 General Requirements

- A. Divisions exempt under §76-3-201(1)(a), MCA, include land divided for transfer to a public agency capable of acquiring the property through eminent domain but, due to an agreement among the parties, eminent domain or a court order is not necessary.
- B. In accordance with §76-3-201(2), MCA, the court shall notify the governing body or designated agent of the pending division and allow the County to present written comment on the division addressing the general evasion criteria and rebuttable presumptions.

8.6.1.2 Rebuttable Presumptions

The use of this exemption may be presumed to have been used for the purpose of evading the MSPA if it appears from the affidavit and supporting documentation that the parties are not *bona fide* adverse parties and that the division is a result of an agreement between the parties for the purpose of evading the MSPA.

8.6.1.3 Required Documentation for Application

- A. A copy of the court order and the proposed division.
- B. In the case of an agreement between a landowner and a public agency with the authority to declare eminent domain, a statement from the agency documenting the agency's plans for acquiring the tract and the authority for eminent domain, and the written agreement between the parties.

8.6.1.4 Recording

- A. Transfer documents including deeds changing ownership and/or correcting legal descriptions must accompany the recording of the division.

8.6.2 Mortgage Security (§76-3-201(1)(b) and §76-3-201(3), MCA)

A division of land creating a parcel of any size to provide security for mortgages, reverse mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or as security for refinancing debt secured by real property.

8.6.2.1 General Requirements

- A. A mortgage tract may only be conveyed to a licensed financial or lending institution from which the mortgage, lien, or trust indenture was given, or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. A transfer of the mortgage tract to any other entity subjects the division of land to the requirements of these regulations and the MSPA. If the mortgage, lien, or trust indenture is satisfied, and the mortgage tract is not conveyed, the survey and the legal description for that same mortgage tract may be used again, without review, by the same party for a subsequent mortgage, lien, or trust indenture.
- B. Use of this exemption shall not create a permanent tract unless the financial institution which holds the mortgage, lien, or trust indenture forecloses upon the property and the tract is then conveyed in foreclosure proceedings.
- C. The remaining land created by use of this exemption may not be conveyed independently of the mortgaged tract unless it is approved under these regulations as a subdivision or becomes a tract pursuant to a foreclosure of the mortgage, lien, or trust indenture.
- D. If a parcel of land was divided pursuant to this section and one of the parcels created by the division was conveyed by the landowners to another party without foreclosure prior to October 1, 2003, the conveyance of the mortgage tract or remaining parcel is not subject to the requirements of this chapter, pursuant to §76-2-201(4), MCA.

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If the mortgage, lien, or trust indenture, is satisfied, and the mortgage tract is not conveyed, the survey and legal description for that same mortgage tract may be used again, without review, by the same party for a subsequent mortgage, lien, or trust indenture.

In cases of foreclosure, if a claimant proposes to reuse a previous mortgage survey for a subsequent mortgage exemption, Missoula County will record the foreclosure deed only if the foreclosure was completed by an institutional lender.

8.6.2.2 Rebuttable Presumptions

The use of this exemption may be presumed to have been used for the purpose of evading the MSPA if:

- A. The mortgagee, lien holder, or beneficiary is not a lending institution registered to do business in the State of Montana.
- B. The division of land is created for the purpose of conveyance to any entity other than 1) the financial or lending institution to which the mortgage, lien,

or trust indenture was given, or 2) a purchaser upon foreclosure of the mortgage, lien, or trust indenture.

- C. There exists a prior agreement to default or a prior agreement to purchase only a portion of the original tract.
- D. The financing is for construction or improvements on land other than the exempted new parcel.
- E. There is more than one construction mortgage, lien, or trust indenture that would create more than one new mortgage parcel on the original tract.
- F. The division, by its location or configuration, would result in more than two tracts created from the original tract if foreclosure of the security occurs and permanent tracts are created.
- G. The claimant has made prior use of the mortgage security exemption and previously conveyed either the security parcel or the remaining tract separately outside of a foreclosure process.
- H. The claimant has engaged in similar prior transfers using the original tract or other tracts.

8.6.2.3 Required Documentation for Application

A. Institution Statement

A signed, notarized statement from the lending institution certifying the following:

- 1. That the lending institution is registered to do business in the State of Montana;
- 2. That the interest is being created only to secure a mortgage, lien, or trust indenture for the purposes of construction, improvements to the land being divided, or refinancing; and,
- 3. That the creation of the exempted parcel is necessary to secure a loan for construction or improvements on the exempted parcel.

B. Landowner Statement

A signed, notarized statement from the landowner(s) certifying the following:

- 1. That landowners will retain title to the entire tract of record unless and until such time as the mortgage exemption parcel is foreclosed upon;
- 2. That transfer of ownership of the separate mortgage tract will only occur upon foreclosure;
- 3. That the landowner will not transfer ownership of the remaining portion unless the mortgage exemption parcel has been foreclosed upon, or the landowner has submitted a subdivision application and received final plat approval for the subdivision of the mortgage exemption parcel and the remaining portion; and,
- 4. That the purpose of the mortgage, lien, or trust indenture is for construction, or improvements to the land being divided, or refinancing.

8.6.2.4 Recording

- A. The certificate of survey owner's certification or the mortgage instrument to be recorded with the Missoula County Clerk and Recorder shall include the following statement:

"This legal description is for the purpose of providing security for a mortgage, lien or trust indenture. It may only be used in an instrument of conveyance in the event of foreclosure proceedings instituted by the lending institution for whom the exemption was granted (or an allowable successor/lender as outlined in the Missoula County Subdivision Regulations), at which point the description is a valid recording reference. Use of this exemption does not by itself create a tract of record."

- B. The Institution Statement required in *Section 8.6.2.3 A*, the Landowner Statement required in *Section 8.6.2.3 B*, shall be recorded at the same time as the instrument(s) creating the security parcel.
- C. Once the loan for construction mortgage, lien, or trust indenture has been satisfied, the exemption is no longer applicable. Thus, the boundaries delineating the exempt parcel are extinguished, and the acreage previously identified reverts back into the acreage of the original tract. This shall be accomplished by including a statement on the security instrument and subsequent release that the security parcel does not exist as a transferable tract of record unless foreclosed upon, as outlined in *Section 8.6.2.4 A*.

8.6.3 Severed Interest (§76-3-201(1)(c), MCA)

A division of land that creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property.

8.6.3.1 General Requirements

There are no general requirements that apply to the severed interest exemption.

8.6.3.2 Rebuttable Presumptions

There are no rebuttable presumptions that apply to the severed interest exemption.

8.6.3.3 Required Documentation for Application

A signed, notarized statement from the landowner(s) that demonstrates that there is no division of the surface ownership creating new tracts.

8.6.3.4 Recording

- A. The landowner shall submit a survey or any other division document to be recorded with the Missoula County Clerk and Recorder establishing the severed interest of subsurface rights from the surface ownership.
- B. The Landowner Statement required in *Section 8.6.3.3 A*, and instruments creating the severed interest shall be recorded with the Clerk and Recorder at the same time as the deed or certificate of survey.

8.6.4 Cemetery Lot (§76-3-201(1)(d), MCA)

A division of land that creates a cemetery lot to be used for burial of human remains.

8.6.4.1 General Requirements

- A. New burial plots shall be at least 100 feet from any well, body of water, or agricultural land.
- B. Floodplain regulations prohibit burial of human remains in the designated floodplain; therefore, burial plots shall be located outside of the designated floodplain.

8.6.4.2 Rebuttable Presumptions

The use of this exemption may be presumed to have been used for the purpose of evading the MSPA if:

- A. The lot is not restricted to cemetery use only for the burial of human remains.
- B. The cemetery lot is large enough to accommodate other uses.
- C. There is already a cemetery lot on the original tract.

8.6.4.3 Required Documentation for Application

A graphic depiction or proposed certificate of survey of the proposed division which clearly identifies the new tract(s) intended for cemetery use.

8.6.4.4 Recording

- A. The division document or survey to be recorded must include a statement that limits the use of the proposed tract exclusively to a cemetery for the burial of human remains, and permanently restricts agricultural use on the new cemetery tract.
- B. The division document or survey to be recorded must include the statement, "Floodplain regulations prohibit burial of human remains in the designated floodplain."

8.6.5 Reservation of Life Estate (§76-3-201(1)(e), MCA)

A division of land creating a tract by the reservation of a life estate as described in MCA, Title 70, Chapter 15. This division is used when a person sells property but reserves the right to live on the property until death, at which time the property reverts to the purchaser.

8.6.5.1 General Requirements

The life estate must qualify as a life estate under provisions of Title 70, Chapter 15, MCA.

8.6.5.2 Rebuttable Presumptions

The use of this exemption may be presumed to have been used for the purpose of evading the MSPA if the reserved life estate does not include the entire tract of record.

8.6.5.3 Required Documentation for Application

There is no additional required documentation for the reservation of life estate exemption.

8.6.5.4 Recording

Once the property reverts to the purchaser, the exemption is no longer applicable. Thus, the boundaries delineating the exempt parcel are extinguished, and the acreage previously identified reverts back into the acreage of the original tract. This shall be accomplished by including a statement on the instrument reserving the life estate and subsequent release that the life estate parcel does not exist as a transferable tract of record.

8.6.6 Agricultural Lease (§76-3-201(1)(f), MCA)

A division of land creating a parcel by lease or rent for agricultural purposes.

8.6.6.1 General Requirements

- A. Only agricultural buildings are permitted on tracts created through the agricultural lease exemption.
- B. Water cannot be used on the property for anything other than agricultural use.

8.6.6.2 Rebuttable Presumptions

The use of this exemption may be presumed to have been used for the purpose of evading the MSPA if:

- A. The division is created for the purpose of conveyance.
- B. The intended use of the parcel is for other than the rent or lease for agricultural purposes.
- C. A building that does not meet the definition of an agricultural building exists on or is proposed for the agricultural lease parcel created by this exemption.
- D. Facilities for water supply, wastewater disposal, and/or solid waste disposal exist on or are proposed for the agricultural lease parcel created by this exemption.

8.6.6.3 Required Documentation for Application

- A. A graphic depiction or proposed certificate of survey of the proposed division which clearly identifies the new parcel intended for agricultural lease or rent.
- B. A signed, notarized statement from the landowner(s) that limits the use of the proposed parcel exclusively to agricultural lease or rent only.

8.6.6.4 Recording

If a lease, memorandum of lease, or similar document is recorded, it must include a statement that limits the use of the proposed parcel exclusively to agricultural purposes.

8.6.7 Federal or Tribal Lands (§76-3-201(1)(g), MCA)

A division of federal or tribal lands or other lands over which the state has no jurisdiction.

8.6.7.1 General Requirements

The land subject to the claimed exemption must be located outside of the state's jurisdiction.

8.6.7.2 Rebuttable Presumptions

There are no rebuttable presumptions that apply to the federal or tribal lands exemption.

8.6.7.3 Required Documentation for Application

There is no additional required documentation for the federal or tribal lands exemption.

8.6.8 Rights-of-way (§76-3-201(1)(h), MCA)

A division of land creating a parcel for a public right-of-way.

8.6.8.1 General Requirements

- A. A subsequent change in land use to something other than the approved right-of-way shall be subject to the requirements of the MSPA.
- B. Construction on a right-of-way exempt parcel shall be restricted to only those structures necessary for the right-of-way.

8.6.8.2 Rebuttable Presumptions

There are no rebuttable presumptions that apply to the right-of-way exemption.

8.6.8.3 Required Documentation for Application

- A. Landowner approval or proof of eminent domain authority by the entity acquiring or accepting the right-of-way.
- B. A signed, notarized statement from the grantee:
 - 1. Stating the purpose of the right-of-way; and,
 - 2. Acknowledging, under §76-3-201, MCA, that any subsequent change in use to residential, commercial, or industrial subjects the division to review under the MSPA.

8.6.8.4 Recording

The document or survey to be recorded must include a notarized statement from the grantee accepting the right-of-way, stating the purpose of the right-of-way, and limiting the use of the proposed exempt parcel exclusively to right-of-way purposes.

8.6.9 Utility Site (§76-3-201(1)(h), MCA)

A division of land creating a parcel for a utility site meeting the definition in §76-3-103(13), MCA.

8.6.9.1 General Requirements

- A. A subsequent change in land use to something other than the approved utility site shall be subject to the requirements of the MSPA.
- B. The entity for which a utility site is created must meet the definition of a public utility per §76-3-103(14), MCA.
- C. Construction on a utility site lot shall be restricted to only those structures necessary for the utility use.

8.6.9.2 Rebuttable Presumptions

There are no rebuttable presumptions that apply to the utility site exemption.

8.6.9.3 Required Documentation for Application

- A. Documentation that the utility utilizing the site meets the definition of public utility in §76-3-103(14), MCA.
- B. Landowner agreement to lease or convey the land to a qualifying utility or proof of eminent domain authority by the utility utilizing the utility lot.
- C. A signed, notarized statement from the utility:
 - 1. Stating the purpose of the utility site; and,
 - 2. Acknowledging, under §76-3-201, MCA, that any subsequent change in use to residential, commercial, or industrial subjects the division to review under the MSPA.

8.6.9.4 Recording

The document or survey to be recorded must include a notarized statement from the utility accepting the utility site, stating the purpose of the site, and limiting the use of the proposed exempt parcel exclusively to a public utility as defined in §76-3-103(13), MCA.

8.6.10 Condominiums, Townhouses, and Townhomes (§76-3-203, MCA)

A division of land for the construction of condominiums, townhomes, or townhouses, as defined in §70-23-102, MCA, the “Unit Ownership Act,” provided they are constructed on land previously subdivided after July 1, 1973, in compliance with these regulations and Title 76, Chapter 3, Parts 5 and 6, MCA.

8.6.10.1 General Requirements

- A. Land for condominiums, townhouses, and townhomes are exempt from review under MSPA if:
 - 1. They are constructed on land previously subdivided in compliance with the MSPA; and,
 - a. The subdivision approval expressly contemplated the construction of the condominium, townhouses, and/or townhomes, and the approved subdivision complies with the parkland dedication requirements contained in §76-3-621, MCA; or,
 - b. The condominium, townhome, or townhouse proposal conforms to applicable zoning regulations.
- B. The site layout of the condominium, townhouse, or townhome development shall not be different from the site layout contemplated in the approved subdivision, unless the property is zoned and the site layout conforms to zoning regulations.
- C. The proposed development must comply with the requirements for unit ownership under Title 70, Chapter 23, MCA.
- D. The documents establishing the division shall be recorded with the “Declaration of Unit Ownership” and all accompanying materials, as approved by the Montana Department of Revenue, and as required for declarations per §70-23-301, MCA.

- E. The proposal must comply with applicable zoning and floodplain regulations.
- F. The documents establishing the condominium division shall cite the exemption under §76-3-203, MCA.
- G. Condominium, townhouse, and townhome exemptions are not subject to the general evasion criteria in *Section 8.4, General Evasion Criteria*.

8.6.10.2 Required Documentation for Application

- A. Evidence that the tract to be divided exists as a tract of record subdivided in compliance with the subdivision regulations and Title 76, Parts 5 and 6, MCA, and the legal description of the tract of record.
 - 1. A copy of the filed plat or final plan approval documenting the land proposed for this exemption was approved as a subdivision that contemplated condominiums, townhomes, and/or townhouses and evidence of compliance with parkland dedication requirements; or,
 - 2. Evidence of compliance with applicable zoning regulations.
- B. Proposed site development plan.
- C. The declaration of condominium or townhouse ownership to be recorded with the Missoula County Clerk and Recorder.

8.6.10.3 Recording

- A. Certification from the local government that the condominiums or townhomes are exempt from review pursuant to this chapter, certification from the appropriate agency that the condominiums or townhomes are compliant with the Sanitation in Subdivision Act, certification from the Department of Revenue that due and payable taxes have been paid and that the name is distinct from other projects in Missoula County, and certification from the Treasurer that assessed and levied taxes have been paid. Documentation submitted to the other agencies of State or local government to obtain such certifications must match any documentation submitted for recording.
- B. The Declaration under the Unit Ownership Act containing all information required thereunder, Bylaws, certifications listed in *Section 8.6.10.3 A*, and final approved site plan of the condominiums, townhomes, or townhouses.

8.6.11 Airport Land (§76-3-205(1), MCA)

A division of land created by lease or rent that is contiguous to airport-related land owned by a city, county, state, or a municipal or regional airport authority.

8.6.11.1 General Requirements

- A. The lease or rent parcel shall be for onsite weather or air navigation facilities, the manufacture, maintenance, and/or storage of aircraft, or air-carrier related activities.
- B. The proposed parcel must be contiguous to airport-related land and must be owned by a city, county, state, or a municipal or regional airport authority.

- C. The proposal must comply with applicable zoning regulations. If the original tract is non-conforming to the zoning, the division may not result in increased non-conformity.
- D. Airport land exemptions are not subject to the general evasion criteria in *Section 8.4, General Evasion Criteria*.

8.6.11.2 Required Documentation for Application

- A. A map showing the location related to airport lands and uses, and current ownership including but not limited to land owned by the city, county, state, or a municipal or regional airport authority.
- B. A tentative agreement between the lessee and the managing entity of the airport to lease or rent the proposed parcel for a use that is permitted by this exemption.

8.6.11.3 Recording

- A. The document or survey to be recorded must include a statement that limits the use of the proposed parcel exclusively to lease or rent only for onsite weather or air navigation facilities, the manufacture, maintenance, and/or storage of aircraft, or air-carrier related activities.
- B. A signed, notarized agreement between the lessee and the managing entity of the airport to lease or rent the exempt parcel for a use permitted by this exemption.

8.6.12 State-owned Lands (§76-3-205(2), MCA)

A division of vacant state-owned land, except for divisions after July 1, 1974, that create a second or subsequent parcel for sale, rent, or lease for residential purposes.

8.6.12.1 General Requirements

- A. The land proposed for conveyance must be owned by the state and may not contain a residential dwelling.
- B. The proposal must comply with applicable zoning regulations. If the original tract is non-conforming to the zoning, the division may not result in increased non-conformity.
- C. State-owned land exemptions are not subject to the general evasion criteria in *Section 8.4, General Evasion Criteria*.

8.6.12.2 Required Documentation for Application

Documentation or a certified statement that there has been no previous division under the MSPA.

8.6.12.3 Recording

Documentation or a certified statement that there has been no previous division under the MSPA.

8.6.13 Relocation of Common Boundaries (§76-3-207(1)(a), (d), and (e), MCA)

A division of land that redesigns or rearranges the boundaries of tracts of record but does not result in an increase in the total number of lots and/or tracts.

8.6.13.1 Outside of Platted Subdivisions

A division of land that adjusts the boundary line between adjoining tracts of record outside of platted subdivision(s), pursuant to §76-3-207(1)(a), MCA.

8.6.13.2 Within Platted Subdivisions

A division of land that adjusts the boundary line between five or fewer adjoining tracts of record within platted subdivision(s), pursuant to §76-3-207(1)(d), MCA.

8.6.13.3 Between a Single Lot Within a Platted Subdivision and Adjoining Land Outside of the Platted Subdivision

A division of land that adjusts the boundary line between a single lot within a platted subdivision and adjoining land outside of platted subdivision(s), pursuant to §76-3-207(1)(e), MCA.

8.6.13.4 General Requirements

- A. The relocation of common boundary lines shall not create any additional tracts of record.
- B. All tracts shall comply with applicable local zoning regulations after the relocation of boundaries. If the original tract is nonconforming to the zoning, the division may not result in increased nonconformity.
- C. Any restriction or requirement that was placed on the original tract prior to the boundary relocation shall continue to apply to that portion of the property after the boundary relocation.
- D. If a relocation of common boundaries within platted subdivisions adjusts boundary lines between more than five lots, the governing body shall review the proposed division, and if

Info Box

Divisions of land that create tracts 160 acres or greater are not subject to subdivision or exemption review; divisions of land that create tracts less than 160 acres must be reviewed by the governing body as a subdivision or subdivision exemption.

By their nature, boundary line relocations move boundaries between a static number of tracts, in some cases resulting in tracts 160 acres or greater where they did not exist prior to the relocation. This creates an opportunity to later divide off 160 acres or greater without review. If the tract is less than 320 acres, any further division would always result in at least one tract less than 160 acres, and, therefore, subject to subdivision or exemption review. In this case, the opportunity to create more tracts without review does not exist because one tract will always be less than 160 acres.

If, however, a boundary line relocation proposes to create tracts 320 acres or greater, this creates the opportunity to divide that tract into two or more tracts without any review. Rebuttable presumption C. in Section 8.6.13.5 allows the subdivision administrator or governing body to determine if creating a tract of 320 acres or greater would constitute an evasion, since tracts 320 acres or greater could be divided into two tracts without governing body review, resulting in more tracts than existed originally.

approved, the division may be shown on a single amended plat in accordance with *Section 8.8.6.7*.

8.6.13.5 Rebuttable Presumption(s)

The use of this exemption may be presumed to have been used for the purpose of evading the MSPA if:

- A. The documentation submitted in the application does not support the stated purpose of the boundary line relocation.
- B. The division would result in the permanent creation of one or more *additional* lots, tracts, or parcels, less than 160 acres.
- C. The boundary line relocation would create a tract(s) that could be further divided without subdivision review or subdivision exemption review. (See Info Box.)

8.6.13.6 Required Documentation for Application

There is no additional required documentation for the boundary line relocation exemption.

8.6.13.7 Recording

- A. Deed(s) correcting previously recorded deed(s) with the legal description for newly created tracts of record.
- B. The certificate of survey must bear the signatures of all landowners whose parcels are changed.
- C. In the instance when no survey is required (see *Section 8.8.6.3*), the documents to be recorded creating the division must include any certification that would have been included on the survey.

8.6.14 Family Transfer / Gift or Sale to Immediate Family Member (§76-3-207(1)(b), MCA)

A single gift or sale of tracts outside of a platted subdivision to a member of the landowner's immediate family, as defined in §76-3-103(8), MCA, as the landowner's spouse, children by blood or adoption, or parents.

8.6.14.1 General Requirements

- A. This exemption may not be used when the land is owned by non-corporeal legal entities such as corporations, companies, partnerships, and trusts.
- B. The parcel involved in a division of land by family transfer exemption must be outside of a platted subdivision.
- C. Transfers of land as a gift or sale to an immediate family member may be approved once for each eligible family member, provided the division is not an evasion of the MSPA.
- D. The tracts created by this exemption may not be transferred or sold within two years of the date of County Commissioner approval of the exemption, unless otherwise approved through an *Appeals and Exceptions* process as outlined in *Section 8.8.7*.

- E. Except to correct or revise boundaries of family transfers between the same grantor and grantee, the use of the family transfer exemption is prohibited on tracts that were previously approved as a family transfer tract within the past two years.
- F. All exempted and remaining tracts shall comply with applicable local zoning regulations. The filing of any plat or survey that further exacerbates an existing zoning non-conformity or creates tracts in violation of Missoula County Zoning Regulations is prohibited.

8.6.14.2 Rebuttable Presumption(s)

The use of this exemption may be presumed to have been used for the purpose of evading the MSPA if:

- A. A transfer of a tract of land by one family member to another is followed by an attempted use of this exemption on the same tract.
- B. The landowner intends to divide land for the purpose of a gift or sale to the landowner's spouse and/or minor children.
- C. The remaining tract is intended to be sold so as to finance construction on a tract gifted and transferred to a spouse.
- D. The division appears to be made for the purpose of speculation by the landowner or for resale for the benefit of the landowner by using the grantee as a "straw person." This may be indicated if the grantor and/or recipient own other tracts of land in Missoula County or it is evident that the receiving family members do not intend to reside on the family transferred tract(s).
- E. The remaining tract or the transferred tracts are marketed for non-family related development purposes where benefit to family members appears to be secondary to development purposes.
- F. There is no clear intent declared on the occupancy or use of the transferred tracts by receiving family members.
- G. The parent purports to act as a guardian and/or conservator for a minor child without establishing a trust instrument and the bona fide assurance that the property will be managed on behalf of the child and not the parent.
- H. The proposed division is on a tract that was previously created through use of a family transfer exemption, mortgage security exemption, or occasional sale exemption, or has received preliminary plat approval.

8.6.14.3 Required Documentation for Application

A signed, notarized statement from the landowner(s) listing the name and relationship of the person(s) who will receive the land from this division and verifying that this division will not result in more than one gift or sale of a tract to any member of the landowner's immediate family in the county.

8.6.14.4 Recording

- A. Any survey or document showing the creation of new tracts of land pursuant to this exemption shall be accompanied by:

1. Corrected deed(s) stating the previous property description is now to be described as the newly created tract(s) of record; and,
 2. Deeds transferring interest in the tract(s) being created.
- B. In the instance when no survey is required (see *Section 8.8.6.3*), the documents to be recorded creating the division must include any certification that would have been included on the survey.
 - C. All deed(s), including corrected deed(s), and, if applicable, the survey to be recorded shall include a statement that prohibits the transfer or sale of family transfer tract(s) within two years of the date of governing body approval of the tract(s) by exemption, unless such tracts are approved by the governing body for sale or transfer prior to the expiration of the two-year holding period. The recordation of an instrument of conveyance of a tract created by family gift or sale within two years of the date of governing body approval may be subject to refusal of the Clerk and Recorder, or to the filing of a court action to set aside the land transfer.
 - D. If land is approved for family transfer to a minor, as indicated in the approval letter from the County, the claimant must furnish proof that a trust has been set up in the name of the minor child(ren) before the filing of the family transfer will be permitted or the deed transferring the property to the minor child(ren) complies with the Montana Uniform Transfers to Minors Act.
 - E. A certificate of survey for a family transfer may include more than one exempt tract, provided all tracts meet the criteria and requirements of this chapter.
 - F. The grantor and recipient(s) must match the original approval, unless otherwise approved through an *Appeals and Exceptions* process as outlined in *Section 8.8.7*.

8.6.15 Agricultural Use Only with Covenant (§76-3-207(1)(c), MCA)

Parcels located outside of a platted subdivision where the landowner gifts, sells, or enters into an agreement for the purchase and/or sale of a portion thereof to be used exclusively for agricultural purposes.

8.6.15.1 General Requirements

- A. The parcel involved in a division of land by agricultural exemption must be outside of a platted subdivision.
- B. The parties to the transaction by gift, sale, or agreement must enter into a covenant running with the land that the land will be used exclusively for agricultural purposes as defined in *Section 8.2.1*, revocable only by mutual consent of the governing body and the landowner in accordance with *Section 8.6.15.5 B, Agricultural Covenant, Removal*.
- C. Only agricultural buildings as defined in *Section 8.2.2*, are permitted on tracts created through the agricultural covenant exemption.

- D. Water cannot be used on the property for anything other than agricultural use.
- E. All tracts shall comply with applicable local zoning regulations. The filing of any plat or survey that further exacerbates an existing zoning non-conformity or creates tracts in violation of Missoula County Zoning Regulations is prohibited.

8.6.15.2 Rebuttable Presumptions

The use of this exemption may be presumed to have been used for the purpose of evading the MSPA if:

- A. The intended use of the tract is for other than agricultural purposes.
- B. A building that does not meet the definition of an agricultural building exists on or is proposed for the agricultural covenant tract created by this exemption.
- C. Facilities for water supply, wastewater disposal, and/or solid waste disposal exist on or are proposed for the agricultural covenant tract created by this exemption.

8.6.15.3 Required Documentation for Application

- A. A graphic depiction or proposed certificate of survey of the proposed division which clearly identifies the new tract intended for agricultural use.
- B. A signed, notarized statement from the landowner(s), to be used as a basis for the covenant language on the survey or division document, limiting the use of the proposed tract exclusively to agricultural use and verifying that only agricultural buildings exist or will be built on the new tract.

8.6.15.4 Recording

- A. In the instance when no survey is required (see *Section 8.8.6.3*), the documents to be recorded creating the division must include any certification that would have been included on the survey.
- B. The certificate of survey must show or contain a signed and acknowledged recitation of the agricultural covenant in its entirety.

8.6.15.5 Agricultural Covenant

A. Application

1. The claimant and County must enter into a covenant, which runs with the land and is revocable only by mutual consent of the governing body and the landowner, stating that the divided land will be used exclusively for agricultural purposes.
2. The covenant must be signed by the landowner, the Missoula County Commissioners, and where applicable, all parties to the gift, sale, or agreement to buy/sell, and recorded at the office of the Missoula County Clerk and Recorder.

B. Removal

1. Removal of the agricultural covenant requires approval of the division of land through subdivision review; or,
2. The Board of County Commissioners may, in its discretion, approve the removal of the agricultural covenant without subdivision review if:
 - a. The original lot lines are restored through aggregation of the covenanted tract prior to, or in conjunction with, the lifting of the agricultural covenant; or,
 - b. The proposed lifting of the covenant is for a government entity seeking to use the tract for public purposes.
3. Lifting of an agricultural covenant shall be recorded at the office of the Missoula County Clerk and Recorder.

8.6.16 Aggregation of Lots (§76-3-207(1)(f), MCA)

The aggregation of tracts or lots when a certificate of survey or subdivision plat eliminates the boundaries of the original tracts and establishes the boundaries of a larger aggregate tract.

8.6.16.1 General Requirements

- A. The aggregation shall not create any additional lots, tracts, or parcels.
- B. All tracts shall comply with applicable local zoning regulations after the aggregation. If the original tract is non-conforming to the zoning, the aggregation may not result in increased non-conformity.
- C. Any restriction or requirement that was placed on the original tract prior to the aggregation shall continue to apply to that portion of the property after the aggregation.

8.6.16.2 Rebuttable Presumptions

There are no rebuttable presumptions that apply to the aggregation exemption.

8.6.16.3 Required Documentation for Application

There is no additional required documentation for the aggregation exemption.

8.6.16.4 Recording

- A. Correction deed(s) stating the previous property description is now to be described as the newly created tract(s) of record.
- B. The certificate of survey must bear the signatures of all landowners whose parcels are changed.
- C. In the instance when no survey is required (see *Section 8.8.6.3*), the documents to be recorded creating the aggregation must include any certification that would have been included on the survey.

8.7 General Submittal Requirements

To divide land by use of an exemption from subdivision review, the claimant shall submit the following subdivision exemption application materials to the subdivision administrator. Condo and Townhome, Airport Land, and State-owned Lands exemptions are not required to pay the review fee listed in *Section 8.7.1.8*.

- 8.7.1** To apply for a subdivision exemption, submit one hard copy and an electronic copy of all items listed below. For exemptions requiring governing body review described in *Section 8.8.1.4*, submit five hard copies, along with the electronic copy, unless a lesser quantity is specified by the Planning Office. Information submitted in other formats or in insufficient quantity may incur additional charges for copying, scanning, or distribution.
 - 8.7.1.1** The application form, with all applicable sections completed.
 - 8.7.1.2** Evidence of entitlement to the claimed exemption in the form of a notarized affidavit signed by at least one landowner of at least one tract involved in the exemption application, and where applicable the landowner's agent.
 - A. When a tract of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms property owner, landowner, and owner mean the seller of the tract under the contract-for-deed (ARM 24.183.1104).
 - B. The affidavit must verify that the information submitted in the application is true and correct.
 - 8.7.1.3** Evidence verified by the County Surveyor that the tract(s) to be divided or revised exists as a tract or tracts of record (see *Section 8.8.5, Evidence of Existing Tract of Record*).
 - A. Attach copies of all deeds, contracts, restrictions and covenants related to the property recorded within the past two years.
 - B. The subdivision administrator shall examine the documents referenced as evidence and may confer with other County departments to verify that the division does not create a new tract subject to review as a subdivision.
 - C. If it is determined that the evidence insufficiently demonstrates that no new tract is created requiring subdivision review, the subdivision administrator shall notify the individual or agent acting on behalf of the individual that the application may not be accepted until the required documentation is submitted.
 - 8.7.1.4** Vicinity map, with the location of the property that is the subject of the exemption clearly identified.
 - 8.7.1.5** If available, a draft survey of the proposed division. For divisions of land where no survey will be recorded, attach a copy of the proposed deed(s) for exchange of ownership, if applicable.
 - 8.7.1.6** Schematic sketches of the original parcel(s) before and after the division, showing the locations and uses of all structures. If the land proposed for division is zoned, the schematic sketch shall indicate distances between structures and

proposed new property lines and any other information to demonstrate compliance with the zoning district regulations.

- 8.7.1.7** Documentation as outlined in Sections A-C below that the division will not create a tract(s) entirely within a flood hazard area which is intended for construction of roads, utilities, or other development, or any other land alteration such as grading or filling.
- A. If a proposed exempt tract(s) is located within one mile of a Zone “A” designated floodplain as identified on the Flood Insurance Rate Map for Missoula County, the claimant shall analyze the land division history of the original tract dating back to August 15, 1983, to determine if a Zone “A” designated floodplain had been located on a parent parcel of an original tract.
 - B. If a Zone “A” designated floodplain had been located on a parent parcel of an original tract at any time since August 15, 1983, the County Floodplain Administrator may require an engineered flood analysis to determine the base flood elevation or may waive the requirement for a flood analysis based on a field determination.
 - C. In lieu of an engineered flood analysis showing that the division will not create tract(s) entirely within a flood hazard area, the claimant may instead include the statement as shown in *Section 8.8.6.11.D.* on the survey, or in the absence of a recorded survey, the claimant shall submit a notarized statement as shown in *Section 8.8.6.11.D.* to be recorded with any division document and/or instruments of conveyance.
- 8.7.1.8** Review fee.
- 8.7.1.9** Additional documentation may be required for specific exemptions found in *Section 8.6, Exempt Divisions of Land*, under the heading “Required Documentation for Application.”
- 8.7.1.10** Any other documentation necessary to complete subdivision exemption review.

8.8 Procedures

A request for use of an exemption from subdivision review must comply with the procedures contained in this section.

8.8.1 Exemption Application Review Process

The sequential steps in the exemption application review process are as follows:

- 8.8.1.1** The claimant may contact the subdivision administrator to assess if the division appears to qualify as an exemption from subdivision review. The subdivision administrator may issue an advisory opinion only, and the opinion creates no commitment on behalf of the local officials when the documents requesting the proposed land division are submitted for formal review. The claimant should be prepared at this time to identify the legal tract of record proposed for division (see *Section 8.8.5, Evidence of Existing Tract of Record*).

- 8.8.1.2** It is the claimant’s responsibility to contact the Department of Environmental Quality (DEQ) reviewer or local sanitarian as applicable. Claimants are advised to consult with the appropriate sanitation reviewer prior to making application for a subdivision exemption. Separate application forms and materials may be required for review by DEQ and/or the local sanitarian.
- 8.8.1.3** The subdivision administrator shall review the application materials to determine if all required information has been submitted. If incomplete, the subdivision administrator will provide information in writing to the claimant on any needed corrections and/or additional materials needed. If applicable, the claimant shall resubmit documents with corrections.
- 8.8.1.4** Court-ordered exemptions are acted upon by the court having jurisdiction, after notifying the governing body or designated agent of the pending division and allowing the County to present written comment on the division. All other exemptions are reviewed administratively by the subdivision administrator, in coordination with other associated agencies, with the following exceptions, which shall be reviewed by the governing body:
- A. Family Transfer,
 - B. Boundary Line Relocation(s) and/or Aggregation within a platted subdivision that affects six or more lots,
 - C. Agricultural Exemption with Covenant,
 - D. Agricultural Covenant Lifting, and,
 - E. Any other applications deemed appropriate for governing body review by the subdivision administrator.
- 8.8.1.5** The subdivision administrator shall notify the landowner of the date and time of governing body consideration of the exemption application. The claimant or agent must appear personally at the hearing. The claimant has the burden of proof by a preponderance of the evidence.
- 8.8.1.6** Exemption review includes a check for compliance with the criteria in these regulations, the MSPA, the Administrative Rules of Montana (ARMs), and coordinated review by other associated agencies, including, but not limited to, the Examining Land Surveyor, Environmental Health, Clerk and Recorder, Treasurer, County Attorney’s Office, Tribal agencies, County Floodplain Administrator, and/or County Public Works.
- 8.8.1.7** If the exemption application is approved, the subdivision administrator or governing body will send written notice to the claimant, with copies to the governing body and all other applicable agencies, including tribal agencies when exemptions are approved on the reservation.
- 8.8.1.8** If a survey is required or desired, the claimant must hire a Professional Land Surveyor, licensed in the State of Montana, to prepare a survey. If a survey is not required and not desired, the claimant prepares the written division or transfer documents necessary for the division. Private legal review of the documents is recommended.

- 8.8.1.9** The claimant shall submit the final documents for recording to the County Clerk and Recorder, including all information required to be recorded with the division document.
- 8.8.1.10** If the proposed use of the exemption is denied, the subdivision administrator shall identify the reasons in writing to the claimant. The claimant may appeal the subdivision administrator's or governing body's decision as outlined in *Section 8.8.7, Appeals and Exceptions*.

8.8.2 Other Agency Review of Exempted Divisions

- 8.8.2.1** Divisions of land exempted from the Montana Subdivision and Platting Act are still subject to requirements of other agencies and applicable regulations. These requirements may restrict the use of the divided land or preclude the filing of the document creating the division. Laws and regulations that may restrict or preclude division and/or development include, but are not limited to, zoning, floodplain regulations, fire codes, access, building codes, etc.
- 8.8.2.2** For any division or merger of real property, all assessed and levied taxes, even if not due at the time of recording, must be paid in full before recording. The landowner must present the County Treasurer's certification that all taxes, fees, and special assessments that have been levied and assessed are paid in full prior to recording.
- 8.8.2.3** Since the County is not reviewing subdivision exemptions for adequate access, approval of an exemption does not guarantee adequate physical and legal access by all vehicles in all weather.
- 8.8.2.4** All divisions reviewed as exemptions under these regulations are subject to the Montana Department of Environmental Quality (DEQ) review, unless shown to be exempt from review under Title 76, Chapter 4.
- 8.8.2.5** The Clerk and Recorder is prohibited from filing a division that does not meet the sanitation requirements of §76-4-122(2), MCA. The landowner is responsible for obtaining the sanitation approvals necessary for a division of land to be filed with the Clerk and Recorder.
- 8.8.2.6** Divisions of land that are exempt from subdivision review are not reviewed for compliance with floodplain regulations. Nonetheless, creating exempt tract(s) entirely within a flood hazard area which are intended to be altered by construction of roads, utilities, or other development, or any other land alteration such as grading or filling, may be deemed evasion and therefore denied. In order to avoid creating exempt tracts that require land alteration in the floodplain, an exempt division of land is subject to an evaluation of impacts at the time of exemption application review relative to the flood hazard area, including an assessment in areas where the proposed exempt tract(s) is within one mile of a Zone "A" designated floodplain.

8.8.3 Exemption Approval Period

- 8.8.3.1** An approval of a subdivision exemption is valid for a period of three years. If an extension has not been requested and granted, the division may not be recorded after the approval period has expired.
- 8.8.3.2** Any existing and outstanding approval letters issued prior to the adoption of these regulations for exemptions authorized by Montana state law shall automatically be deemed to expire three calendar years after the original effective date of these regulations (November 4, 2016).
- 8.8.3.3** Upon the written request of the applicant submitted 10 working days prior to the expiration of the original approval period, the subdivision administrator or governing body may grant one one-year extension of the approval period, including exemptions approved prior to November 4, 2016.
- 8.8.3.4** Notification of approval of the exemption to the claimant shall include the approval period of the exemption and the expiration date.

8.8.4 Remaining Tracts

- 8.8.4.1** A remaining tract can be less than 160 acres if it has been created by the use of exemption found in Title 76, Chapter 3, Part 2, MCA.
- 8.8.4.2** Only one remaining tract can be established in the exemption division process.
- 8.8.4.3** A remaining tract of land created through the use of a valid statutory exemption is a tract of record and shall be identified as a separate parcel.
- 8.8.4.4** If an exemption by certificate of survey is used and the remaining tract is less than 160 acres, the remaining tract is a separate tract which must be surveyed, unless it is exempt per *Section 8.8.6.3*.
- 8.8.4.5** When reviewing exemption applications, the subdivision administrator shall determine whether the claimant has provided sufficient evidence to rebut the presumption of evasion with respect to the proposed remaining tract. If the subdivision administrator or governing body finds that evasion is evident, the exemption request may be denied.

8.8.5 Evidence of Existing Tract of Record

- 8.8.5.1** The Clerk and Recorder may not record any instrument that purports to transfer title unless the instrument of transfer is accompanied by evidence that the tract exists as a tract of record, as defined in §76-3-103, MCA, and has been surveyed as applicable. As required by §76-3-302, MCA, the evidence shall consist of:
 - A. An instrument of transfer describing the parcel or tract by reference to a filed certificate of survey or subdivision plat;
 - B. Documentation that the parcel is in a location in which the state does not have jurisdiction;
 - C. Previously recorded documents verifying the parcel existed as a tract of record before July 1, 1973; or,
 - D. Documents that, if recorded, would verify the parcel existed as a tract of record before July 1, 1973.

- 8.8.5.2** As established by the Montana Attorney General (47 Op. Att’y Gen. No. 10), a US government lot or an aliquot part of a US government section is not a tract of record simply because its description appears in a deed on file. The clerk may not record any instrument that purports to transfer title to an aliquot part of a US government section or to a government lot, unless accompanied by:
- A. Reference to recorded documents that verify the parcel existed as a tract of record on July 1, 1973; or,
 - B. Reference to recorded documents that verify the parcel was segregated and individually conveyed after July 1, 1973, but which was exempted by applicable provisions of the MSPA, as amended.

8.8.6 Recording: Survey, Division Document, Instrument of Transfer

- 8.8.6.1** Only divisions exempted under §76-3-207, MCA, require compliance with the survey requirements of §76-3-401, *et. seq.*, MCA. All other exemptions described in Part 2 of the MSPA do not require a survey, but in some cases surveys may be submitted voluntarily.
- 8.8.6.2** Any certificate of survey, regardless of whether it is required or voluntary, must comply with the Uniform Standards for Certificates of Survey, as found in the Administrative Rules of Montana (ARMs). The Examining Land Surveyor shall review all surveys for compliance with the ARMs.
- 8.8.6.3** As provided for in §76-3-401, MCA, no survey is required for any exemption, including those in §76-3-207, MCA, when the exempted parcel can be described as 1/32 or larger aliquot part of a U.S. government section or as a U.S. government lot, unless the parcel is a lot in a platted subdivision.
- 8.8.6.4** A U.S. government lot in its entirety does not require a survey; smaller parcels within a government lot require a survey.
- 8.8.6.5** The MSPA review requirements only apply to the conveyance of tracts that were created after the effective date of the MSPA, July 1, 1973. (35 Op. Att’y Gen. 55 (1973)). Therefore, in accordance with §76-3-206, MCA, any parcel that was owned under single or undivided ownership on July 1, 1973, requires no survey. (See also 47 Op. Att’y Gen. No. 10).
- 8.8.6.6** The instrument of transfer of land which is acquired for state highways may refer by parcel and project number to the state highway plans which have been recorded in compliance with §60-2-209, MCA, and are exempted from the surveying and platting requirements of the MSPA. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.
- 8.8.6.7** The Clerk and Recorder shall permit the filing of multiple approved exemptions on a single amended plat or survey, as long as all requirements are met.
- 8.8.6.8** For any exemption requiring that the landowner enter into a covenant running with the land, the certificate of survey or document creating the division must include a signed and acknowledged copy of the covenant.

8.8.6.9 All exemptions creating conveyable tracts must be accompanied at the time of recording with appropriate deed(s) transferring newly created tracts of record or, in the case where the grantor and grantee are the same, correcting previously recorded deed(s) with the legal description for newly created tracts of record.

8.8.6.10 If an exemption request is approved, the transfer and/or recording documents must substantially comply with the exemption application and affidavit as approved by the governing body or the subdivision administrator. Minor changes may be approved by the subdivision administrator which are deemed necessary and practical as long as the change is found to be minor in nature and not an evasion of the MSPA. Appeals of the subdivision administrator's determination of whether a change is minor in nature may be made in accordance with *Section 8.8.7, Appeals and Exceptions*.

8.8.6.11 Statements on Recording Documents

All surveys, division documents, and instruments of conveyance must include the following statements.

A. *"This division of land was not reviewed for adequate legal and physical access, and the tracts that are created herein may be unsuitable for the purposes of providing appropriate access for services, such as fire protection, school busing, ambulance, and road maintenance. Consequently, landowners should expect that such services may not be provided. This approval does not obligate Missoula County to provide road maintenance, dust abatement, or any other services."*

B. *"This division of land was not reviewed for installation of utilities, compliance with zoning, floodplain, or availability of public services."*

C. *"A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas."*

D. For approved exemptions waiving the submittal requirement for a Zone "A" flood analysis as required in *Section 8.7.1.7*, the following statement shall be included in the owner's certification on all surveys, division documents, and/or instruments of conveyance.

"Development, including but not limited to grading, filling, mining, storage, and construction of roads, utilities, and structures, may not occur on this tract(s) unless an engineered flood analysis has determined that the location of proposed development is located outside of a flood hazard area."

E. For approved family transfers, the following statement shall be included on all surveys, division documents, and/or instruments of conveyance:

"Any parcel of land created by the family transfer exemption may not be transferred or sold to someone other than the approved family member within two years of the date of approval by the County Commissioners,

unless otherwise approved through an Appeals & Exceptions process. The County Commissioners approved this Family Transfer on (approval date)."

8.8.7 Appeals and Exceptions

- 8.8.7.1** Any landowner whose proposed use of an exemption has been denied by the subdivision administrator may appeal the decision in writing to the governing body.
- A. Appeals of decisions by the subdivision administrator shall follow the applicable procedure outlined in *Section 5.11, Appeals of Administrative Decisions*.
 - B. The landowner may submit additional evidence to demonstrate eligibility for the claimed exemption and/or that the use of the exemption is not intended to evade the MSPA.
 - C. The governing body shall notify the landowner of the date and time of their review of the appeal.
 - D. The governing body's appeal decision shall be submitted in writing to the landowner. If the governing body decision is to authorize the use of the exemption, the survey or deed must be recorded with the written authorization of the governing body.
 - E. If the landowner proposing to use an exemption chooses not to appeal a denial or if, upon appeal, the governing body or court of jurisdiction affirms that the landowner is not eligible for the claimed exemption, the landowner may submit a subdivision application for the proposed division of land.
 - F. Appeals of decisions by the governing body rejecting a claim for an exemption from the subdivision regulations may be appealed to the District Court.
- 8.8.7.2** Any landowner who received approval for a family transfer exemption may request the following exceptions:
- A. **Revision of Grantor and/or Recipient of Family Transfer Tract(s)**
 - 1. Requests to revise the approved grantor and/or recipient of a family transfer tract(s) may be approved administratively by the subdivision administrator in the following situations:
 - a. In the event of grantor(s)' death after family transfer approval, the grantor(s)' estate requests to distribute family transfer tracts to approved recipients.
 - b. New recipients may not be added without a new exemption review; however, approved recipients may swap approved tracts.
 - B. **Exception to Two-Year Holding Period for Family Transfer Tract(s)**
 - 1. Requests for exceptions to the time limitation for sale of family transfer tract(s) shall follow the applicable procedures outlined in *Section 5.11, Appeals of Administrative Decisions*.
 - 2. The landowner shall submit evidence of exceptional circumstances warranting approval of the request to sell or transfer a family transfer

tract prior to the two years required to hold the property, as required in *Section 8.6.14.1 D*.

- a. Circumstances that may warrant approval of a waiver of the time limitation on the sale of a family transfer tract may include involuntary transfers due to foreclosure, death, judicial sale, condemnation, or bankruptcy. Other instances where a waiver of the time limitation may be approved by the governing body include, but are not limited to, estate planning (*e.g.*, transferring the tract into or out of a trust), documented financial hardship, divorce, and adding additional owners to the deed.
3. The governing body may use its discretion to determine if exceptional circumstances exist that warrant an exception to the two-year holding period for a family transfer tract.
4. If an exception is approved by the County Commissioners that authorizes transfer or sale of the exempt tract to a separate owner and allows the original recipient to be removed from the title, the two-year time limitation shall be deemed expired. If the original recipient remains a titled landowner to the property, the two-year holding period shall not expire unless and until the original recipient no longer holds title to the tract, as approved by the Board of County Commissioners.
5. The governing body shall notify the landowner of the date and time of their review of the exception request.
6. The governing body's decision on the exception shall be submitted in writing to the landowner and shall be recorded along with the instrument of conveyance.