

EXEMPTION AND CERTIFICATE OF SURVEY EXAMINATION PROCESS

PREPARED BY:

Richland County Planning Department
123 West Main Street
Sidney, Montana 59270
(406) 433-6886

Approved and Adopted by:

Richland County	Dated: <u>June 27, 2011</u>
City of Sidney	Dated: <u>July 18, 2011</u>
Town of Fairview	Dated: <u>June 13, 2011</u>

Exemptions and Certificates of Survey

The State of Montana allows for certain divisions of land which would be otherwise constitute subdivisions to be exempt from local subdivision review and approval, unless the division is an attempt to evade the Montana Subdivision and Platting Act (the Act). While exempt plats are not subject to subdivision review, they are subject to survey requirements and some level of examination by the City/Town or County; and will be examined according to the Richland County, City of Sidney, and Town of Fairview Subdivision Regulations Section V. “*Divisions of Land Exemption from Subdivision Review*” and shall follow 24.283.1104 of the *Administrative Rules of Montana*.

Table of Contents

Exemption and Certificate of Survey Examination Process	3
Gift or Sale to Family Member	4
Security for a Construction Mortgage, Lien, or Trust Indenture	5
Exemption for Agricultural Purpose	6-7
Relocation of Common Boundary Line/Aggregation	8
Court Order	10
Right-of-Way/Utilities	10
Retracement	10
City-County Contacts	11
Application Form	12

It is the policy of the Richland County to have all proposed exemptions and certificates of survey submitted to the Planning Department to be examined by the Richland County Sanitation Office. The Richland County Sanitation Office is located in the Community Services Building at 1201 West Holly Street, Sidney, Montana.

Exemption Examination Process

While state law does not identify a specific examination process for exemptions and certificates of survey the City Councils for the City of Sidney and the Town of Fairview and the Richland County Commission have adopted this examination process as outlined below:

- Meet with the planning staff to determine if the exemption you are requesting has as factual basis for use of the exemption.
- After confirming with the Planning Office that the exemption you are requesting is valid and legal, retain the services of a surveyor. The Planning Department cannot recommend any particular surveyor, however any Montana State licensed surveyor is appropriate.
- Once a draft certificate of survey is completed, the surveyor, the landowner, or the person who commissioned the survey should submit a draft survey of the certificate of survey and any associated documents to the Planning Department for examination. There is a \$150 examination fee required at time of submittal of the draft survey; a copy of the Fee Schedule can be obtained at the Richland County Planner Office or online at www.richland.org.

*** Additional copies will be required for other city/county departments for comment and suggested corrections if necessary. The Planner will identify which departments are to receive a copy; a paper copy or pdf file may be sent the department(s) as identified; it is the responsibility of the person submitting the survey to provide and send the required copies to the departments.

- Once the Planning Department has received comments and suggested corrections from all pertinent departments, the Staff Planner will contact the surveyor (typically within 1-2 weeks) regarding any suggested corrections that would be helpful to expedite review and consideration of the document and survey to be made prior to submittal of the mylar certificate of survey and associated documents (a signed recordable copy of the Certificate and signed documents).
- When the certificate of survey (2 mylars and 1 paper copy) is ready for recording at Richland County Clerk & Recorder Office the Clerk & Recorder Office requires a recording fee at time of submittal for recording and filing. You may contact Clerk and Recorder to obtain amount fee to be paid at 433-1708 or at 201 West Main, Sidney, MT 59270; the recording fee must be paid prior to survey being recorded.

Exemption as a Gift or Sale to a Member of the Immediate Family
(76-3-207, MCA)

The intention of this exemption is to allow for a landowner to convey one parcel to each member of the immediate family without undergoing local subdivision review. A single parcel may be surveyed and conveyed to each member of the immediate family under this exemption in each county where the landowner owns property. Immediate family is defined as the spouse, children by blood or adoption, or parents of the grantor (76-3-103(7) MCA). The use of this exemption must also consider the following:

- One conveyance of a parcel to each member of the landowner’s immediate family is eligible for exemption for subdivision review.
- The use of the exemption may not result in more than one remaining parcel of less than 160 acres.
- A title in mixed ownership, such as brother and sister are not eligible to claim the family exemption.
- Lots within platted subdivisions are not eligible for family exemptions.
- All tracts of record created by the survey must meet minimum lot sizes prescribed by any zoning in effect, if applicable.

Any proposed use of the family conveyance exemption to divide a tract that was previously created through use of an exemption shall be presumed to be an evasion of the Act if it creates a pattern of development consistent with an overall plan with characteristics such as common roads, utility, easements, restrictive covenants, open space or common marketing.

The following must accompany a certificate of survey that will convey a parcel to an immediate family member:

_____ A \$150 examination fee (checks will need to be made payable to the respective governing body as identified by the Staff Planner: Richland County, City of Sidney, or Town of Fairview).

_____ Documentation of ownership, previously recorded document such as: Quit Claim or Warranty Deed.

_____ It is recommended that a properly executed deed transferring ownership to the family member receiving the parcel will need to be recorded at the same time as the survey is to be recorded

Below is an example of certification required on the face of the survey:

Certificate of Exemption
(Family Gift or Sale)

I (We) hereby certify that the purpose of this division of land is to transfer Tract _____ as shown on this certificate of survey to (name of grantee) _____, my (our) (father) (mother) (daughter) (son) (wife) (husband). I (we) certify that is the single (only) gift or sale (I) (we) have made to the aforementioned immediate family member in the County of _____ for the purpose of this exemption. Furthermore, I (we) certify that I (we) am (are) entitled to use this exemption and am (are) in compliance with all conditions imposed by law and regulation on this use of this exemption. Therefore, this division of land is exempt from review as a subdivision pursuant to section 76-3-207(1)(b), MCA.

DATED THIS _____ day of _____, 20____.

(Name landowner) Acknowledgement and notarized is required.

Exemption to Provide Security for a Construction Mortgage, Lien, or Trust Indenture
(76-3-201, MCA)

The purpose of this exemption is to allow the creation of a parcel to provide financing security for mortgages, liens, or trust indentures for construction, improvements to the land being divided, or refinancing purposes. Under policies of many lending institutions and federal home loan guaranty programs, a landowner who is seeking financing for improvements to a tract of land is required to hold title to the specific site on which to residence or improvements will be built.

Facts presented for the following create the rebuttal presumption that the use of this exemption is being adopted for the purpose of evading the Act:

- It will create a site for more than one dwelling unit.
- The loan is for someone other than the owner of record or the recorded contract purchaser of the parcel to be subdivided.
- It will create a pattern of development which is equivalent to a subdivision with characteristics such as common roads, sewer, water, utility easements, restrictive covenants, open space or a common marketing or promotional pan.

This exemption may be used to create a parcel of any size, regardless of zoning limitations that may be in place; however, the created parcel may not be conveyed to any other entity, except a lending institution in the event of foreclosure of the mortgage, lien, or trust indenture.

The following documents must accompany a certificate of survey submitted for a mortgage exemption:

- _____ Documentation of ownership, previously recorded document such as: Quit Claim or Warranty Deed.
- _____ A \$150 examination fee (checks will need to be made payable to the respective governing body as identified by the Staff Planner: Richland County, City of Sidney, or Town of Fairview).
- _____ A signed statement from a lending institution that the creation of the interest is necessary to secure a loan.

Below is an example of certification required on the face of the survey:

Certificate of Exemption
(SECURITY FOR MORTGAGE, LIEN, OR TRUST INDENTURE)

I (We) hereby certify that the purpose of this survey is to create a parcel of land to provide security for mortgage or loan purposes and that this exemption complies with all conditions imposed on its use, Therefore, this survey is exempt from review as a subdivision pursuant to Section 76-3-201 (1)(b) MCA and from review by the Montana Department of Environmental Quality MCA, 76-4-125(2)(a), the exclusion cited in 76-3-201 and 76-3-204.

DATED THIS _____ day of _____, 20____.

(Name of land owner(s))

Acknowledgement and notarized is required.

Exemptions for Agricultural Purposes (76-3-207, MCA)

The intention of this exemption is to allow a landowner to create a parcel that will be used only for production of livestock or agricultural crops and where no residential, commercial, or industrial buildings will be built. An agricultural purpose, under these exemption criteria, means the use of land for raising crops or livestock, or for the preservation of open space, and specifically excludes residential structures and facilities for commercial processing agricultural products. Agricultural lands under this exemption are exempt from review by the Montana Department of Environmental Quality (MDEQ), provided the applicable exemption is properly invoked by the property owner.

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:

- The parties to the transaction by gift, sale or agreement, must enter into a covenant running with the land and revocable by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purpose or open space. The covenant must be signed by the property owner, the buyer or lessee, and the governing body.
- The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no 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 and the land division is reviewed as a subdivision. The governing body must approve lifting the agricultural covenant.
- Any changes in use of land for anything other than agricultural purposes subjects the parcel to full review as a subdivision. Residential, commercial and industrial structure, including facilities for commercial processing of agricultural products, are excluded uses on parcels created under this exemption unless the covenant is revoked and the land division is reviewed as a subdivision. The governing body must approve lifting the agricultural covenant or the property shall undergo subdivision review.

The following documents must accompany a certificate of survey for an agricultural covenant:

_____ Documentation of ownership, previously recorded document such as: Quit Claim or Warranty Deed.

_____ A \$150 examination fee (checks will need to be made payable to the respective governing body as identified by the Staff Planner: Richland County, City of Sidney, or Town of Fairview).

_____ An agricultural covenant with the signature of the owner and the signatures of the governing body shall be depicted on the survey or on a separate document shall be provided with the covenant language, owner's signature and governing body signatures. Formal action to approve the covenant must be done by the governing body at a regularly scheduled meeting.

Below is an example of certification required on the face of the survey:

**Certificate of Exemption
(For Agricultural Purposes)**

I (We) certify that the purpose of this survey is to create a parcel of land to be used exclusively for agricultural purposes, and that a covenant has been entered into by the parties to the transaction, running with the land and revocable only by mutual consent of the governing body and the property owner, that the land will be used exclusively for agricultural purposes, and this survey is, therefore, exempt from review as a subdivision pursuant to section 76-3-207(1)(c), MCA.

DATED THIS _____ day of _____, 20____.

(Name of landowner)

Acknowledgement and notarized is required.

Exemption for Agricultural Purpose – Continued

Example Acceptance of Certificate of Survey – Agricultural Exemption

This declaration, made this _____ day of _____, 20____, by (Name of Property Owner(s), hereinafter referred to as the “Declarant(s);

That whereas, Declarant is the owner of certain property described as tract(s) _____, certificate of survey number _____ on file and record in the office of the Clerk and Recorder of _____ County, Montana.

Now, therefore, Declarant hereby declares that the parcel(s) described above shall be held, sold, and conveyed in any matter subject to the following covenant, which shall run with the real property and be binding on all parties having any right, title or interest in the described property (properties) or any part thereof, their heirs, executors, successors, administrators, and assignees, and shall bind each owner thereof. This covenant may be revoked by mutual consent of the land owners of the parcel(s) in question and the governing body (Name of City or County). The governing body is deemed to be party to and may enforce this covenant. TO WIT.

The parcel(s) described above shall be used exclusively for agricultural purposes and no building, house, dwelling, or structure requiring water or sewage facilities may be erected or utilized thereon.

IN WITNESS WHEREOF, the undersigned, being the Declarant(s), herein, has (have) hereunto set his (her) (their) hand(s) this _____ day of _____, 20____.

DATED THIS _____ day of _____, 20____.

Landowner (Print Name of Landowner)

State of Montana)
 :
County of Richland)

On this _____ day of _____, 20____, before me, a Notary Public for the State of Montana, personally appeared, _____, _____, and _____, members of the Board of County Commissioners, and _____, County Clerk & Recorder, known to me to be the persons whose names are subscribed to the within instrument and acknowledge to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notary seal the day and year first above written.

(seal)

Print Name: _____
Notary Public for the State of Montana
Residing in: _____
My commission expires: _____

Richland County Commissioners

Chairperson

Commissioner

Commissioner

Attest:

Richland County Clerk & Recorder

Relocation of Common Boundary Line (76-3-207, MCA)

The intended purpose of this exemption is to allow a change in the location of a boundary line between two parcels without subdivision review. 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. Within a platted subdivision, a division of lots that redesigns or rearranges six or more lots must be reviewed and approved by the governing body and an amended plat must be filed with the County Clerk & Recorder in accordance with the Amended Plat procedures found in the Subdivision Regulations.

The following documents must accompany a certificate of survey for the relocation of a common boundary lines:

_____ Documentation of ownership, previously recorded document such as: Quit Claim or Warranty Deed.

_____ A \$150 examination fee (checks will need to be made payable to the respective governing body as identified by the Staff Planner: Richland County, City of Sidney, or Town of Fairview).

_____ It is recommended if the ownership of all parcels with common boundaries being relocated is not the same, then a Quit Claim deed to the owner receiving the additional land shall be required at the time of recording of the survey.

Below is an example of certification required on the face of the survey:

**Certificate of Exemption
(Relocation of Common Boundary)**

I (We) certify that the purpose of this survey is to relocate common boundary line between adjoining properties outside a platted subdivision (or inside a platted subdivision) (or between a single lot within a platted subdivision and adjoining land outside a platted subdivision) and that no additional parcels are hereby created. Therefore this survey is exempt from review as a subdivision 76-3-207(1)(a), (d), or (e) MCA.

DATED THIS _____ day of _____, 20____.

(Name of Property owner(s))

Acknowledgement and notarized is required.

AGGREGATION OF LOTS 76-3-207(1)(f) MCA:

This exemption applies to the aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot(s) or original unplatted parcel(s) continues to apply to those areas.

The following required documentation is required for the use of this exemption:

- The certificate of survey must clearly distinguish between the existing boundary location(s) and, the new boundary location(s). This must be accomplished by representing the eliminated boundary(ies) with a dashed line and the new boundary(ies), if applicable, with a solid line. (ARM 24.183.1104(1)(f).)
- The certificate of survey must bear the signatures of all landowners whose tracts of record will be altered by the proposed relocation. (ARM 24.183.1104 (1)(f).)
- The certificate of survey must show that the exemption was used only to eliminate the boundary line(s) dividing two or more tracts of record. (ARM 24.183.1104(1)(f).)
- It is recommended when the survey is recorded that a quit claim deed(s), warranty deed(s), or grant deed(s) be recorded conveying the entire newly described parcel(s) or that portion of the tract(s) that is being affected to and from the adjoining property owners.
- The certificate of survey must be entitled “amended plat of the (insert the name of the subdivision).”
- The landowner must provide the Exemption Review Committee with evidence that the resulting lots will comply with existing zoning, covenants, deed restrictions, and restrictions or requirements, if any, affecting the original platted lots.

The following documents must accompany a certificate of survey for the relocation of a common boundary lines:

_____ Documentation of ownership, previously recorded document such as: Quick Claim or Warranty Deed or Certificate of Survey or Subdivision plat.

_____ A \$150 examination fee (checks will need to be made payable to the respective governing body as identified by the Staff Planner: Richland County, City of Sidney, or Town of Fairview).

Below is an example of certification required on the face of the survey:

**Certificate of Exemption
(Aggregation of Lots)**

I (We) certify that the purpose of this survey is to aggregate existing lots within a within a platted subdivision, that fewer than six lots are affected, and that no additional parcels are hereby created. Therefore this survey is exempt from review as a subdivision pursuant to section 76-3-207(1)(f) MCA.

DATED THIS _____ day of _____, 20____.

(Name of Property owner(s))

Acknowledgement and notarized is required.

When the following certificates of surveys are to be filed and recorded at the Richland County Clerk & Recorder Office the following guidelines and examination process outlined on pages 2-3, of this handout, will be followed.

Court Order Exemption

This is a division of land created by order of any court of record in this state or by operation, in the absence of agreement between the parties to the sale, could be created by an order of any court in the state pursuant to the land of eminent domain. (76-3-201, MCA)

The following documents must accompany a certificate of survey that is required by a court order:

_____ A copy of the court order.

_____ A \$150 examination fee (checks will need to be made payable to the respective governing body as identified by the Staff Planner: Richland County, City of Sidney, or Town of Fairview).

Right-of-Way/Utility Exemption

This division of land created for the purpose of rights-of-way or utility sites on a property. Any subsequent change in the use of the property as residential, commercial or industrial uses shall subject the land division to the subdivision regulations. (76-3-201, MCA)

_____ If it a utility lease site, a copy of the lease needs to be provided.

_____ A \$150 examination fee (checks will need to be made payable to the respective governing body as identified by the Staff Planner: Richland County, City of Sidney, or Town of Fairview).

_____ It is recommended that the deed transferring the parcel to the appropriate entity, be recorded at the same time as the survey is being recorded..

Retracement

Except as provided in 70-22-105, MCA, within 180 days of the completion of a survey, the registered land surveyor responsible for the survey, whether the surveyor is privately or publicly employed, shall prepare and submit for filing a certificate of survey in the county in which the survey was made if the new survey (76-3-404, MCA):

- Provides material evidence not appearing on any map filed with the County Clerk & Recorder or contains the records of the United States Bureau of Land Management;
- Reveals a material discrepancy in the map;
- Discloses evidence to suggest alternate locations of lines or points; or
- Establishes one or more lines not shown on a recorded map, the positions of which are not ascertainable from an inspection of the map without trigonometric calculations.
- A certificate of survey is not required for any survey that is made by the United States Bureau of Land Management, that is preliminary, or that will become part of a subdivision plat being prepared for recording under the provisions of this chapter.

The following documents must accompany a certificate of survey

_____ A \$150 examination fee (checks will need to be made payable to the respective governing body as identified by the Staff Planner: Richland County, City of Sidney, or Town of Fairview).

_____ Documentation of ownership, previously recorded document such as: Quit Claim or Warranty Deed, if applicable.

Local Government Contacts

County Planner Office:

Marcy Hamburg, City/County Planner
433-6886 or mhamburg@richland.org
County, City of Sidney, Town of Fairview Planner

County Sanitarian:

Kelly Logan, Sanitarian
433-6876 or klogan@richland.org

County Public Works:

Russ Huotari, Director
433-2107 or rhuotari@richland.org

County Examining Surveyor:

Russ Huotari,
433-210 7 or rhuotari@richland.org

County Flood Plain Manager:

Russ Huotari,
433-2107 or rhuotari@richland.org

City Flood Plain Managers:

Sidney:	Fairview:
Jeff Hintz	Graycie Sharbono
433-2809	742-5616

City Public Works:

Sidney:
Jeff Hintz, Director
433-2809 or tmeldhal@richland.org

Fairview:
Mike Metzenberg
742-5616

City Fire Department:

Sidney:
Rob Gilbert
433-1122

Fairview:
Tim Denowh
744-5886

County Fire Department:

County	Lambert	Savage
Rob Gilber	Brian Ligion	Marshal Vojacek
433-1122	(W) 774-3475	(H) 776-2257

Richland County Clerk & Recorder: 433-1708 or 201 West Main Street in Sidney.

Richland County Board of Health:

Judy LaPan,
433-2201 or jlapan@richland.org

Richland County Weed Department:

Dick Zoanni
433-9047

Rural/City Addressing:

County
Chris Veits
433-2106

Sidney:
Public Works
433-2809

Fairview:
Graycie Sharbono
742-5616

***Additional contact information and agencies can be found in 2010 Richland County, City of Sidney Town of Fairview Subdivision Regulations Supplements, *Supplement 2(b): List of Potential Agency Contacts*.

EXEMPTION AND CERTIFICATE OF SURVEY EXAMINATION FORM:

For Office Use:

Submittal Date: _____

Name of Owner, if applicable: _____ Phone: _____

Address: _____ City: _____ State: _____ Zip: _____

Surveyor/Engineer: _____ Phone: _____

Address: _____ City: _____ State: _____ Zip: _____

Parcel Description:

Type of Exemption used: _____

Legal Description: _____ of Section _____ Township _____ Range _____

Parcel Total Size: _____

Number of Lots: _____ Required Fee: _____

Existing Zoning: _____ Proposed Zoning: _____

Existing Use: _____

Any additional comments: _____

Were the required documents and examination fee submitted: _____

Examined by: _____