

1 **11. 40.520.010.E.1.b(5) and 40.540.020.B.4.d - Clarify circumstances under**  
2 **which the County will recognize court orders as exemptions to platting**

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4 **40.520.010 Legal Lot Determination**  
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6 E. Approval Criteria.

7 1. Basic Criteria. Parcels which meet both of the following basic criteria are lots of  
8 record:

9 a. Zoning. The parcel meets minimum zoning requirements, including lot size,  
10 dimensions and frontage width, in effect currently or at the time the parcel  
11 was created.

12 b. Platting.

13 (1) The parcel was created through a subdivision or short plat recorded  
14 with Clark County; or

15 (2) The parcel is five (5) acres or more in size and was created through  
16 any of the following:

17 (a) An exempt division which occurred prior to April 19, 1993,

18 (b) A tax segregation requested prior to April 19, 1993,

19 (c) A survey completed as to boundaries prior to April 19, 1993, and  
20 recorded prior to July 19, 1993; or

21 (3) The parcel was created through a division or segregation of four (4)  
22 or fewer lots requested prior to July 1, 1976; or

23 (4) The parcel was created through division or segregation and was in  
24 existence prior to August 21, 1969; or

25 (5) The parcel was created ~~through court order, will and testament, or~~  
26 ~~other~~ by a process listed as exempt from platting requirements by  
27 RCW 58.17.035, 58.17.040, or Section 40.540.010(A), or through an  
28 exemption from platting regulations provided by law at the time of  
29 creation of the parcel;

30 (6) The parcel was segregated at any time and is twenty (20) acres or  
31 more in size.

32  
33 **40.540.020 Land Division**

1 B. Applicability.

2 4. Exemptions. The provisions of this chapter shall not apply to the following:

3 a. Cemeteries and burial plots while used for that purpose.

4 b. Divisions of land into lots or tracts, each of which is one thirty-second (1/32) of  
5 a section of land or larger, or twenty (20) acres or larger, if the land is not  
6 capable of description as a fraction of a section of land. For purposes of  
7 computing the size of any lot under this item which borders on a street or  
8 road, excluding limited-access streets or roads, the lot size shall be  
9 expanded to include that area which would be bounded by the centerline of  
10 the road or street, and the side lot lines of the lot running perpendicular to  
11 such centerline.

12 c. Divisions of land which are the result of the actions of governmental agencies,  
13 such as condemnation for road construction purposes.

14 d. Divisions of land made by testamentary provisions, or the laws of descent.

15 e. Divisions of land into lots or tracts classified for industrial or commercial use,  
16 when the responsible official has approved a "binding site plan" for use of  
17 the land in accordance with Section 40.520.040(C).

18 f. Divisions of land made for the purpose of lease when no residential structure  
19 other than mobile homes or travel trailers are permitted to be placed upon  
20 the land, when the responsible official has approved a "binding site plan" for  
21 the use of land in accordance with Section 40.520.040.

22 g. Divisions of land made by subjecting a portion of a parcel or tract of land to  
23 Chapter 64.32 RCW.

24 h. Divisions of land made ~~by court order~~ through a process listed as exempt from  
25 platting requirements by RCW 58.17.035, 58.17.040, or Section 40.540.010(A);  
26 provided that the parcel meets all other provisions of the UDC, including, but  
27 not limited to, applicable zoning and dimensional requirements. ~~provided, the~~  
28 ~~divisions shall comply with all other provisions of the UDC.~~

29 i. A boundary line adjustment pursuant to Section 40.540.010.

30 j. A division for the purpose of leasing land for facilities providing personal  
31 wireless services while used for that purpose. "Personal wireless services"  
32 means any federally licensed personal wireless service. "Facilities" means  
33 unstaffed facilities that are used for the transmission or reception, or both, of  
34 wireless communication services including, but not necessarily limited to,  
35 antenna arrays, transmission cables, equipment shelters, and support  
36 structures.

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**Rationale:** A potential loophole was recently discovered in these two sections of code which could be interpreted to mean that court orders that divide land may not need to be consistent with exemptions from platting found in the RCWs. The presence of a comma between “court order” and “will and testament” and the absence of any limiting language in 40.520.010.E.1.b.(5) could support the argument that *any* court order partitioning or dividing property qualifies for an exemption to platting, regardless of the circumstances or the number of lots created. The legal lot determination approval criteria contained similar ambiguity. The proposed clarification would eliminate the “court order” language in favor of the exemptions that are recognized by RCW 58.17.

Section 40.520.020.B.4.h is one of the listed exemptions from platting and does not mention any limitations on court orders, and thus needs to be amended in conjunction with the amendment to 40.520.010.E.