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SUBDIVISION EVASION CRITERIA

This document presents the evasion criteria analyzed by the Planning Department, in its review of a subdivision exemption application, in order to determine whether a proposal is attempting to evade the subdivision review process established through the Ravalli County Subdivision Regulations (RCSR) and the Montana Subdivision and Platting Act (MSPA). The following criteria is referenced from RCSR Chapter 11, as specifically noted below, and categorized, according to the type of exemption request.

General Subdivision Evasion Criteria (RCSR Chapter 11, Section 11-1)

The Ravalli County Board of County Commissioners (BCC) and the Planning Department, when determining whether an exemption described in Sections 11-2, 11-3, or 11-4, is claimed for the purpose of evading the MSPA, shall consider all of the surrounding circumstances, including the following:

- 1) The proposed configuration of the tracts, if the proposed exempt transaction is completed;
- 2) Any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review; and
- 3) The subdivision evasion criteria for specific exemptions, as outlined in the following sections of this chapter. The subdivision evasion criteria determines, when a rebuttable presumption exists, that the proposed use of an exemption, as allowed by State law, is being used to evade these regulations and the MSPA.

Subdivision Evasion Criteria for Mortgage Security Exemptions (RCSR Section 11-2(B)(2))

The use of this exemption is presumed to have been adopted for the purpose of evading these regulations and the MSPA, if:

- 1) It will create more than one new building site;

- 2) The person named in the statement explaining who would have possession of the remainder parcel if title to the exempted parcel is conveyed, is anyone other than the borrower of funds for construction;
- 3) Title to the exempted interest will not be initially obtained by the lending institution if foreclosure occurs;
- 4) There exists a prior agreement to default or a prior agreement to purchase only a portion of the original tract;
- 5) The division of land is created for the purpose of conveyance to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was given, or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture.

Subdivision Evasion Criteria for Boundary Line Relocations Outside of a Platted Subdivision (RCSR Section 11-4(A)(2))

The use of this exemption is presumed to have been adopted for the purpose of evading these regulations and the MSPA, if:

- 1) The proposed relocation creates a new buildable tract from one previously encumbered by an agricultural covenant or other restriction;
- 2) The proposed relocation would cause significant impacts to the criteria listed in Sections 3-10(B)(5) and 4-10(B)(5) that would likely lead to imposition of significant conditions of approval, or denial, of an equivalent preliminary plat application.

Subdivision Evasion Criteria for Boundary Line Relocations Involving a Platted Subdivision (RCSR Section 11-4(B)(2))

The use of this exemption is presumed to have been adopted for the purpose of evading these regulations and the MSPA, if:

- 1) The resulting lots are inconsistent with the approved subdivision;
- 2) The resulting lots do not comply with existing zoning, covenants, and/or deed restrictions;
- 3) Additional lots would be created;
- 4) The proposed relocation creates a new buildable tract from one previously encumbered by an agricultural covenant or other restriction;
- 5) The proposed relocation would cause significant impacts to the criteria listed in Sections 3-10(B)(5) or 4-10(B)(5) of these regulations that would likely lead to imposition of significant conditions of approval, or denial, of an equivalent preliminary plat application.

Subdivision Evasion Criteria for Family Transfer Exemptions* (RCSR Section 11-4(C)(2))

- A) The use of this exemption is presumed to have been adopted for the purpose of evading these regulations and the MSPA, if:
- 1) The use of the family gift or sale exemption is proposed to gift a portion of a tract from a previously created family transfer back to the original grantor;
 - 2) The use of the family transfer exemption would cause significant impacts to the criteria listed in Sections 3-10(B)(5) or 4-10(B)(5) of these regulations that would likely lead to imposition of significant conditions of approval, or denial, of an equivalent preliminary plat application.
- B) **Three Year Timeframe****: Ravalli County Planning Department Policy, as adopted by the Board of County Commissioners on March 3rd, 2015, establishes that the transfer, or potential sale, of the gifted parcel created by the exemption, within three (3) years of creation of the parcel, will result in the presumption that the use of the exemption was adopted for the purposes of evading the MSPA and Ravalli County Subdivision Regulations. Accordingly, the grantee cannot dispossess themselves of title or beneficial interest in the property for a period of three years, without approval from the Ravalli County Board of County Commissioners.

Subdivision Evasion Criteria for Agricultural Exemptions* (RCSR Section 11-4(D)(2))

The following conditions must be met, or the use of the exemption will be presumed to have been adopted for the purpose of evading these regulations and the MSPA:

- 1) The parties to the transaction must enter into a covenant running with the land, and revocable only by mutual consent of the BCC and the landowner, that the divided land will be used exclusively for agricultural purposes. The covenant must be signed by the landowner, the buyer, and the members of the BCC; and
- 2) The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes, and that no non-agricultural buildings will be, or have been, constructed on the property.

*According to RCSR Sections 11-4(C)(1) and 11-4(D)(1), Family Transfer and Agricultural Exemptions may only be used on properties **outside of a platted subdivision**.

**The Three Year Timeframe was adopted by the Board of County Commissioners on March 3rd, 2015, after the current Ravalli County Subdivision Regulations became effective (June 4, 2012), and is therefore not contained within this version of the RCSR.