

RESOLUTION 1986- 55

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS  
 SETTING FORTH A POLICY RELATING TO DIVISIONS OF LAND FOR AGRICULTURAL PURPOSES,  
 EXEMPT FROM REVIEW UNDER THE MONTANA SUBDIVISION AND PLATTING ACT

WHEREAS, Montana law presently provides certain exemptions for some types of subdivisions of land which are exempt from the formal subdivision and review process, but are still subject to preparation of a certificate of survey, set forth in 76-3-207, M.C.A. (1)(c) as follows:

"divisions made outside of platted subdivisions by sale or agreement to buy and sell where the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes"; and,

WHEREAS, the Board of County Commissioners from time to time receives requests related to the law described above, whereby parties request the County Commissioners to revoke a covenant imposed on the land and running with the land, whereby properties have been divided for exclusive agricultural purposes; and,

WHEREAS, Section 76-3-207(2)(b), MCA, further provides as follows:

"Any change in use of the land exempted under sub-section (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter"; and,

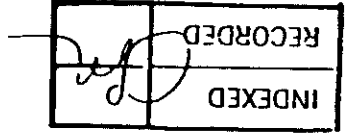
WHEREAS, the County Commissioners also desire to clarify, for persons wishing to utilize the agricultural exemption, procedures to initiate such an exemption, as well as to set forth a policy to deal with requests to revoke an agricultural covenants; and,

WHEREAS, the County Commissioners provided an opportunity for public comment on this proposed policy at a previously noticed public meeting held on March 18, 1986.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Lewis and Clark County that the following policy shall apply to imposition and revocation of agricultural covenants:

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STATE OF MONTANA  
 COUNTY OF LEWIS & CLARK }  
 I hereby certify that the within instrument was filed in my office on this 19 day of July A.D. 1986 at 10:00 o'clock P.M. of the 19 month, first of July A.D. 1986.  
 County Clerk of Lewis and Clark County, Montana  
*Joe Bartlett*  
 BY *Tracy D. King* County Clerk  
*Shof*



LEWIS AND CLARK COUNTY  
POLICY REGARDING  
AGRICULTURAL EXEMPTIONS

I. DIVISIONS OF LAND, FOR AGRICULTURAL PURPOSES, EXEMPT FROM REVIEW UNDER THE MONTANA SUBDIVISION AND PLATTING ACT.

The following provisions shall apply to utilization of the agricultural purposes exemption [Section 76-3-207(1)(c), MCA] to create a division of land exempt from review under the Montana Subdivision and Platting Act:

- A. Any person proposing to divide land and claiming that the division is exempt from review under the Montana Subdivision and Platting Act, because the divided land will be used exclusively for agricultural purposes, shall provide the following to the Clerk and Recorder:
  1. The certificate of survey required by the Montana Subdivision and Platting Act; and,
  2. A written covenant running with the land, revocable only by mutual consent of the Board of County Commissioners of Lewis and Clark County and the property owner, that the divided land will be used exclusively for agricultural purposes and that no structures requiring water and/or sewage facilities have been or will be erected or used on the divided land.
- B. Any person proposing to claim an agricultural exemption shall be provided with a copy of this policy statement by the County Clerk and Recorder.
- C. Use of an agricultural exemption only exempts the division of land from review under the Montana Subdivision and Platting Act and the Lewis and Clark County subdivision regulations. Use of the exemption neither determines nor affects the classification or value that will be assigned to the divided land and used for taxation purposes. Further, any other state and/or local laws and regulations governing the use of the land may still be applicable.

II. FACTORS CONSIDERED IN DETERMINING WHETHER TO REVOKE OR RETAIN AN AGRICULTURAL COVENANT

The County Commissioners may consider the following factors, plus any additional matters that may be pertinent, when reviewing any application to revoke an agricultural covenant:

- A. The County assumes first and foremost that the purpose of the agricultural covenant was to facilitate an exchange of land between members of the agricultural community, and/or to facilitate and promote agricultural uses of the property, and was not meant to evade the State Subdivision and Platting Act. Therefore, the County Commissioners will assume that, if an agricultural covenant is placed upon property, it was the intent of the parties to the transaction that the property would remain in agriculture for many years to come. Thus, any request to revoke an agricultural covenant should be made for some extraordinary reason such as the land cannot be used for an agricultural purpose due to circumstances beyond the control of, and unforeseeable by, the parties to the original transaction which divided the land and created the parcel subject to the covenant.
- B. The County Commissioners will therefore act very conservatively regarding requests to revoke agricultural covenants. The County Commissioners will accord substantial weight to policies which attempt to continue agricultural operations in Lewis and Clark County and maintain the overall viability of agriculture in the County.
- C. In assessing applications to revoke agricultural covenants, the County Commissioners, as a matter of public policy, will tend to deny requests to revoke covenants applicable to lands which, in the County Commissioners' opinion, do serve the purpose of maintaining the viability of agriculture; further, this expression of policy does not prevent the County Commissioners, in their discretion, from denying requests in other circumstances in addition to the foregoing.
- D. Factors which the County Commissioners may consider include, but are not limited to, the following: whether the agricultural covenant for the subject parcel and the revocation of the covenant being requested represent an evasion of subdivision laws and regulations; past and present agricultural uses on the subject parcel and on adjacent and nearby parcels and the degree of change in these uses since the agricultural covenant was obtained; proximity of the subject parcel to areas predominantly used for existing agricultural purposes; whether the parcel is within the Helena Valley Irrigation District; whether the parcel is in an area of high value agricultural soils or other area of high County conservation values identified in the 1984 Lewis and Clark County Voluntary Agricultural Land Conservation Program report; whether the uses of the agricultural covenant was originally obtained for the parcel; whether all taxes on the property are current; and any other relevant factors. However, revocation shall in each and every case be discretionary with the County Commissioners, and consideration of the foregoing factors shall not limit their exercise of such discretion.

III. REQUESTS FOR REVOCATION OF AGRICULTURAL COVENANTS PREVIOUSLY IMPOSED THROUGH USE OF THE EXEMPTION.

A person requesting revocation of an existing agricultural covenant shall follow these procedures:

A. Requesting Revocation of the Agricultural Covenant:

1. Any person requesting that the County Commissioners revoke an existing agricultural covenant, shall make written application to the Commissioners. Such application may be by letter and shall include:
  - a. A statement specifying why the agricultural covenant should be revoked;
  - b. A legal description and a statement of the general location of the property;
  - c. A copy of the filed certificate of survey that created the parcel subject to the agricultural exemption;
  - d. A copy of the agricultural covenant (if recorded separately or if otherwise not set forth on the certificate of survey) and a copy of any other deed restrictions or other restrictive covenants applicable to the property; and,
  - e. Verification that all taxes are paid on the subject property.

B. Consent Action to Revoke the Agricultural Covenant

1. The request for revocation of the agricultural covenant will be considered by the County Commissioners at a regularly scheduled public meeting.
2. If the County Commissioners consent to revocation of the agricultural covenant, the division of land still exists, as represented on the certificate of survey filed in the Clerk and Recorder's Office. Only the agricultural covenant is revoked.
3. The County Commissioners reserve the right to make their revocation, of any agricultural covenant, subject to such appropriate conditions and requirements as the public interest may require.
4. If the County Commissioners consent to revocation of an agricultural covenant, the applicant shall record the following with the Clerk and Recorder before any revocation shall be effective:

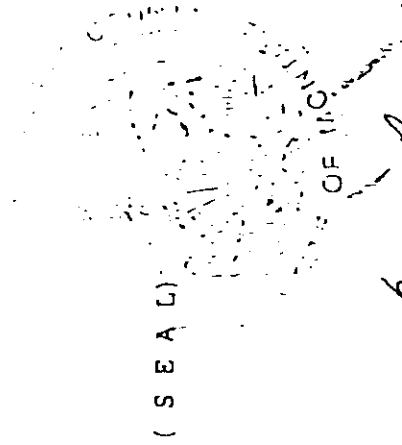
- a. A written statement, prepared and signed by the County Commissioners and each legal and equitable owner of record of the property, duly acknowledged, that the agricultural covenant is revoked; and,
- b. A waiver, of the sanitary restrictions, granted by the Montana Department of Health and Environmental Sciences.

C. Denial of Request to Revoke the Agricultural Covenant:

1. If the Board of County Commissioners denies a request for revocation of an agricultural covenant, the property shall remain subject to the agricultural covenant.
2. If it comes to the County's attention that there has been a change in the use of the land subject to an agricultural covenant imposed pursuant to Section 76-3-207(1)(c), MCA, the County Commissioners retain the right to pursue any civil, criminal or other legal remedies available under Montana law. In an appropriate case,

Such action may include criminal prosecution and requesting a district court to order the cessation or removal of any use and/or structure which violates the agricultural covenant.

DATED this 11th day of August, 1986.



Board Of County Commissioners  
of Lewis and Clark County

L. L. Steen (Ludwig)  
Chairman

[Signature]  
County Commissioner

[Signature]  
County Commissioner

Attest: [Signature]  
County Clerk and Recorder

DECLARATION OF AGRICULTURAL COVENANT

WITNESSETH

THAT WHEREAS, Declarant is the owner of certain property known as \_\_\_\_\_, in Lewis and Clark County, State of Montana, which is more particularly described in attached Exhibit A.

NOW, THEREFORE, \_\_\_\_\_ hereby declares that all of the property described above shall be held, sold, and conveyed 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 property, and shall bind each owner thereof, their heirs, successors and assigns. Revocation or retention of this agricultural covenant shall be subject to the provisions of Resolution 1986-55, entitled "Resolution of the Board of County Commissioners Setting Forth a Policy Relating to Divisions of Land for Agricultural Purposes, Exempt From Review under the Montana Subdivision and Platting Act." The covenant may be revoked only by mutual consent of the owner of the subject property and the governing body of Lewis and Clark County under the stipulations contained in Resolution 1986-55.

TO WIT:

The subject parcel described in Exhibit A shall be used exclusively for agricultural purposes and no structures requiring water and/or sewage facilities have been or will be erected, constructed, or used on the divided land. The governing body of Lewis and Clark County is deemed to be a party to and may enforce this covenant.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
Landowner

STATE OF MONTANA )  
 )  
 : ss.  
 County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me a Notary Public for the State of Montana, personally appeared (\_\_\_\_\_), known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same.

(Seal)

\_\_\_\_\_  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_, Montana  
My Commission Expires \_\_\_\_\_