

(NOTE – UNDERLINED AREAS ARE PROPOSED CHANGES)

V-E-3 Divisions of Land Proposed for Agricultural Use Only [76-3-207(1)(c), MCA]

a. Statement of Intent

This exemption is intended to allow a landowner to create a parcel for gift, sale, or agreement to buy and sell, outside a platted subdivision, without local review if the parcel will be used only for the production of livestock or agricultural crops and no residential, commercial or industrial buildings, which require water or sewer, will be built on it.

b. Required Information

A certificate of survey that uses this exemption to create a parcel for agricultural use only requires a covenant running with the land in accordance with 76-3-207(1)(c), MCA, and a signed and acknowledged recitation of the covenant on the face of the survey [ARM 24.183.1104(f)(iii) in the Appendix]. The certificate of survey must be accompanied by a separate, recordable, document reciting the covenant. Legal access to each parcel created must be provided.

c. Use of Exemption

- i. “Agricultural purpose,” for purposes of these evasion criteria, means the use of land for raising crops, livestock, or timber, and specifically excludes residential structures and facilities for commercially processing agricultural products. Agricultural lands are exempt from review by the DEQ, provided the applicable exemption under the Sanitation in Subdivisions Act is properly invoked by the property owner. A covenant must be entered into with the governing body and must be filed with the Clerk and Recorder’s Office.
- ii. Any change in use of the land for anything other than agricultural purposes subjects the parcel to review as a minor subdivision.
- iii. Residential, commercial, institutional, public, or industrial structures, including facilities for commercial processing of agricultural products, may not be utilized, constructed or erected on parcels created under this exemption unless the covenant is revoked by the governing body.

d. Rebuttable Presumptions

- i. The parties to the transaction must enter into 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. The covenant must be signed by the property owner, the buyer, and the members of the governing body.

- ii. The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial, or industrial buildings have been or will be built on it.
- iii. The parcel must meet the criteria for an agricultural designation under section 15-7-202, MCA.

e. Revocation of Agricultural Covenant Exemption

Revocation of an agricultural covenant imposed under Section 76-3-207(1)(c), MCA, requires:

1. Approval of the division of land through subdivision review; or,

2. The County Commission may, in its discretion, approve the removal of an 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 or public entity seeking to use the tract for public purposes. Public purposes are defined for the purposes of this section as utility stations, airports, cemeteries, water and/or wastewater facilities (CAN BE BROADENED)

i. The County Commission shall determine the qualifications and public purposes of the government or public entity, by:

a. holding a public hearing as set forth in IV-A-3

b. considering the information and evidence provided at the public hearing,

c. issuing written findings of fact based on the information and evidence within 15 working days, and,

d. either approving or denying the removal of the agricultural covenant.

ii. An Agricultural Covenant Exemption Revocation Agreement lifting the agricultural covenant shall be recorded with the Clerk and Recorder.

iii. The revocation of an Agricultural Covenant Exemption does not affect sanitary restrictions imposed under Title 76, Chapter 4, MCA.