



Montana Association of Counties
2715 Skyway Drive
Helena, MT 59602-1213
(p) 406.449.4360 | (f) 406.442.5238
maco@mtcounties.org | <http://www.mtcounties.org>

PROPOSED RESOLUTION 2018-11

LIFTING OF AGRICULTURAL COVENANTS IN LIMITED SITUATIONS

It is the intent of the Montana Association of Counties to allow County Commissioners to lift agricultural covenants imposed under Section 76-3-207(1)(c), MCA, in limited situations.

WHEREAS, under current statutory authority, agricultural covenants imposed on property in accordance with Section 76-3-207(1)(c) can only be lifted through subdivision review pursuant to Section 76-3-207(2)(b); and

WHEREAS, in certain limited situations, County Commissioners need the authority to lift agricultural covenants without requiring subdivision review; and

WHEREAS, County Commissioners need the authority to lift agricultural covenants when the original lots lines before the use of the agricultural covenant are restored through aggregation prior to, or in conjunction with, the lifting of the agricultural covenant; and

WHEREAS, County Commissioners need the authority to lift agricultural covenants when the proposed lifting of the agricultural covenant is for a government or public entity seeking to use the tract for public purposes; and

WHEREAS, County Commissioners shall hold a public hearing on lifting of agricultural covenants in limited situations, consider the information and evidence provided at the public hearing, and issue written findings of fact based on the information and evidence to support the approval or denial of lifting of the agricultural covenant.

NOW, THEREFORE BE IT RESOLVED that the Montana Association of Counties will seek to amend the Montana Subdivision and Platting Act to provide authority for County Commissioners to lift agricultural covenants imposed under Section 76-3-207(1)(c), MCA, in limited situations.

SPONSOR:	MACO LAND USE, PLANNING & DEVELOPMENT COMMITTEE (ORIGINATED IN RICHLAND COUNTY)
RECOMMENDATION:	DO PASS
REFERRED TO:	LAND USE, PLANNING & DEVELOPMENT COMMITTEE
ADOPTED:	ANNUAL CONFERENCE, MISSOULA, MT – SEPTEMBER 19, 2018

ADDITIONAL INFORMATION

76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations -- exceptions -- fees for examination of division. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of tracts of record of any size, regardless of the resulting size of any lot created by the division or aggregation, are not subdivisions under this chapter but are subject to the surveying requirements of **76-3-401** for divisions or aggregations of land other than subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which 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; **A CHANGE IN USE OF THE LAND FOR ANYTHING OTHER THAN AGRICULTURAL PURPOSES SUBJECTS THE DIVISION TO SUBDIVISION REVIEW UNDER PARTS 5 AND 6 OF THIS CHAPTER OR THE GOVERNING BODY MAY, IN ITS DISCRETION, APPROVE THE REMOVAL OF THE AGRICULTURAL COVENANT WITHOUT SUBDIVISION REVIEW IF:**

(i) THE ORIGINAL LOT LINES ARE RESTORED THROUGH AGGREGATION OF THE AGRICULTURAL COVENANTED LAND PRIOR TO, OR IN CONJUNCTION, WITH THE LIFTING OF THE AGRICULTURAL COVENANT; OR

(ii) THE PROPOSED LIFTING OF THE AGRICULTURAL COVENANT IS FOR A GOVERNMENT OR PUBLIC ENTITY SEEKING TO USE THE LAND FOR PUBLIC PURPOSES AS DEFINED IN THE GOVERNING BODY'S REVIEW CRITERIA PURSUANT TO 76-3-504(1)(p). THE GOVERNING BODY SHALL HOLD A PUBLIC HEARING AND ISSUE WRITTEN FINDINGS OF FACT AND A DECISION BASED ON THE RECORD FROM THE PUBLIC HEARING WITHIN 15 WORKING DAYS. AN APPROVAL LIFTING THE AGRICULTURAL COVENANT SHALL BE RECORDED WITH THE CLERK AND RECORDER.

(d) for five or fewer lots within a platted subdivision, the relocation of common boundaries;

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(f) 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 or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1), ~~2~~

~~(a)~~ within a platted subdivision filed with the county clerk and recorder, a division, redesign, or rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body before an amended plat may be filed with the county clerk and recorder; ~~2~~

~~(b)~~ a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to review under parts 5 and 6 of this chapter; ~~2~~

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.