

# LAKE COUNTY RIGHT TO FARM AND RANCH POLICY

## INTRODUCTION

Montana is unique in that it has a state constitution that provides in Article XII, Section 1 (1), “The legislature shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance, and develop all agriculture”. Montana state law also establishes a State of Montana Policy to ensure that farmers and ranchers must be encouraged and have the right to stay in farming (MCA 76-2-901). To facilitate these important objectives and the Lake County Growth Policy, Lake County is adopting a Right to Farm and Ranch ordinance.

Two-thirds of Lake County intersects the Flathead Indian Reservation. Tribal and nontribal individuals participate in agricultural activities of all types, and support for agriculture from all governmental entities is important. Much of the irrigated land in Lake County is served by the Flathead Indian Irrigation Project (FIIP). This and other irrigation systems provide water, water storage, and water distribution facilities for many irrigators. Many agricultural producers in Lake County also participate in numerous state and federally funded agricultural programs.

1. **Policy Statement:** It is the policy of the Board of Lake County Commissioners, as set forth herein that ranching, farming, horticulture, silviculture, apiculture, aquaculture, aviculture, and all manner of new and existing agricultural activities and operations in Lake County are integral elements of and necessary for the continued vitality and viability of the County's history, economy, landscape, open space, wildlife, lifestyle, tradition, and culture. Given their importance to the County, the State of Montana, and the Flathead Indian Reservation, agricultural lands and associated operations are worthy of recognition and protection.
  - a. Landowners, residents and visitors must be prepared to accept the activities, sights, sounds and odors of Lake County's agricultural operations as a normal and necessary aspect of living in a county with a strong, rural character and a healthy and viable agricultural sector. Some may perceive such activities, sights, sounds, and odors only as inconvenience, eyesore, noise and odor. However, State law, specifically MCA 45-8-111, Public Nuisance, and County Policy contained herein, provide that ranching, farming, or other agricultural activities and operations within Lake County shall not be considered to be nuisances so long as they occur in conformance with existing State law and in a responsible, reasonable, and non-negligent manner.
    - i. Legal, responsible, and non-negligent agricultural operations and activities may take place at all hours of the day and night and may include use of waterways with cattle and machinery crossings.
  - b. Conflicts include, but are not limited to: trespass, livestock at-large, worry or harassment of livestock and livestock losses due to free roaming dogs; livestock on highways, herding of livestock onto county and private roads or other areas; leaving gates open, fence and irrigation ditch maintenance, harvest and transportation of agricultural, aquacultural and silvicultural crops, agricultural and prescribed burning, complaints of noise, dust, aesthetics, and odor resulting from production and processing operations; disposal of dead animals, weed, wildlife management, pest and predator control.
  - c. Agricultural producers are encouraged to be considerate of adjacent lands, landowners and the public, and responsible for operating and acting lawfully.

- d. Agricultural opportunities on all lands that have been historically used for agriculture in Lake County should be preserved wherever possible. This should be considered in applications for conservation easements and trust acquisitions, in addition to habitat mitigation purchases by various entities.
2. **Additional Rights and Responsibilities:** All Lake County residents and landowners, whether agricultural, business, farm, ranch or residential, have obligations and responsibilities under State law and County regulations with regards to establishing and maintaining fences, use of County roadways and rights-of ways, irrigation access and maintenance responsibilities, controlling weeds, controlling pets, etc. Residents and landowners are encouraged to learn about their rights, obligations and responsibilities and act as good neighbors and citizens of the County. Visitors to Lake County also have the obligation to be informed of these requirements, so as not to impede or hinder the rights, responsibilities, and obligations of the County's residents and landowners. Examples of items that visitors, residents and landowners should be aware of are listed in Appendix A of this document.

## **IMPLEMENTATION OF THE POLICY**

1. **Public Education and Information Campaign:** The Board of Lake County Commissioners will initiate a campaign to educate and inform real estate agents and brokers, and landowners, residents, and visitors about this Policy using the assistance of county staff and board members. Assistance may come from the Lake County Planning Department, Lake County Boards, and through regulations. Lake County will also solicit assistance from the Montana State University (MSU) Cooperative Extension Office and their agents to disseminate this Policy. Education and information distribution may occur through the following means:
  - a. Amend Lake County's subdivision, zoning, or other regulations, as appropriate, to integrate this Policy to ensure that subdividers, future lot purchasers, and the general public are aware of this Policy,
  - b. Distribution of this Policy document throughout the County, and
  - c. Encourage title companies and real estate brokers and associations to voluntarily disclose this Policy to potential purchasers and include wording regarding this Policy in their disclosure statements when real properties in Lake County are transferred.
  - d. This Policy will be reviewed and amended as necessary.
2. **Property Owner Notification:** The Board of Lake County Commissioners will notify the current and future landowners and the general public about this Policy by the following means:
  - a. Subdivisions plats and certificates of survey filed in Lake County shall contain the following language on the face of the plat: "*Lake County has adopted a Right to Farm and Ranch Policy*",
  - b. Whenever a zoning conformance or building notification permit is issued in Lake County, the County's Planning Department may provide the owner a copy of this Policy or other document when funding of such is available,

- c. Whenever a wastewater permit is issued in Lake County, the County's Environment Health Department may provide the owner a copy of this Policy or other document when funding of such is available,
  - d. Lake County will provide this Policy document on the County's website and have copies available for public distribution at the County's Planning Department and MSU's Lake County Cooperative Extension Office, and
  - e. Lake County will work with local groups such as the Montana Stock Growers Association, Western Montana Growers Cooperative, and other entities representing agricultural producers to disseminate this Policy to their members. Additional entities and groups that should be contacted are listed in Appendix B of this document.
3. **Intergovernmental Agreements.** Lake County should utilize existing intergovernmental agreements with the cities, towns and other local, state, federal, and tribal governmental agencies and develop new agreements to further ensure effective implementation of this Policy throughout this County.
4. **County Government Commitment.** Lake County is committed to considering the issues and concerns addressed in this Policy when the following opportunities arise:
- a. Developing new land use plans or policies and amend Lake County's land use plans and policies as needed,
  - b. Reviewing subdivisions, land use permits, conservation easements, or economic development projects,
  - c. Cooperating, coordinating, and collaborating with other governmental entities, and
  - d. Reviewing and commenting on draft plans and policies, or project proposals from other governmental entities.

## **APPENDIX A: ADDITIONAL RIGHTS AND RESPONSIBILITIES**

- a. Montana is an open range state. The concepts involved with open range are encouraged. The laws outlined in 81-4, MCA are recognized and the Policy is not meant to usurp or change those laws.
  - i. Lake County currently has nine adopted herd districts (see Appendix C). Landowners outside of herd districts can petition the Board of Lake County Commissioners to create new herd districts per 81-4-301, MCA or annex into existing district per 81-4-310, MCA.
  - ii. Herd Districts are “closed range” areas; therefore the livestock owner is responsible for fencing livestock in. However, outside of herd districts is “open range” and property owners are responsible for fencing livestock out.
  - iii. Ownership and maintenance of fences is shared equally when the fence is located on a property boundary. You are responsible for repairing and maintaining the right half of the fence, which is the portion to the right of the middle if two neighbors are looking over the fence at each other.
  - iv. Fences can be designed to stop cattle and livestock while also promoting safe passage for wildlife. Montana’s Department of Fish, Wildlife, and Parks encourages the use of wildlife friendly fences that are a minimum of 14 inches above the ground and are less than 42 inches tall, to allow for the continued, natural migration of wildlife. Incorporating such designs may help to reduce damage to fences and property as the animals migrate through an area and such fences may also help reducing injuries or mortality of the wildlife.
  - v. Fencing and other deterrent techniques (i.e. bee hive and chicken coop enclosures, hay stack fences, bear proof garbage containers, removing old fruit or crops, removing dead livestock, etc.) are encouraged to be implemented to discourage wildlife interactions and conflicts with humans and/or animals (both domestic and agricultural). Such actions potentially help to improve safety and reduce property damage and agricultural losses.
  - vi. Electric fences can pose serious injury, so care should be taken in areas where such fences are being used.
  - vii. Gates need to be reasonably operable and they should be left in the position that they are found unless some circumstance warrants opening or closing them.
  - viii. Loose or stray cattle and livestock can pose serious risk and danger to someone with little or no experience around such animals. If loose or stray cattle or livestock are encountered, contact the Sheriff’s department, farmer, rancher, or someone with the knowledge and experience to safely capture and contain them.

- b. County roads and right-of-ways have historically been used as cattle tracks or travel corridors to trail cattle and livestock between pasture lands and to move farm equipment. Such activities are recognized as an integral component of farming and ranching activities and operations in Lake County.
  - i. Landowners with properties adjacent to County roads or right-of-ways are encouraged to install and maintain fences to detour cattle and livestock from entering and damaging property.
  - ii. Farmers and ranchers that trail cattle and livestock and move farm equipment are encouraged to perform such activities at appropriate times of the day and year when traffic levels are expected to be lightest and on the most appropriate roadway. Such acts help to protect public health and safety and consider the wellbeing and safety of the animals.
  - iii. Landowners are encouraged to implement sufficient building setbacks from property lines that border agricultural lands or along which agricultural activities may occur or the opportunity exists for them to occur in the future to help minimize potential conflicts.
- c. Irrigation waters, whether in ditches or pipes, are essential to agriculture and have legal right of way that must not be obstructed. In accordance with Title 85-7-1909, MCA, irrigators have the right to maintain irrigation ditches through established easements that transport water for their use only as prescribed by a water right.
  - i. Access via irrigation ditches, canals, and their associated access roads is through established easements which have been granted to a specific person or entity for a specific use and such easements generally do not authorize public use. Accessing such areas without first obtaining the proper permission or approvals is considered criminal trespassing and can be subject to prosecution should the landowner or easement holder wish to pursue such action.
  - ii. Landowners should not impede an irrigator from their legal right to obtain their irrigation water or maintain their irrigation ditches or other irrigation infrastructure. Irrigators are encouraged to not increase the encroachment of irrigation-related easements or right-of-ways as associated with their historic, legal rights for repair, maintenance and operation. For instance, if maintenance of ditches has historically been completed by hand, the same practice should be continued today and in the future unless a new practice is implemented that is less invasive. Other examples include not altering the route of access or not cutting down historic trees.
  - iii. Landowners should be aware that it is illegal to remove water from ditches unless they have the legal right to the water, and doing so is a criminal offense for which they may be prosecuted.
  - iv. Irrigation ditch water can be used as stock water, for crop and field sprinkling or flooding, for other agriculturally related purposes, and for maintaining wetland and wildlife habitat. Some ditches do run year-around and are essential for the delivery of stock water and such a use should not be impeded.

- v. Irrigation ditches are not to be used for the dumping of refuse, grass clippings, weeds, stormwater, or other such materials.
  - vi. Only chemicals approved for aquatic environments should be used near or placed into the waters of irrigation ditches. Application should be in accordance with the requirements included on the bottle/package.
  - vii. Open ditch operations often result in seepage from the ditches and spills from stormwaters in unpredictable locations and at unpredictable times. Landowners, developers, and builders should consider these potential issues when selecting building sites and developing properties containing ditches, natural drainage ways, or where such features are present on adjacent properties as they have the potential to impact and flood development. Appropriate setbacks should be considered to minimize the potential for impacts.
- d. Landowners are responsible for the control and treatment of noxious weeds and other pests or pathogens (plant or animal) on their property and should not plant or propagate invasive species. Measures should be taken to address existing or future noxious weed, pest, or pathogen infestations, to reduce potential impacts to public health and safety, agricultural production, and the County's economy.
- i. In accordance with 7-22-2116, MCA, landowners are responsible for the control and treatment of noxious weeds. The State of Montana and Lake County both have noxious weed lists and the weeds included on those lists may vary. Landowners are encouraged to obtain and review both lists.
  - ii. At a minimum, pest and disease management should address the management of crop insects, aquatic invasive species, vertebrates, noxious weeds, and pathogens. If left unchecked, some pests, such as the Western fruit fly, apple scabies, or potato diseases, could have a devastating effect on Lake County's agricultural industry and economy. The Montana State University (MSU) Cooperative Extension Office located in Lake County can provide guidance on appropriate pest management techniques and treatments including approved biological controls.
  - iii. Vehicles, farm equipment, and recreational equipment should be inspected and any plants and seeds found should be removed prior to relocating the equipment to another property to minimize their spread.
  - iv. Herbicides, pesticides, insecticides, and other chemicals can significantly impact the environment, water quality, and public health and safety which can harm agricultural utilizers, non-utilizers, and the public alike, so responsible use and application of any types of chemicals is legally required. Of particular issue to agricultural operations is the potential for over spraying or chemical drift which enters agricultural lands when adjacent landowners try to manage their pest or weed situation. Over spraying, chemical drift, or the inappropriate application of chemicals has the potential to harm and sterilize the land, harm or kill crops, harm or kill animals, etc. and the applicator is liable for any such losses resulting outside of the target property. Landowners and all chemical

applicators should be aware that they may need an applicator's license and/or special training prior to applying chemicals. Applicators, including private users, have a legal obligation to always follow each chemical's instructions, which are typically included on the package, container, or attached labels.

- e. Organic farming and ranching is a growing component of the agricultural economy in Montana and Lake County. Landowners are responsible to control their use of herbicide, pesticides, fertilizers, and other chemicals so as not to adversely impact adjacent lands, waters, or residents. Landowners planting Genetically Modified Organisms (GMOs) are responsible to mitigate any possible cross pollination with crops on adjacent lands.
- f. Alternative agricultural practices are becoming an essential component of agriculture and such methods are continuously changing to meet the needs of the producers and consumers. Such changes are likely to continue as new opportunities are discovered.
  - i. Alternative agriculture is defined as agricultural practices or enterprises that are different from prevailing or conventional agricultural activities. Such practices may include, but are not limited to, the following items:
    - nontraditional crops, livestock, and other farm products;
    - service, recreation, tourism, food processing, forest/woodlot, and other enterprises based on farm and natural resources (ancillary enterprises);
    - unconventional production systems such as organic farming or aquaculture; or
    - direct marketing and other entrepreneurial marketing strategies.
  - ii. Lake County recognizes the value of alternative agricultural practices since they provide diversification for the County's agricultural industry and they help to provide opportunities to establish other industries that support agriculture.
  - iii. Alternative agricultural operations may utilize such practices as being organic, wildlife friendly, non-GMO, natural, or pesticide or material free.
- g. Lake County recognizes the benefit of allowing for the production and marketing of value-added agriculture, which entails changing the raw agricultural product into something new through packaging, processing, cooling, drying, extracting, or other type of process that differentiates the product from the original raw commodity.
- h. Lake County recognizes that migrant, seasonal, and permanent farm workers are integral components of agricultural operations in this County.
  - i. Agricultural operators are responsible for accommodating the needs of their workers and providing the necessary facilities for those workers as required under Federal, State, or local rules and regulations.
  - ii. Any type of facilities erected to support agricultural workers are required to comply with all applicable public health, zoning, or land use requirements to be considered as lawfully erected facilities or recognized uses.
  - iii. Lake County recognizes there is limited housing available throughout the

County to accommodate the agricultural work force needed to support the County's agricultural operations. As Lake County's zoning and subdivision regulations are developed, revised, and amended, consideration will be given to help to accommodate a reasonable amount of agricultural worker housing by allowing for additional permanent residences, temporary housing, etc. for agricultural workers.

- i. Hazards exist in an agricultural environment from items such as farm equipment, irrigation hazards from ditches, seepage, pumps and operations, electrical fences, agricultural chemicals, and animals including dogs and livestock. These present real threats to children and adults. Controlling children's activities should take this into account.
- j. To facilitate the diversification of agriculture and economic development within Lake County, the County recognizes and encourages, where appropriate, uses associated with agricultural practices and the use of agricultural lands. Such uses should be reasonable in size, history, and scope and comply with any applicable regulations. Examples of agricultural uses include, but are not limited to:
  - i. Development or placement of temporary or permanent housing, sanitation facilities, or other necessary features and facilities onsite to accommodate agricultural workers,
  - ii. Storage facilities, processing facilities, or production facilities associated with value added agricultural commodities,
  - iii. Small scale fruit and/or vegetable stands
  - iv. Vineyards, production, or properly licensed tasting rooms and sales areas for agricultural products,
- k. Design standards will be encouraged in subdivisions, energy generation, communication facilities, and other uses to minimize adverse impacts upon rural and agricultural operations, as defined by the custom and culture of the county.



## **APPENDIX B: GROUPS AND ENTITIES LIST**

- Alternative Energy Resources Organization (AERO)
- Confederated Salish & Kootenai Tribes Stockgrowers
- Flathead Lake Cherry Growers
- Intertribal Agriculture Council
- Lake County Conservation District
- Lake County Community Development Cooperation
- Licensed realtors and associations
- Local Ag Producers & Marketing Coops & Associations
- Missoula Community Food & Agriculture Committee (CFAC)
- Montana 4-H and MSU 4-H Foundation
- Montana Association of Conservation Districts
- Montana Cattleman's Association
- Montana Farm Bureau Federation
- Montana Farmers Union
- Montana Future Farmers of America (FFA) Association
- Montana Grape and Winery Association
- Montana Nursery and Landscape Association
- Montana Stockgrowers
- MSU/Lake County Extension Agents
- National Center for Appropriate Technology (NCAT)
- USDA Natural Resources Conservation Service
- Western Montana Growers Coop

