

RESOLUTION  
OF THE  
BOARD OF COUNTY COMMISSIONERS  
OF THE  
COUNTY OF DELTA, STATE OF COLORADO

RESOLUTION NO. 99-R-020

AN AMENDED RESOLUTION ESTABLISHING "RIGHT TO FARM AND RANCH POLICY"

WHEREAS, the Board of County Commissioners of Delta County ("the Board") recognizes the need to protect the viability and emphasize the importance of farming, ranching and other agriculture activities in Delta County; and

WHEREAS, the changing nature of land use and demography in Delta County has increased the potential of conflicts between agricultural operations and rural residents and visitors to Delta County; and

WHEREAS, examples of such conflicts include, but are not limited to: Harassment of livestock and livestock losses due to free roaming dogs; trespass by livestock; movement of livestock and machinery on highways and county roads; gates inappropriately left open or shut; chemical applications; complaints regarding noise, dust, and odor; weed and pest control; and trespass; and

WHEREAS, it is desirable to protect agricultural operators from complaints about legal and non-negligent agricultural operations and activities; and

WHEREAS, it is desirable to educate the public and nonagricultural residents and visitors to Delta County about the existence, value, and importance of the County's agricultural operations and activities; and

WHEREAS, the Board shall attempt and aspire to:

- a. Conserve, enhance and encourage farming, ranching and associated agricultural activities and operations within Delta County;
- b. Minimize financial conflicts between agricultural and nonagricultural users of land in the County;
- c. Educate and notify new rural residents and long time agricultural operators alike of their rights and obligations relating to agricultural activities;
- d. Integrate planning efforts to provide for the retention of agricultural land

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and production, as well as the opportunity for reasonable residential and other development;  
and

WHEREAS, the Board of County Commissioners, pursuant to Colorado statute, has the power to provide for the preservation of cultural, historic and architectural history in the County and to regulate the use of land therein; and

WHEREAS, pursuant to Article 3.5, Title 35, C.R.S., it is the declared policy of the State of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products; the general assembly recognizes that when nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits; and a number of agricultural operations are forced to cease operations and many others are discouraged from making investments in farm improvements. The purpose of the Article is therefore to reduce the loss to the State of Colorado of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance; and

WHEREAS, pursuant to Section 35-3.5-102(1)(a), C.R.S., an agricultural operation is not, nor shall it become, a public or private nuisance by any changed conditions in or about the locality of such operation after it has been in operation for more than one year, provided that it was not a nuisance at the time the operation began, and also provided that it is not a negligent operation and that a change in operation or substantial increase in size of operation does not result in a private or public nuisance; and

WHEREAS, pursuant to § 35-3.5-102(1)(b), C.R.S., a court may award expert witness fees, reasonable court costs and reasonable attorney's fees "to the prevailing party in any action brought to assert that an agricultural operation is a private or public nuisance"; and

WHEREAS, the Board has determined that it is desirable and beneficial to the citizens of Delta County to establish and adopt by resolution a Right to Farm and Ranch Policy involving the elements of protection of agricultural operations and education of property owners and the public; and

WHEREAS, the establishment and adoption of such a Right to Farm and Ranch Policy would serve and promote the public health, safety, welfare, and morals of the citizens of Delta County.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Delta County, Colorado, that:

1. Policy Statement. The "Delta County Right to Farm and Ranch Policy," attached

An Amended Resolution Establishing a Right to Farm and Ranch Policy - continued

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hereto as Exhibit A and by reference made a part hereof, shall be and hereby is adopted as an official policy of Delta County.

2. Court costs and attorney's fees. This Board supports the 1999 amendment to the "Farm and Ranch Law" set forth in Section 35-3.5-102(1)(b) and, to the extent possible, encourages the local courts to consider awarding expert fees, reasonable court costs and reasonable attorney's fees to the prevailing party in a nuisance lawsuit brought against an agricultural operation. The Board agrees that this amendment could act as a deterrent to parties bringing frivolous lawsuits against agricultural operations.

3. Public Education and Information Campaign. The Board, with the primary assistance of the CSU Extension Office and through the use of County Staff as needed, shall support efforts to educate and inform the public of the Right to Farm and Ranch Policy. Such efforts shall include dissemination of written information and oral presentations to community associations and organizations and schools; providing information at the Delta County Fair; creation of signs for roadways in Delta County; preparation and distribution of press releases relating to the Right to Farm and Ranch Policy; sponsoring tours and other events; and other similar activities.

4. Property Owner Notification. The Board shall notify the owners of land within the County by the following means:

- a. A one-time mailing to the record owners of land within Delta County, in conjunction with the mailing of tax notices, of the above Policy Statement.
- b. Whenever a subdivision, subdivision exemption, mobile home park, or other application which may result in a change of the boundaries of property or additional development is required by the County, the applicant shall be provided, along with the application, a copy of Exhibit A, the Delta County Right to Farm and Ranch Policy, and shall be required to provide a copy to purchasers of such property. In addition, a note shall be prominently displayed on any final plat resulting from the approval of such application which makes reference to this Resolution and the Right to Farm and Ranch Policy attached hereto. The note shall read substantially as follows:

All development in Delta County is subject to the Delta County Right to Farm and Ranch Policy, adopted as Resolution 96-R-033 by the Board of County Commissioners of Delta County on December 23, 1996.

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Potential litigants should be aware of Section 35-3.5-102(1)(b), C.R.S., which allows courts to award expert fees, reasonable court costs and reasonable attorney's fees to the prevailing party in an action brought to assert that an agricultural operation is a private or public nuisance.

- c. The Board shall initiate amendments to the County subdivision regulations to provide that notification of the Policy shall be made at the time of any subdivision or related land use application and that a note to that effect shall appear on any Plat so approved.
- d. In addition, the Board shall encourage real estate brokers county-wide to voluntarily disclose the Policy to purchasers of real property in the County. To that effect, the Board shall schedule presentations to the Board of Realtors and other professional organizations to explain the Policy and distribute copies of the Policy.

ADOPTED this 27th day of September, 1999.

BOARD OF COUNTY COMMISSIONERS  
OF DELTA COUNTY, COLORADO

By Jim D. Ventrello  
Jim D. Ventrello, Chairman

Ted H. Hayden  
Ted H. Hayden, Vice-Chairman

Donna R. Ferganchick  
Donna R. Ferganchick, Member

ATTEST:

Lela J. McCracken  
Lela J. McCracken  
Delta County Clerk and Recorder



EXHIBIT A  
RESOLUTION 96-R- 033 adopted December 23 1996

**DELTA COUNTY RIGHT TO FARM AND RANCH POLICY**

Ranching, farming, orchards, animal feeding, dairies and all other types of agricultural activities and operations in Delta County are necessary for the continued vitality of the County's economy, landscape, culture and lifestyle. Given their importance to Delta County, Western Colorado and the State, agricultural lands and operations are worthy of recognition and protection.

Colorado is a "right to farm" state as set forth in CRS 35-3.5-101 *et seq.* Landowners, residents and visitors must be prepared to accept the effects of agriculture and rural living, including noise from tractors and equipment; measures used for protection from frost (e.g. wind machines); dust from animal pens, field work, harvest and gravel roads; odor from animal confinement, silage and manure; smoke from ditch burning; flies and mosquitoes; ground water and seepage from irrigation; the use of pesticides and fertilizer in fields, including the use of aerial spraying; and the presence of insects and other fruit eating pests. These operations are sometimes carried on through the day and night. Under State law and County policy, these activities may not be considered to be nuisances, so long as they are operated in conformance with the law and in a non-negligent manner.

In addition, all owners of land, whether ranch or residential, have obligations and limitations under State law and County regulation with respect to maintenance of fences and irrigation ditches, use and access to irrigation water, controlling weeds, keeping livestock and pets under control, using property in accordance with the land use regulations, etc. Colorado, for example, is an "open range" state and has a very specific fence law with respect to the control of livestock. As an additional example, owners of property with a ditch flowing through that property may have no right to either remove any water from that ditch or interfere with the flow of the water through the property. Residents and landowners are encouraged to learn about these rights and obligations and act as good neighbors with one another as citizens of the County.

Public services in a rural agricultural area are not provided at the same level as in an urban or suburban setting. In addition to the sheer magnitude of the area to be served, which stresses available resources, there must be priorities established in order to provide appropriate service. Road maintenance may be at a lower level; mail delivery may not be as frequent; utility services may be nonexistent or subject to interruption; law enforcement, fire protection and ambulance service may have considerably longer response times and snow may not be removed from the County roads for several days after a major snowstorm. First priority for snow removal is that school bus routes are normally cleared first.

Children are exposed to different hazards in a rural setting than in a urban setting. Farm equipment, ponds and irrigation ditches (as well as underground pipelines, entrance boxes and drain ditches), electrical power for agricultural and mineral activities, high speed traffic, noxious weeds, livestock and dogs running at large present real threats to children. It is necessary that children's activities be properly supervised not only for the safety of the children, but for the protection of the farmer or rancher in the community.