

SMOKY LAKE COUNTY

Title: License of Occupation of Road Allowance for Ranching and Farming Purposes	Policy No.: 17-02
Section: 62	Page No.: 1 of 7 E

Legislation Reference:	Municipal Government Act, Chapter M26.1 – Section 18(1).
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Purpose:	To provide access for ranchers and farmers owning or leasing land adjacent to County road allowances for grazing and farming purposes.
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Policy Statement and Guidelines:
<p>That Smoky Lake County require farmers and ranchers to take out a “License of Occupation” for ditches along county roads for farming and ranching purposes adjacent to owned or rented land. Terms and conditions are specified in “Schedule A” and form part of this policy.</p> <p>Farmers and ranchers who place an electric fence along, but not within a County Road Allowance do not require a “License of Occupation”.</p>

	Date	Resolution Number
Approved	July 26, 2000	# 538 - Page # 6889
Amended	January 18, 2007	# 174-07 - Page # 8268
Amended		



**LICENSE OF OCCUPATION OF ROAD ALLOWANCE
FOR RANCHING AND FARMING PURPOSES**

THIS AGREEMENT made this _____ day of _____, A.D. 20__.

BETWEEN:

SMOKY LAKE COUNTY
Box 310, Smoky Lake, Alberta T0A 3C0
a Municipal Corporation in the Province of Alberta
(hereinafter referred to as **"the County"**)

OF THE FIRST PART

AND

of _____
(hereinafter referred to as **"the Rancher/Farmer"**)

OF THE SECOND PART

Legal Description: _____

WHEREAS the County has and will continue to have direction, control and management of the municipal road allowance located adjacent to lands described above (hereinafter called **"the Road"**).

WHEREAS the Road contains a ditch area between the traveled portion of the Road and the rancher's/farmer's lands described above, hereinafter referred to as "**the Ditch**").

WHEREAS the rancher/farmer owns or leases land described above adjacent to the Road and the leasing is confirmed – as informed by the owner (hereinafter called "**the Land**").

WHEREAS the rancher/farmer wishes to use a portion of the Ditch for the purpose of grazing livestock.

NOW THEREFORE this agreement witnesses that in consideration of the premises, the covenants herein contained and other good and valuable consideration, the parties hereby agree as follows:

IN CONSIDERATION OF \$ NIL DOLLARS per ½ mile or major portion thereof, now paid and exchanged between the parties hereto, the receipt and sufficiency of which is acknowledged, and of the premises and covenants herein contained and for other good and valuable consideration, the parties hereby agree as follows:

1. Subject to the terms of this License, the County grants to the rancher/farmer the right to use and occupy that portion of the Ditch shown on *Schedule "A"* and which is not closer than such distance that may interfere with road grading and road snowplowing to the outer edge of the traveled portion of the Road nearest the Lands, for purposes of farming or livestock grazing.

2. The rancher/farmer is hereby entitled to use and occupy the said portion of the Ditch for a normal livestock grazing operation and to use, and to fence the said area of the Ditch provided that no provision herein shall restrict, hinder or prohibit the public's and County's use of the Road for transportation purposes.
3. The rancher/farmer shall use plastic and fiberglass fencing material and ensure the visibility in the interest of public safety.
4. The rancher/farmer shall at all times and at their own expense keep and maintain the fence constructed within the Ditch in good and sufficient repair to the reasonable satisfaction of the County.
5. The rancher/farmer shall not construct any other structure in the Ditch than the fence referred to above unless the County gives its prior approval in writing to the proposed construction.
6. The rancher/farmer acknowledges and agrees that his/her rights to the use of the Licensed Area shall not confer any exclusive right whatsoever in respect to the use or occupation of the License Area, and that the rancher/farmer shall have no claim to the License Area other than as herein provided.
7. Fencing associated with this License of Occupation shall not cross an intersecting road allowance to ensure public access, except in the case when the rancher/farmer has a Roadway License Agreement on the intersecting road allowance.
8. No provision of this agreement and no act or omission or finding of negligence, whether joint or several, as against the County, in favour of any third party, shall relieve the rancher/farmer from liability to the County, when such liability arises under this agreement, to the extent that such liability shall be caused by the acts or negligence of the County, provided however, that any liability caused by the County and the rancher/farmer jointly or together shall be borne in proportion to the degree of cause as between the County and the rancher/farmer.

9. If the rancher/farmer violates any provision of this agreement, or any provision of the County's bylaws, all rights accruing to the rancher/farmer under this agreement shall, unless the County otherwise decides, cease upon **THIRTY (30) DAYS** written notice if not remedied within that period, but the County shall retain the right to proceed with the enforcement of any security or indemnity provided in satisfaction of any claim, loss or expense of any kind whatsoever arising under this agreement.

10.
 - a. The rancher/farmer indemnifies, saves harmless, releases and forever discharges the County from and against any and all manner of actions, causes of actions, claims, debts, suits, loss, costs (including legal costs on a solicitor-client basis), demands and promises whatsoever, whether known or unknown, which the rancher/farmer or any other person now has or may at any time have by reason of:
 - i. the permission to use and occupy the portion of the Ditch within the Road granted herein; or
 - ii. the construction, maintenance, existence, use or removal of the fence including, without restricting the generality of the foregoing, a claim for loss or injury to persons or property due to the rancher's/farmer's negligence or failure to comply with the County's bylaws or with any provision of this Agreement.
 - b. The rancher/farmer shall carry comprehensive liability insurance with insurable limits of no less than **Two Million Dollars (\$2,000,000.00)** for each occurrence or incident, which shall name the County as an insured party and the Licensee shall provide proof of such insurance to the satisfaction of the County upon demand.

11. The County's officers, employees, agents and contractors shall have the right at any time to enter upon the Road for the purpose of reconstructing, maintaining, repairing, inspecting, testing or removing any public works, utility or road existing at the date of this Agreement. The County shall in undertaking such activities use reasonable efforts to cause its officers, employees, agents and contractors to minimize any disruption or damage to the rancher's/farmer's use and fence which occurs pursuant to such activities to the extent that any loss, damage or injury shall have been caused by the acts of negligence of the County's officers, employees, agents or contractors.

12. All costs to repair or replace the fence which occur as a result of the County's activities pursuant to **Paragraph 11** shall be borne entirely by the rancher/farmer. In addition, the rancher/farmer shall reimburse the County for all necessary and reasonable costs incurred by the County as part of the County's activities pursuant to **Paragraph 10** in excess of those costs that would have been incurred if the fence did not exist.
13. The County may at any time in its sole discretion withdraw the rights it has granted herein to the rancher/farmer and resume possession of the Road for public purposes, provided that the County gives the rancher/farmer **THIRTY (30) DAYS** notice specifying the public purpose and gives the rancher/farmer the right to make submissions to the County's Municipal Council in respect to the necessity, methods, and alternative means of achieving the public purpose, and the rancher/farmer shall at his/her own expense within a period of **SIX (6) MONTHS** from the date receiving such notice of withdrawal or within such shorter time as may be specified by the County's Municipal Council remove the fence and restore the Ditch to the satisfaction of the County.
14. The rancher/farmer shall not, without the prior written consent of the County, assign either in whole or in part any of the rights herein conferred upon the rancher/farmer.
15. The rancher/farmer acknowledges and agrees that all property of the rancher/farmer which may hereafter be located on, under, over or adjacent to the Licensed Area shall be at the sole risk of the rancher/farmer and that the County shall not be liable for any loss or damage thereto howsoever occurring and the rancher/farmer hereby releases the County from all actions, claims, demands, suits or proceedings whatsoever in respect of any such loss or damage, except and to the extent of which such loss or damage is caused by the neglect or fault of the County or its servants or agents.
16. In the event the rancher/farmer fails to keep the Ditch or any structure pertaining thereto, including the fence, in good repair to the reasonable satisfaction of the County in conformance with the prevailing standards of maintenance in the County from time to time, or in the event the rancher/farmer fails to remove the fence and restore the Ditch to the satisfaction of the County, pursuant to **Paragraph 12**, the County may in its sole discretion cause such repairs to be made, as it deems reasonable and necessary, and the cost thereof shall be borne by the rancher/farmer.

17. If any section, subsection, sentence, clause or phrase of this agreement is for any reason held to be invalid by the decision of a Court or competent jurisdiction, the invalid portion shall be severed and the decision that is invalid shall not affect the validity of the remainder of this agreement.

18. This agreement shall ensure to the benefit of and be binding upon the parties hereto **NOTWITHSTANDING** any rule of law or equity to the contrary; and this agreement shall be governed and construed in accordance with the laws of the Province of Alberta.

19. The rancher/farmer shall pay to the County all legal costs incurred by the County in the preparation, execution and registration of this License of Occupation.

20. The term of the license shall be **THREE (3) YEARS** normally renewable and shall terminate on the ____ day of _____, 20____.

21. To be eligible for and/or remain eligible for the License of Occupation and for this agreement to remain in effect, the rancher/farmer must be either the owner or hold a license; or be a renter of the property adjacent to the road.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day first above written.

SMOKY LAKE COUNTY

Per: _____
Signature

Per: _____
Print Name

RANCHER(S)/FARMER(S)

Per: _____
Signature

Per: _____
Print Name

