

**BOUNDARY COUNTY, IDAHO ORDINANCE NO. 2025- \_\_\_\_\_**  
**BOUNDARY COUNTY PLANNING & ZONING FILE # 25-0012**  
**AGRICULTURAL PROTECTION AREA ORDINANCE**

AN ORDINANCE OF BOUNDARY COUNTY, IDAHO, CREATING AN OPPORTUNITY AND PROCEDURES TO: ESTABLISH AGRICULTURAL PROTECTION AREAS (APA), AS REQUIRED BY THE STATE OF IDAHO; ALLOW LANDOWNERS TO VOLUNTARILY DESIGNATE THEIR AGRICULTURAL LANDS FOR PROTECTION AND PRESERVATION; ESTABLISH AN APA COMMISSION; PROVIDE A PROCESS TO EXPAND, TERMINATE, OR REMOVE LANDS FROM A PROTECTION AREA; AND TO PROVIDE SEVERABILITY AND AN EFFECTIVE DATE.

**WHEREAS**, the Constitution of the State of Idaho, Article XII, Section 2, and Title 31, Chapter 7 provides authority for the Boundary County Board of Commissioners to adopt ordinances necessary to provide for the safety, health, and prosperity of its inhabitants, and for the protection of property; and

**WHEREAS**, the Idaho State Legislature enacted House Bill 608, adding a new Chapter 97, Title 67, to Idaho Code, establishing a new, voluntary agricultural protection area designation through which farmers, ranchers, and forest land owners may apply to the county to set their lands aside for future agricultural use for 20 years; and

**WHEREAS**, Idaho Code §67-9704 requires each board of county commissioners to adopt an agricultural protection area ordinance by January 1, 2025; and

**WHEREAS**, Boundary County desires to provide the opportunity for landowners to designate their lands as agricultural protection areas through this voluntary land use designation; and

**WHEREAS**, the Boundary County comprehensive plan recognizes the value of its agricultural and forest lands, not only for their economic contributions but for their scenic beauty and role in affording the rural qualities that define Boundary County's heritage and culture; and

**WHEREAS**, the Boundary County Board of Commissioners held a duly noticed public hearing in accord with the notice and hearing procedures of Idaho Code §67-6509 on December 10, 2024, at which time interested persons had the right to be heard regarding the proposed ordinance.

**NOW THEREFORE**, Be it ordained by the Board of County Commissioners of Boundary County, Idaho that the following ordinance is hereby adopted, as follows:

**ADOPTION: Boundary County Agricultural Protection Ordinance is hereby adopted to read as follows:**

### **Section 1: Purpose:**

The purpose of this ordinance is to provide for a voluntary process through which agricultural and timber producers of Boundary County, Idaho may apply to designate lands actively devoted to agriculture for future agricultural use in an Agricultural Protection Area (APA). The APA provides an opportunity to protect and enhance the economic and cultural benefits that working lands provide by promoting proactive planning tools for landowners and governing bodies to maintain and enhance the economic value of working lands without impacting the property of those who do not want to participate in this opportunity. This ordinance establishes the process to create Agricultural Protection Areas.

### **Section 2: Definitions:**

For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- A. Agriculture Production: means activities or conditions conducted on land actively devoted to agriculture as defined in section §63-604, Idaho Code, or on forest land as defined in section §63-1701, Idaho Code.
- B. Agricultural Protection Area (APA): means specific parcels of land in a designated geographic area voluntarily created under the authority of this chapter for the purpose of protecting and preserving agricultural land.
- C. Agricultural Protection Area Commission: means the advisory board to the governing body created pursuant to section §67-9705, Idaho Code.
- D. Applicant: means anyone who owns five (5) contiguous acres or more of land that has been in active agricultural or forest production for the previous three (3) consecutive years, consistent with the provisions of sections §63-604 and §63-1701, Idaho Code, and who voluntarily applies for that land to be part of an Agricultural Protection Area.
- E. Area of City Impact/Area of Impact: area designated by county ordinance where city growth and development are expected to occur.
- F. Hardship: means a situation or circumstance over which a landowner in an Agricultural Protection Area has no control, including, but not limited to, an adverse result in litigation against the farm or landowner, death of a close family member that would lead to unanticipated financial hardships, significant tax liabilities, bankruptcy due to another person's fraud, or any other illegal activity.
- G. Proposal: means written documents submitted to a governing body or agricultural protection area commission from landowner(s) regarding their property.

### **Section 3: Agricultural Protection Area Commission:**

- A. The Board of Commissioners shall appoint at least three (3) but no more than five (5) members actively employed by or supporting production agriculture in the

- county to serve on the county's Agricultural Protection Area Commission. Members may include representatives from the local soil and water conservation district board of supervisors, the local cattlemen's association board, the county farm bureau board, an irrigation district or water users association board, or a grower/commodity association or commission board, to serve as the Agricultural Protection Area Commission for the county.
- B. Terms of office for the commission shall be four (4) years.
  - C. As part of its duties, the commission shall provide for meetings and hearings to obtain advice on the agricultural needs of the county. The commission may also conduct informal meetings with public officials and agencies, agricultural professionals, educational professionals, and other organizations to evaluate the agricultural needs of the county.
  - D. The commission may make recommendations to the board of county commissioners concerning the process by which the agricultural protection area commission will accept, review, and offer recommendations regarding agricultural protection area proposals to the board of county commissioners, including the nature and type of information provided by applicants and the evaluation criteria required to review agricultural protection area applications.
  - E. The commission shall review applications for inclusion in an agricultural protection area pursuant to the county agricultural protection area ordinance and make recommendations to the board of county commissioners regarding such applications.

**Section 4: Criteria for Agricultural Protection Area:**

An APA designation is a voluntary land use designation available to landowners who wish to protect their agricultural land from future nonagricultural development. To qualify for an APA designation, the land must be:

- A. At least five (5) contiguous acres;
- B. Actively devoted to an agricultural or forest purpose;
- C. Assessed as agriculture or forest land; and
- D. Located within a zone that allows for agricultural or forest use.

**Section 5: Applications:**

Landowners wishing to establish an APA on their land must submit an application to the Boundary County Planning Department. At a minimum, the application shall include the following:

- A. Name, phone number, email, and mailing address of the land owner;
- B. Proof of land ownership;
- C. A legal description of the parcels, structures, and facilities proposed to be included in the APA;
- D. A map showing the boundaries of the proposed APA;
- E. A statement outlining the current contiguous acreages of land, land use, agricultural productivity, and other relevant characteristics of the land to be included in the APA;
- F. The number of years the land has been in agricultural or forest production, the types of agricultural or forest commodities produced, and the applicant's plan to

- continue using the land for agricultural or forest purposes;
- G. The stated reasons for seeking an APA designation;
- H. Application fee, as established by the official fee schedule;
- I. Soil surveys, water rights, and any other relevant environmental assessments;
- J. Any additional, relevant information the Commission may request to properly review the application.

**Section 6: Review Process:**

- A. Upon receipt of a completed application, the planning department shall transmit the application to the APA commission, who shall review the proposal and make a recommendation to the board of county commissioners within sixty (60) days of receiving the application. The application shall be evaluated on the following criteria:
  - 1. The total contiguous acreage of the land is at least five (5) acres in size and is actively devoted to agricultural or forest production;
  - 2. Adjacency to an existing area of city impact/area of impact;
  - 3. Possible conflict with existing city annexation or development plans or agreements;
  - 4. Proximity to existing public rights of way;
  - 5. Proximity to planned transportation corridors or future public rights of way;
  - 6. Proximity to planned airport expansion or development;
  - 7. Proximity to planned development with existing entitlements;
  - 8. Agricultural production capability of the land within the proposed APA; and
  - 9. Other local impacts relevant to the proposed APA.
- B. Once the APA commission makes its recommendation to the board of county commissioners, the board of county commissioners shall hold a public hearing in accord with the notice and hearing procedures of Idaho Code §67-6509 and shall issue its decision to approve or deny the application within sixty (60) days. Failure to make a decision within sixty (60) days of receiving the commission recommendation shall render the APA commission's recommendation final.
- C. Notwithstanding the criteria and review process outlined in this code, the board of county commissioners may place additional conditions on lands designated as an APA, including, but not limited to, setbacks from existing public rights of way, setbacks from existing public structures, and a review of the land's APA designation after twenty (20) years.
- D. Upon making its decision, the board of county commissioners shall:
  - 1. Provide the applicant with a written decision, containing:
    - a. The date of the APA creation;
    - b. A legal description of the subject property;
    - c. The findings of the agricultural protection commission;
    - d. The decision of the board of commissioners and the facts and reasoned statement supporting the decision;
    - e. Notice that the APA is established for twenty (20) years and will automatically renew for another twenty (20) years, unless the landowner provides written notice of the desire to terminate the APA, in accord with the procedures of the Agricultural Protection Area Act;

- f. Identification of the limitations and protections established by the creation of the APA, as provided in the Agricultural Protection Act.
2. Have the clerk of the board of county commissioners file with the county recorder the executed, written decision of the board, within ten (10) days of the approval of the APA designation by the board.
3. Notify relevant public officials and agencies of the designation.
4. Submit the decision to the Boundary County Planning and Zoning Commission for inclusion in the future land use comprehensive plan map as a designated agricultural protection area, pursuant to the procedures of Idaho Code §67-6508 and §67-6509.

### **Section 7: Expansion or Modification of an APA**

An expansion, modification, or removal of an existing APA shall follow the same application, review, and hearing procedures outlined in this code. Any expansion of an APA shall be contiguous to the APA.

### **Section 8: Termination of an APA**

If a hardship exists, as defined by this code, landowners may request termination of their APA by filing a written request with the Boundary County Commissioners and identifying the cause of the hardship. Early termination may be granted only upon landowner proof of the undue hardship. The landowner seeking to terminate an APA bears the burden of proof in demonstrating the hardship. The request for termination shall be considered by the Board of County Commissioners at a regularly scheduled meeting not less than sixty (60) days after the written request is filed. The landowner shall reimburse the county for the costs to terminate the APA, if granted.

### **Section 9: Enrollment Duration and Review**

Lands designated as an APA will remain so designated for a period of twenty (20) years and shall automatically renew for another twenty (20) years unless notified by the landowner that they wish to terminate the APA. A landowner wishing to end an approved APA designation after twenty (20) years must notify the board of county commissioners in writing of their desire not to renew the land's APA designation. Failure of the landowner to notify the county, or failure of the county to review the APA terms, will result in the APA designation continuing for another twenty (20) years.

### **Section 10: Fees**

An application fee shall be required to cover administrative costs, including, but not limited to, reviewing materials, conducting public meetings and hearings, processing and recording documents, and updating county land use maps.

### **Section 11: Enforcement, Prohibitions, and Penalties**

- A. Unless otherwise approved by the board of county commissioners, the following land uses are not allowed within an APA:
  1. The siting of large, confined animal feeding operations (CAFOs);
  2. The siting of commercial, manufacturing, and industrial uses;
  3. The siting of solar energy or wind energy generating facilities such as wind or

- solar farms, or battery storage structures; or
- 4. Any other nonagricultural land uses.
- B. The board of county commissioners or designated code enforcement staff shall be responsible for enforcing the provisions of this ordinance.

**Section 12: Severability**

If any section, subsection, sentence, clause, or phrase of this title is held to be invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this title and they shall remain in full force and effect.

**Section 13: Effective Date**

This ordinance shall be in full force and effect upon the passage and publication of the ordinance or ordinance summary in one (1) issue of the official newspaper for Boundary County, in accordance with the Idaho State Code.

This ordinance duly enacted as an ordinance of Boundary County, Idaho on this \_\_\_\_ day of \_\_\_\_\_, 2024, upon the following roll call vote:

**ROLL CALL:**

Commission Chair Bertling \_\_\_\_\_  
 Commissioner Cossairt \_\_\_\_\_  
 Commissioner Robertson \_\_\_\_\_

**APPROVAL OF ORDINANCE SUMMARY**

Publication of the ordinance by summary in the official newspaper is hereby approved by the Boundary County Commissioners on this \_\_\_\_ day of \_\_\_\_\_, 2024, upon the following roll call vote:

**ROLL CALL:**

Commissioner Bertling \_\_\_\_\_  
 Commissioner Cossairt \_\_\_\_\_  
 Commissioner Robertson \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
 Glenda Poston  
 Clerk of the Board of County Commissioners

\_\_\_\_\_  
 Date