



BOUNDARY COUNTY PLANNING AND ZONING

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STAFF REPORT BOUNDARY COUNTY BOARD OF COUNTY COMMISSIONERS FILE #25-0012, AGRICULTURAL PROTECTION AREA

Prepared By:	Clare Marley, Senior Planner, AICP Acting Zoning Administrator Ruen-Yeager & Associates, Inc
Project Description:	Boundary County is initiating an ordinance, as required by the State of Idaho, to establish a process, application requirements, and standards, to provide a voluntary opportunity for landowners to protect and enhance the economic and cultural benefits of working lands. "Agricultural protection area" means specific parcels of land in a designated geographic area voluntarily created under the authority of the state through local ordinance for the purpose of protecting and preserving agricultural land. Lands created under the Agricultural Protection Act would be designated on the county's comprehensive plan future land use map. Provisions to continue these ag protection areas or remove the designation are included in the proposed ordinance, as well as the formation of an Agricultural Protection Area Commission, to be appointed by the board of county commissioners.
Applicants:	Boundary County Board of Commissioners
Date Application Initiated:	November 7, 2024
Hearing Date:	Board of County Commissioners 12/10/2024
Legal Notice Provided:	Newspaper: 11/21/2024 Site Posting: N/A Mailed to media & taxing districts: 11/20/2024
BOCC Decision:	PENDING
Staff Report Attachments	Legal notice, draft ordinance, copy of Idaho Agricultural Protection Act

Project Summary

The Idaho State Legislature adopted House Bill 608 during the 2024 legislative session that created a new Agricultural Protection Area Act to allow owners of farm and forest lands to voluntarily designate their lands for protection. This new law, codified at Chapter 97, Title 67 of Idaho Code, requires all Idaho counties to adopt their own agricultural protection area ordinances, reflecting the intent of the new state law. The law requires counties to adopt an Agricultural Protection Area by January 1, 2025.

Staff drafted a proposed Boundary County Agricultural Protection Area (APA) ordinance, based on the requirements of Idaho Code and a template drafted by the Idaho Association of Counties. Staff also sought input from the American Planning Association-Idaho Chapter and other counties in Idaho.

The Ag Protection Area Act’s stated intent is “to provide an opportunity to protect and enhance the economic and cultural benefits that working lands provide to Idahoans by promoting proactive planning tools for working landowners and governing bodies to maintain and enhance the economic value of working lands without impacting the property of those that elect not to participate in this opportunity.”

The following is a summary of the requirements of the APA Act, how the requirements are incorporated into the Boundary County’s draft APA ordinance, and staff comments:

APA Act	Boundary County draft	Staff comments
IC§67-9701-9703 Intent/Definitions	Section 1, Purpose; Section 2, Definitions	The draft ordinance reflects the state law’s intent. Definitions are copied from state code, with one addition to define Area of City Impact/Area of Impact, since the term is used in the state code and draft ordinance.
<p>IC§67-9704, Ag Protection Areas, requiring the county to establish:</p> <ul style="list-style-type: none"> • A process for APA • Application requirements • Standards for evaluating applications • Timeline for reviewing • Fees to cover costs <p>Also requires APAs be designated on future “land use planning maps to serve as a voluntary and expeditious tool for working landowners while also informing planners, commissions, county officials, and citizens at large on how to proactively plan for agriculture.”</p>	<p>This section is addressed in the draft at:</p> <ul style="list-style-type: none"> • Section 6, Review Process • Section 5, Applications • Section 6 A 1-9, Review Process • Section 6 B, Review Process • Section 10, Fees <p>Amending a “future” land use map is identified in the draft as being the comprehensive plan map, and is assigned to the Planning and Zoning Commission for recommendation to the Board of County Commissioners through the standard land use application notice and hearing.</p>	<p>The state does not direct which county department is to receive the application. In the draft, the planning department is assigned to receive the application since the new law requires notification and hearings consistent with the Local Land Use Planning Act, under which the planning department regularly works.</p> <p>Fees for review of these applications and public hearing and notice will need to be established and collected, and would likely match the mapping amendment costs. The fee schedule would need to be updated, or a determination made that the fee is the same as a map amendment for zoning.</p> <p>The requirement to amend the “future land use planning maps” seems to have left <u>great uncertainty</u> with counties who are establishing this ordinance for the first time. Responses to staff inquiries from planners indicate that the state law left it up to counties to interpret</p>

APA Act	Boundary County draft	Staff comments
		<p>what maps need to be amended and how. Because the new act uses the word “future,” staff determined that the comp plan map should be updated. Comp plan amendments require a recommendation from Planning and Zoning Commission, so that process is integrated into the application review at Section 6 D 4.</p>
<p>IC§67-9705, APA Commission</p> <ul style="list-style-type: none"> • Board to appoint at least 3 but not more than 5 from specified community sectors • Terms to be set by resolution or ordinance • Duties specified • Recommendation to commissioners required • Review applications • Deadline of 60 days to recommend 	<p>Section 3, APA Commission</p> <ul style="list-style-type: none"> • Commission size is 3 to 5, membership requirement reflects Idaho Code • Terms set at 4 years • Duties copied from this section of state code • Section 6 A sets the deadline to provide a recommendation within 60 days of receipt of application • Review process in Section 3 & 6 	<p>The draft leaves the commission size at 3 to 5, as a flexible option for the board of commissioners. The BOCC could set a firm number of members here, if they wish.</p> <p>Terms of office are to be established either by resolution or ordinance. It was most expeditious to set the terms within this ordinance rather than a separate resolution. The suggested term is 4 years to match the practice of appointments for P&Z. The BOCC may pick a different term of office that ranges from 3 to 6 years and can direct staff to update the draft ordinance to reflect this, if they desire.</p>
<p>IC§67-9706, Review & Action</p>	<p>Section 6 B, Review Process, sets the response time by the BOCC to 60 days after the APA Commission makes its recommendation.</p>	<p>The draft matches state code requirements.</p>
<p>IC§67-9707, Recording of APA</p>	<p>Under Section 6 D 2, Review Process, the clerk of the board is assigned to record the APA decision within 10 days of its establishment.</p>	<p>Draft Section 6 D 2 provides that the written decision containing the specifics of the state law be filed for recording by the clerk of the board. A written decision is required regardless, so using this same document for recording saves the steps of creating an extra document. A notary acknowledgment would have to be included in the future decision letter for the APAs to be recorded.</p>
<p>IC§67-9708, Renewal of APA</p>	<p>Section 6 D 1 e of the draft provides that the APA is established for 20 years, per Idaho Code. In the decision letter, the county will give notice that the APA will automatically renew, unless the landowner advises otherwise.</p>	<p>If after 20 years, the landowners want to continue the APA, they don't have to do anything, and the APA continues for another 20 years. This draft section includes the automatic renewal so that county staff does not have to remember in 20 years to renew the APA.</p>
<p>IC§67-9709, Adding/Removing lands</p>	<p>Draft Section 7 provides that the expansion or modification of an APA follows the same rules as the creation of an APA. Section 8 provides for termination of the APA.</p>	<p>Early termination due to hardships are the same as state law provides and depend on the definition of hardship contained in both the local draft and state law.</p>

APA Act	Boundary County draft	Staff comments
IC§67-9710, Limitations	The local draft includes under Section 11, Enforcement, Prohibitions and Penalties, a section that prohibits certain non-agricultural uses, including large, confined animal feeding operations (CAFOs), per state code, <u>unless otherwise approved by the board of commissioners.</u>	The draft matches the “Limitations” of state code, which allows the county to regulate CAFOs and other non-agricultural uses within an APA. But this section does state “unless otherwise approved.” The state law broadly includes solar or wind energy structures and residential uses in possible regulations. Staff suggests keeping CAFOs and wind and solar “farms” in this prohibited section and keeping the “unless otherwise approved” phrase. Small wind or solar generators should be permitted, and residential uses are allowed in the Ag/Forestry zones. The enforcement authority is assigned to the BOCC or designated code enforcement staff. Suggested violation of this ordinance in the IAC template was a misdemeanor. That language is not included in the draft because of recent local discussions on the use of misdemeanor for violations.
IC§67-9711, Nuisances	Not included in draft.	This section reflects Idaho’s right-to-farm status and reminds the public that agricultural facilities are protected from nuisance actions if they follow generally recognized farming practices. The new APA act did not require this to be included in local law.
IC§67-9711, Eminent Domain	Not included in draft.	The new law provides that a political subdivision cannot exercise eminent domain and condemn property with an APA for any purpose except for expansion or maintenance of an existing highway right-of-way or as granted in Section 14, Article 1 (right of eminent domain) and Section 8, Article 11 (right of eminent domain and police power) of the state constitution. This section was not required to be in local code.

Authority

The authority for counties to enact agricultural protection areas is provided at Chapter 97, Title 67, of Idaho Code.

Agency/Public Comments

Notice of the proposed ordinance was published in the official newspaper of record a minimum of 15 days prior to the public hearing, in accord with the APA Act law. Taxing districts and the media were also given

notice at least 15 days prior to the hearing. No agency comments or public comment had been submitted at the time of this staff report.

Review by county civil counsel:

Planning staff provided to county civil counsel drafts of the ordinance for review prior to the hearing. Suggested comments and revisions have been incorporated into the final ordinance draft.

Staff Analysis	
<p>The new Agricultural Protection Area Act is a tool provided by the state of Idaho to allow landowners to voluntarily designate their working farm and forest lands for the purpose of protecting and preserving those lands. The APA cannot be applied to lands if there is no request for such a designation by the landowners themselves, so the designation should not adversely affect other property owners. Both state law and the local draft allow for the termination of a created APA if a hardship exists, as defined by code. The state law requires the county to amend its future land use maps to acknowledge designated APAs. However, Idaho Code does not clarify the type of map to be amended nor the process to amend it. The words “future land use planning maps” suggests this is meant to be the comprehensive plan map. Other counties have said the state law leaves it to the counties to interpret what maps are to be amended, whether they be zoning or comprehensive plan maps. This draft proposes the comprehensive plan map be amended to acknowledge designated APAs, using the standard Planning and Zoning Commission and Board of Commissioners process under state law.</p>	

Draft Motions, Board of County Commissioners – Agricultural Protection Area Code	
Motion to Approve	I move to approve the Agricultural Protection Area ordinance, finding that the proposal IS in accord with the authority granted to the County by the State of Idaho under the Agricultural Protection Act, Chapter 97, Title 67, and based upon the findings as written in the staff report (or as amended). I further move to direct staff to prepare written findings, a decision letter, ordinance, and ordinance summary for the Board of Commissioners’ future consideration.
Motion to Table	I move to table or continue the hearing to <i>[insert date, time and place]</i> to allow further consideration of the proposed amendment or to allow review and approval of written findings and decision.
Motion to Deny	I move to deny the request for Agricultural Protection Area ordinance, finding that the proposal IS NOT in accord with the authority granted to the County by the State of Idaho under the Agricultural Protection Act, for the following reasons (STATE REASONS). I further move to direct staff to prepare written findings and a decision for Board of Commissioners’ consideration.

Draft findings and conclusions for discussion/adoption:

1. The Board of Commissioners conducted a duly notice public hearing to consider the Agricultural Protection Act Ordinance, in accord with the requirements of Idaho Code §67-9704 and §67-6509.
2. Idaho Code’s Agricultural Protection Act, Chapter 97, Title 67, provides Idaho counties with the authority and duty to enact APA ordinances.
3. Notice of the proposed ordinance has been provided to public and taxing agencies via regular mail. Notice has also been provided in the newspaper of record on November 21, 2024, and has been posted to the county website.
4. Boundary County’s comprehensive plan recognizes the value of its agricultural and forest lands for their economic contributions, scenic beauty, and the role they play in retaining the county’s rural qualities that define Boundary County’s heritage and culture.