

**TITLE 16 AGRICULTURAL PROTECTION AREA ORDINANCE
BONNER COUNTY REVISED CODE**

AN ORDINANCE OF BONNER COUNTY, IDAHO, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO, RELATED TO AGRICULTURAL PROTECTION AREAS; ADDING TITLE 16, BONNER COUNTY CODE THEREOF, SETTING FORTH THE PURPOSE AND APPLICABILITY OF THIS TITLE, ADOPTING ELIGIBILITY CRITERIA FOR CREATION AND DESIGNATION OF AN AGRICULTURAL PROTECTION AREA (APA), SETTING FORTH APPLICATION REQUIREMENTS, PROVIDING A PROCESS FOR REVIEW AND APPROVAL OF APPLICATIONS FOR DESIGNATION OF AN APA, PROVIDING A PROCEDURE FOR EXPANSION, MODIFICATION OR TERMINATION OF AN APA, SETTING FORTH THE DURATION OF AN APA DESIGNATION, SPECIFYING THE USES PROHIBITED WITHIN AN APA, ESTABLISHING AN AGRICULTURAL PROTECTION AREA COMMISSION, AND PROVIDING ASSOCIATED DEFINITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR NON-WAIVER OF ACTIONS REGARDING VIOLATIONS OCCURRING WHILE PRIOR ORDINANCES WERE IN EFFECT; AND PROVIDING AN EFFECTIVE DATE.

Whereas, in 2024, the Idaho Legislature adopted House Bill 608, as amended in the Senate, which added a new chapter to the Idaho Code, namely Title 67, Chapter 97, Idaho Code, entitled the “Agricultural Protection Area Act”; and

Whereas, in Idaho Code section 67-9702 the Idaho Legislature declared that the intent of the Legislature in adopting the Agricultural Protection Area Act was as follows:

- (a) Working farms, ranches, and forests provide important benefits to all Idahoans by sustaining: Idaho's economy; food and fiber production; the cultural heritage of local communities; habitat for wildlife; intact watersheds for clean water; and opportunities to hunt, fish, and enjoy the outdoors with landowner permission;
- (b) Working farms, ranches, and forests and the benefits they provide to Idahoans are being lost to rapid population growth, conversion to development, and other uses in recent decades;
- (c) Many of Idaho's rural working landowners are deeply committed to maintaining agricultural and forestry traditions and to serving as stewards of natural resources and wildlife; and
- (d) Idaho deeply respects the property rights of individual landowners and seeks to minimize the government's control over a landowner's decisions regarding the use of his property; and

Whereas, in Idaho Code section 67-9702 the Idaho Legislature further declared that the purpose of Title 67, Chapter 97 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; and

Whereas, the Agricultural Protection Area Act requires each Board of County Commissioners in

Idaho to establish an agricultural protection area ordinance in accordance with the notice and hearing procedures in Idaho Code section 67-6509 no later than January 1, 2025; and

Whereas, the Agricultural Protection Area Act also requires each Board of County Commissioners in Idaho to establish, by either resolution or ordinance, an agricultural protection area commission pursuant to Idaho Code section 67-9705 no later than January 1, 2025; and

Whereas, the Bonner County Board of Commissioners desires to comply with the above-referenced requirements; and

Whereas, the Bonner County Board of Commissioners also desires to promote the long-term use of lands for agricultural and timber production in conjunction with the legislative intent articulated in Idaho Code section 67-9702;

Now, therefore be it ordained by the Board of County Commissioners of Bonner County, Idaho that the following be and is hereby adopted as an ordinance of Bonner County:

SECTION 1: Authority

This ordinance is adopted pursuant to the authority granted by Chapter 97, Title 67, Idaho Code.

SECTION 2. Adopting Title 16, Bonner County Revised Code (BCRC)

That Title 16, Bonner County Revised Code, is hereby adopted as a new Title, to be designated as Title 16, Bonner County Revised Code, and to read as follows:

Title 16
Agricultural Protection Areas

BCRC TITLE 16, CHAPTER 1: PURPOSE, APPLICATION, AND PROCEDURES

16-101: PURPOSE:

The purpose of this title is to provide for a voluntary process through which agricultural and timber producers located within Bonner County may make application to commit lands actively devoted to agriculture for long-term future agricultural use. The Agricultural Protection Area (APA) designation process aims to protect productive farmland, rangeland, and forest land; promote farm viability; support the local agricultural economy; and provide for long-term planning stability. This title sets out the process for creation of Agricultural Protection Areas.

16-102 APPLICABILITY:

The provisions of this title shall apply to any person or legal entity that owns five (5) contiguous acres or more of land which has been in active agricultural or forest production for the previous three (3) consecutive years, consistent with the provisions of Idaho Code section 63-604 or section 63-1701 as applicable, and who voluntarily applies for that land to be designated as an agricultural protection area.

16-103 CREATION AND DESIGNATION OF APA:

An Agriculture Protection Area shall be designated as an “APA.” 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.

16-104 APPLICATION REQUIREMENTS:

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

- A. Application Form: A completed application form must be submitted with the property owner's signature, or with the applicant's signature together with a notarized letter from the property owner authorizing the applicant to file the permit application.
- B. 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. The application fee shall not exceed the actual costs of processing the application, in compliance with Section 67-9704(e) of Idaho Code. Fees as adopted by resolution of the Board of County Commissioners.
- C. Site Plan: A site plan must be submitted which is drawn to scale showing a north arrow, lot boundaries, location of all structures and utilities, the location, dimension and purpose of existing easements, the location of future structures, and other relevant information regarding the site and the request.
- D. Proof of property ownership.
- E. A legal description of the property proposed to be included in the APA.
- F. A narrative which describes in detail the existing conditions of the property and the nature of the proposal, including the following:
 - 1. 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.
 - 2. 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.
 - 3. The reasons for seeking an APA designation.
 - 4. Any other information that may be relevant to the application.
- G. Relevant soil surveys, documentation of water rights, and any other environmental assessments which have been completed with respect to that property.

16-105 REVIEW AND APPROVAL PROCEDURE:

- A. Upon receipt of a complete and sufficient application, the APA commission shall review the proposal and make a recommendation to the Board of County Commissioners within sixty (60) days after the application has been determined to be complete and sufficient.
- B. Evaluation of the application shall be based on the following criteria:
 - 1. The total contiguous acreage of the property is at least five (5) acres in size and is actively devoted to agricultural or forest production.
 - 2. Whether the property that is the subject of the application is within or adjacent to an existing area of city impact.
 - 3. Possible conflicts 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.
 - 9. Other local impacts relevant to the proposed APA.
- C. The Board of County Commissioners shall hold a public hearing and issue its decision within sixty (60) days after the APA commission issues its recommendation to the Board of County Commissioners. Notice of the hearing shall be published in a newspaper of general circulation in Bonner County at least fourteen (14) days before the hearing date. Written comments on the application may be accepted at any time before the hearing and at the hearing. The hearing on the request for APA designation shall be conducted in accordance with Idaho Code section 67-6509.
- D. Failure to make a decision shall render the APA commission's recommendation final.
- E. The Board of County Commissioners' order of decision shall cite the applicable legal standards, state the evidence and conclusions on which the decision was based, and explain any relevant contested facts and its evaluation of those facts.
- F. The Board of County Commissioners may place conditions of approval of an APA designation, including, but not limited to, setbacks from existing public rights of way, setbacks from existing public structures, or a review of the land's APA designation after twenty (20) years. Decisions of approval shall include any conditions of approval.
- G. Upon making a decision of approval, the Board of County Commissioners shall:
 - 1. Record the order of decision approving the APA designation, including a legal

description of the area within the designated APA, with the office of the Bonner County Recorder, at the property owner's expense, within ten (10) days after issuance of the order of decision;

2. Direct the amendment of the future land use map in the County Comprehensive Plan to reflect the boundaries of the APA; and
3. Notify relevant public officials and agencies of the designation.

16-106 RECONSIDERATION:

- A. Reconsideration: Every applicant or affected person seeking judicial review of the Board of County Commissioners' final decision must first file with the Board of County Commissioners a motion for reconsideration of the Board of County Commissioners' decision, specifying deficiencies in the decision within fourteen (14) days of the date of the decision, along with the applicable fee. A failure to seek reconsideration is also a failure to exhaust administrative remedies.
- B. Initial Decision: The Board of County Commissioners may consider the reconsideration motion as scheduled on an open business meeting agenda and determine whether to grant or deny the request. If the Board of County Commissioners grants reconsideration in whole or in part, a hearing before the Board of County Commissioners will be scheduled to address the specific deficiencies identified by the applicant or affected person and to allow interested persons to have an opportunity to be heard. If the Board of County Commissioners denies the request for reconsideration, it shall promptly notify the parties in writing.
- C. Public Notice On Hearing: Notice of the public hearing on the reconsideration, identifying the specific deficiencies alleged in the reconsideration request, will be provided as follows, including:
 1. Notice To Agencies And Political Subdivisions: At least fifteen (15) days prior to the public hearing, the Planning Director shall send notice to all political subdivisions providing services with the planning jurisdiction, including school districts and the manager or person in charge of the local public airport.
 2. Legal Notice: At least fifteen (15) days prior to the public hearing, the Planning Director shall publish a notice of the time and place in the official newspaper or paper of general circulation in the County.
 3. Radius Notice: Will be provided in the same manner as originally provided on the application.
- D. Decision: Following the hearing on the reconsideration, the Board of County Commissioners may affirm, reverse or modify its prior decision and shall provide a written decision to the applicant and the affected person(s) within sixty (60) days of receipt of the request for reconsideration. If the Board of County Commissioners fails to timely decide, the original decision of the Board of County Commissioners will stand.

16-107 EXPANSION OR MODIFICATION OF AN APA:

- A. An expansion, modification, or removal of an existing APA shall comply with the same application, review, and hearing procedures outlined in this title.
- B. Any expansion of an APA shall be contiguous to an existing APA.

16-108 RENEWAL OR TERMINATION OF AN APA:

Twenty (20) years after the creation of an agricultural protection area, if the landowner desires to continue with the agricultural protection area, no action on the part of the landowner is necessary and the board of county commissioners shall automatically renew the agricultural protection area for another twenty (20) years, in accordance with Idaho Code 67-9708.

If the landowner desires to terminate the agricultural protection area, written notice to the Board of County Commissioners, along with the applicable fee, are required at least ninety (90) days prior to the expiration of the agricultural protection area before the board of county commissioners terminates the designation, in accordance with Idaho Code 67-9708.

Early termination of the APA may be requested via application and the applicable fee, in accordance with Idaho Code 67-9709, and shall only be approved upon proof of a hardship by clear and convincing evidence. The owner seeking to terminate an APA shall bear the burden of proof, including the burden of going forward with evidence and the burden of persuasion. The request for early termination shall be in accordance with Idaho Code 67-9709.

16-109 DURATION OF DESIGNATION:

Lands designated as an APA shall remain so designated for a period of no less than twenty (20) years unless terminated pursuant to section 16-108 of this title. A property owner who intends to end an approved APA designation after twenty (20) years must notify the Planning Department in writing prior to the end of the then-current period. Failure of the owner to so notify the Planning Department will result in the continuation of the APA designation for another period of twenty (20) years.

16-110 PROHIBITION OF USES AND ENFORCEMENT:

- A. Unless otherwise approved by the Board of County Commissioners, the following land uses shall be prohibited within an APA:
 - 1. The siting of large confined animal feeding operations (CAFOs);
 - 2. The siting of residential, commercial, manufacturing, industrial, solar energy, wind energy, or battery storage structures; or
 - 3. Any other nonagricultural land uses.

BCRC TITLE 16, CHAPTER 2: AGRICULTURAL PROTECTION AREA COMMISSION AND MEETINGS

16-201: AGRICULTURAL PROTECTION AREA COMMISSION:

- A. Establishment. An Agricultural Protection Area Commission (“the APA Commission”) is hereby established in and for the County pursuant to Idaho Code Title 67, Chapter 97.

The APA Commission shall consist of five (5) members appointed by majority vote of the Board of County Commissioners. Members shall be selected without regard to political affiliation and shall serve without compensation, provided, however, that actual and necessary expenses shall be allowed if approved by the Board of County Commissioners.

- B. Qualifications. Commission members shall meet the requirements of Idaho Code 67-9705.
- C. Terms of Office. The terms of office for APA Commission members shall conform to the requirements of Idaho Code section 67-9705 and shall be for three (3) years. Positions A and B shall first expire December 31, 2025, and then every three (3) years thereafter. Positions C and D shall expire December 31, 2026, and every three (3) years thereafter. Position E shall expire December 31, 2027, and every three (3) years thereafter. Expired or vacant positions shall be filled within ninety (90) days. Appointment to complete the term of a vacated position or appointment to a new term shall be done by motion and order of the Board of Bonner County Commissioners.
- D. Removal of Members. Any member of the APA Commission may be removed for cause by a majority vote of the Board of County Commissioners. Any member who is absent from any series of three (3) consecutive regular and/or special meetings and study sessions, without the formal consent of the APA Commission, or who fails to attend at least seventy five percent (75%) of such regular and special meetings and study sessions, in any one calendar year, may be removed by the Board of County Commissioners.
- E. Chair. Once every year, at the regular meeting held in February, or the first regular meeting thereafter, the APA Commission shall select one of its members as Chair of the APA Commission and one of its members as Vice Chair.
- F. Powers and Duties. The APA Commission shall act in an advisory capacity to the Board of County Commissioners, and shall perform such duties as may be required under Idaho Code 67-97.
- G. Procedural Rules. The APA Commission may adopt such bylaws or rules of procedure as it may deem necessary to properly exercise its powers and duties. Such rules shall be kept on file with the Planning Department and a copy thereof shall be furnished to any person upon request.
- H. Liability. Neither the APA Commission, nor any person connected with the APA Commission, shall incur any financial liability in the name of the County.

16-202 AGRICULTURAL PROTECTION AREA MEETINGS:

- A. Time of Meetings. Once each year, the Planning Director shall publish the APA Commission's monthly meeting schedule for the following year. Special meetings may be called at any time by the Chair of the APA Commission or by the Planning Director, subject to the notification requirements set forth herein.
- B. Quorum. A majority of the filled positions on the APA Commission shall constitute a quorum for the purpose of conducting the APA Commission's business, provided there

are at least three (3) filled positions. For purposes of determining a quorum, a member who is present, but who cannot hear or deliberate on an application because of a conflict of interest, shall be counted as a member present for quorum purposes.

- C. Record of Proceedings: Minutes shall be kept of all APA Commission proceedings, and a recording of all APA Commission proceedings shall be kept. Voting: Each member of the APA Commission which does not have a conflict as defined in section 67-6506, Idaho Code, including the Chair, Chair pro tem and Vice Chair, shall be entitled to one vote on each matter before the APA Commission.

BCRC TITLE 16, CHAPTER 3: DEFINITIONS

16-301 GENERAL RULES FOR USE OF LANGUAGE:

- A. All provisions, terms, phrases and expressions contained in this title shall be constructed in accordance with the following general rules:
 - 1. In any case of any difference of meaning or implication between the text of this chapter and any heading, drawing, table, figure or illustration, the more restrictive text shall control.
 - 2. Unless otherwise specifically indicated, lists of items or examples that use terms such as "including", "such as", or similar language are intended to provide examples and not to be exhaustive lists of all possibilities.
 - 3. References to days are calendar days unless otherwise stated. Excluding the first day and including the last day shall determine the time in which an act is to be done. If the last day is a Saturday, Sunday or holiday observed by Bonner County, that day shall be excluded.
 - 4. Whenever reference is made to a resolution, ordinance, statute, regulation or document, it shall be construed as a reference to the most recent edition or amendment of such resolution, ordinance, statute, regulation or document, unless otherwise specifically stated.
 - 5. Terms not defined within this title shall have the meaning customarily assigned to them as defined in Webster's dictionary ("The Merriam-Webster Collegiate Dictionary", eleventh edition).
 - 6. All public officials, bodies, and agencies to which references are made are those of Bonner County, unless otherwise indicated.
 - 7. The words "shall", "will", and "must" are always mandatory. The words "may" and "should" are advisory and discretionary terms.
 - 8. The words used in one tense (past, present, or future) include all other tenses, unless the context clearly indicates the contrary.
 - 9. The singular includes the plural and the plural includes the singular (including numeric values), i.e., truck vs. trucks.

10. Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows:
 - a. "And" indicates that all connected items, conditions, provisions or events apply.
 - b. "Or" indicates that one or more of the connected items, conditions, provisions or events may apply or be optional.
11. The word "lot" includes the words "plot", "parcel", or "tract".
12. The word "person" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.

16-302 DEFINITIONS:

AGRICULTURE PRODUCTION: Activities or conditions conducted on land actively devoted to agriculture as defined in Idaho Code section 63-604 or on forest land as defined in Idaho Code section 63-1701.

AGRICULTURE PROTECTION AREA (APA): One or more specific parcels of land in a designated geographic area voluntarily created under the authority of this title for the purpose of protecting and preserving agricultural land.

AGRICULTURE PROTECTION AREA COMMISSION (APA Commission): The advisory board to the Board of County Commissioners created pursuant to Idaho Code section 67-9705 and section 16-201 of this title.

AREA OF IMPACT (AOI): An area designated by county ordinance which is adjacent to a city and where city growth and development are expected to occur.

APPLICANT: Anyone who owns five (5) 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 Idaho Code sections 63-604 and 63-1701 and who voluntarily applies for that land to be part of an agricultural protection area.

NUISANCES (1) Recognizing that Idaho is a right-to-farm state and that agricultural operations and agricultural facilities pursuant to chapter 45, title 22, Idaho Code, are protected from nuisance actions if they follow generally recognized farming practices, a political subdivision shall ensure that any of its laws or ordinances that define or prohibit a public nuisance shall exclude agricultural protection areas from its definition or from any prohibition for any agricultural activity or operation within an agricultural protection area as long as those agricultural activities or operations follow generally recognized farming practices.

(2) In a civil action for nuisance or criminal action for public nuisance, it is a complete defense if the action involves otherwise lawful agricultural activities that were:

- (a) Conducted within an agricultural protection area; and
- (b) Not in violation of any federal, state, or local law or regulation relating to the alleged nuisance and were conducted using generally recognized farming practices.

HARDSHIP: A situation or circumstance over which an owner of property designated as an agricultural protection area has no control, including, without limitation, an adverse result in litigation against the farm or landowner, death of the owner or a family member that would lead to unanticipated financial hardships, significant tax liabilities, bankruptcy due to another person's fraud, or any other illegal activity.

PLANNING DIRECTOR: An official appointed by the board who has knowledge in the practice of planning and zoning or his or her designee or appointee.

SECTION 3: SERVABILITY

The provisions of this Ordinance are hereby declared to be individually severable. Should any provision of this ordinance be declared invalid by a court of competent jurisdiction, such declaration shall not affect the validity of the remaining provisions.

SECTION 4: EFFECTIVE DATE

This Ordinance shall be in full force and effect upon its passage and publication of the ordinance or ordinance summary in one (1) issue of the Bonner County Daily Bee Newspaper.

Regularly considered, passed and approved as an ordinance of Bonner County, Idaho, done this 2nd day of January 2025, upon the following roll call vote:

PASSED AND APPROVED BY THE BOARD OF THE COUNTY COMMISSIONERS

Asia Williams, Chairwoman

Ron Korn, Commissioner

Steve Bradshaw, Commissioner

ATTEST: Michael W. Rosedale, Clerk

By Deputy Clerk:

Date

Legal: _____

STATEMENT OF COUNTY CLERK UNDER SEAL OF COUNTY COMMISSIONERS Bonner
County Revised Code Agricultural Protection Area Ordinance

The Bonner County Clerk has approved the following summary of an ordinance under I.C. § 31-715A and believes it to contain a true and complete summary of the adopted ordinance and further provides adequate notice to the public of the adopted ordinance:

SUMMARY OF ADOPTED ORDINANCE

Bonner County, a political subdivision of the State of Idaho, pursuant to I.C. § 31-715A, hereby provides the following summary of an adopted ordinance:

Ordinance #2024-XX Adoption of the Agricultural Protection Area Ordinance

An Ordinance of Bonner County, Idaho, establishing the Bonner County Revised Code, Title 16 to protect and enhance the economic and cultural benefits that working lands provide to residents of Bonner County by promoting proactive planning tools for working landowners to maintain and enhance the economic value of working lands without impacting the property of others by designating agricultural land as protected areas.

This ordinance creates a procedure for forming an Agricultural Protection Area Commission, its responsibilities to recommend to the Board of County Commissioners those properties interested in creating a protection area and the procedures for holding hearings and placing a protection area in compliance with Idaho Code § 67-97 Agricultural Protection Area Act.

A copy of the full text of this adopted ordinance may be obtained at the Bonner County Commissioners Office at 1500 Highway 2, Suite 308, Sandpoint, ID 83861 (9:00 a.m. to 5:00 p.m.). A true and correct copy of this notice shall be published in accordance with I.C. § 31-715. Dated this 2nd day of January 2025,

Alisa Schoeffel
Bonner County Clerk

The Bonner County Commissioners hereby place their seal this 2nd day of January 2025 as required by I.C. § 31-715(3)

Asia Williams, Chairwoman
Bonner County. Commissioners