

## **Appendix A**

### **Summary of Proposed Title 16 Updates:**

**16-104 (APPLICATION REQUIREMENTS):** Makes a minor edit to change the reference from “land use maps” to “APA map” to align with Idaho Code language. All other application requirements remain the same.

**16-105 (REVIEW AND APPROVAL PROCEDURE):** Update to the decision maker on APA applications from the BOCC to the Planning Director. Remove the public hearing requirement and established the decision-making process for the Planning Director.

**16-106 (APPEAL):** Replaces the reconsideration process with an appeal to the BOCC. Established an appeal timeline.

**16-110 (PROHIBITION OF USES):** Aligns prohibited uses with Idaho Code 67-9710(4), prohibiting specific uses.

Below are the proposed amendments to each specific section and the description of the changes. The language in red and underlined is recommended as additions to the existing code. Those words in ~~red and strike through~~ would be deleted from the ordinance.

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## Title 16

### Agricultural Protection Areas

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#### 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 the county APA ~~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 Planning Director ~~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. Within sixty (60) days of receiving a recommendation from the agricultural protection area commission to support or reject an application, the planning director shall approve or deny the application to include land in an agricultural protection area in a written decision. The decision shall specify, at a minimum:

1. The ordinance and standards used in evaluating the application;
2. The agricultural protection area commission's recommendation;
3. A reasoned explanation for the decision reached by the administrator or other administrative officer, if appointed; and
4. If applicable, the actions, if any, that the applicant could take to obtain approval.

D. If the planning director fails to issue a written decision within sixty (60) days of receiving a recommendation from the agricultural protection area commission, the recommendation of the agricultural protection area commission shall become the decision of the administrator or other administrative officer, if appointed.

~~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 APPEAL:**

A. An aggrieved applicant may appeal the decision to the Board of County Commissioners within thirty (30) days of receiving the written decision pursuant to subsection (1) of this section or recommendation that has become final pursuant to subsection (3) of this section.

B. Within sixty (60) days of receiving an appeal, the Board of County Commissioners shall hold a public hearing in accordance with the notice and hearing procedures described in section Idaho Code 67-6509 regarding the appeal.

C. In reviewing an appeal, the Board of County Commissioners shall consider the recommendation of the agricultural protection area commission, the written decision of the Planning Director, all written and oral public comment received at the public hearing, and any other information the Board of County Commissioners determines to be relevant.

D. Within sixty (60) days of the close of the public hearing, the Board of County Commissioners shall issue a final decision approving or denying the agricultural protection area application. If the Board of County Commissioners fails to act within the sixty (60) day period, the decision of the administrator or other administrative officer, if appointed, shall become the final decision of the board of county commissioners.

E. The Board of County Commissioners' final decision shall be subject to judicial review.

F. If the agricultural protection area application is approved, the agricultural protection area shall be created.

~~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:~~

- ~~a. 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.~~
- ~~b. 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.~~
- ~~c. 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.~~
1. The siting of residential, commercial, manufacturing, industrial, solar or wind energy structures, or any other non-agricultural land use on lands included within an agricultural protection area shall be prohibited unless such uses are also contributing to agricultural production. Such non-agricultural uses are subject to applicable county zoning ordinances.

(No Changes are Proposed for Title 16, Chapter 2)

(No Changes are Proposed for Title 16, Chapter 3)