

## SUMMARY – AGRICULTURE PROTECTION AREA MODEL ORDINANCE

During the 2024 Legislative Session, the Idaho State Legislature enacted House Bill 608, adding a new Chapter 97, Title 67, Idaho Code. The law establishes a new 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. Each county is required to adopt an agricultural protection area ordinance and application process for the establishment of agricultural protection areas and appoint an agricultural protection area commission to receive, review, and process agriculture protection area applications.

At minimum, a county agricultural protection area ordinance must include the following:

- An application process,
- Application requirements,
- Clear and objective standards for reviewing applications,
- Timeline for reviewing and making decisions on an application, and
- An application fee to cover the administrative costs of processing applications.

In addition to the agricultural protection area ordinance requirements, each county is also required to do the following:

- Establish an agricultural protection area commission to receive, review, and process agricultural protection area applications; and
- Designate agricultural protection areas on future land use planning maps.

Each county must adopt an agricultural protection area ordinance and establish an agricultural protection area commission no later than January 1, 2025.

The model ordinance presented to you was drafted by county commissioners, county planners, and IAC staff. **It is a non-binding guideline or template that can be used as a reference for creation of your own county agriculture protection area ordinance.** The model ordinance provides a structural format and targets the minimum statutory requirements for enacting an agricultural protection area ordinance. It is not inclusive of every issue or item a particular county may want to address. Please review the model agriculture protection area ordinance and contact IAC staff with any questions.

**The following framework should be individualized in order to meet the needs of each local jurisdiction. Any other possibly relevant factors should be considered.**

# MODEL ZONING ORDINANCE FOR AGRICULTURE PROTECION AREAS

[Insert Appropriate Local Introduction and Recitals]

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:

## Section 1: Purpose

The purpose of this ordinance is to provide for a voluntary process through which agricultural and timber producers of [INSERT COUNTY NAME] may make application to commit lands actively devoted to agriculture for future agricultural use. An APA designation 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 ordinance sets out the process for creation of Agriculture Protection Areas.

## Section 2: Adoption of New Chapter ## to Zoning Ordinance

The [LOCAL JURISDICTION ZONING ORDINANCE] is herby amended to add the following new Chapter [OR ARTICLE OR PART, AS APPROPRIATE]: ###-###

## Section 3: Definitions

**NOTE: If your county has a standalone definitions section within your zoning code, it may be more appropriate to include APA related definitions within that section of code and make references to that section in lieu of listing definitions in the APA ordinance.**

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

**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.

**Agriculture 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.

**Agriculture Protection Area Commission:** means the advisory board to the governing body created pursuant to section 67-9705, Idaho Code.

**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.

Area of City Impact (AOI): area designated by county ordinance where city growth and development are expected to occur.

Hardship: means a situation or circumstance over which a landowner in an agricultural protection area has no control and can then petition for removal for reasons that include but are 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.

Proposal: means written documents submitted to a governing body or agricultural protection area commission from a landowner regarding his property.

#### Section 4: Creation and Designation of APA

**Note: The criteria below should not be considered an exhaustive list of criteria. There may be other factors your county will want to consider. Likewise, there may be criteria included that your county does not wish to use.**

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.

Landowners wishing to establish an APA must submit an application to the **[DESIGNATE COUNTY DEPARTMENT/OFFICIAL TO RECEIVE THE APPLICATION]**. 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) Soil surveys, water rights, and any other relevant environmental assessments.

## **Section 5: Review Process**

Upon receipt of a completed application, the APA commission 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:

- a) The total contiguous acreage of the land is at least five (5) acres in size and is actively devoted to agricultural or forest production,
- b) Adjacency to an existing area of city impact,
- c) Possible conflict with existing city annexation or development plans or agreements,
- d) Proximity to existing public rights of way,
- e) Proximity to planned transportation corridors or future public rights of way,
- f) Proximity to planned airport expansion or development,
- g) Proximity to planned development with existing entitlements,
- h) Agricultural production capability of the land within the proposed APA, and
- i) Other local impacts relevant to the proposed APA.

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.

Once the APA commission makes its recommendation to the board of county commissioners, the board of county commissioners shall hold a public hearing and issue its decision within 60 days. Failure to make a decision shall render the APA commission's recommendation final. The board of county commissioner's decision shall include findings and facts supporting its decision.

Upon making its decision, the board of county commissioners shall:

- a) Record the designation of an APA, a legal description of the area, and any findings and facts with the county recorder within ten (10) days;
- b) Amend county land use planning maps to reflect the boundaries of the APA; and
- c) Notify relevant public officials and agencies of the designation.

## **Section 6: 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 7: Termination of an APA**

A landowner wishing to terminate an APA must request in writing a meeting with the board of county commissioners. The meeting request shall include a proof of hardship [DESIGNATE COUNTY DEPARTMENT/OFFICIAL TO RECEIVE WRITTEN REQUEST]. Early termination of the APA shall only occur upon the proving by the land owner of an undue hardship as defined in this code. The landowner seeking to terminate an APA bears the burden of proof in demonstrating the hardship. Early termination of an APA is not taken lightly, and will be carefully considered.

### **Section 8: Enrollment Duration and Review**

Lands designated as an APA will remain so designated for a period of twenty (20) years. 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 9: 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 10: Enforcement, Prohibitions, and Penalties**

Unless otherwise approved by the board of county commissioners, the following land uses are not allowed within an APA:

- a) The siting of large confined animal feeding operations (CAFO);
- b) The siting of residential, commercial, manufacturing, industrial, solar energy, wind energy, or battery storage structures; or
- c) Any other nonagricultural land uses.

The board of county commissioners or acting code enforcement officer shall be responsible for enforcing the provisions of this ordinance. Any person found to be in violation of this code shall be guilty of a misdemeanor and punishable as provided in

Section 18-113, Idaho Code.

**Section 11: 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 12: Effective Date**

This ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

PASSED and APPROVED by the [INSERT COUNTY] Board of County Commissioners on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

DRAFT