

ORDINANCE NO. 607
CASE NO. ORA24-0009
AGRICULTURAL PROTECTION AREAS

AN ORDINANCE OF KOOTENAI COUNTY, IDAHO, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO, RELATING TO AGRICULTURAL PROTECTION AREAS; AMENDING TITLE 8, CHAPTER 3, KOOTENAI COUNTY CODE WITH THE ADDITION OF A NEW ARTICLE 3.4 THEREOF, SETTING FORTH THE PURPOSE AND APPLICABILITY OF THIS ARTICLE, 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 AND PROVIDING FOR ENFORCEMENT THEREOF, 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 section 67-9702, Idaho Code, 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 section 67-9702, Idaho Code, 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 section 67-6509, Idaho Code, 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 section 67-9705, Idaho Code, no later than January 1, 2025; and

WHEREAS, the Kootenai County Board of Commissioners desires to timely comply with the above-referenced requirements; and

WHEREAS, the Kootenai 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 section 67-9702, Idaho Code;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF KOOTENAI COUNTY, IDAHO:

SECTION 1. That Title 8, Chapter 3, Kootenai County Code, shall be, and the same is hereby amended by the addition of a **NEW ARTICLE**, to be designated as Title 8, Chapter 3, Article 3.4, Kootenai County Code, and to read as follows:

Article 3.4

Agricultural Protection Areas

8.3.401: PURPOSE: The purpose of this article is to provide for a voluntary process through which agricultural and timber producers located within Kootenai 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 article sets out the process for creation of Agricultural Protection Areas.

8.3.402: APPLICABILITY: The provisions of this article 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 section 63-604 or section 63-1701, Idaho Code, as applicable, and who voluntarily applies for that land to be designated as an agricultural protection area.

8.3.403: 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.

8.3.404: APPLICATION REQUIREMENTS: Landowners wishing to establish an APA must submit an application to the 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:** Fees as adopted by resolution of the board.

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.**

8.3.405: 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 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 shall hold a public hearing and issue its decision within sixty (60) days after the APA commission issues its recommendation to the Board. Notice of the hearing shall be published in a newspaper of general circulation in Kootenai 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 section 8.8.404 of this title.

D. Failure to make a decision shall render the APA commission's recommendation final.

E. The Board's 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 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 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 Kootenai 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.

8.3.406: 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 article.
- B. Any expansion of an APA shall be contiguous to an existing APA.

8.3.407: TERMINATION OF AN APA:

A landowner wishing to terminate an APA must request in writing a public hearing before the Board. Notice and hearing on the request for termination of the APA shall be conducted in accordance with subsection 8.3.405(c) of this article. Early termination of the APA shall only be approved upon proof of a hardship, as defined in section 8.9.204 of this title, 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.

8.3.408: DURATION OF DESIGNATION:

Lands designated as an APA shall remain so designated for a period of twenty (20) years unless terminated pursuant to section 8.3.407 of this article. A property owner who intends to end an approved APA designation after twenty (20) years must notify the Department in writing prior to the end of the then-current period. Failure of the owner to so notify the Department will result in the continuation of the APA designation for another period of twenty (20) years.

8.3.409: PROHIBITION OF USES AND ENFORCEMENT:

- A. Unless otherwise approved by the Board, 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.
- B. Enforcement of the provisions of this article shall be as set forth in article 8.6 of this title.

SECTION 2. That a new Section 8.8.304, Kootenai County Code, shall be, and is hereby added as follows:

8.8.304: AGRICULTURAL PROTECTION AREA COMMISSION:

A. Establishment. An Agricultural Protection Area Commission ("the APA Commission") is hereby established in and for the County pursuant to Title 67, Chapter 97, Idaho Code. The APA Commission shall consist of five (5) members appointed by majority vote of the Board. 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.

B. Qualifications. Commission members shall meet the requirements of section 67-9705, Idaho Code.

C. Terms of Office. The terms of office for APA Commission members shall conform to the requirements of section 67-9705, Idaho Code, and shall be for three (3) years. Expired or vacant positions shall be filled within ninety (90) days. Terms shall begin on January 1 and conclude on December 31. The Board may set term limitations for members of the APA Commission by resolution.

D. Removal of Members. Any member of the APA Commission may be removed for cause by a majority vote of the Board. 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.

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. In the case of the absence of the Chair and Vice Chair, the members present at any meeting shall select one member to act as Chair *pro tem*.

F. Meetings.

1. Time of Meetings. Once each year, the 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 Director, subject to the notification requirements set forth herein.

2. 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.

3. Record of Proceedings: Minutes shall be kept of all APA Commission proceedings, and a transcribable recording of all APA Commission proceedings shall be made. The Director shall ensure that recordings of APA Commission proceedings are transcribed when required by law, and may provide for transcription of recordings of APA Commission proceedings at any other time.

4. 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.

G. Powers and Duties. The APA Commission shall act in an advisory capacity to the Board, and shall perform such duties as may be required under Title 67, Chapter 97, Idaho Code.

H. 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 Department and a copy thereof shall be furnished to any person upon request.

I. Liability. Neither the APA Commission, nor any person connected with the APA Commission, shall incur any financial liability in the name of the County.

SECTION 3. That the following new definitions shall be, and the same are hereby added to Section 8.9.101, Kootenai County Code, as follows:

AGRICULTURE PRODUCTION: 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): One or more specific parcels of land in a designated geographic area voluntarily created under the authority of this article 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 section 67-9705, Idaho Code and section 8.8.304 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.

SECTION 4. That the following new definition shall be, and the same is hereby added to Section 8.9.204, Kootenai County Code, as follows:

HARDSHIP: For purposes of Chapter 3, Article 3.4 of this title, 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.

SECTION 5. If any section, subsection, sentence, clause, phrase or portion of this chapter is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 6. Neither the adoption of this Ordinance nor the repeal of any ordinance shall, in any manner, affect the prosecution for violation of such ordinance committed prior to the effective date

of this Ordinance or be construed as a waiver of any license or penalty due under any such ordinance or in any manner affect the validity of any action heretofore taken by the Kootenai County Board of Commissioners or the validity of any such action to be taken upon matters pending before the Kootenai County Board of Commissioners on the effective date of this Ordinance.


SECTION 7. This Ordinance shall take effect and be in full force upon its passage, approval, and publication in one (1) issue of the *Coeur d'Alene Press*.

ADOPTED this 12 day of December, 2024.

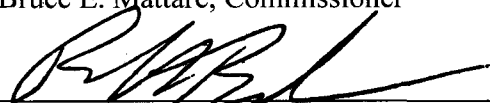
**KOOTENAI COUNTY
BOARD OF COMMISSIONERS**



Leslie Duncan, Chair

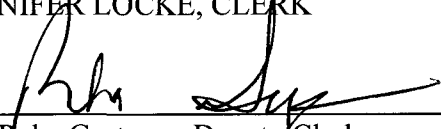


Bruce E. Mattare, Commissioner



Bill Brooks, Commissioner

ATTEST:
JENNIFER LOCKE, CLERK

By: 

Reba Grytness, Deputy Clerk



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