

BINGHAM COUNTY ORDINANCE 2025-03

TITLE 2 "BOARDS AND COMMISSIONS"

CHAPTER 2 "AGRICULTURAL PROTECTION AREA AND COMMISSION"

AN ORDINANCE OF BINGHAM COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO, TO ENACT NEW REGULATIONS WITHIN BINGHAM COUNTY CODE TITLE 2 "BOARDS AND COMMISSIONS" CHAPTER 2 "AGRICULTURAL PROTECTION AREA AND COMMISSION" AS REQUIRED BY IDAHO CODE TITLE 65 CHAPTER 97 "AGRICULTURAL PROTECTION AREA ACT", PROVIDING THAT THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT AS OF ITS PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the Board of County Commissioners are tasked with providing for the health, safety, and general welfare of the citizens of Bingham County; and

WHEREAS, one of the primary and essential services provided by Bingham County is the power to enact ordinances; and

WHEREAS, during the 2024 Legislative Session, the Idaho State Legislature enacted House Bill 608, adding a new Chapter 97, Title 67, Idaho Code ("Agricultural Protection Area Act", or the "Act") which establishes a new Agricultural Protection Area ("APA") designation through which farmers, ranchers, and forest landowners may apply to the County to set their lands aside for future agricultural use for terms consisting of twenty (20) years; and

WHEREAS, each county in Idaho is required by the Act to adopt an Agricultural Protection Area ordinance. Additionally, each county is required by the Act to appoint an Agricultural Protection Area Commission to receive, review, and process Agriculture Protection Area applications and provide recommendations to the Bingham County Board of County Commissioners for final action; and

WHEREAS, the Board held a Public Hearing on February 18, 2025 to receive the testimony on the proposed APA Ordinance. At the conclusion of the Public Hearing, the Board found the proposed Ordinance reasonably necessary, in the interest of the public, is in conformance with the new law, and should be adopted.

NOW THEREFORE, BE IT ORDAINED BY THE BINGHAM COUNTY, BOARD OF COUNTY COMMISSIONERS, AS FOLLOWS:

Section 1: Bingham County Code Title 2 Chapter 2 shall read as follows:

AGRICULTURAL PROTECTION AREA AND COMMISSION

2-2-1: Purpose

The Agricultural Protection Area (APA) is a designation established to provide a voluntary process through which agriculture and timber producers of Bingham County may make an 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 area encourages proactive planning to support the economic and cultural benefits of working lands while respecting the property rights of landowners.

2-2-2: Definitions

A. This section identifies and provides the interpretation and meaning of terms and words used in this Chapter.

1. Agriculture Production: means 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.
2. 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.
3. Agriculture Protection Area Commission: means the advisory board to the governing body created pursuant to Idaho Code Section 67-9705.
4. Applicant: means 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 Agriculture Protection Area.
5. Area of City Impact (AOI): area designated by county ordinance where city growth and development are expected to occur.
6. Hardship: means a situation or circumstance over which a landowner in an Agriculture 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.
7. Proposal: means written documents submitted to a governing body or Agriculture Protection Area commission from a landowner regarding their property.

2-2-3: APA Commission

A. The Board of County Commissioners shall appoint at least three (3) and no more than five (5) members to the Agriculture Protection Area Commission to serve for a term of three (3) years. Members shall be actively employed by or supporting production agriculture as further defined in Idaho Code Section 67-9705. Agriculture Protection Area Commission members shall serve in an advisory role and have the following responsibilities:

1. Review and make recommendations on Agriculture Protection Act applications; and
2. Assess and report on the agricultural needs of the County.

B. The Board of County Commissioners may remove members of the Agriculture Protection Area Commission at any time, with or without cause. Agriculture Protection Area Commission members serve in a volunteer capacity without pay, benefits, or other compensation.

2-2-4: Creation and Designation of Agricultural Protection Areas

An Agriculture Protection Area 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:

1. At least five (5) contiguous acres;
2. Actively devoted to an agricultural or forest purpose;
3. Assessed as agriculture or forest land with a current agricultural exemption;
4. Located within a zone that allows for agricultural or forest use;
5. Not within an Area of City Impact;
6. Located outside any areas that have been subdivided as defined in Title 10 Chapter 14 of Bingham County Code.

2-2-5: Content of Application

A. Landowners wishing to establish an Agriculture Protection Area designation must apply to the Planning and Development Department in a format and content prescribed by the Department Director. If an Application is determined by the Planning and Development Department to not meet the criteria above or is in any other way incomplete, it cannot be accepted by the Department. At a minimum, the application shall include the following:

1. The landowner and applicant's name, phone number, email, and mailing address;
2. Proof of land ownership;
3. The legal description of the parcels, structures, and facilities proposed to be included in the Agriculture Protection Act;
4. A map showing the boundaries of the proposed Agriculture Protection Act;
5. A letter of intent addressing all application criteria including reasons for seeking an Agricultural Protection Act designation, the current contiguous acres of land, land use, agricultural productivity, other relevant characteristics of the land to be included in the Agricultural Protection Area, the number of years the land has been in agricultural production, the types of agricultural commodities produced, and the applicant's plan to continue using the land for agricultural purposes;
6. A copy of any easements on the property and a map showing their location;
7. A statement from Bingham County Public Works Department, Forest Service, private owner(s), or Idaho Department of Transportation for any roadway, driveway or easement that crosses the property that approval will not have a negative impact on future transportation plans of their current rights of way or easement; and
8. Soil surveys, water rights, and any other relevant environmental assessments on the property.

2-2-6: Review Process:

A. Upon receipt of a completed application, the Planning and Development Director shall schedule a meeting with the Agriculture Protection Area Commission within sixty (60) days of receiving the application. The hearing shall follow the notice and hearing procedures of Idaho Code Section 67-6509.

B. The Application shall be evaluated on the following criteria:

1. The total contiguous acreage of the land is at least five (5) acres in size and is actively devoted to agricultural or forest production as defined in Idaho Code Sections 63-604 and 63-1701;
2. Proximity to an existing area of city impact;
3. Possible conflict with existing city annexation or development plans or agreements;
4. Proximity to existing public rights of way, planned transportation corridors, improvements, or future public rights of way;
5. Proximity to existing or planned utility locations;
6. Proximity to planned airport expansion or development;
7. Proximity to planned development with existing entitlements;
8. Compatibility and consistency with existing development patterns, Comprehensive Plan designations, zoning designations, or planned development with land use entitlements;
9. Agricultural production capability of the land within the proposed area;
10. Soil classification, water rights and usage, and any effect on provisions of essential services to the requested Agriculture Protection Area land or nearby land; and
11. Other local impacts relevant to the proposed Agriculture Protection Area.

C. Notwithstanding the criteria and review process outlined in this code, the Board of County Commissioners may place additional conditions on lands designated as an Agriculture Protection Area, including, but not limited to, setbacks from existing public rights of way, setbacks from existing public structures, and a review of the land's Agriculture Protection Area designation prior to the expiration of the designation.

D. Once the Agriculture Protection Act Commission makes its recommendation to the Board of County Commissioners, the Board shall hold a public hearing and issue its decision within 60 days. Failure to make a decision shall render the Agriculture Protection Act Commission's recommendation final. The Board of County Commissioner's decision shall include findings and facts supporting its decision.

E. Upon making its decision, the Board of County Commissioners shall:

1. Record the designation of an Agriculture Protection Act, a legal description of the area, and any findings and facts with the County Clerk and Recorder within ten (10) days; and
2. Notify relevant public officials and agencies of the designation.

2-2-7: Expansion or Modification of an Agriculture Protection Area

An expansion, modification, or removal of an existing Agriculture Protection Act shall follow the same application, review, and hearing procedures outlined in this code. Any expansion of an Agriculture Protection Act shall be contiguous to the Agriculture Protection Act.

2-2-8: Early Termination for Undue Hardship

A landowner wishing to terminate an Agriculture Protection Area must request in writing a meeting with the Board of County Commissioners. The meeting request shall include a proof of hardship and be submitted to the Planning and Development Director. Early termination of the Agriculture Protection Act shall only occur upon the proving by the landowner of an undue hardship as defined in this code. The landowner seeking to terminate an Agriculture Protection Act bears the burden of proof in demonstrating the hardship. Early termination of an Agriculture Protection Act is not taken lightly and will be carefully considered.

2-2-9: Enrollment Duration and Review

Lands designated as an Agriculture Protection Act will remain so designated for a period of twenty (20) years. 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. The Clerk of the Board of County Commissioners shall record the renewal of the Agricultural Protection Area pursuant to Idaho Code Section 67-9707. A landowner wishing to end an approved Agriculture Protection Act designation after twenty (20) years must notify the Board of County Commissioners in writing of their desire not to renew the land's Agriculture Protection Act designation.

2-2-10: Land Use and Regulatory Limitations

A. Protection of Agricultural Use

1. Continuity of Agricultural Operations: The Board shall not enact local laws, ordinances, or regulations that restrict farm structures or practices within an Agricultural Protection Area designation unless they conflict with recognized farming practices or the current agricultural zoning designation.
2. Zoning Amendments: The Board shall not change the agricultural zoning designation for land within an Agricultural Protection Area designation without the written permission of the landowner.

B. Exemptions and Limitations

1. Nuisance Protections: Agricultural activities within an Agricultural Protection Area designation are exempt from local nuisance laws if conducted in accordance with generally recognized farming practices.
2. Eminent Domain: Land within an Agricultural Protection Area designation is protected from condemnation except for the expansion or maintenance of existing highway rights-of-way or as otherwise provided by state law.
3. Unless otherwise approved by the Board, the following land uses are not allowed within an Agricultural Protection Area designation:
 - a. Confined animal feeding operations (CAFO);
 - b. Residential subdivisions;

- c. Industrial or large-scale commercial business not directly related to agriculture;
- d. Solar or wind energy, battery storage and other energy infrastructure not directly supporting agricultural operations;
- e. Mining and/or resource extraction (ex. mining, gravel pits, or other extractive industries);
- f. Landfills/hazardous waste disposal sites; and
- g. Other nonagricultural land uses.

2-2-11: 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.

2-2-12: Enforcement

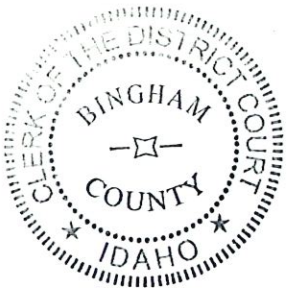
A. Enforcement: Board of County Commissioners or acting Code Enforcement Officer shall be responsible for enforcing the provisions of this ordinance. Any person found to be in violation of this code shall be guilty of a misdemeanor and punishable as provided in Idaho Code Section 18-113.

Section 2: Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is held to be invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions and they shall remain in full force and effect.

Section 3: 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 on this 18th day of January, 2025.

BOARD OF COUNTY COMMISSIONERS
BINGHAM COUNTY, IDAHO



Whitney Manwaring

Whitney Manwaring, Chairman

Erick Jackson

Erick Jackson, Commissioner

Drew Jensen

Drew Jensen, Commissioner

Attest: *Pamela Eckhardt*

Pamela W. Eckhardt
County Clerk