



Amendment to the Land Development Code

Staff Report – BoCC Public Hearing April 28, 2025

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Summary:

Agricultural Protection Area – LDC Amendment: The Teton County Board of County Commissioners adopted Resolution 2024-1209B which created a five (5) member Agricultural Protection Commission for Teton County. To fully enact new state legislation Title 67-Chapter 97, this text amendment will amend the Teton County Land Development Code to add Chapter 2, Section 11 to formally create agricultural protection areas (APAs) in the LDC (or alternately to create the APA Overlay area), and create an application process and review criteria. The Planning and Zoning Commission reviewed the APA ordinance at a public hearing on March 11, 2025. The PZC recommended approval of the ordinance without changes by unanimous vote. Very little public input was received by the PZC at their hearing.

Following provisions of the state legislation and considering similar code amendments from other jurisdictions in Idaho, the Agricultural Protection Commission prepared language to allow for the designation of Agriculture Protection Areas to apply to property in Teton County.

These areas must meet certain qualifications to be considered agricultural land in order to be considered for the designation.

The designation, if granted, would be in force for a period of 20 years and would renew automatically at the end of that period unless it is requested to be removed.

In order to be removed from the designation within the 20 year timeframe the landowner would need to demonstrate a qualifying hardship.

An alternative ordinance has also been developed incorporating subsequent recommendations from the Agricultural Protection Area Commission after the PZC considered the ordinance. This is titled “Amended: and updated as of 4 22 2025. The Board could consider this alternative language as they are holding their own public hearing. Altered language is presented as a redlined edit. The Board could also remand the proposal back to the Planning and Zoning Commission for additional deliberation if they felt the amendments to the ordinance warranted their further review.

Process:

This County initiated code amendment began with the formation of the Agricultural Protection Commission, which met a number of times for the development of the proposed ordinance language including a review process for considering property requested to be placed into the APA zone.

The BoCC will now review the P&Z Commission's recommendations and issue a final decision and adopt the ordinance to amend the code.

Application Items:

Per §4-4 of the LDC Comprehensive Plan & LDC Amendments, this is the written description of the proposed amendment. As this is a new section, as currently proposed, it is not replacing or modifying existing LDC language. The proposal does not appear to be in conflict with revisions, and complies with the vision of the comprehensive plan as the proposal is intended to protect agricultural land and is driven by requirements of state statute.

APA Ordinance analysis.

Two different ordinances are presented to the Board for consideration. The first is an earlier version of the Idaho Association of Counties' model as modified by the APA Commission. This version was recommended for approval by the Planning and Zoning Commission following a public hearing on March 11, 2025. Two people spoke during the hearing one from the public who commented that *"she had a problem with the fee for putting your land into the ag overlay. She didn't think it should move forward until the legislature makes their changes. She wanted to have a 10 year requirement."* The other participant who spoke was a representative of the APA Commission. The PZC had little deliberation of details of the ordinance and the feeling was that it was important to get an ordinance "on the books" as it was anticipated that the ordinance would have been adopted earlier as per the State Statutes' original deadline.

Following the Planning and Zoning Commission's recommendation the APA Commission held additional meetings on March 19, and April 11, 2025, and further refined their proposals, focusing on incentives that would make the program more attractive to farmers and ranchers. Discussions, facilitated by the Planning Administrator, centered on whether to adopt the APA as a zoning overlay or a distinct zone. The administrator also recommended consideration of other adjacent jurisdiction's ordinances and inclusion of language from state statute. Other considerations for incentivizing the program were driven by the APA Commission. Consequently, the Planning Administrator drafted an amended ordinance and a supplementary policy document. This information is based on the draft APA Commission meeting minutes, pending formal approval.

Regarding the adoption of this ordinance, the main considerations from a planning perspective are its integration into existing land use ordinances and administration. I believe the designation of an Agricultural Protection Area (APA) should function as a zoning overlay in that it adds restrictions or addresses specific aspects of the property related to agricultural uses, rather than a Zoning District which may require a zone change.

This overlay approach, which adds restrictions related to agricultural uses without amending the zoning map, appears simpler to administer and could be tracked on a planning map layer. While other jurisdictions have used different approaches, treating the APA as an overlay would suggest a different location within the Land Development Code. Instead of Chapter 2, it could be initially referenced under 1-4 Overlay Maps and further detailed under an existing section like 5-4-4 or 5-5, or potentially as a new section 5-10 as currently drafted.

Additionally, other recommendations from planning staff, now integrated into the APA Commission recommendations, focus on preserving elements of state statute concerning eminent domain and requests for land removal within a ten-year maximum. These provisions were not included in the Idaho Association of Counties model ordinance.

67-9712. EMINENT DOMAIN. A political subdivision having or exercising eminent domain powers may not condemn for any purpose any land within an agricultural protection area that is being used for production agriculture except for the expansion or maintenance of an existing highway right-of-way or as granted in section 14, article I and section 8, article XI of the constitution of the state of Idaho.

The APA Commission recommended protection from eminent domain without reservations listed in the statute. The inclusion of this text comes as a modification of Madison County's equivalent ordinance. Provisions for removal within 10 years upon the request of a landowner is outlined in the following section of state statute.

67-9709.

(2) An owner of land within an agricultural protection area may remove any or all of the land from the agricultural protection area by filing a petition for removal with the board of county commissioners.

(a) The board of county commissioners shall acknowledge receipt of the petition for removal in writing; and

(b) Confirm the removal date as ten (10) years from the date of petition for removal, or upon expiration of the designation, whichever is sooner.

Again, the language addressing the 10 year provision in the amended ordinance comes from Madison County's APA ordinance.

Other recommendations from the APA Commissions deliberations are not tied to state statute. These additional recommendations are captured in a supporting policy and were not incorporated in the ordinance. The APA Commission also established a tiered system to identify and incentivize parcels which they felt offered the most value in agricultural land protection. These are outlined in a separate policy which could be considered as a resolution, but are included here only for discussion at this time.

Review:

The review criteria for these amendments are as follows §4-4-F:

The recommendations of the PZC and the final decision of the BoCC on an application to amend the comprehensive plan, will be based on the following criteria:

Staff assumes the intent of this section was to say Comprehensive Plan or LDC amendment for each review criterion.

- a. The comprehensive plan amendment corrects an error or meets the challenge of some changing condition, trend, or fact. *Staff comment: The amendments proposed are addressing changes to state legislation.*
- b. The comprehensive plan amendment is in response to changes in state law, as established through amendments to the Idaho Statutes or by court decision. *Staff comment: The amendments proposed are addressing changes to state legislation.*
- c. The amendment does not have the effect of creating a regulatory taking under Idaho or federal law. *Staff comment: The amendment would not likely result in a takings as the APA designation is voluntary.*
- d. The comprehensive plan amendment constitutes a benefit to the County as a whole and is not solely for the good or benefit of a particular landowner or owners at a particular point in time. *Staff comment: The amendments proposed are addressing changes to state legislation and may create benefits to the county as a whole.*
- e. The proposed change is consistent with policies of the comprehensive plan, the requirements of the Planning Act, and state and federally mandated uses. *Staff comment: The amendments proposed are addressing changes to state legislation.*
- f. The comprehensive plan amendment substantially conforms to the stated purpose and intent of the LDC. *Staff comment: The LDC amendments proposed are addressing changes to state legislation.*
- g. The comprehensive plan amendment will not have a demonstrable adverse impact on the natural environment, including air, water, noise, storm water management, wildlife, scenic corridor views, and vegetation. *Staff comment: The LDC amendments proposed are addressing changes to state legislation. It is anticipated that the application of these changes may result in positive impact to all of the elements listed.*
- h. The comprehensive plan amendment will not have a demonstrable adverse impact on existing conforming development patterns, standards or zoning regulations. *The proposed amendment has internal review criteria to consider potential impacts to development patterns in the county.*
- i. The comprehensive plan amendment will not have a demonstrable adverse impact on delivery by any jurisdiction or agency providing public services in the County, including school districts. *Staff comment: Staff does not believe there will be an adverse impact to agencies from this amendment proposal.*

Noticing Requirements:

This application has been noticed per Idaho Code section 67-6509, and LDC 4-2D. The application was noticed in Teton Valley News on February 19 and February 26, 2025 and subsequently on April 9 and April 16, 2025 for the BoCC hearing. Because this amendment affects the entirety of the County, 7 large signs were posted throughout the County on 2/12/25 advertising the amendments and where to find additional information. All materials were posted and available on Teton County's website under the Planning Department page.

Public Comment:

Staff has not received written public comment at the time of this report.

BoCC Actions:

1. Approval of either ordinance amendment as proposed.
2. Approval of the amendment with modifications to the ordinance
3. Denial of the proposed amendment.
4. Continuation of the application
5. Remand the application to the PZC for further review.

Motions:

Approval: Having found that the review criteria in LDC 4-4-F can be met, I move to approve the Agricultural Protection Area LDC Ordinance as presented in the staff report and as recommended by the Planning and Zoning Commission.

Approval: Having found that the review criteria in LDC 4-4-F can be met, I move to approve the Amended APA LDC ordinance (dated 04_22_2025) as presented in the staff report and materials attached.

Denial: Having found that the review criteria in LDC 4-4-F cannot be met, I move to deny the Agricultural Protection Area LDC amendment as presented in the staff report and materials attached.

Continuation: I move to continue the public hearing for the LDC Amendments to [insert specific date and time] in order to obtain [insert the additional information request here]

Attachments:

- A. APA LDC Amendment (4 pages)
- B. Amended APA Ordinance LDC Amendment (5 pages)
- C. Draft APA Commission minutes
- D. Draft APA policy resolution language (not for adoption at this time)