

### Part 3 Proposal and Approval of Protection Area

#### **17-41-301 Proposal for creation of agriculture protection area or industrial protection area.**

- (1)
  - (a) A proposal to create an agriculture protection area or an industrial protection area may be filed with:
    - (i) the legislative body of the county in which the area is located, if the area is within the unincorporated part of a county; or
    - (ii) the legislative body of the city or town in which the area is located, if the area is within a city or town.
  - (b)
    - (i) To be accepted for processing by the applicable legislative body, a proposal under Subsection (1)(a) shall be signed by a majority in number of all owners of real property and the owners of a majority of the land area in agricultural production or industrial use within the proposed agriculture protection area or industrial protection area, respectively.
    - (ii) For purposes of Subsection (1)(b)(i), the owners of real property shall be determined by the records of the county recorder.
- (2) The proposal shall identify:
  - (a) the boundaries of the land proposed to become part of an agriculture protection area or industrial protection area;
  - (b) any limits on the types of agriculture production or industrial use to be allowed within the agriculture protection area or industrial protection area, respectively; and
  - (c) for each parcel of land:
    - (i) the names of the owners of record of the land proposed to be included within the agriculture protection area or industrial protection area;
    - (ii) the tax parcel number or account number identifying each parcel; and
    - (iii) the number of acres of each parcel.
- (3) An agriculture protection area or industrial protection area may include within its boundaries land used for a roadway, dwelling site, park, or other nonagricultural or, in the case of an industrial protection area, nonindustrial use if that land constitutes a minority of the total acreage within the agriculture protection area or industrial protection area, respectively.
- (4) A county or municipal legislative body may establish:
  - (a) the manner and form for submission of proposals; and
  - (b) reasonable fees for accepting and processing the proposal.
- (5) Each county and municipal legislative body shall establish the minimum number of continuous acres that shall be included in an agriculture protection area or industrial protection area.

Amended by Chapter 297, 2011 General Session

#### **17-41-302 Notice of proposal for creation of agriculture protection area or industrial protection area -- Responses.**

- (1) Each applicable legislative body shall provide notice of the proposal by:
  - (a)
    - (i) publishing notice:
      - (A) in a newspaper having general circulation within:

- (I) the same county as the land proposed for inclusion within an agriculture protection area or industrial protection area, as the case may be, if the land is within the unincorporated part of the county; or
  - (II) the same city or town as the land proposed for inclusion within an agriculture protection area or industrial protection area, as the case may be, if the land is within a city or town; and
  - (ii) as required in Section 45-1-101;
  - (b) posting notice at five public places, designated by the county or municipal legislative body, within or near the proposed agriculture protection area or industrial protection area; and
  - (c) mailing written notice to each owner of land within 1,000 feet of the land proposed for inclusion within an agriculture protection area or industrial protection area.
- (2) The notice shall contain:
- (a) a statement that a proposal for the creation of an agriculture protection area or industrial protection area has been filed with the applicable legislative body;
  - (b) a statement that the proposal will be open to public inspection in the office of the applicable legislative body;
  - (c) a statement that any person or entity affected by the establishment of the area may, within 15 days of the date of the notice, file with the applicable legislative body:
    - (i) written objections to the proposal; or
    - (ii) a written request to modify the proposal to exclude land from or add land to the proposed agriculture protection area or industrial protection area, as the case may be;
  - (d) a statement that the applicable legislative body will submit the proposal to the advisory committee and to the planning commission for review and recommendations;
  - (e) a statement that the applicable legislative body will hold a public hearing to discuss and hear public comment on:
    - (i) the proposal to create the agriculture protection area or industrial protection area;
    - (ii) the recommendations of the advisory committee and planning commission; and
    - (iii) any requests for modification of the proposal and any objections to the proposal; and
  - (f) a statement indicating the date, time, and place of the public hearing.
- (3)
- (a) Any person wishing to modify the proposal for the creation of the agriculture protection area or industrial protection area shall, within 15 days after the date of the notice, file a written request for modification of the proposal, which identifies specifically the land that should be added to or removed from the proposal.
  - (b) Any person wishing to object to the proposal for the creation of the agriculture protection area or industrial protection area shall, within 15 days after the date of the notice, file a written objection to the creation of the agriculture protection area or industrial protection area.

Amended by Chapter 388, 2009 General Session

**17-41-303 Review of proposal for creation of agriculture protection area or industrial protection area.**

- (1) After 15 days from the date of the notice, the applicable legislative body shall refer the proposal and any objections and proposed modifications to the proposal to the advisory committee and planning commission for their review, comments, and recommendations.
- (2)
  - (a) Within 45 days after receipt of the proposal, the planning commission shall submit a written report to the applicable legislative body that:

- (i) analyzes and evaluates the effect of the creation of the proposed area on the planning policies and objectives of the county or municipality, as the case may be;
  - (ii) analyzes and evaluates the proposal by applying the criteria contained in Section 17-41-305;
  - (iii) recommends any modifications to the land to be included in the proposed agriculture protection area or industrial protection area;
  - (iv) analyzes and evaluates any objections to the proposal; and
  - (v) includes a recommendation to the applicable legislative body either to accept, accept and modify, or reject the proposal.
- (b) Within 45 days after receipt of the proposal, the advisory board shall submit a written report to the applicable legislative body that:
- (i) recommends any modifications to the land to be included in the proposed agriculture protection area or industrial protection area;
  - (ii) analyzes and evaluates the proposal by applying the criteria contained in Section 17-41-305;
  - (iii) analyzes and evaluates any objections to the proposal; and
  - (iv) includes a recommendation to the applicable legislative body either to accept, accept and modify, or reject the proposal.
- (c) The applicable legislative body shall consider a failure of the planning commission or advisory committee to submit a written report within the 45 days under Subsection (2)(a) or (b) as a recommendation of that committee to approve the proposal as submitted.

Amended by Chapter 194, 2006 General Session

**17-41-304 Public hearing -- Review and action on proposal.**

- (1) After receipt of the written reports from the advisory committee and planning commission, or after the 45 days have expired, whichever is earlier, the county or municipal legislative body shall:
- (a) schedule a public hearing;
  - (b) provide notice of the public hearing by:
    - (i) publishing notice:
      - (A) in a newspaper having general circulation within:
        - (I) the same county as the land proposed for inclusion within the agriculture protection area or industrial protection area, if the land is within the unincorporated part of the county; or
        - (II) the same city or town as the land proposed for inclusion within an agriculture protection area or industrial protection area, if the land is within a city or town; and
      - (B) on the Utah Public Notice Website created in Section 63F-1-701;
    - (ii) posting notice at five public places, designated by the applicable legislative body, within or near the proposed agriculture protection area or industrial protection area; and
    - (iii) mailing written notice to each owner of land within 1,000 feet of the land proposed for inclusion within an agriculture protection area or industrial protection area; and
  - (c) ensure that the notice includes:
    - (i) the time, date, and place of the public hearing on the proposal;
    - (ii) a description of the proposed agriculture protection area or industrial protection area;
    - (iii) any proposed modifications to the proposed agriculture protection area or industrial protection area;
    - (iv) a summary of the recommendations of the advisory committee and planning commission; and

- (v) a statement that interested persons may appear at the public hearing and speak in favor of or against the proposal, any proposed modifications to the proposal, or the recommendations of the advisory committee and planning commission.
- (2) The applicable legislative body shall:
  - (a) convene the public hearing at the time, date, and place specified in the notice; and
  - (b) take verbal or written testimony from interested persons.
- (3)
  - (a) Within 120 days of the submission of the proposal, the applicable legislative body shall approve, modify and approve, or reject the proposal.
  - (b) The creation of an agriculture protection area or industrial protection area is effective at the earlier of:
    - (i) the applicable legislative body's approval of a proposal or modified proposal; or
    - (ii) 120 days after submission of a proposal complying with Subsection 17-41-301(2) if the applicable legislative body has failed to approve or reject the proposal within that time.
- (4)
  - (a) In order to give constructive notice of the existence of the agriculture protection area or industrial protection area to all persons who have, may acquire, or may seek to acquire an interest in land in or adjacent to the agriculture protection area or industrial protection area, respectively, within 10 days of the creation of an agriculture protection area or industrial protection area, the applicable legislative body shall file an executed document containing a legal description of the agriculture protection area or industrial protection area, as the case may be, with:
    - (i) the county recorder of deeds; and
    - (ii) the affected planning commission.
  - (b) If the legal description of the property to be included in the agriculture protection area or industrial protection area is available through the county recorder's office, the applicable legislative body shall use that legal description in its executed document required in Subsection (4)(a).
- (5) Within 10 days of the recording of the agriculture protection area, the applicable legislative body shall:
  - (a) send written notification to the commissioner of agriculture and food that the agriculture protection area has been created; and
  - (b) include in the notification:
    - (i) the number of landowners owning land within the agriculture protection area;
    - (ii) the total acreage of the area;
    - (iii) the date of approval of the area; and
    - (iv) the date of recording.
- (6) The applicable legislative body's failure to record the notice required under Subsection (4) or to send the written notification under Subsection (5) does not invalidate the creation of an agriculture protection area.
- (7) The applicable legislative body may consider the cost of recording notice under Subsection (4) and the cost of sending notification under Subsection (5) in establishing a fee under Subsection 17-41-301(4)(b).

Amended by Chapter 90, 2010 General Session

**17-41-305 Criteria to be applied in evaluating a proposal for the creation of an agriculture protection area or industrial protection area.**

In evaluating a proposal and in determining whether or not to create or recommend the creation of an agriculture protection area or industrial protection area, the advisory committee, planning commission, and applicable legislative body shall apply the following criteria:

- (1) whether or not the land is currently being used for agriculture production or for an industrial use, as the case may be;
- (2) whether or not the land is zoned for agriculture use or industrial use, as the case may be;
- (3) whether or not the land is viable for agriculture production or industrial use, as the case may be;
- (4) the extent and nature of existing or proposed farm improvements or the extent and nature of existing or proposed improvements to or expansion of the industrial use, as the case may be; and
- (5)
  - (a) in the case of an agriculture protection area, anticipated trends in agricultural and technological conditions; or
  - (b) in the case of an industrial protection area, anticipated trends in technological conditions applicable to the industrial use of the land in question.

Amended by Chapter 194, 2006 General Session

**17-41-306 Adding land to or removing land from an agriculture protection area or industrial protection area -- Removing land from a mining protection area.**

- (1)
  - (a) Any owner may add land to an existing agriculture protection area or industrial protection area, as the case may be, by:
    - (i) filing a proposal with:
      - (A) the county legislative body, if the agriculture protection area or industrial protection area and the land to be added are within the unincorporated part of the county; or
      - (B) the municipal legislative body, if the agriculture protection area or industrial protection area and the land to be added are within a city or town; and
    - (ii) obtaining the approval of the applicable legislative body for the addition of the land to the area.
  - (b) The applicable legislative body shall comply with the provisions for creating an agriculture protection area or industrial protection area, as the case may be, in determining whether or not to accept the proposal.
- (2)
  - (a) Any owner of land within an agriculture protection area or industrial protection area may remove any or all of the land from the agriculture protection area or industrial protection area, respectively, by filing a petition for removal with the applicable legislative body.
  - (b)
    - (i) The applicable legislative body:
      - (A) shall:
        - (I) grant the petition for removal of land from an agriculture protection area or industrial protection area, as the case may be, even if removal of the land would result in an agriculture protection area or industrial protection area of less than the number of acres established by the applicable legislative body as the minimum under Section 17-41-301; and
        - (II) in order to give constructive notice of the removal to all persons who have, may acquire, or may seek to acquire an interest in land in or adjacent to the agriculture protection area or industrial protection area and the land removed from the agriculture protection

- area or industrial protection area, file a legal description of the revised boundaries of the agriculture protection area or industrial protection area with the county recorder of deeds and the affected planning commission; and
- (B) may not charge a fee in connection with a petition to remove land from an agriculture protection area or an industrial protection area.
- (ii) The remaining land in the agriculture protection area or industrial protection area is still an agriculture protection area or industrial protection area, respectively.
- (3)
  - (a) If a municipality annexes any land that is part of an agriculture protection area or industrial protection area located in the unincorporated part of the county, the county legislative body shall, within 30 days after the land is annexed, review the feasibility of that land remaining in the agriculture protection area or industrial protection area according to the procedures and requirements of Section 17-41-307.
  - (b) The county legislative body shall remove the annexed land from the agriculture protection area or industrial protection area, as the case may be, if:
    - (i) the county legislative body concludes, after the review under Section 17-41-307, that removal is appropriate; and
    - (ii) the owners of all the annexed land that is within the agriculture protection area or industrial protection area consent in writing to the removal.
  - (c) Removal of land from an agriculture protection area or industrial protection area under this Subsection (3) does not affect whether that land may be:
    - (i) included in a proposal under Section 17-41-301 to create an agriculture protection area or industrial protection area within the municipality; or
    - (ii) added to an existing agriculture protection area or industrial protection area within the municipality under Subsection (1).
- (4) A mine operator that owns or controls land within a mining protection area may remove any or all of the land from the mining protection area by filing a notice of removal with the legislative body of the county in which the land is located.

Amended by Chapter 376, 2009 General Session

**17-41-307 Review of agriculture protection areas and industrial protection areas.**

- (1) In the 20th calendar year after its creation under this part, each agriculture protection area or industrial protection area, as the case may be, shall be reviewed, under the provisions of this section, by:
  - (a) the county legislative body, if the agriculture protection area or industrial protection area is within the unincorporated part of the county; or
  - (b) the municipal legislative body, if the agriculture protection area or industrial protection area is within the municipality.
- (2)
  - (a) In the 20th year, the applicable legislative body shall:
    - (i) request the planning commission and advisory board to submit recommendations about whether the agriculture protection area or industrial protection area, as the case may be, should be continued, modified, or terminated;
    - (ii) at least 120 days before the end of the calendar year, hold a public hearing to discuss whether the agriculture protection area or industrial protection area, as the case may be, should be continued, modified, or terminated;
    - (iii) give notice of the hearing using the same procedures required by Section 17-41-302; and

- (iv) after the public hearing, continue, modify, or terminate the agriculture protection area or industrial protection area.
- (b) If the applicable legislative body modifies or terminates the agriculture protection area or industrial protection area, it shall file an executed document containing the legal description of the agriculture protection area or industrial protection area, respectively, with the county recorder of deeds.
- (3) If the applicable legislative body fails affirmatively to continue, modify, or terminate the agriculture protection area or industrial protection area, as the case may be, in the 20th calendar year, the agriculture protection area or industrial protection area is considered to be reauthorized for another 20 years.

Amended by Chapter 194, 2006 General Session