

1                                   **AGRICULTURE AND INDUSTRIAL**  
2                                   **PROTECTION AREA AMENDMENTS**

3                                   2008 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: John G. Mathis**

6                                   Senate Sponsor: Margaret Dayton

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8                                   **LONG TITLE**

9                                   **General Description:**

10                                  This bill modifies provisions relating to agriculture protection areas.

11                                  **Highlighted Provisions:**

12                                  This bill:

- 13                                  ▶ requires county and municipal planning commissions to identify and consider
- 14 agriculture protection areas in drafting a land use element of a general plan and to
- 15 avoid uses that are inconsistent with or detrimental to agriculture in those areas;
- 16                                  ▶ clarifies that an owner of land in an agriculture protection area or industrial
- 17 protection area may withdraw some or all of the owner's land from the area;
- 18                                  ▶ prohibits a county or municipal legislative body from charging a fee for a petition to
- 19 remove land from an agriculture protection area or industrial protection area; and
- 20                                  ▶ requires state agencies and political subdivisions to consider impacts on agriculture
- 21 protection areas and reasonably comparable alternatives when designating a
- 22 transportation corridor and to make reasonable efforts to minimize or eliminate
- 23 detrimental impacts on agriculture.

24                                  **Monies Appropriated in this Bill:**

25                                  None

26                                  **Other Special Clauses:**

27                                  None

28                                  **Utah Code Sections Affected:**

29                                  AMENDS:

30           **10-9a-403**, as last amended by Laws of Utah 2005, Chapter 245 and renumbered and  
31 amended by Laws of Utah 2005, Chapter 254

32           **17-27a-403**, as last amended by Laws of Utah 2005, Chapter 245 and renumbered and  
33 amended by Laws of Utah 2005, Chapter 254

34           **17-41-306**, as last amended by Laws of Utah 2006, Chapter 194

35           **17-41-406**, as last amended by Laws of Utah 2006, Chapter 194



37 *Be it enacted by the Legislature of the state of Utah:*

38           Section 1. Section **10-9a-403** is amended to read:

39           **10-9a-403. Plan preparation.**

40           (1) (a) The planning commission shall provide notice, as provided in Section 10-9a-203,  
41 of its intent to make a recommendation to the municipal legislative body for a general plan or a  
42 comprehensive general plan amendment when the planning commission initiates the process of  
43 preparing its recommendation.

44           (b) The planning commission shall make and recommend to the legislative body a  
45 proposed general plan for the area within the municipality.

46           (c) The plan may include areas outside the boundaries of the municipality if, in the  
47 planning commission's judgment, those areas are related to the planning of the municipality's  
48 territory.

49           (d) Except as otherwise provided by law or with respect to a municipality's power of  
50 eminent domain, when the plan of a municipality involves territory outside the boundaries of the  
51 municipality, the municipality may not take action affecting that territory without the  
52 concurrence of the county or other municipalities affected.

53           (2) (a) At a minimum, the proposed general plan, with the accompanying maps, charts,  
54 and descriptive and explanatory matter, shall include the planning commission's  
55 recommendations for the following plan elements:

56           (i) a land use element that:

57           (A) designates the long-term goals and the proposed extent, general distribution, and

58 location of land for housing, business, industry, agriculture, recreation, education, public  
59 buildings and grounds, open space, and other categories of public and private uses of land as  
60 appropriate; and

61 (B) may include a statement of the projections for and standards of population density  
62 and building intensity recommended for the various land use categories covered by the plan;

63 (ii) a transportation and traffic circulation element consisting of the general location and  
64 extent of existing and proposed freeways, arterial and collector streets, mass transit, and any  
65 other modes of transportation that the planning commission considers appropriate, all correlated  
66 with the population projections and the proposed land use element of the general plan; and

67 (iii) for cities, an estimate of the need for the development of additional moderate  
68 income housing within the city, and a plan to provide a realistic opportunity to meet estimated  
69 needs for additional moderate income housing if long-term projections for land use and  
70 development occur.

71 (b) In drafting the moderate income housing element, the planning commission:

72 (i) shall consider the Legislature's determination that cities should facilitate a reasonable  
73 opportunity for a variety of housing, including moderate income housing:

74 (A) to meet the needs of people desiring to live there; and

75 (B) to allow persons with moderate incomes to benefit from and fully participate in all  
76 aspects of neighborhood and community life; and

77 (ii) may include an analysis of why the recommended means, techniques, or combination  
78 of means and techniques provide a realistic opportunity for the development of moderate  
79 income housing within the planning horizon, which means or techniques may include a  
80 recommendation to:

81 (A) rezone for densities necessary to assure the production of moderate income  
82 housing;

83 (B) facilitate the rehabilitation or expansion of infrastructure that will encourage the  
84 construction of moderate income housing;

85 (C) encourage the rehabilitation of existing uninhabitable housing stock into moderate

86 income housing;

87 (D) consider general fund subsidies to waive construction related fees that are  
88 otherwise generally imposed by the city;

89 (E) consider utilization of state or federal funds or tax incentives to promote the  
90 construction of moderate income housing;

91 (F) consider utilization of programs offered by the Utah Housing Corporation within  
92 that agency's funding capacity; and

93 (G) consider utilization of affordable housing programs administered by the Department  
94 of Community and Culture.

95 (c) In drafting the land use element, the planning commission shall:

96 (i) identify and consider each agriculture protection area within the municipality; and

97 (ii) avoid proposing a use of land within an agriculture protection area that is  
98 inconsistent with or detrimental to the use of the land for agriculture.

99 (3) The proposed general plan may include:

100 (a) an environmental element that addresses:

101 (i) the protection, conservation, development, and use of natural resources, including  
102 the quality of air, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and  
103 other natural resources; and

104 (ii) the reclamation of land, flood control, prevention and control of the pollution of  
105 streams and other waters, regulation of the use of land on hillsides, stream channels and other  
106 environmentally sensitive areas, the prevention, control, and correction of the erosion of soils,  
107 protection of watersheds and wetlands, and the mapping of known geologic hazards;

108 (b) a public services and facilities element showing general plans for sewage, water,  
109 waste disposal, drainage, public utilities, rights-of-way, easements, and facilities for them, police  
110 and fire protection, and other public services;

111 (c) a rehabilitation, redevelopment, and conservation element consisting of plans and  
112 programs for:

113 (i) historic preservation; [~~and~~]

114 (ii) the diminution or elimination of blight; and  
115 (iii) redevelopment of land, including housing sites, business and industrial sites, and  
116 public building sites;

117 (d) an economic element composed of appropriate studies and forecasts, as well as an  
118 economic development plan, which may include review of existing and projected municipal  
119 revenue and expenditures, revenue sources, identification of basic and secondary industry,  
120 primary and secondary market areas, employment, and retail sales activity;

121 (e) recommendations for implementing all or any portion of the general plan, including  
122 the use of land use ordinances, capital improvement plans, community development and  
123 promotion, and any other appropriate action;

124 (f) provisions addressing any of the matters listed in Subsection 10-9a-401(2); and

125 (g) any other element the municipality considers appropriate.

126 Section 2. Section **17-27a-403** is amended to read:

127 **17-27a-403. Plan preparation.**

128 (1) (a) The planning commission shall provide notice, as provided in Section  
129 17-27a-203, of its intent to make a recommendation to the county legislative body for a general  
130 plan or a comprehensive general plan amendment when the planning commission initiates the  
131 process of preparing its recommendation.

132 (b) The planning commission shall make and recommend to the legislative body a  
133 proposed general plan for the unincorporated area within the county.

134 (c) (i) The plan may include planning for incorporated areas if, in the planning  
135 commission's judgment, they are related to the planning of the unincorporated territory or of the  
136 county as a whole.

137 (ii) Elements of the county plan that address incorporated areas are not an official plan  
138 or part of a municipal plan for any municipality, unless it is recommended by the municipal  
139 planning commission and adopted by the governing body of the municipality.

140 (2) (a) At a minimum, the proposed general plan, with the accompanying maps, charts,  
141 and descriptive and explanatory matter, shall include the planning commission's

142 recommendations for the following plan elements:

143 (i) a land use element that:

144 (A) designates the long-term goals and the proposed extent, general distribution, and  
145 location of land for housing, business, industry, agriculture, recreation, education, public  
146 buildings and grounds, open space, and other categories of public and private uses of land as  
147 appropriate; and

148 (B) may include a statement of the projections for and standards of population density  
149 and building intensity recommended for the various land use categories covered by the plan;

150 (ii) a transportation and traffic circulation element consisting of the general location and  
151 extent of existing and proposed freeways, arterial and collector streets, mass transit, and any  
152 other modes of transportation that the planning commission considers appropriate, all correlated  
153 with the population projections and the proposed land use element of the general plan; and

154 (iii) an estimate of the need for the development of additional moderate income housing  
155 within the unincorporated area of the county, and a plan to provide a realistic opportunity to  
156 meet estimated needs for additional moderate income housing if long-term projections for land  
157 use and development occur.

158 (b) In drafting the moderate income housing element, the planning commission:

159 (i) shall consider the Legislature's determination that counties should facilitate a  
160 reasonable opportunity for a variety of housing, including moderate income housing:

161 (A) to meet the needs of people desiring to live there; and

162 (B) to allow persons with moderate incomes to benefit from and fully participate in all  
163 aspects of neighborhood and community life; and

164 (ii) may include an analysis of why the recommended means, techniques, or combination  
165 of means and techniques provide a realistic opportunity for the development of moderate  
166 income housing within the planning horizon, which means or techniques may include a  
167 recommendation to:

168 (A) rezone for densities necessary to assure the production of moderate income  
169 housing;

170 (B) facilitate the rehabilitation or expansion of infrastructure that will encourage the  
171 construction of moderate income housing;

172 (C) encourage the rehabilitation of existing uninhabitable housing stock into moderate  
173 income housing;

174 (D) consider general fund subsidies to waive construction related fees that are  
175 otherwise generally imposed by the county;

176 (E) consider utilization of state or federal funds or tax incentives to promote the  
177 construction of moderate income housing;

178 (F) consider utilization of programs offered by the Utah Housing Corporation within  
179 that agency's funding capacity; and

180 (G) consider utilization of affordable housing programs administered by the Department  
181 of Community and Culture.

182 (c) In drafting the land use element, the planning commission shall:

183 (i) identify and consider each agriculture protection area within the unincorporated area  
184 of the county; and

185 (ii) avoid proposing a use of land within an agriculture protection area that is  
186 inconsistent with or detrimental to the use of the land for agriculture.

187 (3) The proposed general plan may include:

188 (a) an environmental element that addresses:

189 (i) the protection, conservation, development, and use of natural resources, including  
190 the quality of air, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and  
191 other natural resources; and

192 (ii) the reclamation of land, flood control, prevention and control of the pollution of  
193 streams and other waters, regulation of the use of land on hillsides, stream channels and other  
194 environmentally sensitive areas, the prevention, control, and correction of the erosion of soils,  
195 protection of watersheds and wetlands, and the mapping of known geologic hazards;

196 (b) a public services and facilities element showing general plans for sewage, water,  
197 waste disposal, drainage, public utilities, rights-of-way, easements, and facilities for them, police

198 and fire protection, and other public services;

199 (c) a rehabilitation, redevelopment, and conservation element consisting of plans and  
200 programs for:

201 (i) historic preservation; [~~and~~]

202 (ii) the diminution or elimination of blight; and

203 (iii) redevelopment of land, including housing sites, business and industrial sites, and  
204 public building sites;

205 (d) an economic element composed of appropriate studies and forecasts, as well as an  
206 economic development plan, which may include review of existing and projected county  
207 revenue and expenditures, revenue sources, identification of basic and secondary industry,  
208 primary and secondary market areas, employment, and retail sales activity;

209 (e) recommendations for implementing all or any portion of the general plan, including  
210 the use of land use ordinances, capital improvement plans, community development and  
211 promotion, and any other appropriate action;

212 (f) provisions addressing any of the matters listed in Subsection 17-27a-401(2); and

213 (g) any other element the county considers appropriate.

214 Section 3. Section **17-41-306** is amended to read:

215 **17-41-306. Adding land to or removing land from an agriculture protection area**  
216 **or industrial protection area.**

217 (1) (a) Any owner may add land to an existing agriculture protection area or industrial  
218 protection area, as the case may be, by:

219 (i) filing a proposal with:

220 (A) the county legislative body, if the agriculture protection area or industrial protection  
221 area and the land to be added are within the unincorporated part of the county; or

222 (B) the municipal legislative body, if the agriculture protection area or industrial  
223 protection area and the land to be added are within a city or town; and

224 (ii) obtaining the approval of the applicable legislative body for the addition of the land  
225 to the area.



226 (b) The applicable legislative body shall comply with the provisions for creating an  
227 agriculture protection area or industrial protection area, as the case may be, in determining  
228 whether or not to accept the proposal.

229 (2) (a) Any owner of land within an agriculture protection area or industrial protection  
230 area may remove any or all of the land from ~~[an]~~ the agriculture protection area or industrial  
231 protection area, respectively, by filing a petition for removal ~~[of the land from the agriculture~~  
232 ~~protection area or industrial protection area, respectively,]~~ with the applicable legislative body.

233 (b) (i) The applicable legislative body:

234 (A) shall:

235 ~~[(A)]~~ (I) grant the petition for removal of land from an agriculture protection area or  
236 industrial protection area, as the case may be, even if removal of the land would result in an  
237 agriculture protection area or industrial protection area of less than the number of acres  
238 established by the applicable legislative body as the minimum under Section 17-41-301; and

239 ~~[(B)]~~ (II) in order to give constructive notice of the removal to all persons who have,  
240 may acquire, or may seek to acquire an interest in land in or adjacent to the agriculture  
241 protection area or industrial protection area and the land removed from the agriculture  
242 protection area or industrial protection area, file a legal description of the revised boundaries of  
243 the agriculture protection area or industrial protection area with the county recorder of deeds  
244 and the affected planning commission~~[-];~~ and

245 (B) may not charge a fee in connection with a petition to remove land from an  
246 agriculture protection area or an industrial protection area.

247 (ii) The remaining land in the agriculture protection area or industrial protection area is  
248 still an agriculture protection area or industrial protection area, respectively.

249 (3) (a) If a municipality annexes any land that is part of an agriculture protection area or  
250 industrial protection area located in the unincorporated part of the county, the county legislative  
251 body shall, within 30 days after the land is annexed, review the feasibility of that land remaining  
252 in the agriculture protection area or industrial protection area according to the procedures and  
253 requirements of Section 17-41-307.

254 (b) The county legislative body shall remove the annexed land from the agriculture  
255 protection area or industrial protection area, as the case may be, if:

256 (i) the county legislative body concludes, after the review under Section 17-41-307, that  
257 removal is appropriate; and

258 (ii) the owners of all the annexed land that is within the agriculture protection area or  
259 industrial protection area consent in writing to the removal.

260 (c) Removal of land from an agriculture protection area or industrial protection area  
261 under this Subsection (3) does not affect whether that land may be:

262 (i) included in a proposal under Section 17-41-301 to create an agriculture protection  
263 area or industrial protection area within the municipality; or

264 (ii) added to an existing agriculture protection area or industrial protection area within  
265 the municipality under Subsection (1).

266 Section 4. Section **17-41-406** is amended to read:

267 **17-41-406. Restrictions on state development projects.**

268 (1) Each state agency that plans any development project that might affect land within  
269 an agriculture protection area or industrial protection area shall submit its development plan to:

270 (a) the advisory board of the agriculture protection area or industrial protection area,  
271 respectively; and

272 (b) in the case of an agriculture protection area, the commissioner of agriculture and  
273 food.

274 (2) The commissioner of agriculture and food, in the case of an agriculture protection  
275 area, and the advisory board shall:

276 (a) review the state agency's proposed development plan; and

277 (b) recommend any modifications to the development project that would protect the  
278 integrity of the agriculture protection area or industrial protection area, as the case may be, or  
279 that would protect the agriculture protection area from nonfarm encroachment or the industrial  
280 protection area from nonindustrial encroachment.

281 (3) Each state agency and political subdivision of the state that designates or proposes

282 to designate a transportation corridor shall:

283 (a) consider:

284 (i) whether the transportation corridor would:

285 (A) be located on land that is included within an agriculture protection area; or

286 (B) interfere with agriculture production activities on land within an agriculture

287 protection area; and

288 (ii) each other reasonably comparable alternative to the placement of the corridor on

289 land within an agriculture protection area; and

290 (b) make reasonable efforts to minimize or eliminate any detrimental impact on

291 agriculture that may result from the designation of a transportation corridor.