

CHAPTER 18.02  
COORDINATING GOVERNMENT REGULATION  
OF  
LAND AND NATURAL RESOURCES USE

SECTIONS:

18.02.010	Purpose
18.02.020	Coordination with Growth Management Act, Comprehensive Plan and Existing County Law
18.02.030	Validity Under Constitutional, Federal and State Law; Interpretation
18.02.040	Definitions
18.02.050	General Guidance
18.02.060	Agriculture and Livestock
18.02.070	Cultural Resources, Recreation, Wildlife and Wilderness
18.02.080	Land Acquisition and Disposition
18.02.090	Water Resources
18.02.100	Clean Air
18.02.110	Private Property Rights
18.02.120	Monitoring and Evaluation
18.02.130	Severability
18.02.140	Effective Date

18.02.010 PURPOSE. The adoption of this chapter is required to secure and promote the public peace, general welfare, health and safety of the citizens of Benton County through preservation of their custom, culture and economic stability, protection and use of their environment and endorsement of their constitutionally protected private property rights and to establish procedural projections to ensure that there is full and complete information and cooperation provided to federal and state agencies in their decision making processes regarding the management of land within Benton County and their actions affecting land and natural resources use. This chapter addresses federal and state agency regulation of land and natural resources use directly and is

intended to be used as a positive guide for federal and state agencies in their development and implementation of regulations affecting land and natural resources use in Benton County.  
[Ord. 298 (1996) ■ 1]

18.02.020 COORDINATION WITH GROWTH MANAGEMENT ACT, COMPREHENSIVE PLAN AND EXISTING COUNTY LAW. (a) The provisions of this chapter shall be in addition to and, to the extent permitted by law, coordinated with the final Benton County Comprehensive Plan adopted pursuant to the Washington State Growth Management Act. The effectiveness of this chapter, however, shall not depend upon adoption of the Comprehensive Plan or the authority of the County to adopt such a plan.

(b) This chapter shall be coordinated with existing and future County ordinances, resolutions, policies and plans. It is intended as a set of provisions that shall provide a general framework as well as specific guidance and shall work in conjunction with other County ordinances, resolutions, policies and plans.  
[Ord. 298 (1996) ■ 2]

18.02.030 VALIDITY UNDER CONSTITUTIONAL, FEDERAL AND STATE LAW; INTERPRETATION. (a) The validity of this chapter is based upon the rights of citizens granted by the Constitutions of the United States and the State of Washington, the authority of the County to protect and uphold such rights, and existing federal and state laws mandating that federal and state agencies consult and coordinate with local governments in actions affecting use of land and natural resources.

(b) This chapter is intended and shall be interpreted as providing no greater authority than the authority provided by the Constitutions of the United States and the State of Washington, existing federal and state statutes affecting use of land and natural resources, and laws of the State of Washington authorizing the actions of county governments.  
[Ord. 298 (1996) ■ 3]

18.02.040 DEFINITIONS. For the purpose of this chapter, the following words shall be defined as follows:

(a) "Action", when used with respect to any federal or state agency, shall have the broadest possible meaning in the context of any exercise of authority, and shall include, without limitation, any proposal, policy, regulation, rule, consideration, finding, study or gathering or review of data, that may lead to any substantive rule, regulation or administrative action or determination.

(b) "Federal agency," "state agency" or any combination thereof, shall mean each department, agency, commission or other instrumentality receiving its authority from the executive, legislative or judicial branches of the United States or the State of Washington, respectively, including without limitation independent regulatory agencies and public corporations, together with each officer, agent or employee thereof in the performance of official duties.

(c) "Private property" shall mean all property protected by the Fifth and Fourteenth Amendments to the United States Constitution. [Ord. 298 (1996) ■ 4]

18.02.050 GENERAL GUIDANCE. Within thirty (30) days of the adoption of this chapter, and at the beginning of each calendar year after this chapter becomes effective, the Benton County Board of Commissioners shall give written notice of the following to all federal and state agencies owning real property within Benton County and may give such notice to any other federal and state agencies that may take action regarding real property within Benton County:

(a) Of the County's desire for full and complete notice and opportunity for involvement regarding all actions considered, proposed or taken by federal or state agencies, that affect or have the potential of affecting the use of land or natural resources within Benton County;

(b) That such agencies should consider the effects such actions have on (i) community stability; (ii) maintenance of custom, culture and economic stability; and (iii) conservation and use of the environment and natural resources, as part of the action taken;

(c) That such agencies should coordinate procedures to the fullest extent possible with the County, on an equal basis and not with the County as subordinate, prior to and during the taking of any federal or state action;

(d) That such agencies should meet with the County to establish, through a memorandum of understanding or otherwise, the process for such coordination, including joint planning, joint environmental research and data collection, joint hearings, and joint environmental assessments;

(e) That such agencies should submit a list and description of alternatives in light of possible conflicts with the County's laws, policies and plans, including the Comprehensive Plan; consider reconciling the proposed action with the County's laws, policies and plans, including the Comprehensive Plan; and after such consideration, take all practical measures to resolve such conflict and display the results of such consideration in appropriate documentation;

(f) That such agencies should not assume, in any environmental impact statement or otherwise, that any proposed action would be consistent with County conditions or would have a non-significant impact, without at least prior coordination and consultation with the County and review of data specific to the County;

(g) That such agencies should in absence of a direct constitutional conflict, coordinate with the County so as to comply with federal and state statutes and regulations, and County laws, policies and plans, including the Comprehensive Plan;

(h) That such agencies should take appropriate mitigation measures adopted with the concurrence of the County to adequately mitigate adverse impacts on culture, custom, economic stability or protection and use of the environment; and

(i) That such agencies should not violate through regulatory means or otherwise any private property rights of citizens of Benton County.

[Ord. 298 (1996) ▪ 5]

18.02.060 AGRICULTURE AND LIVESTOCK. The custom and culture associated with agricultural and livestock production in Benton County is significant to the economic stability, livelihood and well-being of its citizens and protection and use of their environment. The purpose of this section is to provide clear guidance to federal and state agencies when actions taken by such entities affect or have the potential of affecting agricultural and livestock production in Benton County.

(a) In general, since the regulation of any aspect of agricultural and livestock production may impact the ability of County citizens to use land and use and conserve natural resources for agricultural and livestock purposes, all federal and state agencies should (i) notify the County of proposed actions, (ii) provide a detailed statement assessing the specific effects on the custom, culture, economy and environment of Benton County, (iii) consider all alternatives to the taking of such actions, and (iv) to the extent permitted by law, take appropriate mitigation measures adopted with the concurrence of the County.

(b) To the extent permitted by law, federal and state agencies should avoid taking actions that have the effect of obstructing, or making financially inefficient, agricultural and livestock production within Benton county.

(c) To the extent permitted by law, federal and state agencies should give adequate consideration to the designation and use of lands as agricultural lands in the Comprehensive Plan and as otherwise consistent with the custom, culture and economy of Benton County.

[Ord. 298 (1996) ▪ 6]

18.02.070 CULTURAL RESOURCES, RECREATION, WILDLIFE AND WILDERNESS. The custom and culture associated with cultural resources, recreation, wildlife and wilderness in Benton County are significant to the livelihood and well-being of its citizens and protection and use of their environment. It is the continuing policy of Benton County to (i) assure for all citizens safe, healthful, productive and aesthetically and culturally pleasing surroundings, (ii) preserve important historic, cultural and natural aspects of our County heritage, and (iii) maintain whenever possible an environment which supports diversity and variety of individual choice. The purpose of this section is to provide clear guidance to federal and state agencies when actions by such agencies may affect cultural resources, recreation, wildlife and wilderness in Benton county.

(a) Before any action is considered, proposed or taken affecting cultural resources, recreational, wildlife or wilderness uses in Benton County, federal and state agencies should (i) notify the County of any proposed action, (ii) provide a detailed statement assessing the specific effects on custom, culture, economy and environment of Benton County, including, without limitation, public health and safety, (iii) consider all alternatives to the taking of such actions, and (iv) to the extent permitted by law, take appropriate mitigation measures adopted with the concurrence of the County.

(b) Federal and state agencies should avoid taking actions affecting recreational, cultural, wilderness and wildlife opportunities within Benton County that are incompatible with local custom, culture and economic stability or preservation and use of the environment, or that otherwise fail to protect private property rights and local determination.

(c) In connection with any action related to sensitive, threatened or endangered plant or animal species, a federal or state agency should:

- (1) At the earliest possible time, give actual notice to Benton County of the intent to consider or purpose a

species for listing, or to change or propose critical habitat;

- (2) To the extent possible, base the listing of a species on the best scientific and commercial data relating specifically to Benton County and not generalized over a wider geographic area;
- (3) List a species as threatened or endangered only after taking into account the efforts of Benton County to conserve the species;
- (4) Only implement a recovery plan if it will provide for conservation of a species;
- (5) In designing critical habitat, base the designation on the best scientific data available and, after taking into consideration economic impacts, exclude as critical habitat all impacted areas unless, based upon the best scientific and commercial data available, failure to designate would result in extinction of the species;
- (6) Complete and forward to Benton County in a timely manner all documentation required by law when designating critical habitat.
- (7) Consider and directly respond to comments submitted by Benton County;
- (8) Not develop protective regulations or recovery plans if a Benton County plan is in place to protect effectively the species within Benton County;
- (9) Protect the species through alternatives with the least impact on the custom, culture and economic stability and preservation and use of the environment of Benton County; and
- (10) To the extent permitted by law, take appropriate mitigation measures adopted with the concurrence of the

County to mitigate adequately and impact on custom, culture, economic stability and protection and use of the environment, including any impact on public use and access and private property rights.

[Ord. 298 (1996) ▪ 7]

18.02.080 LAND ACQUISITION AND DISPOSITION. Land is significant to the preservation of custom, culture and economy and preservation and use of the environment and natural resources. In addition, land provides much of the tax base for vital public functions, such as funding of public schools and administration of county government. When land (including any interest in land) is acquired or held in trust by federal and state agencies, it may be removed from this tax base and the citizens of Benton County may suffer as a result. For these reasons, it is the policy of Benton County that the design and development of all federal and state land acquisitions, including those by forfeiture, donation, purchase, eminent domain or trust, disposal, adjustments and exchanges be carried out to the benefit of the citizens of Benton County.

(a) To the extent permitted by law, prior to acquiring any lands or interest in lands within Benton County federal and state agencies should: (i) notify the County of proposed acquisitions, (ii) provide a detailed statement assessing the specific effects on the custom, culture, economy and environment of Benton County, (iii) consider all alternatives to the taking of such actions, and (iv) to the extent permitted by law, take appropriate mitigation measures, such as payments in lieu of taxes, adopted with the concurrence of the County.

(b) Before any federal or state agency pursues any disposition, adjustment or exchange of land within Benton County, the County should be notified of, consulted about and otherwise involved in all federal and state land dispositions, adjustments, and exchanges.

[Ord. 298 (1996) ▪ 8]

18.02.090 WATER RESOURCES. Benton County recognizes that the conservation and development of water resources are essential to preservation of the custom, culture and economic stability of its citizens and protection and use of their environment. To the extent permitted by law, federal and state agencies should avoid taking actions affecting water rights and water resources that are incompatible with local custom, culture and economic stability or preservation and use of the environment, or that otherwise fail to protect private property rights and local determination.

(a) Any federal or state action that has or could have the effect of changing existing water rights or water uses within the County should be critically considered in relationship to the historic and current use of water in the County by humans, vegetation, livestock and wildlife. It is the intent of the County to assist federal and state agencies in the planning and management of the County's natural, cultural, economic and environmental resources related to water use. Because the regulation of any aspect of water rights or water use may impact the ability of County citizens to use land and natural resources, all federal and state agencies should, when taking any action related to restricting or limiting water use or water rights, (i) notify the County of proposed actions, (ii) provide a detailed statement assessing the specific effects on the custom, culture, economy and environment of Benton County, (iii) consider all alternatives to the taking of such actions, and (iv) to the extent permitted by law, take appropriate mitigation measures adopted with the concurrence of the County.

(b) Any proposed definition of wetlands, any action affecting the management of river flows or the sources or uses of irrigation, and any other federal or state action that has any effect on water rights or water uses within the County (i) should be coordinated with the County, (ii) to the extent permitted by law, should comply with all County water use plans, and (iii) should not violate any water rights.

(c) To the extent permitted by law, Benton County shall have the authority to define and designate wetlands, and to the event such authority is exercised in accordance with law, federal and state agencies should act in compliance with such definitions and

designations. In addition, to the extent permitted by law the County may continue to develop, in coordination with private land owners and governmental agencies, water management plans that encompass water resources on both governmentally owned and privately owned lands.

(d) To the extent permitted by law, Benton County shall have the authority to establish development regulations for point source and non-point source water pollution. To the extent such authority is exercised in accordance with law, federal and state agencies should comply with all administrative requirements, controls, processes and sanctions of such development regulations.

(e) The use of water that originates from sources outside Benton County has been and continues to be an important part in the preservation of custom, culture and economic stability and the protection and use of the environment of Benton County. The provisions of this section shall therefore apply fully to actions taken by federal and state agencies in any jurisdiction that affect water rights and water uses within Benton County.

(f) Before any federal or state agency acquires or agrees to acquire any interest in water rights in Benton County, directly, indirectly or in trust, for any purpose (including for transfer to or use in any other jurisdiction), by donation, purchase, condemnation or otherwise, such agency should fully comply with all provisions of this chapter. In addition, federal and state agencies should not acquire for any public purpose any interest in water rights within Benton County without (i) first coordinating and consulting with the County, and (ii) ensuring that private water rights are protected.  
[Ord. 298 (1996) 9]

18.02.100 CLEAN AIR. Benton County recognizes that the conservation and use of clean air resources are significant to preservation of the custom, culture and economic stability of its citizens and protection and use of their environment.

(a) Prior to taking any action affecting air usage within Benton County, all federal and state agencies should (i) notify the County of the proposed action, (ii) provide a detailed statement assessing the specific effects on the custom, culture, economy and environment of Benton County, (iii) consider all alternatives to the taking of such action, and (iv) to the extent permitted by law, take appropriate mitigation measures adopted with the concurrence of the County.

(b) Any federal or state action that has or could have the effect of changing existing use of air resources within the County should be critically considered in relationship to the historic and current use of air resources in the County by humans, vegetation, livestock and wildlife. Any proposed designation of federal or state pollution non-attainment areas and any other federal or state action that has any effect on air resources within Benton County should be coordinated with the County and should comply with all County air quality standards and use plans.

(c) It is the intent of the County to assist federal and state agencies in the planning and management of the County's natural, cultural, economic and environmental resources related to air quality. To the extent permitted by law, Benton County shall have the authority to establish development regulations regarding air pollution and develop air quality protection plans of its own design. To the extent such authority is exercised in accordance with law, federal and state agencies should act in compliance with such regulations. In addition, to the extent permitted by law the County shall have the authority to continue to develop, in coordination with private land holders and governmental agencies, air quality management plans that encompass clean air resources throughout Benton County. To the extent such authority is exercised as permitted by law, federal and state agencies should comply with all administrative requirements, controls, processes and sanctions of such regulations and plans.  
[Ord. 298 (1996) ■ 10]

18.02.110 PRIVATE PROPERTY RIGHTS. Benton County recognizes that the protection of private property rights is essential to

preservation of the custom, culture and economic stability of its citizens and protection and use of their environment. Federal and state agencies should fully comply with all case law, statutes, regulations, rules and guidelines concerning protection of private property rights in Benton County, including, without limitation, (i) United States Executive Order 12630, Governmental Actions and Interferences With Constitutionally Protected Property Rights, dated March 16, 1988, (ii) Section 18 of the Washington Growth Management Act, Protection of Private Property (RCW 36.70A.370), and guidelines of the Attorney General of the State of Washington promulgated with respect thereto, and (iii) the Fifth and Fourteenth Amendments of the United States Constitution and the United States Civil Rights Act, as amended.  
[Ord. 298 (1996) ■ 11]

18.02.120 MONITORING AND EVALUATION. (a) Benton County shall develop a method to monitor actions by federal and state agencies for conformance with the guidelines set forth in this chapter, the Comprehensive Plan and other ordinances, resolutions, policies and plans of Benton County. Any actions that may be taken or authority that may be exercised by Benton County pursuant to this chapter or otherwise in accordance with law, may be taken or exercised by action of the Benton County Board of Commissioners. The County may by resolution of the Board of Commissioners exempt any action or area of action by a federal or state agency from this chapter. This chapter contains no enforcement provisions, but nothing in this chapter shall be interpreted to affect any remedy that Benton County or any of its citizens may have under federal or state law.

(b) A basic premise of this chapter is that involvement by citizens is crucial to the preservation of their custom, culture and economic stability and protection and use of their environment. This is particularly true with respect to coordinating government regulation of land and natural resources use.

(c) In order to involve citizens in the monitoring of federal and state legislation and other actions by federal and state agencies there shall hereby be established the Benton County Coordinating

Committee for Federal and State Actions Affecting Land and Natural Resources Use (the "Coordinating Committee"), and the subcommittees thereof named below. The basic function of the Coordinating Committee and the subcommittees shall be to identify federal and state laws mandating that federal and state agencies consult and coordinate with local governments in actions affecting use of land and natural resources and to monitor federal and state actions and advise the County Commissioners regarding conformance by such agencies with this chapter. The Coordinating Committee and the subcommittees shall be advisory only and shall in no way bind the County Commissioners, who shall have final authority regarding interpretation of this chapter.

(d) The members of the Coordinating Committee shall be the chair and vice chair of the following subcommittees, each of which shall have the chair, vice chair, members and specific duties designated by the Board of County Commissioners from time to time in furtherance of this chapter: (i) Agriculture and Livestock, (ii) Cultural Resources, Recreation, Wildlife and Wilderness, (iii) Public Land Management, (iv) Water Resources, and (v) Clean Air. In furtherance of this chapter, the Board of County Commissioners may by resolution (i) expand or contract the number of members of the Coordinating Committee and any subcommittee, or (ii) change the subcommittees or establish other subcommittees.

(e) The Board of County Commissioners shall appoint on the first Monday of each year, or as soon thereafter as practical, the chair, vice chair and other members of each subcommittee. Members of the Coordinating Committee and each subcommittee must be citizens of or own property in Benton County and be over the age of 18 years, with terms of appointment as follows: Initially, members shall be appointed for one, two or three year terms; thereafter, terms shall be for a period of three years, staggered so that the terms of one-third of the members expire each year. The County Commissioners may remove any person from a chair, vice chair or membership position at their discretion and may fill vacancies as needed from time to time.

(f) At its initial meeting, the Coordinating Committee shall adopt operational procedures for itself and the subcommittees, which

along with any later amendments thereto, shall be subject to the approval of the County Commissioners. To the extent required by law, the Coordinating Committee and subcommittees shall be subject to the Open Public Meetings Act (Chapter 42.30 RCW) and the Public Disclosure Act (Chapter 42.17 RCW).  
[Ord. 298 (1996) § 12; Ord. 305 (1997) § 1]

18.02.130 SEVERABILITY. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby.  
[Ord. 298 (1996) § 13]

18.02.140 EFFECTIVE DATE. This chapter shall take effect and be in full force upon its passage and adoption.  
[Ord. 298 (1996) § 14]