

NOTICE OF PUBLIC HEARING

THE PUBLIC HEARING ORIGINALLY SCHEDULED ON SEPTEMBER 14, 2020 HAS BEEN  
RE-SCHEDULED TO SEPTEMBER 21, 2020

THE BOARD OF WASHINGTON COUNTY COMMISSIONERS of Washington County will hold a public hearing on September 21, 2020 at the hour of 2:00 p.m. to receive public comment upon the proposed Ordinance 86 Title 8, Chapter 10, of Washington County Code regarding Prescribed Burn Regulations; Ordinance 87 Title 8 Chapter 11 requiring Federal Land Administrators to obtain written permission from the Commissioners regarding road closures on Federal Lands; Ordinance 88 Title 8 Chapter 12 regarding allotments on split estate lands. The Ordinances in their entirety is available for review in the Clerk's Office or on the County Website.

The public is invited to comment on the proposed Ordinances at the Vendome located at 309 State Street , Weiser, Idaho. The public may also attend the hearing via Zoom at <https://zoom.us/j/499630910>, Meeting ID 499 630 910. Written comment may be mailed to the Clerk's Office at 256 E. Court Street, Weiser, Idaho 83672.

Any person needing special accommodations to participate in this hearing should contact the Clerk's Office seven (7) days prior to the meeting at 208-414-2092, 256 E. Court Street, Weiser, Idaho.

Kirk Chandler, Chairman  
Board of Washington County Commissioners

Please Publish: September 2, 2020  
September 16, 2020

ORDINANCE 86

An ordinance of the Board of County Commissioners of Washington County, Idaho adding Title \_\_8\_\_ Chapter 10 prescribed burning rules to the Washington County Code.

Whereas; The land use planning act of the state of Idaho title 67-6502 reads; PURPOSE: The purpose of this act shall be to promote the health, safety and general welfare of the people of the state of Idaho as follows; (i) To protect life and property in areas subject to natural hazards and disasters. (j) To protect fish, wildlife and recreation resources. (k) To avoid undue water and air pollution.

Whereas; The jurisdiction, both civil and criminal, over persons with in federal land reservations shall not be affected or changed by reason of the existence of such reservations.....being that the State wherein any such reservation is situated shall not by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens.... Organic Act of 1897 (6)

Whereas; the Organic Act of 1897 provides for State and Local jurisdiction of Federal Lands

Whereas; FLPMA of 1976, Title II sec. 202 (c) (8) provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans, and (9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments with which the lands are located....

Whereas; the state DEQ air quality department said that we should have code in our county that regulates prescribed burning in our county.

Now therefore be it ordained by the Board of County Commissioners of Washington Co. that Title\_\_ Chapter\_\_ read as follows;

All prescribed burns;

- (1) Shall comply with Idaho State DEQ rules and have an approved start date and an out cold stop date.
- (2) Shall limit spring burning due to the smoke from burning wet materials and the ability to control fires burning into summer. No prescribed burns would be allowed during the wildfire season (June 1<sup>st</sup> to Oct. 20<sup>th</sup>). The person designated to start and oversee the prescribed burn shall be personally responsible for any damage to private property.
- (3) Shall show that they have used best management practices before the area is burned, such as logging, thinning and targeted intensive grazing of the prescribed burn area.
- (4) Shall have the property owner's written permission to burn their property, including but not limited to ; allotment owner's or permit holder's grass and other private land holdings within the burn boundaries or those directly adjacent to the intended burn area.
- (5) Shall be coordinated with the County Commissioners and the Sheriff to proceed with the prescribed burn.

Enforcement; The Sherriff has the authority to enforce these prescribed burn rules in Washington County Code.

Penalty; A misdemeanor fine of \$1000 dollars or 1 year in jail or both for anyone who does not comply with this code.

## ORDINANCE 87

An ordinance of the Board of County Commissioners of Washington County, Idaho adding Title 8 Chapter 11 County coordination and Sheriff's authority to the Washington County Code.

Whereas; Washington County has Federal land in the county and the FLPMA of 1976 Title II Sec. 202 (c ) states: In the development and revision of land use plans the Secretary shall- (9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located....

Whereas; The jurisdiction, both civil and criminal, over persons with in federal land reservations shall not be affected or changed by reason of the existence of such reservations.....being that the State wherein any such reservation is situated shall not by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens.... Organic Act of 1897 (6)

Whereas; the Organic Act of 1897 provides for State and Local jurisdiction of Federal Lands

Whereas; Title V, Sec. 501, (6) of FLPMA states; roads, trails, highways, railroad, canals tunnels, tramways, airways, livestock driveways, or other means of transportation..... (7) such other necessary transportation or other systems or facilities which are in the public interest.....

Whereas; Organic Act of 1897, Public and Private Uses (7) states; Nothing herein shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of such reservations, or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and utilize their property.....

Now therefore be it ordained by the Board of County Commissioners of Washington Co. that Title 8 Chapter 12 read as follows;

1. The Federal land administrators shall obtain County Commissioner and Sheriff written approval to close any road under their management in the county where the Federal land resides.
2. The Sheriff has the authority under this ordinance to open roads and areas on the Federal land that are needed for public access and safety.
3. The Federal law enforcement officers operate under the Sherriff's authority and shall not enforce any laws upon the citizens of the county without permission of the Sherriff.
3. The county receives funds from the timber harvest, grazing and mineral extraction from the Federal land. Therefore the Federal Land Administrator shall allow and promote timber extraction, mining activities and grazing for the benefit of the citizens of the county as stated in, FLPMA of 1976, NFMA of 1976, and the Organic act of 1897.

Enforcement: The Sheriff of Washington County has the authority to enforce this ordinance when requested by the citizens of the county or need arises as determined by the Sherriff.

Penalty: Failure to coordinate and comply with the Authorities of Washington County and follow the terms set out in this ordinance is a misdemeanor and is punishable with a \$1000 fine or 1 year in jail or both.

## ORDINANCE 88

An ordinance of the Board of County Commissioners of Washington County, Idaho adding Title 8 Chapter 12. This will insure property rights on Federal Lands to the Washington County Code.

Whereas; the Curtis Act of 1898 (30 Stat 495) was Congresses first true split estate land disposal policy where the timber and minerals were retained by the US, and Tribes. The Stock Raising Homestead Act of 1916 (39 US 862) was the culmination of 17 years of effort by Congress to find the method by which they would dispose of the "land chiefly valuable for grazing and raising forage crops".

Whereas; there are many ranchers in Washington County that were granted preference rights and were allotted the grass and water rights on these split estate lands. The ranchers own the grass and the water rights on their allotments in Washington County.

Whereas; with any other private property rights, these rights on split estate land administered by the Federal Government are protected in the constitution.

Whereas; the Organic Act of 1897 states in Public and Private Uses (13), The pasturing of livestock on public lands in forest reservations will not be interfered with, so long as it appears that injury is not being done to the forest growth.....

Whereas; IC 25-901 states that congress passed the Taylor Grazing Act of 1934 acknowledging grazing preference rights of ranchers. IC 25-903 states any person who willfully or negligently interferes with the legal herding, grazing or pasturing of livestock or with fence, gate, water development or other range improvement of private base property or on an adjudicated allotment is guilty of a misdemeanor.....

Whereas FLPMA of 1976 Sec. 701 (a) states Nothing in this act... shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act. Therefore the property rights of the ranchers on Federal lands were not done away with due to since passed laws.

Now therefore be it ordained by the Board of County Commissioners of Washington County, Idaho that Title 8 Chapter 14 read as follows;

1. Allotment holders on split estate lands have the right to manage, refurbish, repair and improve their grazing preference lands by thinning timber, planting grass and other practices that improve their grazing value as with any other private property they own.
2. Allotment holders are allowed to repair, refurbish, and improve the water on their allotments as with any other private property they own.
3. Allotment holders are allowed to use the timber and stone resources on their allotments for personal use as outlined in the Organic Act of 1897.

Enforcement; The Sherriff of Washington County has the authority to protect the property rights of the citizens of the County, from anyone that would endeavor to restrict those property rights.

Penalty; A misdemeanor fine of \$1000 dollars and 1 year in jail or both for anyone who restricts or does not allow an allotment holder to exercise his property rights on his allotments.