A Beginner's Guide to Coordination

September 2012

A Public Lands Council Report

This report was prepared at the request of the Public Lands Council to provide general information about coordination and to encourage future collaboration between public lands ranchers and rural governments.

Table of Contents

Introduction

In western counties that depend on public lands grazing for their economic stability, it is increasingly common that the land use plans issued by federal agencies like the Bureau of Land Management (BLM) and the U.S. Forest Service do not reflect the needs or planning decisions of local communities. Nor is it the case that federal lands management decisions always incorporate or consider local knowledge and expertise regarding the environment, local socioeconomic conditions and needs, or the local custom and culture. Though ranching communities have struggled to have more of a voice in federal lands decisions that affect them, many report that their concerns have fallen on deaf ears, leading to a growing sense among ranchers of disempowerment and frustration.

But increasingly, rural communities are discovering that they need not stand by helplessly while their social and economic futures are determined for them by federal land management agencies. Congress has provided local governments with important tools–"cooperating agency" status and "coordination"–which can help local governments have substantial influence over how federal lands are managed. In the interest of educating the public lands grazing industry about these important opportunities, and to encourage interaction between ranchers and local governments, the Public Lands Council has commissioned two "Beginner's Guides," one on cooperating agency status, and this report, which addresses coordination.

Coordination can give local government entities like boards of county commissioners (and potentially others, like conservation districts) influence over federal land use planning and project-level management decisions. If used properly, this tool can help local governments protect the interests of public lands grazing, upon which many rural counties economically depend. Yet due to a lack of knowledge about coordination among both elected officials and ranchers, many counties that strongly support public lands grazing have not availed themselves of the opportunities and potential benefits that coordination offers.

This report is intended to give members of PLC, state affiliate livestock organizations, county cattlemen's and woolgrowers' organizations, and other parties with an interest in the public lands grazing industry a preliminary working knowledge of coordination. The information collected here is not meant to be exhaustive; due to the limited scope of this project there are many "advanced topics" which have been set aside for future discussion. Instead, this report is intended to provide sufficient information to members of the grazing industry to engage with their local governments regarding coordination, allow industry members to understand the uses and limitations of this tool, and to help industry members talk with their local governments about how it might be used to benefit the grazing industry and rural communities generally.

It is possible that the grazing industry has been slow to utilize coordination as a general practice due to conflicting accounts of what it is and what benefits it affords. It is therefore a secondary goal of the present report to clarify the facts regarding coordination, and to create an accurate starting point from which PLC can expand its use of this tool through subsequent projects.

Every effort was made to ensure that the information in this report is accurate. Information was drawn from a combination of federal agency documents, federal statutes and regulations, case law, and consultations with experts such as attorneys and county

representatives. The report was subsequently vetted both by federal agency personnel and by public lands attorneys who are well acquainted with the topic at hand.

The first section of this report will discuss general facts about coordination. The second section looks at the statutes and regulations underpinning coordination, and then outlines one method for initiating the coordination process. The third section clarifies the differences between coordination and cooperating agency status, and addresses frequently asked questions about coordination. Appendices provide a list of resources for further education and consultation that industry members and local governments can use to add to their understanding of coordination, as well as relevant statutory and regulatory references.

A few caveats are in order. First, this report documents the basic facts about how coordination status *should* work. It does not cover in depth the pitfalls that can arise when agencies are reluctant to engage in the coordination process, nor does it discuss troubleshooting techniques at any length. Federal agencies *can* be unhelpful when local governments wish to coordinate, although numerous coordinators report positive and productive experiences. If problems arise, legal expertise or other assistance may be necessary. Contacts can be found at the end of this report.

Second, for the sake of brevity this report is limited in scope. Although state, tribal, and local governments can all enter into coordination with federal agencies, our focus will be exclusively on coordination between local governments and the BLM and Forest Service.

§1 The Basics

What is a Federal Land Use Plan?

Since the 1970s, Congress has required[1] both the BLM and the Forest Service to manage federal lands by using "land use plans."[2] These are district-wide or forest-wide plans that determine how the resources for a given area of BLM or Forest Service land will be used and managed over an extended period of time. Typically, land use plans are rewritten every 15 to 20 years, although litigation often means new plans don't get finalized on time. These plans are essentially master documents that cover the goals and allowable uses for an area. Even though they don't dictate every action that a BLM or Forest Service area manager will take, plans provide guidance for future decisions. As explained in the BLM Land Use Planning Handbook, "Land use plans and planning decisions are the basis for every on-the-ground action the BLM undertakes."[3]

BLM and Forest Service land use plans don't just determine what activities can occur within a BLM district or national forest; they also determine where those activities can take place and to what degree. For example, a plan may reduce or increase the amount of grazing AUMs available, or restrict grazing from certain areas. It may determine how much (if any) timber, oil, gas, or mineral extraction is allowed. A plan may decide to reduce motorized access in certain areas by restricting cross-country travel or by closing existing roads. Plans also contain strategies for fire management, water management, invasive species management, range management, and a whole host of other issues that can impact surrounding communities in a multitude of ways.

Because of their far-reaching impact on both the environment and people, land use plans must be accompanied by an environmental impact statement (EIS) as required by the National Environmental Policy Act (NEPA).[4]

What is a Local Government Land Use Plan?

When people think of "local land use plans," they typically have in mind the general planning document that counties use to determine zoning, public services and facilities, transportation, and the like. But these plans tend to focus on land that is largely within the county's jurisdiction. By contrast, many rural counties (as well as other local government entities, like special districts) have also officially adopted land use plans that apply to the surrounding *public land*–both federal and state–the management of which impacts their ability to function and serve local citizens. For the rest of this report, "local land use plan" will refer exclusively to such plans, and focus on their application to federal (as opposed to state) land management.[5]

For those unfamiliar with local land use planning for federal lands, the very idea may seem odd. After all, county jurisdiction over federal lands is fairly limited, and local land use plans cannot require federal land managers to take specific actions. For example, a county cannot dictate in its land use plan how many grazing AUMs will be allocated for a given area of public range, or that wild horse populations shall be managed below appropriate management levels (AML) to provide for more cattle grazing. These decisions are within the authority of the federal agency. However, rural

counties' socioeconomic wellbeing, safety, and culture are intimately tied to the management of the surrounding public lands. Moreover, counties are required by state law to oversee the economic, social, and general wellbeing of the people and resources within their jurisdictions. In light of this, local land use plans are used to state the general requirements a county (or other local government) has of the surrounding federal land in order to meet these responsibilities.

Here are just a few examples of issues a local land use plan might address:

- A requirement[6] that grazing be maintained at historic levels, sufficient to maintain the economic viability of ranches that support a county's tax base.

- A requirement that wild horses be managed–according to law–at appropriate management level (AML), and that cattle not be removed from the range to provide for overpopulation of horses.

- A requirement that forage be grazed sufficiently to help prevent catastrophic wildfire to protect the safety and livelihood of residents.

- A requirement that noxious weeds be managed in a timely manner and in cooperation with the efforts of the State and private landowners.

Aside from specific expectations for federal land management, local land use plans typically include information about an area's history, economic base, local custom and culture, and historic uses (both extractive and recreational) on federal lands, as well as the local government's mission and responsibilities. Depending on the plan, a variety of other expectations and background information may be included. But in the end, all local land use plans have the same purpose: to serve as an officially adopted document laying out–in general terms–what management approaches on the neighboring federal lands a local government body requires to be taken in order to fulfill its statutory responsibilities.

What is Coordination?

Coordination is a federally mandated process that requires the BLM and Forest Service to work with local governments to seek consistency between federal land use planning and local land use plans and policies. Coordination requires federal agencies do more than just *inform* local governments of their future management plans and decisions, and it requires that they do more than merely *solicit comment* from local government entities. Coordination calls for something beyond that: a negotiation on a government-to-government basis that seeks to ensure officially approved local plans and policies are accommodated by planning and management decisions on federal lands.

The mandate to coordinate comes from the primary statutes governing the activities of the BLM (the Federal Land Management Policy Act, or "FLPMA") and the Forest Service (the National Forest Management Act, or "NFMA").[7] In Section 2 of this

report, we will look at how these statutes define coordination for the BLM and Forest Service, respectively.

Is Coordination Only for Counties?

No. The opportunity to coordinate with the BLM and Forest Service is available to "local governments," as well as Federal agencies, state governments, and tribal governments. "Local government" is a broad category, and includes many governing entities beyond counties. For instance, the BLM defines "local government" as "any political subdivision of the State and any general purpose unit of local government with resource planning, resource management, zoning, or land use regulation authority."[8] This definition clearly captures government entities like counties, cities, and towns because they are "general purpose" and manage land use, but it also applies to any entity that is defined as a "political subdivision of State" by the state within which it exists. For example,

> **Wyoming Statutes 16-4-201 (a) (iv)**
> " 'Political subdivision' means every county, city and county, city, incorporated and unincorporated town, school district and special district within the state."

Here, Wyoming explicitly recognizes that school districts and "special district[s]" are political subdivisions. This means that in Wyoming, school districts, conservation districts, irrigation or water districts, fire districts, and potentially others qualify as local governments according to BLM regulations.[9] Each state has similar statutory language that determines what counts as a political subdivision, and therefore as a local government, according to the BLM's definition.

Individual states also have a statute defining what qualifies as a local government. For example,

> **Oregon Statutes 174.116 (1) (a)**
> **Local government and local service district defined**
> "…[L]ocal government means all cities, counties and local service districts located in this state, and all administrative subdivisions of those cities, counties and local service districts."

Because the Forest Service has no regulatory definition for local government, state definitions are particularly useful for verifying that a given entity is recognized within its state as a local government body.

Although many types of government entities are recognized as local governments, **in order to enter into coordination with the BLM or Forest Service, a local government's mission or responsibilities must be affected by the management of the surrounding, adjacent, or nearby federal lands.**

Is Coordination Only for Land Use Plans?

So far, coordination has been described as a process of working to get federal and local land use plans to be compatible with each other. But coordination can go beyond comprehensive land use plans, both on the part of the local government and the BLM and Forest Service.

Many local governments, especially if they are not counties, do not have the resources to create a comprehensive land use plan. Although a land use plan is the most effective tool for coordination, it is not required. All that is necessary is that the local government has an officially adopted policy, such as an ordinance or resolution, relating to the management of the adjacent federal land.[10]

On the federal end, BLM and Forest Service land use plans are only developed once every 15-20 years, with occasional revisions and amendments. However, the most productive cases of coordination are ongoing processes in which a local government interacts with a federal agency on a regular basis to discuss anticipated management actions on federal land, and continually balances those actions against the local government's land use plan or policies.

BLM statute, regulations, and applicable case law recognize that coordination applies to BLM management activities as well as to land use plans.[11] Forest Service statute and regulations explicitly recognize that coordination applies to land use plans and travel management planning.[12] Experienced coordinators have also reported that good relationships with Forest Service officials have allowed for ongoing coordination in a number of cases, including coordination on project-level decisions.

Of course, there will be many agency activities that either do not affect a particular government body or in which they have no particular stake. Most local governments will see little need to coordinate over repainting the agency's outhouses or replacing worn-out signage. The point, however, is that in the best cases, coordination is not a process that occurs only occasionally in the development of new land use plans or amendments. Ideally, coordination (as described by the BLM Land Use Planning Handbook) involves the creation of "ongoing, long-term relationships where information is continually shared and updated,"[13] and results in BLM and Forest Service management decisions that reflect the needs of local communities.

What Does Coordination Look Like in Action?

At its most successful, coordination is an ongoing process in which a local government meets regularly with BLM or Forest Service personnel to discuss upcoming management decisions on federal lands in light of the local land use plans and policies. Ideally, this should be a productive government-to-government exercise, where the participants seek to attain mutually agreeable outcomes. In the second section of this report, a step-by-step approach to coordination is considered in more detail.

Unfortunately, the BLM and the Forest Service are sometimes unfamiliar with coordination, or are reluctant to recognize the unique status coordination affords local governments. When this happens, coordinating governments may have to seek enforcement of the law through the use of an attorney. An attorney will be able to write letters on a coordinating government's behalf notifying agency superiors of the field

manager or forest manager's unwillingness to coordinate. If that fails, it may be necessary to enforce the law through litigation. Keep in mind that to achieve good results in litigation, a coordinating government must build an administrative record by communicating all of its concerns in writing to the agency.

Though talk of litigation may be discouraging, successful coordinators are finding that persistent, patient insistence on the right to coordinate, directed at agency supervisors, and even congressional representatives, is yielding a growing recognition throughout the BLM and Forest Service that coordination with local governments is both mandatory and substantive.

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§ 2 Nuts and Bolts

The Statutory Mandate

Coordination is not optional; both the BLM and the Forest Service *are required* by their respective governing statutes (FLPMA and NFMA) to coordinate land use planning actions with local government plans and policies.

> FLPMA
> "In the development and revision of land use plans, the Secretary shall […] to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities […] with the land use planning and management programs […] of local governments…"[14]

> NFMA
> "[T]he Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies."[15]

Although the mandates for the BLM and the Forest Service to coordinate are equally strong, the two agencies' governing statutes and regulations explain coordination with differing degrees of detail. In the next two sections, we will look at the specific requirements each agency is held to by its governing statutes and regulations, and consider what local governments should expect when coordinating with the BLM and Forest Service respectively.

Coordinating with the BLM

FLPMA provides the clearest, strongest, and most detailed requirements for coordination of any federal statute. Aside from the directive that the BLM engage local governments in coordination, as stated above, FLPMA provides four specific instructions to the BLM as a means to accomplish it. They are:

- To the extent practical, the BLM must stay apprised of local land use plans.
- The BLM must assure that local land use plans germane to the development of BLM land use plans are given consideration.
- To the extent practical, the BLM must assist in resolving inconsistencies between local and BLM land use plans.
- The BLM must provide for the meaningful involvement of local governments in the development of BLM land use programs, regulations, and decisions. This includes early notification of proposed decisions that may impact non-federal lands.[16]

These "four pillars" of coordination describe Congress' vision for how coordination is to be carried out. BLM is expected to keep up to date (to the extent practical) with local plans, consider those plans when making land use decisions, engage in negotiations (to the extent practical) in an attempt to resolve any inconsistencies between local and BLM plans, and to give local governments a meaningful and early seat at the table in the development of any federal land use decision that impacts them.

These four pillars comprise what might be called the "coordination process," a series of activities that embody the act of BLM's coordination with local governments. As to the ultimate result of these activities, Congress is absolutely clear:

> "Land use plans of the Secretary under this section *shall be consistent* with State and local plans to the maximum extent he finds consistent with federal law and the purposes of this Act." 43 U.S.C § 1712(c)(9), emphasis added. (FLPMA)

In other words, the end result of engaging in the coordination process, as described above, is that the BLM plan or decision *will be consistent* with the local land use plan or policy, provided that achieving consistency does not put the BLM in violation of federal law.

Consistency

FLPMA's consistency requirement makes the coordination mandate for the BLM particularly strong. In effect, it says that the BLM cannot simply opt out of adhering to local land use plans. The failure of a BLM plan or action to be consistant with a local land use plan can only be justified by reference to a resulting violation of federal law. In other words, where BLM land use plans are inconsistent with local land use plans, the burden[17] is on the BLM to show how adhering to the plan would result in a violation of federal law. Moreover, BLM's governing regulations make clear that "consistency" is itself a strong requirement:

> "*Consistent* means that the Bureau of Land Management plans will adhere to the terms, conditions, and decisions of officially approved and adopted resource related plans, or in their absence, with policies and programs, subject to the qualifications in § 1615.2 of this title." 43 CFR § 1601.0-5(c) (BLM)

Unfortunately, some local governments have taken the BLM consistency requirement to mean that by simply handing the BLM their land use plan, the BLM will be forced to comply with it. Not only is this incorrect, it undermines the ongoing negotiation and information sharing process that is at the core of coordination. Experienced coordinators recognize that the BLM has no obligation to adhere to any local plan or policy that is inconsistent with federal laws and regulations. For coordination to work, agencies and local governments need to mutually ascertain each other's needs and limitations. Instead of throwing a plan at the BLM and expecting them to conform, local governments should work with the BLM on creating mutually acceptable outcomes while keeping the consistency requirement as a backdrop.

Guidance

BLM's consistency requirement applies not only to land use plans and management actions, but also to guidance from BLM State Directors–like memos and instructions–that "transmit objectives, goals, constraints, or any other direction that helps the District and Area Managers and staff know how to prepare a specific resource management plan."[18] In other words, advice and direction from the State BLM office on land use planning does not override the consistency requirement; it is held to the same consistency standards as the planning and management decisions:

> "*Guidance* and resource management plans […] *shall be consistent* with officially approved or adopted resource related plans, and the policies and programs contained therein, of […] local governments […] so long as the guidance and resource management plans are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands..." 43 CFR §1610.3-2(a), emphasis added. (BLM)

In instance where planning guidance from the State Director is not consistent with local plans and policies, the State Director is required to provide a justification (i.e. detailing how consistency is not achievable within federal law) and to propose possible remedies to the local government in question:

> "In developing guidance to the Field Manager […] the State Director shall:
> (1) Ensure that it is as consistent as possible with existing officially adopted and approved resource related plans, policies or programs of […] local governments that may be affected…;
> (2) Identify areas where the proposed guidance is inconsistent with such policies, plans or programs and provide reasons why the inconsistencies exist and cannot be remedied; and
> (3) Notify the […] local governments with whom consistency is not achieved and indicate any appropriate methods, procedures, actions and/or programs which the

State Director believes may lead to resolution of such inconsistencies." 43 CFR §1610.3-1(d) (BLM)

When Consistency is Not Achieved

The BLM's consistency requirement means that local government plans and policies can play a significant role in shaping BLM management decisions, provided that local plans and policies do not call on the BLM to make management decisions in violation of federal law. But even in cases where a local plan *does* call for a management approach that would not be legal for the BLM to follow, the BLM still has an outstanding obligation to coordinate with the local government to take their concerns into consideration:

> "State Directors and Field Managers shall provide […] local governments […] opportunity for review, advice, and suggestion on issues and topics which may affect or influence […] government programs." 43 CFR § 1610.3-1(c) (BLM)

For example, a county may have an official policy that grazing be maintained at historic levels in order to keep ranches economically sustainable and support the county tax base. A major range fire would likely make it impossible for the BLM to adhere to this policy, at least temporarily. However, the fact that the county policy cannot legally be adhered to by the BLM does not release the BLM from its obligation to coordinate with the county. The county still must be given "the opportunity for review, advice, and suggestion" on issues that affect it, such as range recovery methods and anticipated grazing schedules.

NEPA Consistency Review

Independent of the coordination mandate stated in FLPMA, NEPA has an additional consistency review requirement for any federal agency action requiring an environmental impact statement (EIS). NEPA requires that EISs "shall discuss any inconsistency of a proposed action with any approved state or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the [EIS] should describe the extent to which the agency would reconcile its proposed action with the plan or law."[19] The consistency review requirement applies equally to the BLM and the Forest Service, as well as any other federal agency writing an EIS.

This consistency review requirement further underlines the importance that local governments prepare land use plans, or at very least, approve policies on public land management issues that affect them.

Conclusion

In summary, FLPMA requires that coordination not simply be a process of the BLM's taking local land use plans "into consideration" when making decisions affecting local governments. Although consideration, negotiation, and discussion should all be part of the coordination process, the end result must be a BLM plan, action, or guidance that "adhere[s] to the terms, conditions, and decisions" of the local land use plan, provided that no federal law is violated as a result. Inconsistency between BLM land use plans and actions and local plans and policies can only be justified by reference to a violation of federal law. Moreover, in instances where the demands of local land use plans *are not*

consistent with federal law, BLM's coordination mandate still requires the agency to engage with the local government to allow it to review information and advise the BLM on how county needs may be addressed by subsequent management decisions.

Coordinating with the Forest Service

The statute and regulations governing the Forest Service have significantly less information about coordination than those governing the BLM. To supplement the lack of specifics, some local governments have appealed (with some success) to FLPMA's description of the coordination process as an informal guide when coordinating with the Forest Service. Some local governments have also argued that the Forest Service is legally bound by FLPMA's description of coordination, on the grounds that the FLPMA language embodies Congress' intent for how agencies are to coordinate with local governments in the land use planning process.

Regardless of whether this argument is sound, the Forest Service has officially rejected FLPMA's consistency requirement,[20] and, more generally, the idea that the Forest Service is bound by FLPMA's coordination provisions.[21] Because there is currently no existing case law or legislation clarifying that the Forest Service has an obligation to use FLPMA's interpretation of coordination, there is currently no guarantee that the Forest Service will adhere to the coordination process as described in FLPMA,[22] or reflect the primary importance FLPMA places on achieving consistency between federal and local land use plans.

Despite the agency's having taken this position, coordination with the Forest Service is still a substantive process. The fact that the Forest Service is directed to "coordinate" with local governments implies by its plain meaning that the Forest Service must engage in a process that involves more than simply "considering" the plans and policies of local governments. One often-cited judicial interpretation of "coordinate," although it is not binding on the Forest Service (the case, *California Native Plant Society v. City of Rancho Cordova*, was heard in the California State Courts) serves as a marker for the kind of activity the Forest Service is expected to engage in:

> *"... the concept of 'coordination' means more than trying to work together with someone else. Even under the City's definition of the word, 'coordination' means negotiating with others in order to work together effectively. To 'coordinate' is 'to bring into a common action, movement, or condition'; it is synonymous with 'harmonize.'" (Merriam-Webster's Collegiate Dictionary. Supra, at p. 275, col. 1) Indeed, the very dictionary the City cites for the definition of the word 'coordinate' defines the word 'coordination' as 'cooperative effort resulting in an effective relationship.' (New Oxford Dict., supra, at p. 378, col.3)*
>
> *"Although the city suggests 'coordination' is synonymous with 'consultation'—and therefore the city satisfied its 'coordination' obligation under the general plan at the same time it satisfied 'consultation' obligation under the plan—that is not true. While the City could 'consult' with the Service [Fish and Wildlife] by soliciting and considering the Service's comments on the draft EIR, the City could not 'coordinate' with the Service by simply doing those things. . . . [B]y definition*

'coordination' implies some measure of cooperation that is not achieved merely by asking for and considering input or trying to work together." California Native Plant Society v. City of Rancho Cordova, 172 Cal. App. 4th 603, 91 Cal. Rpr. 3d. 571 (Third App. Dist. 2009).

NFMA and Forest Service Regulations

NFMA and Forest Service regulations explicitly require the Forest Service to coordinate with local governments on land use planning and travel management planning.[23] Although NFMA does not specify, as FLPMA does, how the process of coordination is to be carried out, NFMA's directive to "coordinate" implies that the Forest Service is expected to engage in a meaningful process with local governments on a government-to-government basis to seek to harmonize local and Forest Service plans and decisions.

Outside of NFMA's bare bones requirement to coordinate, the Forest Service's approach to coordination is guided by their 2012 National Forest Service Land Management Planning Rule (i.e. regulations). The regulations make three specific statements regarding coordination:

- That the responsible official shall coordinate land management planning with the equivalent and related planning efforts of […] local governments.

- When Forest Service land use plans are developed or revised, the responsible official shall review local plans and policies relevant to the federal plan. The review will consider the objectives of local plans, the compatibility and interrelated impacts between local and federal plans, opportunities to address impacts and contribute to joint objectives, and opportunities to resolve or reduce conflicts. As required by NEPA, this review will be included in the EIS for the Forest Service plan.[24]

- The responsible official will not seek to direct or control management of lands outside of the plan area, nor will the responsible official conform management to meet non-Forest Service objectives or policies.[25]

Conclusion

Although the Forest Service is required to coordinate with local governments, it does not recognize FLPMA's specific coordination procedure, or FLPMA's requirement that, within the scope of federal law, consistency between agency and local land use plans be achieved. Despite this, coordination between local governments and the Forest Service must be a substantive process, as indicated by the plain meaning of "coordination." A local government acting in coordination with the Forest Service should seek to attain interaction with the Forest Service on a regular basis, request that planning information be shared as early as possible, and expect that the agency will engage in a good faith effort to harmonize[26] Forest Service land use, resource, and travel management plans with local land use plans and policies.

Getting Started: How to Initiate the Coordination Process[27]

The BLM and Forest Service are required to coordinate, but local governments should initiate, orchestrate, and maintain the process themselves. There are several reasons for this. First, because federal statutes provide no official structure for coordination, it is incumbent upon local governments to create a structure that makes coordination effective. Second, local governments can assist coordination by providing agencies with their land use plans and policies; agencies often cannot, or will not, obtain these materials without assistance.[28] Third, many agency personnel are unaware of coordination requirements, or may even wish to avoid them. Therefore, it is necessary for a local government to initiate and maintain the coordination process to ensure that agencies participate, and that the process is productive over time.

What follows is a step-by-step discussion of how some successful coordinators have gotten started. This is a "rough sketch," not a comprehensive guide. It is recommendable to consult both with experienced coordinators and a knowledgeable attorney before launching a coordination effort.

- **Self Education**:

Being knowledgeable is the key to successful coordination, since the agencies must often be educated about the process and reminded of their obligations. There are many routes to self-education, such as talking with experienced coordinators, taking training sessions, and reading instructional literature. PLC has provided this report in order for you to gain a basic working knowledge of coordination, so you're already on the right track. PLC also plans to schedule training sessions with local livestock associations to help ranchers get a better understanding of how to coordinate effectively. Contact PLC for scheduling information.[29] PLC may also be able to put you in contact with people who have used coordination successfully, and are willing to visit with you about their experiences.

- **Select a Government Entity to Coordinate**:

Once you understand the coordination process, you will want to approach a local government body with a view to getting them involved in coordination. Which government body should you choose? In many of our public lands grazing communities, boards of county commissioners are strongly supportive of the needs of ranchers, as well as those of other natural resource users. Consider approaching your county government if you believe they would be receptive and helpful. Help to educate them by sharing coordination materials, like this report. In the instance that the county is not open to coordination, or would not properly represent your community's public land resource needs, smaller government bodies like water districts, fires districts, or other special districts may be good candidates, provided that they are impacted by public lands decisions. The local conservation district is a particularly important local government to consider because of their experience and expertise in working with land and water resources. Because well managed grazing benefits these resources, conservation districts are likely to be supportive of the needs of local ranchers. Finally, try to engage

government bodies consisting of people who are knowledgeable about land management issues, and have cooperative attitudes.

- **Pass a Resolution to Coordinate**:

Upon confirming their intention to coordinate, the local government members should pass a simple resolution stating 1) that they are the duly elected members of the body; 2) that it is the government body's statutory responsibility to oversee (for example) the socioeconomic welfare, safety, and well-being of its constituents, or (for example) the environmental protection of natural resources within its jurisdiction; 3) that the government body is asserting its right to coordinate with the agency in question as provided for by federal statute. The resolution demonstrates that the local government body is unified in its decision to coordinate with the federal agencies.

- **Develop a Plan or Policy**:

Once a government body has decided to coordinate, they will need a land use plan or policy to coordinate with. Some counties may already have land use plans pertaining to federal lands. If so, read them to determine what the county's positions are. The plan may need to be updated or amended. In many cases, however, counties or smaller government bodies will not yet have a comprehensive plan. In that case, consider what the main public land management issues impacting the local government's responsibilities are, and what policy positions would help resolve those issues. Start slowly, by approving one or two key policies to coordinate with. Read other county land use plans to give you an idea of policies that have been passed by other coordinators. Here are several examples:

> "Federal land management agencies will not permit the relinquishment, transfer, or retirement of livestock grazing AUMs in favor of conservation, wildlife, or other uses besides livestock grazing."
>
> "Roads on public lands will remain open and be maintained as needed unless there is an outstanding reason for their closure."
>
> "Fire, timber harvesting, and treatment programs will be utilized in a way to promote forest health, reduce disease and insect infestation and prevent waste of forest products while providing opportunities for local businesses and small businesses."
>
> "Federal land outdoor recreation access shall not discriminate in favor of one mode of recreation to the exclusion of others."

Keep in mind that plans and policies must *not* require any action of the management agency that is in violation of federal law, such as "No wilderness inventories will be performed," or "All wild horses will be removed from the existing herd management area

(HMA)." Federal agencies will not adhere to such policies. To help determine useful policies that are consistent with federal law, it may be helpful to recruit the assistance of an attorney and to consult existing land use plans from other areas.

- **Write a Letter to the Agency**:

Once the local government has prepared a policy or plan, they should write a formal letter to the agency informing the agency that the local government is asserting its coordination status, and would like to meet with agency officials to initiate the coordination process. The letter should inform the agency what issue or issues the local government is interested in discussing, and propose one or two possible dates for the meeting. Ask the agency to confirm (give them 30 days) the meeting date with the local government, or to propose another date. If the agency refuses or fails to respond to your written request, send a similar letter, *preferably written by an attorney*, to the next individual up the chain of command in the agency explaining the agency's statutory obligation to coordinate. If necessary, continue this process until it reaches the Director of the agency in Washington D.C. You may also send a letter explaining the situation to your congressional representative. Keep PLC informed if you are experiencing difficulty with agency personnel, as PLC staff can communicate those problems to Washington agency staff and help smooth the process. Be persistent and courteous. Many agency personnel are unaware that coordination is mandatory.

- **Draft an Agenda**:

Prepare for the meeting by drafting an agenda listing the issues you want addressed. Send it to the agency and ask for additions, if they have any. Also, set the ground rules for your meeting and communicate them to the agency. This is a local government meeting, so it should be held in a space provided by it, not the agency. If it is an official county (or other government) meeting, the event will also have to follow Open Meeting laws, meaning it will be open to the public and require public notice. (Note that sometimes unofficial, closed meetings may be appropriate as well, particularly when a local government is also engaged as a cooperating agency.[30]) Make clear to the agency, however, that because this is a government-to-government meeting, there will be no public comment. Notice of the meeting and the agenda should be posted in the way typical of all other meetings held by the local government in question. Also, make sure that the agency has received an official copy of the local land use plan or policy several weeks before the meeting.

- **Have Your First Meeting**:

The local government should orchestrate the meeting. It may be useful to make an audio recording of the meeting for future reference. Welcome the agency, and make clear that the meeting is a government-to-government coordination meeting. Also make clear that the public is welcome, but there will be no public comment. (A public comment period

at the end of the main session can be provided at the next coordination meeting.) Introduce all agency and local government parties present, and allow the agency to make a statement, if they would like. Then work your way through your agenda items. Carefully explain your concerns about specific issues and press the agency to help seek solutions. Be sure that you also ask about future actions they are planning. Knowing the statute and regulations the agency is bound by will help you to assert your position in the coordination process. When the meeting ends, set a date for your next meeting, or possibly negotiate a plan for regularly scheduled meetings (once every two months, for example).

- **Next Steps**:

The local government should perform any activities routinely done following a formal meeting, such as holding a debriefing session or issuing a press release. Send a letter to the agency thanking them for attending, and reminding them of your next meeting and any interim obligations (like providing maps, or other information) they may have agreed to. The coordination process has now been launched.

- **Possible Outcomes**:

Coordination is being used successfully across the West. Particularly in California, Idaho, Wyoming, New Mexico and Arizona, rural government bodies are successfully helping to guide decisions on public lands. In Modoc County, California, for example, coordination was used effectively to prevent the inclusion of the Modoc National Forest in a Forest Service plan for conservation of the spotted owl. In New Mexico, local counties successfully coordinated with the BLM to restore over a million acres of range vital to the grazing industry. Some counties have chosen to form coalitions to strengthen their coordination capabilities. The Arizona/New Mexico Coalition of Counties is just one example where neighboring counties have successfully supported multiple-uses on public land, in part by working jointly as coordinators.

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§ 3 Clarifications

Differences Between Coordination and Cooperating Agency Status

PLC has provided "Beginner's Guide" reports on cooperating agency status as well as this report on coordination. "Cooperation" and "coordination" sound similar, and many people assume that they are one and the same. But although both provide opportunities for local governments to play an elevated role in federal planning and management decisions, they are far from identical. Here are several important points of difference between cooperating agency status and coordination.

Context:

Cooperating agency status occurs only within the context of developing an environmental impact statement (EIS) [or occasionally an environmental assessment (EA)] under NEPA. Cooperating agency status *ends when the NEPA analysis is completed*.

Coordination takes place in the general context of working to achieve compatibility between BLM or Forest Service plans and actions and local government plans and policies. Ideally, coordination is an *ongoing process*.

Criteria:

To become a cooperating agency, a local government must show that they have *special expertise or jurisdiction by law* relevant to a particular NEPA study.

To coordinate, the local government's statutory obligations *must be generally affected* by the federal agency's planning and actions. They must also have an officially adopted land use plan or policy.

Authority:

Cooperating agency input is based on expertise that the federal government recognizes. Although there is a general expectation that the lead agency should use the cooperating agency's input to the greatest extent possible, there is no binding obligation on the lead agency to adhere to the cooperating agency's recommendations.

Coordination involves an expectation that the agency will work to accommodate local government needs and harmonize federal planning and actions with local government plans and policy. With the BLM, there is a further expectation that the agency's plans and actions will be consistent with local plans and policies, provided the local plans and policies are consistent with federal law.

Disclosure:

As a cooperating agency, a local government has access to predecisional NEPA documents which are not otherwise disclosed to the public.

A federal agency has no obligation to share predecisional NEPA documents that are not publically disclosed with coordinating governments, unless they are also cooperating agencies.[31]

Influence over NEPA:

As a member of the interdisciplinary NEPA team, a cooperating agency can recommend that the lead agency undertake certain scientific studies, and recommend existing research for inclusion in the analysis.

Coordinating local governments may recommend that the lead agency of a NEPA analysis use certain studies, but if the local government is not also a cooperating agency, the lead agency has no special obligation to take their recommendations under advisement.

Coordination FAQs

Unfortunately, there are a number of misconceptions about coordination. This has led to confusion, false expectations, and occasionally, an inability to utilize coordination to its fullest potential. Here are answers to some of the more frequently asked questions:

Q: Is coordination always superior to cooperating agency status?

A: Some parties maintain that coordination is always superior to cooperating agency status, and therefore cooperating agency status should never be sought. PLC's position is that coordination and cooperating agency status are different tools that provide distinct, though often complementary benefits. They are most effectively used, if possible, together.

Q: Does coordination force the agency to comply with local plans and policies?

A: No. This overstates the coordination mandate. Neither agency will comply with any requirement in a local plan that is inconsistent with federal law. Furthermore, the Forest Service recognizes no obligation to achieve consistency with local plans,[32] although it is reasonable to expect that the Forest Service will make a good faith effort to do so within the context of achieving agency goals and objectives.[33]

Q: Must the Forest Service comply with FLPMA's coordination requirements?

A: Some parties suggest that the Forest Service is bound to follow the description of coordination as it appears in FLPMA. Although this may in principle be correct, in practice the Forest Service has explicitly denied being bound by FLPMA's coordination provisions.[34] Until there is case law or legislation that requires otherwise, there is no guarantee that the Forest Service will agree to coordinate in accordance with the provisions in FLPMA.

§4 Conclusion

Successful coordination involves a delicate balance. A local government must understand statutory mandates and politely insist that a federal agency follow them, while at the same time working to create an atmosphere where fruitful relationships, open dialogue, and negotiation can develop. Local governments who have mastered this art report significant successes, both with the BLM and the Forest Service. By contrast, those who have expected coordination to provide a "silver bullet" that will force federal land management agencies to subordinate themselves to local governments have been largely disappointed.

Many of the rural counties where public lands ranching plays a significant economic role are strongly supportive of grazing, and desire public lands policies that benefit ranchers. For this reason, public lands ranchers are well situated to educate their local government officials about the unique benefits that coordination affords. Coordination is not available to environmental activist groups, most of which do not have a large presence in rural communities. Coordination is specifically reserved to the representatives of residents in an affected area. Coordination therefore provides a unique opportunity for local residents, through their local governments, to shape the management of public lands.

As a result, ranchers should view their boards of county commissioners and other local government bodies as key allies in the ongoing struggle to ensure that grazing is a substantial and ongoing use of the public lands. As individuals, and collectively as livestock organizations, ranchers have limited influence through the "public participation" opportunities offered to the general public. By getting local government representatives to coordinate, that changes. It puts public lands ranchers' local representatives "at the table" with the federal agencies on a government-to-government footing, seeking compatibility between local and federal requirements on the public lands.

Appendix I:
Educational and Consulting Resources

References

A Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners (BLM, 2012):

http://www.blm.gov/wo/st/en/info/nepa/cooperating_agencies.html

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Appendix II
Statute and Regulations Relevant to Coordination

Federal Land Management Policy Act (FLPMA)

43 U.S.C. Chapter 35, Subchapter II - LAND USE PLANNING AND LAND ACQUISITION AND DISPOSITION § 1712

(c) Criteria for development and revision
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, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended [16 U.S.C. 460l–4 et seq.], and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

Bureau of Land Management (BLM) Regulations

43 CFR § 1601.0-5 - Definitions.

As used in this part, the term:

(c) Consistent means that the Bureau of Land Management plans will adhere to the terms, conditions, and decisions of officially approved and adopted resource related plans, or in their absence, with policies and programs, subject to the qualifications in § 1615.2 of this title.

(g) Guidance means any type of written communication or instruction that transmits objectives, goals, constraints, or any other direction that helps the Field Managers and staff know how to prepare a specific resource management plan.

(h) Local government means any political subdivision of the State and any general purpose unit of local government with resource planning, resource management, zoning, or land use regulation authority.

(j) Officially approved and adopted resource related plans means plans, policies, programs and processes prepared and approved pursuant to and in accordance with authorization provided by Federal, State or local constitutions, legislation, or charters which have the force and effect of State law.

43 CFR §1610.3-1 - Coordination of planning efforts.

(a) In addition to the public involvement prescribed by § 1610.2, the following coordination is to be accomplished with other Federal agencies, state and local governments, and federally recognized Indian tribes. The objectives of the coordination are for the State Directors and Field Managers to:
(1) Keep apprised of non-Bureau of Land Management plans;
(2) Assure that BLM considers those plans that are germane in the development of resource management plans for public lands;
(3) Assist in resolving, to the extent practicable, inconsistencies between Federal and non-Federal government plans;
(4) Provide for meaningful public involvement of other Federal agencies, State and local government officials, both elected and appointed, and federally recognized Indian tribes, in the development of resource management plans, including early public notice of final decisions that may have a significant impact on non-Federal lands; and
(5) Where possible and appropriate, develop resource management plans collaboratively with cooperating agencies.

(c) State Directors and Field Managers shall provide other Federal agencies, State and local governments, and Indian tribes opportunity for review, advice, and suggestion on issues and topics which may affect or influence other agency or other government programs. To facilitate coordination with State governments, State Directors should seek the policy advice of the Governor(s) on the timing, scope and coordination of plan components; definition of planning areas; scheduling of public involvement activities; and the multiple use opportunities and constraints on public lands. State Directors may seek written agreements with Governors or their designated representatives on processes and procedural topics such as exchanging information, providing advice and participation, and timeframes for receiving State government participation and review in

a timely fashion. If an agreement is not reached, the State Director shall provide opportunity for Governor and State agency review, advice and suggestions on issues and topics that the State Director has reason to believe could affect or influence State government programs.

(d) In developing guidance to Field Manager, in compliance with section 1611 of this title, the State Director shall:
(1) Ensure that it is as consistent as possible with existing officially adopted and approved resource related plans, policies or programs of other Federal agencies, State agencies, Indian tribes and local governments that may be affected, as prescribed by § 1610.3-2 of this title ;
(2) Identify areas where the proposed guidance is inconsistent with such policies, plans or programs and provide reasons why the inconsistencies exist and cannot be remedied; and
(3) Notify the other Federal agencies, State agencies, Indian tribes or local governments with whom consistency is not achieved and indicate any appropriate methods, procedures, actions and/or programs which the State Director believes may lead to resolution of such inconsistencies.

(e) A notice of intent to prepare, amend, or revise a resource management plan shall be submitted, consistent with State procedures for coordination of Federal activities, for circulation among State agencies. This notice shall also be submitted to Federal agencies, the heads of county boards, other local government units and Tribal Chairmen or Alaska Native Leaders that have requested such notices or that the responsible line manager has reason to believe would be concerned with the plan or amendment. These notices shall be issued simultaneously with the public notices required under § 1610.2(b) of this title.

(f) Federal agencies, State and local governments and Indian tribes shall have the time period prescribed under § 1610.2 of this title for review and comment on resource management plan proposals. Should they notify the Field Manager, in writing, of what they believe to be specific inconsistencies between the Bureau of Land Management resource management plan and their officially approved and adopted resources related plans, the resource management plan documentation shall show how those inconsistencies were addressed and, if possible, resolved.

43 CFR § 1610.3-2 - Consistency requirements.

(a) Guidance and resource management plans and amendments to management framework plans shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein, of other Federal agencies, State and local governments and Indian tribes, so long as the guidance and resource management plans are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands, including Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise, and other pollution standards or implementation plans.

(b) In the absence of officially approved or adopted resource-related plans of other

Federal agencies, State and local governments and Indian tribes, guidance and resource management plans shall, to the maximum extent practical, be consistent with officially approved and adopted resource related policies and programs of other Federal agencies, State and local governments and Indian tribes. Such consistency will be accomplished so long as the guidance and resource management plans are consistent with the policies, programs and provisions of Federal laws and regulations applicable to public lands, including, but not limited to, Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise and other pollution standards or implementation plans.

(c) State Directors and Field Managers shall, to the extent practicable, keep apprised of State and local governmental and Indian tribal policies, plans, and programs, but they shall not be accountable for ensuring consistency if they have not been notified, in writing, by State and local governments or Indian tribes of an apparent inconsistency.

(d) Where State and local government policies, plans, and programs differ, those of the higher authority will normally be followed.

(e) Prior to the approval of a proposed resource management plan, or amendment to a management framework plan or resource management plan, the State Director shall submit to the Governor of the State(s) involved, the proposed plan or amendment and shall identify any known inconsistencies with State or local plans, policies or programs. The Governor(s) shall have 60 days in which to identify inconsistencies and provide recommendations in writing to the State Director. If the Governor(s) does not respond within the 60-day period, the plan or amendment shall be presumed to be consistent. If the written recommendation(s) of the Governor(s) recommend changes in the proposed plan or amendment which were not raised during the public participation process on that plan or amendment, the State Director shall provide the public with an opportunity to comment on the recommendation(s). If the State Director does not accept the recommendations of the Governor(s), The State Director shall notify the Governor(s) and the Governor(s) shall have 30 days in which to submit a written appeal to the Director of the Bureau of Land Management. The Director shall accept the recommendations of the Governor(s) if he/she determines that they provide for a reasonable balance between the national interest and the State's interest. The Director shall communicate to the Governor(s) in writing and publish in the Federal Register the reasons for his/her determination to accept or reject such Governor's recommendations.

National Forest Management Act (NFMA)

16 U.S.C. Chapter 36, Subchapter I – Planning
§ 1604 - National Forest System land and resource management plans

(a) Development, maintenance, and revision by Secretary of Agriculture as part of

program; coordination
As a part of the Program provided for by section 1602 of this title, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies.

U.S. Forest Service Regulations

36 CFR § 219.4 - Requirements for public participation

(b) *Coordination with other public planning efforts.*
(1) The responsible official shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments.
(2) For plan development or revision, the responsible official shall review the planning and land use policies of federally recognized Indian Tribes (43 U.S.C. 1712(b)), Alaska Native Corporations, other Federal agencies, and State and local governments, where relevant to the plan area. The results of this review shall be displayed in the environmental impact statement (EIS) for the plan (40 CFR 1502.16(c), 1506.2). The review shall include consideration of:
(i) The objectives of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments, as expressed in their plans and policies;
(ii) The compatibility and interrelated impacts of these plans and policies;
(iii) Opportunities for the plan to
address the impacts identified or contribute to joint objectives; and
(iv) Opportunities to resolve or reduce conflicts, within the context of developing the plan's desired conditions or objectives.
(3) Nothing in this section should be read to indicate that the responsible official will seek to direct or control management of lands outside of the plan area, nor will the responsible official conform management to meet non- Forest Service objectives or policies.

36 CFR § 212.53 - Coordination with Federal, State, county, and other local governmental entities and tribal governments.

The responsible official shall coordinate with appropriate Federal, State, county, and other local governmental entities and tribal governments when designating National Forest System roads, National Forest System trails, and areas on National Forest System lands pursuant to this subpart.

Department of Interior Regulations

43 CFR § 46.155 - Consultation, coordination, and cooperation with other agencies.

The Responsible Official must whenever possible consult, coordinate, and cooperate with relevant State, local, and tribal governments and other bureaus and Federal agencies concerning the environmental effects of any Federal action within the jurisdictions or related to the interests of these entities.

Council on Environmental Quality Regulations

40 CFR § 1506.2 - Elimination of duplication with State and local procedures.

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.
(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:
(1) Joint planning processes.
(2) Joint environmental research and studies.
(3) Joint public hearings (except where otherwise provided by statute).
(4) Joint environmental assessments.
(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.
(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

[1] 43 U.S.C. §1701 *et seq.* (FLPMA); 16 U.S.C. §1600 *et seq.* (NFMA)
[2]
[3] Bureau of Land Management Land Use Planning Handbook , H-1601-1, (2005) p. 1. (Henceforth BLM LUP Handbook)
[4]42 U.S.C. 4321 *et seq.* (NEPA)
[5] Coordination opportunities may be available with state governments for management of state lands. However, this issue is not addressed in this report, as coordination opportunities will differ depending on each state's statute.
[6] "Requirement" in this instance does not mean that there is a legally binding obligation on the federal agency to follow the plan, but to express what management actions the county (or other local government) requires on public land in order to satisfy its statutory duties.
[7] See endnote 1
[8] 43 CFR § 1601.0-5(h) (BLM)
[9] *A Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners* (BLM, 2012), p. 23. (Henceforth *BLM Desk Guide*)

[10]**Federal statute and regulations require BLM to coordinate with local governments' officially adopted policies and programs as well as plans.**

> "In the development and revision of land use plans, the Secretary shall […] 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 […] local governments within which the lands are located." 43 U.S.C. § 1712 Sec. 202 (c)(9), emphasis added. (FLPMA)
>
> "*Consistent* means that the Bureau of Land Management plans will adhere to the terms, conditions, and decisions of officially approved and adopted resource related plans, or in their absence, with policies and programs subject to the qualifications in § 1615 of this title." 43 CFR § 1601.0-5(c) (BLM)
>
> "*Officially approved and adopted resource related plans* means plans, policies, programs and processes prepared and approved pursuant to and in accordance with authorization provided by […] local constitutions, legislation, or charters which have the force and effect of State law." 43 CFR § 1601.0-5(g) (BLM)

Federal statute and regulations require Forest Service to coordinate with local governments' officially adopted policies as well as plans:

> "[T]he Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management *planning processes* of State and local governments and other Federal agencies." 16 U.S.C. § 1604(a), emphasis added. (NFMA)

> "The responsible official shall coordinate land management planning with the equivalent and related *planning efforts* of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments." 36 CFR § 219.4(b)(1), emphasis added. (USFS)

(Note that the terms "planning processes" and "planning efforts" above are quite general, and may be applied to local planning policies and programs, as well as to local land use plans.)

[11] **Local governments may coordinate with the BLM on management activities, not just in the developing, revising, and amending of land use plans:**

> "In the development and revision of land use plans, the Secretary shall […] 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 […] local governments within which the lands are located." 43 U.S.C. Chapter 35 §1712(c)(9), emphasis added. (FLPMA)

> "The defendants suggest that this statute requires coordination only when revising land use plans or amending or developing resource management plans. As the Decision does not concern a land use plan, and is not a formal amendment to an existing RMP, the defendants contend that they were under no obligation to consult with the Tribe. However, FLPMA's coordination and consistency review requirements apply 'when the Secretary is making decisions directly affecting the actual management of the public lands,' whether formally characterized as 'resource management plan' activity or not. *State of Utah v. Babbitt*, 137 F.3d at 1208." *Uintah County v. Gale Norton*, Civil No. 2:00-cv-0482J, emphasis added.

> "The Responsible Official must whenever possible consult, *coordinate*, and cooperate with relevant State, local, and tribal governments and other bureaus and Federal agencies concerning the environmental effects *of any Federal action within the jurisdictions or related to the interests of these entities*." 43 CFR §46.155, emphasis added. (DOI)

[12] **Forest Service statute and regulations provide for coordination on the development, revision, and amendment of land management planning, resource management planning, and travel management planning.**

> "[T]he Secretary of Agriculture shall develop, maintain, and, as appropriate, revise *land* and *resource* management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies." 16 U.S.C. § 1604(a), emphasis added (NFMA)

"The responsible official shall coordinate with appropriate Federal, State, county, and other local governmental entities and tribal governments when designating National Forest System roads, National Forest System trails, and areas on National Forest System lands pursuant to this subpart." 36 CFR § 212.53 (USFS)

[13]BLM LUP Handbook, p. 6

[14] 43 U.S.C. §1712 Sec. 202 (c)(9) (FLPMA)

[15] 16 U.S.C. §1604(a) (NFMA)

[16]"In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands." 43 U.S.C. § 1712(c)(9) (FLPMA)

[17] If a BLM plan or action is inconsistent with a local plan, the burden is on the BLM to demonstrate that achieving consistency with the local plan would have resulted in the BLM's violating federal law. That said, the BLM only has a responsibility to make such an explanation when a BLM decision is being administratively or legally appealed. It is important to note that a legal determination as to whether the BLM complied with this responsibility is based on the BLM's written record. It is therefore important for coordinating governments to provide the BLM with their concerns in writing so as to build an administrative record documenting each of their interactions with the agency.

[18] 43 CFR § 1601.0-5(g) (BLM)

[19] 40 CFR § 1506.2(d) (CEQ)

[20] "[P]lans are not required to be consistent with State forest assessments or strategies or plans of State and local governments under the final rule. The Forest Service must develop its own assessment and plans related to the conditions of the specific planning unit and make decisions based on Federal laws and considerations that may be broader than the State or local plans. Requiring land management plans to be consistent with local government plans would not allow the flexibility needed to address the diverse management needs on NFS lands and could hamper the Agency's ability to address regional and national interests on Federal lands. In the event of conflict with Agency planning objectives, consideration of alternatives for resolution within the context of achieving NFS goals or objectives for the unit would be explored." 36 CFR § 219 National Forest System Land Management Planning; Response to Comments; Final Rule and Record of Decision; 77 Federal Register 68 (April 9, 2012), p. 21197.

[21] "Although some provisions in the Federal Land Policy and Management Act (FLPMA) apply to National Forest System lands, none require the Forest Service to coordinate with counties. The coordination requirement in FLPMA (43 U.S.C. 1721(c)(9)) applies to the Secretary of the Interior, not the Forest Service." Letter from Secretary of Agriculture Tom Vilsack to Rep. Wally Herger, January 27, 2012.

[22] "The statute (NFMA) does not specify which actions are required to coordinate Forest Service planning with local government planning." *Ibid.*

[23] See endnote 10
[24] See endnote 16
[25] 36 CFR § 219.4(b) (Forest Service)
[26] "In the event of conflict with Agency planning objectives, consideration of alternatives for resolution within the context of achieving NFS goals or objectives for the unit would be explored." 36 CFR § 219 National Forest System Land Management Planning; Response to Comments; Final Rule and Record of Decision; 77 Federal Register 68 (April 9, 2012), p. 21197.
[27]This section was compiled using information from the American Stewards of Liberty document *How it Works*.
[28] In fact, BLM regulations specifically state that the BLM is not accountable for assuring consistency through coordination unless they are notified by the local government:

> "State Directors and Field Managers shall, to the extent practicable, keep apprised of State and local governmental and Indian tribal policies, plans, and programs, but they shall not be accountable for ensuring consistency if they have not been notified, in writing, by State and local governments or Indian tribes of an apparent inconsistency." 43 CFR §1610.3-2(c) (BLM)

[29] Contact Theodora Dowling at PLC: (202) 347-0228; tdowling@beef.org
[30] For more information on being a cooperating agency, see the PLC report *A Beginner's Guide to Cooperating Agency Status*.
[31] *BLM Desk Guide*, p. 32
[32] See endnote 17
[33] See endnote 23
[34] See endnote 18

This report was researched and compiled by Andrea Rieber
at the request of the Public Lands Council.

It is for informational purposes only,
and is not a substitute for professional legal advice.