

**Natural Resource Coordinating Committee; Friday, September 15, 2010 – 3:00 p.m.**

*Room 154, Board of Commissioner's Conference Room*

Attending: Commissioner Dwight Ellis, Geoff Garcia, Paul Torrence, Lawrence Ford, Shane Jimerfield, Dan Delany, Don Eaton, Brian Mein, Linda Langford, Recorder. Absent: Joel King, Jack Swift

**I. Call to Order**

Dwight Ellis called the meeting to order at 3:00 p.m.

**II. Presentation by Commissioner Ellis**

Dwight Ellis reviewed The Coordination Process, attached as exhibit "A". He explained how Josephine County's plan will establish natural resource priorities in Josephine County. Dwight said that once our plan is in place the County will notify all federal and state agencies. He discussed the counties who already have a plan, and those working on plans that this Committee may reference. He said this includes Modoc, Del Norte, Siskiyou, Baker, and Jackson County who are just beginning their process. Dwight explained that by having a plan in place it will allow Josephine County to sit at the table with federal and state agencies to discuss issues that we think may harm our county. These agencies are to listen and possibly make adjustments to their plan, and local counties are to be meaningfully informed. He explained that special interests in some counties could be mining, logging, grazing, etc. Establishing a plan in Josephine County will give the county standing to participate in judicial proceedings posing federal planning actions.

Dwight reviewed documents that he included with the advisory committee binders including a contact list for experts like Sean Curtis. He said that Sean could advise when this group begins their process. He suggested contacting Sean first. Dwight also included, for reference, completed plans from Modoc County and a county in Idaho.

In summary, he said his hope is that this Committee will write a Natural Resource Plan for Josephine County to be adopted by the Board of County Commissioners and used as a basis for coordinating and cooperating with Forest Service, BLM and other federal and state agencies with plans affecting our County. He said the Committee will end when plan is completed. Dwight said he took advice from other counties to keep membership to about nine or ten with specific areas of expertise; he also discussed options for meeting times and locations.

**III. Election of Officers**

Dwight explained that they need to elect a Chair and a Vice-Chair. They would only need to elect a secretary if they decide to meet in the evenings when the BCC staff is not available. He said that he will remain liaison to this Committee.

Brian Mein volunteered to serve as Vice Chair, seconded by Don Eaton. Approved by majority vote.

Brian Mein made a motion to nominate Joel King as Chair, motion seconded by Don Eaton. Motion carried by majority vote.

**IV. New Business**

Brian Mein asked if the group can use established plans as a guideline. Dwight said yes, though not all areas will pertain to Josephine County or the State of Oregon. He added that Oregon laws may vary. Brian asked if grazing or agricultural maps were available. Geoff Garcia said he may be able to provide maps. Brian asked how the Committee's plan would be adopted. Dwight explained that the Committee Chair would present the plan to the BCC. The BCC may adopt parts of the plan or all of it. He said that

if it turns out to be a large plan, it can be presented to the BCC in sections, though the BCC would prefer the entire document at one time.

Dwight said that County Planning staff can be called to check if the Land Use Code is a consideration. Scott Conroy from USDA, and Mary Smeltzer from BLM are willing to consult or come to a meeting. He said the group can meet as often as they like, but probably once a month. He said they can create sub-groups to work on specific items. Sub-groups would need to stay under five members or they would have a quorum and that meeting would require a public notice. Brian Mein said the first few meetings will probably be spent figuring out where to start. Dwight then asked each member to introduce themselves and provide a little background of their work experience.

VI. Next Meeting

Next Meeting is Wednesday, October 6th at 3 p.m. in room 157 of the Courthouse.

*Attachments: Exhibit A*

Meeting adjourned at ~~4~~ 4:15 p.m

  
Linda Langford

Reviewed by the Board of Commissioners this 8<sup>th</sup> day of October, 2010

Josephine County Board of Commissioners

  
Dwight F. Ellis Chair

  
S. Cassanelli, Vice Chair

  
Dave Toler, Commissioner

# The Coordination Process

Local government has the responsibility to protect the local tax base, to preserve the value of private property, to promote local economic stability, and in general, ensure the well-being of the school system and of local communities. Counties in western states often contain huge tracts of federal land, as well as significant state lands, so these critical local government functions are closely entangled with federal and state land management decisions.

Federal land management policies and actions usually directly, and often profoundly, impact adjoining and co-mingled lands, as well as civil liberties, local cultures and economies. Federal policies and projects also impact and endanger rights of private landowners - those rights, for instance, inherent to control and use of the land, claims to water rights, and to access rights-of-way and grazing allotments.

Congress has long recognized the importance of local authorities to the management of the nation's resources and to the actions of resource management agencies. It has provided for the involvement of local authority in every federal land use statute passed over the past 35 years. Every major federal statute relating to management of land, resources, and the environment contains Congress' mandate that the federal land use agencies "coordinate" their policies and management activities with any local government that is engaged in land use planning.

This applies to federal agencies which operate under and implement the National Forest Management Act, the Endangered Species Act, the Clean Water Act, the Clean Air Act, the Wild and Scenic Rivers Act, the National Preservation Act, the Federal Power Act, Soil Conservation district statutes, and the National Environmental Policy Act, to name just a few.

In agency vernacular, coordination is commonly used and an understood obligation amongst federal government entities; but until Fred Kelly Grant, President and Chief Counsel of Stewards of the Range ([www.stewards.us/](http://www.stewards.us/)), recognized that it applied to states, tribes and local units of government, it had never been utilized to its fullest extent.

The foundation for coordination is found in the Federal Land Policy Management Act (FLPMA). Section 1712 of Title 43 of the United States Code requires the Bureau of Land Management (BLM) to coordinate its "land use inventory, planning, and management activities of (federal) lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments..." which are engaged in land use planning for the federal lands managed by the federal agencies.

The agencies are required to give the local government full disclosure of any studies they may be pursuing, any plans for studies or actions they may be considering, and notice of all management activities the agencies are taking that may affect the local government's jurisdiction. The coordination process requires other criteria, including the requirement that agencies make their policies and management activities consistent with local plans.

Congress directed the federal agencies coordinate with local government so that local authority is consulted and meaningfully involved in the decision making process. The process establishes a government-to-government relationship, wherein coordination is conducted above and before the public input process, such as any consultation with or input from public advocacy groups.

Equally important to prior notice, federal agencies are required to make every practicable effort to make the federal and local positions consistent. If consistency and agreement cannot be achieved locally, the issue of consistency goes to the federal department head, such as the Secretary of Interior. The Secretary is directed by Congress to make the agency's plans and activities consistent with local planning and policies to the extent permitted by federal statutory and case law.

Coordinated planning ensures federal agencies keep informed of local planning, policies, and activities, and eliminates duplicated efforts among various levels of government. Prior notice of planning and management actions gives local government the opportunity to make its analysis, to make its recommendations, and then monitor the consistency of federal action to the local plan throughout the process. When a local government notifies the federal agencies that they expect to be coordinated with, the burden to comply is on the agency.

Federal statutes do not limit mandatory coordination only to county government, but extend it to "local government" entities. How local government is defined is a function of state statute or code. Usually local government is a separate tax raising unit of government; often its officials are elected. Oregon code (ORS 174.116) says local 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."

The ideal is for a county's Board of Commissioners (BOC) or Supervisors to assert their coordination authority. Whether or not a county board chooses to coordinate, other local government entities (such as a county's Natural Resources Advisory Committee or Soil and Water Conservation District, or any city, school district, irrigation district, fire district, and so forth) can and should pursue coordinate status to best protect its own special interests, and those of its constituents.

A written land use management plan is not required by federal statute. However, to gain maximum impact from coordination status, a local government must develop and adopt a local land use and management plan, which defines the natural resource priorities in terms of the economic, social, and political customs and culture of the community. In those areas in which logging is critical to the economy, priorities must be set with the economic backbone centralized. All local industries and uses that make up the economic strength of the community should be prioritized with regard to their dependence upon and impact upon the natural resources and environment. Each area's plan should be written specific to the area, taking into account the adverse impact on the economy if federal agencies restrict and reduce natural resource use. An existing plan from another area can be used as an example of format and of methods of establishing priorities, but each area must develop its own plan, specific to the area and its citizen's needs.

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Once the local plan is adopted the governing body must advise the Federal and State agencies (many states have coordination requirements) that the local government is involved in land use planning within the terms of the federal statutes and regulations relating to federal-local coordination. The advisory letter should invite the agencies to send personnel by a certain date to meet with the governing body to discuss the procedure through which coordination will be implemented. That procedure should be decided upon and reduced to a written agreement in order to avoid future disputes as to how and where coordination took place. The procedure should set forth all the elements of coordination set forth in FLPMA: advance notice, opportunity for early comment and persuasion, and consistency review.

Additionally, a local land use plan provides standing to the county to participate in judicial proceedings opposing federal planning actions. This "standing" concept for counties with land use plans has been reiterated in many court cases. It is a concept which brings substantive value to the property owners of counties which adopt land use plans. That planning process provides a means to slow up, and perhaps halt, federal abuses of authority.

However, lawsuits are rarely necessary; both the Secretaries of Interior and Agriculture, and the U.S. Justice Department, understand the clear Congressional coordination mandate, and have so advised local agency personnel as needed.

Following are some of the federal statutes requiring coordination:

- 16 U.S.C. 1604, the National Forest Management Act (NFMA)**  
**(Directs the United States Forest Service)**
- 42 U.S.C. 4331, the National Environmental Policy Act (NEPA)**  
**(Directs Federal plans, functions, programs and resources)**
- 16 U.S.C. 797, the Federal Power Act (FPA)**  
**(Directs the Federal Energy Regulatory Commission)**
- 16 U.S.C. 1533, the Endangered Species Act (ESA)**  
**(Directs the United States Fish and Wildlife Service)**
- 16 U.S.C. 1271, the Wild and Scenic River Act (W&SRA)**  
**(Directs the National Park Service)**
- 42 U.S.C. 7401, the Clean Air Act (CAA)**  
**(Directs the Environmental Protection Agency)**
- 33 U.S. C. 1251, the Clean Water Act (CWA)**  
**(Directs the Environmental Protection Agency)**
- 16 U.S.C. 2003, the Soil and Water Resources Conservation Act (SWRCA)**  
**(Directs the Soil and Water Conservation Service)**
- 16 U.S.C. 1382, the Marine Mammal Protection Act (MMPA)**  
**(Directs the National Oceanographic and Atmospheric Administration)**
- 16 U.S.C. 1431, the Marine Protection, Research, and Sanctuaries Act (MPRS)**  
**(Directs the National Oceanographic and Atmospheric Administration)**
- 16 U.S.C. 1451, the Coastal Zone Management Act (CZMA)**  
**(Directs the National Oceanographic and Atmospheric Administration)**
- 16 U.S.C. 1801, the Fishery Conservation and Management Act (FCMA)**  
**(Directs the National Oceanographic and Atmospheric Administration)**

There have been three federal lawsuits filed for an agency's failure to coordinate (the government lost all three).

1. Greenpeace v. EPA, 2000 WL 1000000, Civil No. 2:00-CV-0482J.
2. Greenpeace v. EPA, 543 F. Supp. 789; 1982 U.S. Dist.
3. Greenpeace v. EPA, 93-0168-E-HLR.

FLPMA itself may not be involved in the land management issues you face, but other federal statutes have like requirements. For example, the Secretary of Interior must give local government advance notice of any listing decision that he intends to make, and he must take into account any local plan relating to species before he makes a listing decision. These duties put local government at the table with U.S. Fish and Wildlife. The Clean Water Act also requires that consideration be given to local plans as to water quality, so this requirement puts participating local governments at the table with EPA and the state environmental quality agencies. Practically speaking, because of the close interaction among the federal agencies, once you get one agency to the county's table, you should learn much about all the agencies' activities and plans.

Development of a group of citizens who are interested enough to work tirelessly on development of a local plan and persuasion of county commissioners is the first step to achieve coordinate status. It is highly recommended that representatives of the industries of the area, Tribal representatives (if possible), business people, school board or district representatives, water users, and fire department and health district personnel be invited to participate in this advisory group. The broader the group, the more inclusive will be your plan, and the more persuasive will be the presentation to the governing board for adoption.

Local governments that have implemented "coordination" status with federal management agencies are successfully fighting erosion of private property rights in their communities. In the world of coordination, Owyhee County, Idaho and Modoc County, California (both of which have been using coordinate status to protect their citizens for more than ten years) can offer a long list of success stories about situations in which local government has brought state and federal agencies to the table for solutions which are not harmful to ranchers, farmers and water users. At last count, 70 local governments are engaged in the coordination process.

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