

Coordination/Cooperating Agency / Joint Lead Agency

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There continues to be confusion between the various ways that local government can participate with federal government in natural resource planning. This white paper attempts to offer a very short definition of each with what rights and obligations each offers.

Coordination

Some of the statutes that require coordination:

40 CFR1506.2

(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.

(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.

36 CFR 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 government and other Federal agencies.

Fred Kelly Grant makes several key points explaining coordination in a memo of 5-21-08.

“If a county advises the Forest Service, Fish and Wildlife Service, EPA, state agencies serving as designees of EPA, BLM, Corps of Engineers, Dept of Agriculture, NRCS, and other federal agencies which work together with BLM and Forest Service on projects that it is exercising its coordinate authority under the National Forest Management Act and the Federal Land Policy Management Act, and the National Environmental Policy Act, the coordination link is established.”

“Many believe that coordination is a complicated procedure, but it is not. It is brought into being by local government simply advising the federal agencies that it is exercising the legal authority already given to it by Congress.”

“keep in mind that coordination authority includes more authority than simply being involved in general planning. The coordination authority includes management actions that are put into place to implement plans, and it includes development of rules and regulations and permit decisions and other decisions that the agency makes which effects the jurisdiction of the local government as to tax base and protection of the rights of its citizens including property.”

More recently Fred Kelly Grant states: coordination provides the real muscle for the county through the CONSISTANCY requirement.

For coordination to be most effective several steps need to occur (there is no special order these need to be accomplished):

1. The citizens of the local government must convince the local government to participate
2. The local government must notify the federal/state that they want to be involved when actions are contemplated in their county.
3. The local government should tell the federal/state agency about the county: the county’s culture, customs, economy (tax base)
 - a. This is usually done by development of a local “land use plan” that defines and explains those attributes of the county.

When a county or local government has a local land use plan that defines the local custom, culture and economic stability including the tax base then a federal agency must be consistent with that plan or explain why it is illegal for them not to be consistent. This process takes a significant commitment of the local government to develop and adopt the plan and then to stay engaged with both the community and the federal agency for it to be most effective.

Wallowa County has been participating in coordination for many years:

1. In 1993 published the Wallowa County Nez Perce Tribe Salmon Habitat Recovery Plan; this plan was updated and expanded to a multi-species habitat Plan in 1999.
2. In 1996 The Wallowa County Court (now Board of Commissioners) created the Wallowa County Natural Resource Advisory Committee.
3. In 1994 The Board of Commissioners signed an MOU with the United States Forest Service (USFS) that defined how the County and the USFS would communicate. This MOU was the notification necessary for coordination to be an ongoing process in the county.

Cooperating Agency Status

40 CFR 1508.5 - Cooperating agency.

Cooperating agency means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in 1501.6.

40 CFR 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

Tom McDonnell wrote as part of the book, Strengthening a Nation From Within,

“Since January 2002, the Council of Environmental Quality has placed renewed emphasis on ensuring the all federal agencies are actively seeking non-federal cooperating agencies in the analysis, preparation and documentation required under the National Environmental Policy Act. There are many advantages to county involvement as a cooperating agency. First, the county now has a voice in determining the scope of the NEPA document before the process begins. The county also has a voice at the table in determining where scoping hearings will be held, determining the issues and affected resources, developing the alternatives and mitigation measures, and analyzing the environmental consequences of the proposed action and its alternatives. The county still does not have a say in the final decision. The county does have a say in how that decision is reasoned and the mitigation measures that might offset possible impacts to the human environment within the county.”

Acting as a cooperating agency does require further commitment of personnel and financial resources by the county. An individual may have to be committed full time to the project, there may be studies, surveys, and data gathering that has to be conducted, there may be travel expenses occurred

CEQ does recognizes the burdens that the responsibilities of being a cooperating agency may have on county resources, and requires the federal (or lead) agency to “fund or include in budget requests funding for an analysis the lead agency requests from cooperating agencies.” Federal agencies are also required to look for alternatives to travel, such as telephonic or video conferencing when funding constrains participation. Facility, service or equipment support from the federal agency is also allowed.

Wallowa County has been participating in cooperating agency status for the first time with the USFS Travel Management Planning process ongoing these past two years. They are part of the multi-county Cooperating Agency status MOU.

Joint Lead Agency Status (also as co-lead)

40 CFR 1506.2 (b) - Elimination of duplication with State and local procedures.

(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.

Tom McDonnell wrote as part of the book, Strengthening a Nation From Within,

“The third level at which a county may participate in NEPA is as a joint lead agency. At this level of participation, the county not only has a voice in determining the scope, alternatives and analysis of a proposed action, but has a say in the final decision and mitigation measures made by a federal agency. The key to county involvement as a joint lead agency is the existence of “local ordinances [that] have environmental impact statement requirements.”

For county involvement in the NEPA process a thorough knowledge of the NEPA process itself is necessary.

“Technically, unless the local government applies for a Lead Agency Status they cannot be joint partners with the agency. Most local governments cannot afford the huge costs associated with federal planning, especially the research necessary for writing Environmental Impact Statements.”

Wallowa County has never utilized this tool.

Citations:

Strengthening a Nation from Within, bringing people together. 2003. Dave Winckler & John Williams. Washington Farm Bureau and LEARN (Local Environmental and Resource Network.)

Coordination and Cooperating Agency Status Fred Kelly Grant, President, Stewards of the Range. May 21, 2008.