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 health and welfare, economically and socially, 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 the civil liberties, local cultures and economies of residents living adjacent to, or within, these government land counties. 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, Counsel and Lead Negotiator for Trademark America (www.trademarkamerica.org), 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 it's "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 to the extent practicable.

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 own analysis, to make recommendations that will protect their local economy, the social cohesiveness, and health and welfare of its constituents, 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 the coordination mandate 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) states, in part, that 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." Please read ORS 174.116 for a complete list of "local government" entities. "Local Service Districts" includes such entities as domestic water supply districts, library districts, rural fire protection districts, irrigation districts, and soil and water conservation districts, to name just a very few.

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 an area where logging is critical to the economy, for instance, priorities must be set with that 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 or access to public lands. 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.

Once the local plan is adopted the governing body must advise the Federal and State agencies (many states also mandate coordination with local government) 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 then reduced to a written agreement in order to avoid future disputes as to how and where coordination took place. The procedure should specify 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.

Lawsuits are rarely necessary, however; 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), 1976
(Directs the United States Forest Service)

42 U.S.C. 4331, the National Environmental Policy Act (NEPA), 1970
(Directs Federal plans, functions, programs and resources)

16 U.S.C. 1533, the Endangered Species Act (ESA), 1973
(Directs the United States Fish and Wildlife Service)

16 U.S.C. 1271, the Wild and Scenic River Act (W&SRA), 1968
(Directs the National Park Service)

PL 88-29 (77 Stat. 49), the Recreation Coordination and Development Act, 1963
(Directs the National Park Service)

42 U.S.C. 7401, the Clean Air Act (CAA), 1970
(Directs the Environmental Protection Agency)

43 U.S. C. 1711, the Federal Land Policy Management Act, 1976
(Directs the Bureau of Land Management)

33 U.S. C. 1251, the Clean Water Act (CWA), 1972
(Directs the Environmental Protection Agency)

16 U.S.C. 2003, the Soil and Water Resources Conservation Act (SWRCA), 1977
(Directs the Soil and Water Conservation Service)

16 U.S.C. 1382, the Marine Mammal Protection Act (MMPA), 1972
(Directs the National Oceanographic and Atmospheric Administration)

16 U.S.C. 1431, the Marine Protection, Research, and Sanctuaries Act (MPRS), 1972
(Directs the National Oceanographic and Atmospheric Administration)

16 U.S.C. 1451, the Coastal Zone Management Act (CZMA), 1972
(Directs the National Oceanographic and Atmospheric Administration)

16 U.S.C. 1801, the Fishery Conservation and Management Act (FCMA), 1976
(Directs the National Oceanographic and Atmospheric Administration)

These Acts of Congress define the land management tasks Congress relegates to the federal resource agencies. These acts do not all contain the exact same coordination language. But the laws of legislative construction state that unless Congress specifies otherwise, all laws of a similar subject, such as resource management, must be considered in *pari materia,* as they have a common purpose. And the U.S. Supreme Court ruled in 2007 that the ESA *does not "trump"* acts such as the Clean Water Act.

There have been three federal lawsuits filed for an agency's failure to coordinate; the government lost all three:

1. **Uintah County v. Gale Norton**, Civil No. 2:00-CV-0482J (2001).

2. **American Motorcycle Association v. Watt**, 543 F. Supp. 789; 1982 U.S. Dist.

3. **ID Farm Bureau Federation v. Babbitt**, Civil No. 93-0168-E-HLR(1995).

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 (of threatened and/or endangered species under the ESA) 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 coordination 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, or city council, 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 eighteen 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.

But coordination's greatest victory to date lies in stopping the Trans Texas Corridor (http://www.stewards.us/strategies/frameset_i35victory.html), the largest segment of the proposed massive intermodal NAFTA Super Highway planned to run from Mexico to Canada, which would have devastated local communities along I-35, and demolished local property rights over nearly 60,000 acres of land.

At last count, 143 local governments are engaged in the coordination process.

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