

A Perspective on the Obligations for Coordination from Eureka County, NV

Congress has mandated time and time again that federal agencies coordinate their decision making with state and local governments. This mandate is repeated in the National Environmental Policy Act, the National Forest Management Act, the Federal Land Policy and Management Act, other Acts of Congress and in numerous rules and regulations. However, since federal agency personnel and state and local officials, elected and appointed, often do not know, understand, or apply what is required through this coordination obligation, there is a failure to reach consistency, confusion runs rampant, distrust abounds, and even hostility between federal agency staff and state and local government arises. We believe that federal agencies should enter to formal coordination protocols with state and local governments that include and describe in detail the process for coordination at every stage of the agency planning and decision processes especially regarding how to address inconsistencies with state and local land use plans, policies, and controls.

Although coordination encompasses “collaboration,” “consultation,” and “cooperation,” coordination by definition is *not* synonymous with these terms. Coordination by definition is “of the same order or degree; equal in rank or importance” (Merriam-Webster Dictionary). Therefore, coordination implies active participation of the state and local government at a level higher than afforded the general public. Only state and local governmental entities, elected by the people and accountable to it, are able to incorporate and legitimize the compromises necessary for sustainable management of the lands that communities are so dependent on. Regular, principled coordination is the only way to put to rest past conflicts and allay fears about community viability threats down the road in addition to reducing the need for appeal and judicial review of agency management decisions. In the end we believe that including and properly defining coordination will work now to build and strengthen the foundation for the long-term while making the necessary management decisions at the necessary scale—the local scale.

Effective coordination, at a minimum, should include the following as mandated by various laws and regulations:

- Early notification (prior to public notice) to the state and local government of all actions or plans of the federal agency that will affect the local population.
- Opportunity for meaningful input by the state and local government with substantial weight and meaning applied by the federal agency to the input.
- Federal agency is required to be apprised of the state and local government policies and plans.
- Federal agency must solicit state and local government interpretation of these policies and plans.
- Federal agency is required to adequately consider the state and local government policies or plans when working on federal agency policies, plans, or management actions.
- Federal agency is required through all practicable effort to make federal agency policies, plans, or actions consistent with the state and local government policies and plans.
- When inconsistencies arise, federal agency should meet with state and local governments in order to work towards consistency.
- When consistency cannot be reached, federal agency must specifically justify and explain in the document of analysis (i.e., EIS) why consistency could not be reached.

Statutory and Regulatory Criteria for Coordination

Items of particular note are emphasized in ***bold italic***.

Federal Land Policy and Management Act (FLPMA), 43 USC 1712(c)(9)

(c) 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.***

BLM Regulations Implementing Planning Under FLPMA

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.

(b) When developing or revising resource management plans, BLM State Directors and Field Managers will invite eligible Federal agencies, state and local governments, and federally recognized Indian tribes to participate as cooperating agencies. The same requirement applies when BLM amends resource management plans through an environmental impact statement. State Directors and Field Managers will consider any requests of other Federal agencies, state and local governments, and federally recognized Indian tribes for cooperating agency status. Field Managers who deny such requests will inform the State Director of the denial. The State Director will determine if the denial is appropriate.

(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.

FLPMA Summary:

43 U.S.C. 1712 requires that the Bureau of Land Management must coordinate its "land use inventory, planning and management actions" with any local government which has engaged in land use planning for the federal lands managed by the federal agencies.

Congress did not leave the definition of the word "coordination" to chance, or to the whim of the federal management agencies. Congress defined the word by specifying the duties and responsibilities of the BLM regarding local plans. The statute REQUIRES the following:

1. BLM must keep apprised of local land use plans;
2. BLM must assure consideration is given to the local plans when federal plans are being developed;
3. BLM must attempt to resolve inconsistencies between federal and state local plans;
4. BLM must provide "meaningful...involvement" of local government officials in the development and revision of plans, guidelines and regulations;
5. The Secretary must, finally, compare local and federal plans and make sure they are consistent "to the maximum extent"...consistent with federal law.

BLM regulations also set forth a very clear process by which the local government, which has developed a plan, is able to "coordinate" with the BLM and this process elevates the participation level of the local government to a point of "prior notice" and "meaningful" participation above and ahead of "public participation".

Note that the statute does not limit the mandatory coordination to "counties," but rather extends it to "local governments". That language includes any unit of local government, often identified as any separate tax-raising unit of government, i.e., school districts, road districts, fire districts, irrigation districts, and cities and towns.

So, in a county where county commissioners and supervisors refuse to develop a local plan for coordination status, any school board or other tax-raising unit of government can gain coordinate status for itself. The ideal goal for local government would be to develop a plan by which the county, towns within the county, school districts, irrigation districts, fire districts, could all participate in the same coordination activities.

Consistency review is particularly important because it is intended to highlight and work out a method to eventually find consistency with state and local government plans, policies, and controls. The Governor's consistency review is particularly powerful and allows local governments with concerns and inconsistencies to work with the Governor to elevate the issue, if necessary, to the Director of the BLM. The BLM Director **shall** accept the Governor's recommendations if they provide a reasonable balance between the national and State interest.

This process provides for an additional check on consistency not only with documented State or local plans, but also with "policies" or "programs" and can give a Governor an opportunity to influence the final RMP even after most other forms of public involvement are no longer available. When submitting recommendations, the Governor should focus on both the specific inconsistencies (with plans, policies or programs) and the manner in which the recommendations for changes to the plan or amendment strike a reasonable balance between the BLM/federal interest and the interests of the State. Of high importance is that the Governor is not limited to issues relating to State plans, policies or programs and can also raise issues pertaining to local or regional plans, policies or programs.

Case Law on FLPMA:

BLM has often argued that the coordination and consistency requirements are limited and only apply to development or amendments of Resource Management Plans. This is incorrect. See *Uintah County v. Gale Norton*, Civil No. 2:00-cv-0482J where "The defendants [BLM] suggest that this statute [FLPMA] 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." Further, in *State of Utah v. Babbitt*, 137 F. 3d at 1208, the court was clear that "the requirements [of 43 USC § 1712] apply... when the Secretary is making decisions directly **affecting the actual management of the public lands**" (emphasis added).

National Environmental Policy Act

42 USC Section 4331 - Congressional Declaration of National Environmental Policy

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is **the continuing policy of the Federal Government, in cooperation with State and local governments**, and other concerned public and private organizations, to **use all practicable means and measures**, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under

which man and nature can exist in productive harmony, and ***fulfill the social, economic, and other requirements of present and future generations*** of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to ***improve and coordinate Federal plans, functions, programs, and resources*** to the end that the Nation may —

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

42 USC Section 4332 – Cooperation of Agencies; Reports; Availability of Information; Recommendations; International and National Coordination of Efforts

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall —

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. ***Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available*** to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves ***unresolved conflicts concerning alternative uses of available resources***;

(G) ***make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment***;

NEPA Implementing Regulations, Council on Environmental Quality (CEQ), 40 CFR 1500

Section 1501.2 Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(a) Comply with the mandate of section 102(2)(A) to “utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment,” as specified by §1507.2.

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

Section 1501.7 Scoping.

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (§1508.22) in the Federal Register except as provided in §1507.3(e).

(a) As part of the scoping process the lead agency shall:

(1) **Invite the participation of affected** Federal, **State, and local agencies**, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under §1507.3(c). An agency may give notice in accordance with §1506.6.

Section 1502.16 Environmental consequences.

It shall include discussions of:

(c) **Possible conflicts between the proposed action and the objectives** of Federal, regional, **State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned.** (See §1506.2(d).)

(h) Means to mitigate adverse environmental impacts (if not fully covered under §1502.14(f)).

Section 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.

Question 23b of the CEQ FAQs clarifies that:

Conflicts with “Proposed plans should also be addressed if they have been formally proposed...in a written form, and are actively pursued by officials of the jurisdiction” and “The term “policies” includes **formally adopted statements** of land use policy as **embodied in laws** or regulations. It also includes proposals for action such as the initiation of a planning process, or a **formally adopted policy statement** of the local, regional or state executive branch, **even if it has not yet been formally adopted** by the local, regional or state legislative body.”

Question 23c of the CEQ FAQs clarifies that:

“In the Record of Decision, the decisionmaker must explain what the decision was, how it was made, and what mitigation measures are being imposed to lessen adverse environmental impacts of the proposal, among the other requirements of Section 1505.2. This provision would require the decisionmaker to explain any decision to override land use plans, policies or controls for the area.”

Section 1508.14 Human environment.

Human environment shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of “effects” (§1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared ***and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.***

Section 1508.20 Mitigation.

Mitigation includes:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

Section 1508.27 Significantly.

Significantly as used in NEPA requires considerations of both context and intensity:

(a) *Context*. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), ***the affected region, the affected interests, and the locality.*** Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) *Intensity*. This refers to the severity of impact. ***Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action.*** The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

16 U.S.C. 1604

States that “the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise...plans for units of the National Forest System, ***coordinated with the land and resource management planning processes of...local governments.***”

USFS Travel Management Rules 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.

USFS 2012 Planning Rule, 36 CFR 219, Requirements for public participation

(a) Providing opportunities for participation.

(1) Outreach. The responsible official ***shall engage*** the public - including Tribes and Alaska Native Corporations, other Federal agencies, ***State and local governments***, individuals, and public and private organizations or entities - early and throughout the planning process as required by this part, using collaborative processes where feasible and appropriate. In providing opportunities for engagement, the responsible official shall encourage participation by:

(iv) Federal agencies, ***States, counties, and local governments***, including State fish and wildlife agencies, State foresters and other relevant State agencies. Where appropriate, the responsible official ***shall encourage States, counties, and other local governments to seek cooperating agency status*** in the NEPA process for development, amendment, or revision of a plan. The responsible official may participate in planning efforts of

States, counties, local governments, and other Federal agencies, where practicable and appropriate.

(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 to contribute to joint objectives;** and
- (iv) **Opportunities to resolve or reduce conflicts, within the context of developing the plan's desired conditions or objectives.**

State of Nevada Examples for State and Local Cooperation and Federal Engagement

NRS Chapter 278 – Planning and Zoning

NRS 278.243 City or county authorized to represent own interests in certain matters if governing body has adopted master plan. ***A city or county whose governing body has adopted a master plan pursuant to NRS 278.220 may represent its own interests with respect to land and appurtenant resources that are located within the city or county and are affected by policies and activities involving the use of federal land.***

NRS 278.160 Elements of master plan.

1. Except as otherwise provided in this section and NRS 278.150 and 278.170, the master plan, with the accompanying charts, drawings, diagrams, schedules and reports, may include such of the following elements or portions thereof as are appropriate to the city, county or region, and as may be made the basis for the physical development thereof:

(a) A conservation element, which must include:

(1) A conservation plan for the conservation, ***development and utilization of natural resources***, including, without limitation, water and its hydraulic force, underground water, water supply, solar or wind energy, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals and other natural resources. The conservation plan must also cover the reclamation of land and waters, flood control, prevention and control of the pollution of streams and other waters, regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan, prevention, control and correction of the erosion of soils through proper clearing, grading and landscaping, beaches and shores, and protection of watersheds. The conservation plan must also indicate the maximum tolerable level of air pollution.

(d) A ***land use element, which must include:***

(1) Provisions concerning community design, including standards and principles governing the ***subdivision of land and suggestive patterns for community design and development.***

(2) A land use plan, including an ***inventory and classification of types of natural land and of existing land cover and uses, and comprehensive plans for the most desirable utilization of land.*** The land use plan:

(I) Must, if applicable, address mixed-use development, transit-oriented development, master-planned communities and gaming enterprise districts. The land use plan must also, if applicable, address the ***coordination and compatibility of land uses with any military installation*** in the city, county or region, taking into account the location, purpose and stated mission of the military installation.

(II) ***May include a provision concerning the acquisition and use of land that is under federal management within the city, county or region, including, without limitation, a plan or statement of policy prepared pursuant to NRS 321.7355.***

(e) A public facilities and services element, which must include:

(2) A population plan setting forth an ***estimate of the total population which the natural resources of the city, county or region will support on a continuing basis without unreasonable impairment.***

5) Provisions concerning public services and facilities showing general plans for sewage, drainage and utilities, and rights-of-way, easements and facilities therefor, including, without limitation, any utility projects required to be reported pursuant to NRS 278.145. If a public utility which provides electric service notifies the planning commission that a new transmission line or substation will be required to support the master plan, those facilities must be included in the master plan. The utility is not required to obtain an easement for any such transmission line as a prerequisite to the inclusion of the transmission line in the master plan.

(f) ***A recreation and open space element***, which must include a recreation plan showing a comprehensive system of recreation areas, including, without limitation, natural reservations, parks, parkways, trails, reserved riverbank strips, beaches, playgrounds and other recreation areas, including, when practicable, the locations and proposed development thereof.

2. The commission ***may prepare and adopt, as part of the master plan, other and additional plans and reports dealing with such other elements as may in its judgment*** relate to the physical development of the city, county or region, and nothing contained in NRS 278.010 to 278.630, inclusive, prohibits the preparation and adoption of any such element as a part of the master plan.

NRS 321 – Administration, Control, and Transfer of State Lands

State Land Use Planning Agency

NRS 321.700 Creation. In addition to any other functions assigned to it by law, the Division is hereby designated as the State Land Use Planning Agency for the purpose of carrying out the provisions of NRS 321.640 to 321.770, inclusive, and ***fulfilling any land use planning requirements arising under federal law.***

NRS 321.710 Administration; activities which have priority; personnel.

1. The Administrator shall administer the activities of the State Land Use Planning Agency. The Administrator has authority and responsibility for the development and distribution of information useful to land use planning.

2. The activities of the State Land Use Planning Agency which have priority are:

(a) Provision of technical assistance to a county or city in areas where such assistance is requested;

(b) ***Activities relating to federal lands in this State;*** and

(c) Investigation and review of proposals for designation of areas of critical environmental concern and the development of standards and plans therefor.

3. In addition to the assistant provided by subsection 3 of NRS 321.010 the Administrator may appoint, subject to the availability of money, such professional, technical, administrative, clerical and other persons as the Administrator may require for assistance in performing his or her land use planning duties.

NRS 321.720 Duties of Administrator concerning local governments.

1. The Administrator shall develop and ***make available to cities and counties information useful to land use planning***, including:

(a) Preparation and continuing revision of a statewide inventory of the land and natural resources of the State;

(b) Preparation and continuing revision of an inventory of state, local government and private needs and priorities concerning the acquisition and use of federal lands within the State;

(c) Preparation and continuing revision of an inventory of public and private institutional and financial resources available for land use planning and management within the State and of state and local programs and activities which have a land use impact of more than local concern;

(d) Provision, where appropriate, of technical assistance and training programs for state and local agency personnel concerned with the development and implementation of state and local land use programs;

(e) ***Coordination and exchange of land use planning information and data among state agencies and local governments, with the Federal Government, among the several states and interstate agencies, and with members of the public, including conducting of public hearings, preparation of reports and soliciting of comments on reports concerning information useful to land use planning;***

(f) Coordination of planning for state and local acquisition and use of federal lands within the State, except that in the case of a plan which utilizes both federal and private lands the governing body of the area where private lands are to be utilized has final authority to approve the proposal;

(g) ***Provision of assistance to counties to develop programs to increase the responsibility of local governments for the management of lands in the State of Nevada that are under federal management;*** and

(h) Consideration of, and consultation with, the relevant states on the interstate aspects of land use issues of more than local concern.

2. To the extent practicable, the Administrator shall:

(a) Compile any information developed pursuant to subsection 1; and

(b) Make the compilation available to cities and counties.

NRS 321.735 Powers and duties concerning federal lands; action by certain cities and counties not precluded.

1. The State Land Use Planning Agency may represent the interests of the State, its local or regional entities, or its citizens as these interests are affected by policies and activities involving the use of federal land.

2. The provisions of this section do not preclude a city or county whose governing body has adopted a master plan pursuant to NRS 278.220 from representing its own interests in accordance with NRS 278.243.

NRS 321.7355 Plan or statement of policy concerning lands under federal management.

1. ***The State Land Use Planning Agency shall prepare, in cooperation with appropriate federal and state agencies and local governments throughout the State, plans or statements of policy concerning the acquisition and use of lands in the State of Nevada that are under federal management.***

2. The State Land Use Planning Agency ***shall, in preparing the plans and statements of policy, identify lands which are suitable for acquisition*** for:

(a) Commercial, industrial or residential development;

(b) The expansion of the property tax base, including the potential for an increase in revenue by the lease and sale of those lands; or

(c) Accommodating increases in the population of this State.

The plans or statements of policy must not include matters concerning zoning or the division of land and must be ***consistent with local plans and regulations concerning the use of private property.***

3. The State Land Use Planning Agency shall:

(a) Encourage public comment upon the various matters treated in a proposed plan or statement of policy throughout its preparation and incorporate such comments into the proposed plan or statement of policy as are appropriate;

(b) Submit its work on a plan or statement of policy periodically for review and comment by the Land Use Planning Advisory Council and any committees of the Legislature or subcommittees of the Legislative Commission that deal with matters concerning the public lands; and

(c) Provide written responses to written comments received from a county or city upon the various matters treated in a proposed plan or statement of policy.

4. Whenever the State Land Use Planning Agency prepares plans or statements of policy pursuant to subsection 1 and submits those plans or policy statements to the Governor, Legislature or an agency of the Federal Government, the State Land Use Planning Agency shall include with each plan or statement of policy the comments and recommendations of:

(a) The Land Use Planning Advisory Council; and

(b) Any committees of the Legislature or subcommittees of the Legislative Commission that deal with matters concerning the public lands.

5. A plan or statement of policy must be approved by the governing bodies of the county and cities affected by it before it is put into effect.

Land Use Planning Advisory Council

NRS 321.740 Creation; appointment, number, terms and expenses of members.

1. The Land Use Planning Advisory Council, consisting of 17 voting members appointed by the Governor and 1 nonvoting member appointed by the Nevada Association of Counties, or its successor organization, is hereby created. The provisions of subsection 6 of NRS 232A.020 do not apply to members of the Advisory Council who also serve as county commissioners, and the Governor may appoint any such member of the Advisory Council to one other board, commission or similar body.

NRS 321.750 Duties. The Land Use Planning Advisory Council shall:

1. Advise the Administrator on the development and ***distribution to cities and counties of information useful to land use planning.***
2. ***Advise the State Land Use Planning Agency regarding the development of plans and statements of policy pursuant to subsection 1 of NRS 321.7355.***
3. Work cooperatively with the Attorney General and the Nevada Association of Counties as required pursuant to subsection 3 of NRS 405.204.

NRS 321.755 Executive Council.

1. The Executive Council of the Land Use Planning Advisory Council is hereby ***created to resolve inconsistencies between the land use plans of local government entities.***
2. The Executive Council consists of the Administrator and four persons selected by the Land Use Planning Advisory Council from among its members. To the extent practicable, the members selected to serve on the Executive Council must be representative of the various geographic areas of this State. Each member of the Executive Council shall serve for 2-year terms.

Resolution of Inconsistencies in Local Plans

NRS 321.761 Technical assistance; submission of matter to Executive Council.

1. If an inconsistency in land use plans develops between two or more adjacent or overlapping local government entities which cannot be resolved between them, one or more of them may request the State Land Use Planning Agency to study and assist in resolving the inconsistency.
2. Upon receipt of such a request the Administrator shall convene a meeting of all the affected entities and shall provide technical assistance and advice in resolving the inconsistency.

3. If, after subsequent meetings over a reasonable period of time as determined by the Administrator, the affected entities cannot resolve the inconsistency, the matter shall be submitted to the Executive Council of the Land Use Planning Advisory Council for a decision.

motion, may determine the expiration date of the plans and regulations imposed pursuant to this section.

NRS 277.182 through 277.188 - State and Local Government Cooperation Act

NRS 277.184 “Local government” defined. “Local government” means any county or city.

NRS 277.1855 “Plan” defined. “Plan” means:

1. In the case of a local government, a master plan adopted by the local government pursuant to NRS 278.160 or any part thereof.
2. In the case of a state agency, a plan adopted by the state agency that may affect a master plan, or any part thereof, adopted by the local government pursuant to NRS 278.160.

NRS 277.186 “State agency” defined. “State agency” means an agency, bureau, board, commission, department, division or any other unit of the Executive Department of State Government.

NRS 277.187 Purpose of Act; provision of information and **solicitation and consideration of comments when proposed plan or amendment may affect local governments** or state agencies; **consideration of alternatives if proposed plan or amendment is inconsistent or incompatible** with existing plan of affected local government or state agency.

1. It is the purpose of the State and Local Government Cooperation Act to **encourage communication, cooperation and coordinated working relationships** between state agencies and local governments.
2. To carry out the purposes set forth in subsection 1:

(a) If a state agency intends to adopt a plan or an amendment thereto, the state agency should, to the extent practicable:

(1) **Inform local governments** that may be affected of the state agency’s intent to adopt a plan or amendment thereto.

(2) **Solicit and consider comments** from local governments that may be affected by the plan or amendment thereto.

(3) If a local government informs the state agency that the proposed plan or amendment thereto will be inconsistent or incompatible with a plan of the local government, **consider whether the state agency can make the proposed plan or amendment consistent or compatible with the plan of the local government.**

(b) If a local government intends to adopt a plan or an amendment thereto, the local government should, to the extent practicable:

(1) **Inform state agencies** that may be affected of the local government's intent to adopt a plan or amendment thereto.

(2) **Solicit and consider comments** from state agencies that may be affected by the plan or amendment thereto.

(3) If a state agency informs the local government that the proposed plan or amendment thereto will be inconsistent or incompatible with a plan of the state agency, consider whether the local government can make the proposed plan or amendment consistent or compatible with the plan of the state agency.

NRS 277.188 Interpretation of Act must not limit power of state agency or local government to carry out statutory duties and responsibilities. Nothing in the State and Local Government Cooperation Act shall be interpreted to limit the power of a state agency or local government to carry out its statutory duties and responsibilities.

State Clearinghouse

<http://clearinghouse.nv.gov/site/index>

Contact:

Skip Canfield

nevadaclearinghouse@lands.nv.gov

Nevada Division of State Lands

901 S. Stewart St, Ste 5003

Carson City, NV 89701-5246

(775) 684-2723

Authorized by gubernatorial executive order in 1989, the State Clearinghouse, within the Department of Conservation and Natural Resources, Division of State Lands, exists to inform Executive Branch agencies of significant federal projects and policy initiatives that affect our state.

NEPA SPOC

The Nevada State Clearinghouse is the single point of contact (SPOC) for National Environmental Policy Act (NEPA) proposals statewide. Pursuant to NEPA, federal agencies must consult with the State and other agencies whenever a project or policy initiative is proposed on public lands. The Clearinghouse ensures that pertinent State agencies and other local governments are notified about the projects and then provides their comments back to the federal agencies to help facilitate the consultation process.

NRS 548 – Conservation and Conservation Districts

NRS 548.100 Legislative declaration: Consequences for failure to plan for conservation. It is hereby declared, as a matter of legislative determination, that ***the consequences of failing to plan for and accomplish the conservation and controlled development of the renewable resources of the State of Nevada are to handicap economic development and cause degeneration of environmental conditions important to future generations.***

NRS 548.105 Legislative declaration: Leadership by local communities; appropriations.

1. It is hereby declared, as a matter of legislative determination, that ***persons in local communities are best able to provide basic leadership and direction for the planning and accomplishment of the conservation and development of renewable natural resources through organization and operation of conservation districts.***

NRS 548.340 Conservation district is governmental subdivision; exercise of public powers. A conservation district organized under the provisions of this chapter shall constitute a governmental subdivision of this State and a public body corporate and politic, exercising public powers.

NRS 548.283 Appointment of supervisors to represent cities and counties; alternates.

3. ***The governing bodies of any counties located within the boundaries of the district shall each appoint a representative to represent the governing body as a supervisor on the governing board of the district.***

4. Each representative of a city or county shall designate an alternate to replace the representative in the representative's absence from meetings of the supervisors of the district. The representative shall send a written notice to the authority which appointed him or her containing the name and address of the person so designated. The notice must be sent in such a manner that it will be received before the date of the meeting which the alternate is to attend. An alternate has all of the duties, rights and privileges of the replaced representative.

NRS 548.113 Legislative declaration: Special expertise of conservation districts. It is hereby declared, as a matter of legislative determination, that ***conservation districts may be recognized as having special expertise regarding local conditions, conservation of renewable natural resources and the coordination of local programs which makes conservation districts uniquely suitable to serve as cooperating agencies for the purpose of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq., and any other federal laws regarding land management, and to provide local government coordination for the purposes of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701 et seq., and any other federal laws regarding land management.***

NRS 548.375 Comprehensive plans for conservation. In addition to other powers granted in this chapter, a district and the supervisors thereof shall have the power:

1. To ***develop comprehensive plans for the conservation of renewable natural resources within the district,*** which plans shall specify in such detail as may be possible the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in the use of land; and
2. To publish such plans and information and bring them to the attention of occupiers of lands within the district.