

COORDINATION PROTOCOL

For use by Bonner County and US Forest Service

RE: Proposed Forest Plan for the Idaho Panhandle National Forest

Submitted to USFS

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I. INTRODUCTION

At its September 23rd, 2014 Board of County Commissioner (BOCC) meeting the Board adopted Resolution No. 2014-71 establishing the County's policy and position with respect to the US Forest Service (USFS) proposed Forest Plan on the Idaho Panhandle National Forest located in Bonner and Boundary Counties. This Resolution invoked coordination with the USFS regarding the proposed Forest Plan on the Idaho Panhandle National Forest; and authorized Bonner County (including the Board and Sheriff along with the Prosecuting Attorney) to engage in coordination with the USFS regarding all matters related to this proposed Forest Plan.

Prior to this time, there had been no official protocol setting forth the process by which the County and the USFS would engage in a timely and meaningful coordination process to work on issues of mutual concern.

Believing it is mutually important to execute a protocol documenting commitment to an open, effective, government-to-government relationship by both agencies, the following Coordination Protocol for this process has been created. In addition to fulfilling the coordination requirements set forth under state and federal statutes, this process will allow for better decisions, achieve efficiencies, enhance understanding, and facilitate trust. It is anticipated that this protocol will establish a means by which the entities can work productively over time, towards common objectives, that will evolve into solutions.

This protocol sets forth the process by which Bonner County and the USFS expect to coordinate on issues of mutual interest and concern. It provides a venue for the County to address its concerns with the USFS's proposed Forest Plan, and have direct communications and interactions. It also sets forth the process for making future adjustments to the protocol that is needed and mutually agreeable.

This protocol is established to provide a forum for USFS-to-Bonner County (government-to-government) coordination requirements as set forth in a variety of federal laws, regulations, and executive orders.

II. WHAT IS COORDINATION?

The “coordination process” as directed by Congress is simply a process by which local government and federal agencies are to meet in a government-to-government dialogue in order to attempt to reach consistency between federal plans and actions and local plans and policies.

Congress has directed every federal agency to engage in this government-to-government “coordination process” with local governments.

Congress has recognized that local government has a duty and responsibility in planning and policy making, which is superior to that of the general public. The reasons are clear:

- **Local government** is dependent on revenue from the tax base in the unit to provide necessary services to the citizens.
- **Local government** has the duty to provide for the public safety, health and welfare, so it must be involved in development of plans and policies that affect the human and natural environment, and resources within its jurisdiction and within its sphere of influence.

Congress has mandated that the federal agencies engage in the “coordination process” that provides local government with a *meaningful* seat at the negotiating table with federal agencies. Congress has directed that local governments be given early notice of federal plan/policy development, and also given the opportunity for meaningful participation in the development and implementation of plans/policies. The federal management agencies are directed to pay special attention to inconsistencies between federal plans and actions, and local plans and actions.

The ultimate goal Congress has set for the “coordination process” is CONSISTENCY¹ between federal and local plans, policies and actions.

The “coordination process” provides a congressionally sanctioned method of amicably resolving conflicts between the federal, state and local government sovereignties. It is a conflict resolution process that leads to positive

¹ The Random House Dictionary – 1) The condition of holding together and retaining from 2) degree of density or firmness 3) steadfast adherence to the principles, course, etc. 4) agreement between parts or things

intergovernmental relations. If utilized as directed by Congress, the federal agencies can avoid a considerable waste of time and money that today is required for long, drawn out confrontational disputes. If utilized as directed by Congress, it benefits all citizens who are entitled to have each level of their governments work together, cordially and productively.

Coordination provides the means by which local government can represent these multiple users in an evenhanded negotiating manner---and in a government-to-government process. The reason Congress provided this unique government-to-government process is because local governing boards have the responsibility of funding public services with revenue from taxes. Because of the massive holdings of federal land from which no tax revenue is drawn, it is important for local elected officials to have some meaningful input into management.

Meaningful participation in management is critical to deterrence of adverse impact on the use of private land and on the economy of the government. Through coordination, the local governing boards can place emphasis on the “human environment” that is often ignored by those interested only in the “natural environment”. The environmentalist organizations have no responsibility to fund necessary public services and no responsibility to protect the economic stability of the people or the local government.

Bonner County asserts its right and obligation pursuant to state and federal law to coordinate with the USFS and other federal agencies for any program, project, plan or proposal which impacts the economic, social, traditional, health, and public safety of the citizens we serve. In addition, Bonner County asserts its right to coordinate with State agencies or NGO’s which receive federal funding and or rely on Federal Acts or regulations such as the Clean Air Act, Clean Water Act, and the Endangered Species Act.

III. County's Coordinating Body & Volunteer Committee

The Bonner County Coordinating Body shall consist of the Bonner County Board of County Commissioners, the Sheriff, and Prosecuting Attorney or his Civil Counsel. These five members are the Coordinating Body for Bonner County. Chair of the Coordinating Body shall be the Chair of the BOCC.

The Coordinating Body will be assisted by the Volunteer Coordination Committee. Members of the Coordinating Body will work directly with the Volunteer Coordination Committee. This Committee shall be made up of volunteer members of the community who are knowledgeable in the issues to be coordinated, and are selected by the Coordination Body.

The Volunteer Coordination Committee shall be comprised of a number of community citizens who are knowledgeable in the issues determined to influence the socio-economic, health and safety of the citizens of Bonner County. Issues shall consist of items such as, but not limited to, land use/forestry, water, air, grazing and ranching, recreation, and transportation. For each item of concern, a sub-committee may be developed consisting of a leader and any number of sub-committee members desired. This sub-committee shall research and develop a position on their issue. When this Volunteer Coordination Committee has developed their research and position paper, the Committee may attend a BOCC Coordination Committee Workshop and present their findings. It is then up to the Coordinating Body to determine if the issue warrants coordination.

Volunteer Coordination Committee members shall be selected by the BOCC.

IV. COORDINATION MEETING PROCEDURES

Initial Coordination Meeting – Protocol and housekeeping tasks

The purposes of the first few meetings are to ‘meet and greet,’ identify and establish the legal responsibility for coordination, agreement to protocol for coordination, and to establish the coordination participants. Either party may offer suggestions to improve this protocol. The result will be to document the parties’ understanding and commitment to an agreed upon protocol for the “process of coordination.”

Housekeeping tasks such as identification and contacts for all participants, (including email addresses, and phone numbers), establishing the frequency of meetings and location(s), and best method for dissemination of information, etc. will be completed at these initial meetings. With the mobility of federal employees and County elected officials, it is important to establish this protocol so that when individuals are relocated or replaced, there is written record for the new person.

Government to Government Coordination Begins

The follow-up meetings are when coordination actually begins. Specific topics to be addressed must be identified and placed on the agenda prepared by the County/USFS for each meeting.

AGENDAS - Agendas will normally be prepared two weeks in advance of the next Coordination Meeting. Agendas will be disseminated via email to all known participants by the County since it is the requesting agency. Either party may add items to the agenda for discussion and consideration.

MEETINGS - Meeting will normally be held at least monthly at a mutually agreed upon date and time. The location will normally be at a location where the greatest number of citizens are impacted by the issue under coordination, or at the county seat.

V. STATUTES, ACTS, AND RULES THAT MANDATE COORDINATION BY CONGRESS

Establishing Legal Responsibility for Coordination

Agencies may or may not be aware of their Service's responsibility to coordinate with Bonner County. This section identifies the statutory and regulatory provisions setting forth the federal agencies responsibility to engage in coordination with local government. By including both the statutory and regulatory language, it sets forth both the Congressional legal mandate of coordination and the Secretary of Agriculture's rules specifying the USFS's responsibilities. [Section V will be revised as new information becomes available.]

1. Coordination is a statutorily mandated process defined in the Federal Land Policy Management Act (1976), 43 USC 1712. It establishes a government-to-government relationship between the coordination invoking local government entity and one or more government agencies developing or implementing public policy that affects activities and actions within the local government's jurisdictions.
2. The National Forest Management Act of 1976 states in part that the USFS is obligated under this act and Forest Service rules to coordinate with state and local governments before issuing a decision on a plan, amendment or revision.
3. The National Environmental Policy Act (NEPA), states that the "natural" and "human" environment are to be considered for reaching a harmonious and productive environment. Environmental Impact Statements are to be detailed studies which review the impact of plans or actions on the local community and safety of citizens to fulfill the social and economic interest of present and future generation of Americans. Elimination of logging in a USFS area affects the loss of revenue to people, businesses and local government. Road closures in National Forests affect the safety of citizens in need of a required law enforcement, fire, SAR, or EMS-related response.

4. Executive Order 12372 (1982) and the Intergovernmental Cooperation Act, in addition to NEPA, requires federal agencies to coordinate their plans, determine local views, communicate their plans and actions, and make efforts to accommodate State and local officials' concerns, and an appeal process is provided for direct access to the Department of Agriculture.
5. Council on Environmental Quality (CEQ) regulations written to implement NEPA specifically defines "human environment" so that there should be no confusion that the impact on man's environment is a valuable and critical element in every NEPA document.
6. NEPA requires that federal agencies coordinate with local governments.
7. 42 USC 4331 (b), Congress directs federal government to coordinate federal plans, functions, programs and resources.
8. The U.S. Constitution, including the 10th and 14th Amendments, asserts states' rights and due process to citizens and their rightful pursuit of life, liberty, and property.
9. U.S. Forest Service Regulations, 1982 Planning Rules, Section 219.7, requires coordination at the beginning of the planning process.
10. The Regulatory Flexibility Act requires that adverse impacts on local governments with units less than 50,000 population be considered and when adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public.
11. The Data Quality Act (2001) demands equity and objectivity in studies and analyses.

12. Federal law requires “consistency” or harmony between the federal plan, action or program w/ the desires & needs of local officials and its citizenry.
13. Coordination and consistency is required pursuant to the Comprehensive Land Use Plan for agencies within Bonner County.
14. EO 13575 (2011) Establishment of the White House Rural Council. “The Council shall work across executive departments, agencies, and offices to coordinate development of policy recommendations to promote economic prosperity and quality of life in rural America, and shall coordinate my Administration’s engagement with rural communities.”
15. ESA Subsection 4(i) codified at 16 USC 1533(i) requires that the Secretary of Interior shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.
16. Additionally, these statutory provisions require Coordination by the USFS and subsequently, the USFWS by inference via Section 7 Consultation as required:
 - a. **NATIONAL FOREST MANAGEMENT ACT (NFMA)**
16 USC 1604 provides:
“As a part of the Program provided for by section 1602 of this title, the Secretary of Agriculture shall develop, maintain, and as appropriate, revise land and resource management plans for units of the National Forest System, **coordinated with the land and resource management planning processes of State and local governments..**” The “Program provided for by section 1602” as to which there must be coordination is the entire scope of the Renewable Resources Program mandated by Congress.

b. THE RULES OF THE SECRETARY OF AGRICULTURE In Rule 219.7 of the 1982 Planning Rule, the Secretary provided that the “responsible line officer” **“shall coordinate regional and forest planning with the equivalent and related planning efforts of other federal agencies, States and local governments, and Indian Tribes.”** The Secretary spelled out the following elements of coordination for the Service:

1. Notice must be given to the County of any intent to prepare a land and resource management plan, along with a general schedule of anticipated activities to the governing body of the County
2. The line officer has to review the planning and land use policies of the local government, and this review must later be reported in the EIS for the plan [This is the rule requirement that guarantees transparency so that the citizens can see who is influencing the planning and is involved in providing or gathering data that will be used.)

The “review” by the line officer “shall” include the following:

- a. Consideration of the objectives of the local government as expressed in their rules, plans or policies;
- b. Assessment of the interrelated impacts of the local and federal rules, plans and policies;
- c. Determine how the Forest Service plan should deal with the interrelated impacts;
- d. In developing the plan, the line officer “shall meet” with representatives of local government **AT THE BEGINNING OF THE PLANNING PROCESS TO DEVELOP PROCEDURES FOR COORDINATION.** [The emphasized language is actually in the rule; it does not say that the Forest Service will tell the local government how it will accomplish coordination, rather it requires the

- forest service line officer to meet with local officials “to develop” the process for coordination.]
- e. As a minimum, this coordination meeting must take place after public issues have been identified and management concerns have been identified---- and it must take place *before* recommendation of a preferred alternative is made.
 - f. In developing the forest plan, the officer “shall seek input from federal, state, local government and universities “help resolve management concerns in the planning process and to identify areas where additional research is needed.”
 - g. The line officer is told to include a monitoring and evaluation program that “includes consideration of the affects of National Forest Management on land, resources, and communities adjacent to or near the National Forest being planned....”

3. **COORDINATION REQUIRED SPECIFICALLY IN TRAVEL MANAGEMENT** 36 Code of Federal Regulations, Section 212.53 of the specifically issued rules for governing the development of Travel Management Plans states that you “**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.**”

- 4. 30 Code of Federal Regulations 212.1 provides for creation of a Forest Atlas, and provides that the Atlas can be updated to reflect new information on the existence and condition of roads.

17. Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), explicitly states that the "regulatory system must protect public health, welfare, safety, and our environment while

promoting economic growth, innovation, competitiveness, and job creation" (emphasis added). Consistent with this mandate, Executive Order 13563 requires agencies to tailor "regulations to impose *the least burden on society*, consistent with obtaining regulatory objectives" (emphasis added). Executive Order 13563 also requires agencies to "identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice" while selecting "those approaches that maximize net benefits." To the extent permitted by law, the regulatory system must respect these requirements. (Rev: 2 April 2012)

RECORD OF REVISIONS:

1.