

**BEAVERHEAD COUNTY
PUBLIC LAND'S
RESOURCE USE
POLICY AND PLAN**

July 2010



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INTRODUCTION

Beaverhead County is a general law county and, as such is a political subdivision of the State of Montana, having corporate powers and exercising the sovereignty of the State of Montana within its boundaries, as provided in the Montana Constitution, those powers specified and implied by statute.

Only the Beaverhead County Board of County Commissioners hereinafter referred to as the "Board," can exercise the powers of the County by agents and officers acting under the authority of the Board. The Board serves as the chief executive authority of the county government and is charged by law with performing all duties necessary to the full discharge of these specified and implied executive duties. The Board is charged with governing Beaverhead County in the best interest of all its citizens and one of its duties is to supervise and protect the tax base of the County.

The Board is well aware that one goal of the Beaverhead County citizenry and its government has been the continuation of a lifestyle that assures quiet enjoyment of private property rights and property interests and assures the highest degree of protection of these rights. Property rights and interests are important to the people who live and work in this remote rugged county, which has an area larger than some states, but the population of a small town. Many people who live in this county are reliant upon the land and its productive use. Private ownership and the incentive provided by private ownership is a driving force that supports the livelihood of many Beaverhead County citizens.

The Board is concerned by the fact that federal and state-managed lands comprise over sixty-nine percent of the area of Beaverhead County. Moreover, the county's economy is affected by changes on federal, state and private lands. State and federal agencies are charged by law with governing state and federal lands inside Beaverhead County's political boundary in the best interest of all the citizens. While local, state and federal planning decisions may create benefits for a great many state and national citizens outside the county, a disproportionate amount of the costs and responsibilities may be transferred to local communities and citizens.

The Board believes that the American concept of "government of the people, by the people and for the people," is best served when government affairs are conducted at the local level. The Board is charged to carry out its duties to operate the government of Beaverhead County in the best interests of all its citizens and to protect and preserve the County's tax base. It is therefore desirable that the Board address the use and management of the County's resources within its jurisdiction. Additionally, the Board desires to exercise its right to fully participate in the planning process utilized by federal and state agencies for determining and implementing land use plans and other actions in Beaverhead County. The Board's interest extends to land use plans or action formulation, development, and implementation and includes monitoring and evaluation.

The Board has established a planning board and community-based subcommittee to advise and assist the Board in formulating County policy with respect to land-use and resource issues.

It is the intent of Beaverhead County government to protect the custom and culture of county citizens, its economy and tax base through a variety of actions. It is the policy of Beaverhead County to work with federal and state agencies to ensure coordination and cooperation of plans and actions that affect Beaverhead County.

Federal and state laws require federal and state agencies to coordinate and cooperate with the local government to ensure consistency in planning and decision making to the fullest extent required by law. The Board will notify other government agencies of actions that are proposed by the Board affecting various resources and amenities in Beaverhead County and solicit other agency input and comment. The purpose of this exchange of information is to ensure consistency in planning efforts that minimize impacts and maximize benefits to the residents of Beaverhead County.

BEAVERHEAD COUNTY

Beaverhead County is located in the southwest corner of Montana. It is the largest county in the fourth largest state in the country. It is sparsely populated with only 1.47 persons per square mile and a total population of 8,790. The county covers an area of 5,560 square miles (3.55 million acres).

Sixty-nine percent of the lands are owned by the federal and state governments (59% federal, 10% state) and 31 percent are privately owned. The county is bordered on the north, west, and south by the continental divide, which separates the watersheds of the Mississippi River system and the Columbia River system.

The region is characterized by rugged mountain ranges separated by broad valleys. Irrigated and partially irrigated croplands are located in the valleys and produce hay, potatoes, barley, and wheat. Pasture also exists in river and stream bottoms. These land uses total in excess of 200,000 acres.

There are more than 2,000,000 acres of range providing excellent forage for cattle and sheep. Woodland and forest trees are predominately Lodge Pole Pine and Douglas Fir. Over half of the 1,050,000-forested acres are grazed. Another 20,000 acres consists of wilderness and primitive areas and 44,963 acres are in the Red Rock Lakes National Wildlife Refuge. More than 500 acres of county land have been subdivided.

The county's economy has been historically based on natural resources including agriculture, forestry, mining and recreation. Beaverhead County leads Montana in cattle and hay production. A talc mine and mill employ about 100 people. About twenty percent of the population is dependent upon agriculture and forestry. The county has sizable government and educational employment at Western Montana College of the University of Montana, the Beaverhead/Dillon Public Schools, Barrett Hospital, United

States Bureau of Land Management, United States Forest Service and a variety of other federal and state offices.

The first written record of this area came from the journals of the Lewis and Clark expedition in 1805 and 1806. Due to access difficulties, settlement in Beaverhead County was minimal until the discovery of gold in 1862. The first territorial legislative assembly of Montana created Beaverhead County in 1863. The county held its first election October 30 of that year, and elected three county commissioners. When the Montana Territory was created in 1864, Beaverhead was included within its boundaries and made a county of Montana Territory. Bannack was named the capitol of Montana Territory in 1864. Agriculture was initially stimulated in Beaverhead County by mining activities. Some of Montana's earliest livestock operations were established.

By 1880, mining and ranching in the area stimulated the expansion of the railroad from Salt Lake City, Utah, to Butte, Montana. This railroad, now the Union Pacific, resulted in the development of several communities in the county. The city of Dillon, established in 1880 and historically the county's largest urban settlement, was a rail distribution center. The towns of Lima and Dell also have railroad roots.

The economy continues to be heavily dependent on natural resources. Dillon continues to be the area's regional service center. The county's other settlements have remained small and in some cases have disappeared from lack of economic viability.

In the next decade, Beaverhead County's greatest challenge will be maintaining its economy, culture and customs. Over the past several decades, the county's basic economic sectors have been stagnating or declining. The lack of growth and diversification in the county's economy is reflected in declining real income and earned income, an out-migration of the young working age groups and declining business activity.

These trends are typical of most of America's small west inter-mountain rural farming and ranching communities. This poses a challenge to the very fabric of these rural communities and their lifestyle.

CUSTOM AND CULTURE

The history of Beaverhead County is steeped in the tales of rich gold and silver mines. From the first mining efforts in the early 1860s to the present day, mining has been important to the people who first settled here and to those who now live in this county. Today many people still actively work mining claims and talc mining is an important part of the county economy.

The development of the early gold and silver mines stimulated the development of agriculture. Trail herds of cattle from Texas, California, and Oregon were driven in and sheep were introduced to provide beef and mutton for the miners. As ranchers began to develop base properties as permanent sites for livestock, they recognized that transient trail-drives endangered the quality of their range. Early Beaverhead County ranchers

sought the help of Congress to protect the quality of the range in the early 1900s, thirty years before the Taylor Grazing Act was passed.

Access rights-of-way and water rights were historically critical to the early settlers and remain critical today. The federal government owns 59% of the 3.55 million acres of land in Beaverhead County. The state of Montana owns 10%, leaving only 31% in private ownership. As a result, a map of the county shows a checkerboard of federal, state, and private land. Rights-of-ways across state and federal lands is necessary for private landowners to access their property, use their water rights, and exercise their grazing rights.

In 1866 the Congress enacted law to provide and protect access across federal lands for miners and others reliant upon water to earn their livelihood. That act, Revised Statute 2477 (RS 2477), provided the rights-of-ways for the construction of highways over public land not reserved for public uses. Beaverhead County miners and ranchers developed such rights-of-ways in the forms of roads and trails that continue to be used today. In 1993, the Montana Legislature passed a statute establishing a procedure for counties to record rights-of-way established under the 1866 law. Beaverhead County's Board of Commissioners has been working to determine and document the rights-of-way in the county that fall under RS 2477.

Early settlers established water rights through the doctrine of prior appropriation. The earliest adjudicated rights in Beaverhead County are dated 1863. As subsequent efforts were made to control the water, landowners brought suit to protect their prior appropriation rights. Today holders of water rights are still struggling to preserve their rights against encroachment.

The customs and culture of Beaverhead County have been and are currently determined by technology, access to resources, distance to markets and prices.

The beneficial use of natural resources has been the basis for Beaverhead County's economy, custom and culture; even if technology, mechanization and markets have altered the means of production and the marketing of these resources from their historic beginnings. Mining, timber harvesting, ranching and farming comprise the heritage of the County.

Access to natural resources including water, is vital to the maintenance of the county's economy, customs, and culture. County residents remain diligent in pursuing all methods of protecting these rights.

In recent years, increased recreational use of the land in Beaverhead County has grown rapidly. Montanans and out-of-state visitors have flocked to the county for all types of recreation including snowmobiling, skiing, horseback riding, hiking, prospecting, fishing, hunting, camping and other outdoor activities. The potential for conflict between these users and those residents who make their living on the land is great. Cooperative efforts on both sides have kept the conflict to a minimum.

PURPOSE

This plan is a dynamic document, changing as more information becomes available and new situations arise. Economic and demographic data, and position statements essential to the Beaverhead County Growth Policy and Resource Use component will be included in later updates. This information should include both current and historical data for the past decades and should give an indication of the trends. Data to be added may include:

1. Total personal income by major component (industry)
2. Full-time, part-time employment by major industry
3. Transfer payments by major component (industry)
4. Farm income and expenses
5. Total population and population by age categories
6. Households by type

The Federal Land Policy and Management Act (FLPMA), the Forest Management Act and the Council on Environmental Quality, as well as other federal and state management and planning regulations and policy provide local governments various opportunities to participate and influence planning and decision making processes associated with managing state, federal and public lands.

In the case of federally managed lands, managers are required, to varying degrees, to ensure that management, planning, and decision making are consistent with local government plans, policies, and ordinances.

This public lands portion of the County's Comprehensive Plan reflects the County's position on the management and use of public lands within the County or that impact the County's interests. The plan clearly and concisely states the County policies, goals and objectives that relate to federal and state public land management, planning efforts, and decision-making processes.

The intent of this plan is to protect the interest of the County, its customs and culture, the health and safety of its residents, and to communicate County interest and concerns regarding management of public lands to the appropriate agency. It is designed to ensure that the spirit and intent of the laws, regulations and policies that govern management and use of public lands are followed and to provide a basis for productive communication, consistency review, and analysis. This plan is intended to be a guide to the County so it may provide consistent input on planning and management decisions on public lands.

This policy and any subsequent implementation are to be followed unless it is impermissibly inconsistent with statute or duly promulgated regulation. Should any part of this policy or implementation plan be inconsistent with statute or regulation, or declared void, unenforceable, or invalid by a court with competent jurisdiction, the remaining provisions or parts shall remain in full force and effect.

For purposes of this policy and subsequent implementation plans, all reference to analysis means NEPA analysis, unless otherwise specified.

As conditions change and new issues arise, the Beaverhead County Commissions' policies will continue to evolve and change requiring periodic amendments to this document. The commission will conduct formal reviews of this document on an annual basis, however amendments may be made at any time.

PRIMARY PLANNING GUIDELINES

The Board and the Resource Use Committee recognize that it is their duty and obligation to enter into official land use planning activities and to participate equitably and fully with the federal and state management agencies.

In accordance with state and federal laws regarding land use planning and the protection of private property interests, the Board and the Resource Use Committee seek to maintain and to revitalize the various multiple uses of the state and federally managed lands.

The Resource Use Committee and the Board have developed a process to cooperate and/or coordinate in advance with the federal and state agencies regarding any proposed actions, which will alter or impact lands in Beaverhead County. This includes, but is not restricted to, private property rights and private property interests, the economic stability and historically developed custom and culture of the county, the provisions of this Resource Use Plan and the Beaverhead County Comprehensive Plan or Growth Policy. Such agencies are requested, prior to taking official action or issuing a report on a proposed action, to coordinate with the Board. The agencies may accomplish this in part by providing the Board or its agents, in a timely manner, with the proposed purposes, objectives, and estimated economic impacts of such action.

The Board and the Resource Use Committee are committed to a positive planning process with federal and state agencies. The County will equitably consider the best interest of all of the people of Beaverhead County and the State of Montana in the use of state and federal lands.

Beaverhead County commits itself to seeing that all decisions on natural resources affecting the county will be guided by the following principles:

- To maintain the concept of multiple use on all lands in Beaverhead County.
- The protection of private property rights and private property interests, including investment backed expectations.
- The protection of local historical custom and culture.

- The protection of the traditional economic structures in the county that form the base for economic stability.
- The opening of new economic opportunities through reliance on free markets.
- The protection of the rights to the enjoyment of the natural resources of the county by all citizens.

The Beaverhead County Board believes that resource and land use management decisions made in a coordinated manner by federal and state agencies and county officials will not only maintain and revitalize the multiple use of all lands in Beaverhead County, but will also enhance environmental quality.

The General Planning Guidelines set out in this plan present the standards of law, fact, and planning by which the Board will be guided in its official capacity as the executive authority of the county. The Guidelines include constitutional and statutory standards for land management by which the Resource Use Committee and the Board will be guided.

This Plan is only the commencement of the planning process in Beaverhead County. The process itself is ongoing and will require the Resource Use Committee and the Board to become involved with all stages of the resource process followed by federal and state agencies. These stages will include plan development, implementation, monitoring, and evaluation.

The Resource Use Committee, the Board and the people of Beaverhead County accept, support, and sustain the Constitutions of the United States and the State of Montana. The Constitution of the United States, Article 1, Section 8, clauses 17 and 18 limits the authority of the federal government to own only specific lands.

- That all lands in Beaverhead County be managed in cooperation and/or coordination with the Board, its representatives, and thereby the citizens of this county.
- Reaffirm the fundamental rights of residents of Beaverhead County with application of Environmental Justice that is not blind to all minorities. Including with ethnic minorities in the interpretation the addition of social, economic, educational, and population density minorities as well.
 - Apply a broad interpretation of the mandated environmental justice analysis to include not only just ethnic minorities, but other recognized minorities for the resource area based on comparisons to the general population of the United States. Such additional minorities would include, but not be limited to economic status, income level, social class, accessibility to opportunity, age, etc.

- Through cooperative planning with Beaverhead County insure that state or federal agency decisions on resource use and/or use allocations mitigate negative impacts to all local minorities as intended through environmental justice directives in the NEPA process.
- Throughout the planning, analysis, and decision making process due consideration and preference be given to recognized local minorities to ensure that the burden of environmental and/or resource use and/or allocation decisions do not unduly burden the social, economic, or freedoms of minority residents of Beaverhead County.
- Protect private property and private property rights and promote the continuation of private economic pursuits,
 - Protect private property rights.
 - Protect local custom and culture.
 - Maintain traditional economic structures through self-determination.
 - Open new economic opportunities through reliance on free markets.
 - Enhance environmental quality.
 - Protection and preservation of privately owned land is desirable in Beaverhead County.
- Goal: Ensure Due Process.
 - Notice
 - Opportunity to be heard
 - The right of cross examination
 - Disclosure

OBJECTIVES

The following objectives and subsequent policies shall be the basis for public land management and implementation plan that will further define this policy.

The County's objectives are:

- To support multiple use, conservation and protection of public lands and its resources including well planned, outcome based, management prescriptions. It acknowledges the need on occasion to place strict requirements on the

management of some resources to provide needed protection when it has been determined through scientific and supportable analysis that such needs exist to protect such resources from irreparable harm.

- To ensure public lands are managed for multiple use, sustained yield, and prevention of natural resource waste. Further, these lands should be managed to prevent loss of resources, private property and to protect the safety and health of the public.
- The prioritizing of any one multiple use should only occur after the impact to other multiple uses are fully quantified and mitigated. Any proposal to close the federal lands to a multiple use must be coordinated with the County and only after full public disclosure and analysis.
- To ensure management decisions are accomplished with full participation of the County and supported by tested and true scientific data. Decisions shall fully analyze and disclose impacts on the area economic tax base, culture, heritage, and life styles and rights of area residents. (An economic analysis was conducted in the BLM's Dillon RMP and all decisions are tiered to this analysis.)
- To provide policies, plans, and other documents for governmental agency use to ensure management and planning consistency with the County.
- To ensure agriculture and grazing lands remain available to produce the food and fiber needed by the citizens of the state and the nation, and to preserve the rural character and open landscape through a healthy and active agricultural and grazing industry, consistent with private property rights and state fiduciary duties.
- To support agriculture on private and public lands as part of the local economy, custom, culture, and heritage as well as the provision of a secure national food supply.
- To support national energy needs relative to the nation's increasing dependency on foreign oil, all public lands must remain open to the greatest extent possible for the exploration and production of energy and other energy related products.
- Recognize and protect private rights in federal and state land resources including rights-of-way, grazing permits, water rights, special use permits, leases, contracts, and recreation use permits and licenses.
- To ensure mitigation and compensation for impacts to the County and its residents. If action results in a taking, all applicable law must be applied.
- To ensure public and private access and rights-of-way for utilities and transportation of people and products on and across public lands.
- To ensure that special designations do not influence the use of resources on lands outside those listed in the designation. The County opposes the use of a

buffer zone management philosophy that dictates land use practices and influences decisions beyond the scope and boundaries of the designations.

- To ensure that restrictions placed on any resource are based on analysis of trend, threat and need, and imposed only after a complete analysis.
- To ensure that lands designated open for various specified uses are available on a timely basis and permits for such use are processed promptly. Extended delays or no action shall not be used as a method to accomplish restrictions or protections. Waivers modification or exception to restrictions must be provided for when conditions exist or impacts can be mitigated to prevent irreparable damage to the resource.
- To provide for the health and safety of it's residents and workforce and to deliver services and provide necessary oversight, the County may assess impact fees.
- To ensure that the economic, cultural, and heritage values of natural resources such as habitats and watersheds remain within the area. Such resources may not be transferred through mitigation or any other method.
- To reaffirm the fundamental rights of mankind as enumerated in the Declaration of Independence and acknowledge the limited nature of government as intended by the nation's Founding Fathers.
- The Beaverhead County Board believes that resource and land use management decisions made in a coordinated manner by federal and state agencies and county officials will not only maintain and revitalize the multiple use of all lands in Beaverhead County, but will also enhance environmental quality.
- This plan is only the commencement of the planning process in Beaverhead County. The process itself is ongoing and will require the Resource Use Committee and the Board to become involved in all stages of the resource process followed by federal and state agencies. These stages will include plan development, implementation, monitoring, and evaluation.

MANAGEMENT ACTIONS

Federal Agencies shall recognize and comply with the following principles when preparing any policies, plans, programs, process, or desired outcomes relating to federal lands and natural resources on federal lands pursuant to this section.

- The citizens of the state are best served by applying multiple-use and sustained yield principles.
- Multiple-use and sustained-yield management means that federal agencies will develop and implement management plans and make resource-use decisions that:

1. Achieve and maintain in perpetuity a high level annual or regular periodic output of various renewable resources from public lands.
 2. Support valid existing transportation, mineral, and grazing rights privileges at the highest reasonably sustainable levels.
 3. Are designed to produce and provide the desired vegetation for the watersheds, timber, food, fiber, livestock forage, and wildlife forage, and minerals that are necessary to meet present needs and future economic growth, community expansion, without permanent impairment of the land.
 4. Meet the personal and business-related transportation needs of the citizens of the state.
 5. Meet the recreational needs of the citizens of the county, state and nation.
 6. Provide for the preservation of cultural resources, both historical and archaeological.
 7. Meet the needs of economic development.
 8. Are conducive to well planned and measured community and economic development.
 9. Provide for the protection of water rights.
 10. Ensure that proper stewardship of the land and natural resources necessary to ensure the health of the watersheds, timber, forage, and wildlife resources.
- Forests, rangelands, timber, and other vegetative resources:
 1. Provide forage for livestock.
 2. Provide forage and habitat for wildlife.
 3. Provide resources for the state's timber and logging industries.
 4. Contribute to the state's economic stability and growth.
 5. Provide a wide variety of recreational pursuits.
 - To fully address the County's concerns and resolve differences, the County will work with public land management agencies in a collaborative and cooperative manner.
 - When necessary to protect the County's interests and as provided by law, the County will enter into formal agreements such as memorandums of understanding, memorandums of agreement, or partnerships to codify expectations and processes and should include the following:
 1. The County shall be provided a written report detailing how consistency with policy was analyzed with respect to agency purpose, action or plan. The report must identify where inconsistencies exist, any plausible way to correct the inconsistencies, and why consistency is not possible.
 2. The County shall be provided a detailed economic analysis of the impact of agency action or proposed action on the County tax base and area economy. When more than one action is proposed the report must analyze cumulative impacts.

3. The County shall be provided certification that applicable data used in development of a proposal or plan meets the requirements of the Environmental Quality Data Act.
 4. The County shall be notified of any proposed action that may affect local culture, social structure, or heritage values.
 5. The County shall be provided an opportunity for meaningful participation in the development, monitoring, and analyses of any studies conducted on resources associated with public lands.
 6. Federal and state agencies shall analyze the impacts of proposed actions on traditional uses of resources such as recreation, grazing, energy development, wildlife, etc.
 7. To the extent provided by law, the County shall have “cooperator” status in the development of any NEPA and/or MEPA analysis associated with proposed actions, public land management, or planning.
 8. Federal and state agencies shall keep the County fully informed of all management action proposed and allow adequate time to develop its position should it not be clearly defined in the County’s plans or policies or subsequent implementation plans.
 9. Federal and state agencies shall provide in writing intentions for formal communications or consultation at the onset of any such discussions. Unless stated all communication will be considered to be informal.
- Mitigations must be implemented to reduce or eliminate impacts of activities that are expected to impact air or water quality and that individually or cumulatively result in exceeding state or federal air or water quality standards. Federal agencies shall cooperate and coordinate with the County in the development of mitigation strategies.
 - Federal and State management decisions must not force a disproportional share of development onto private lands as this often impacts high value wild life habitat and agricultural productivity.

POSITION STATEMENTS

The following position statements were developed to communicate the County’s position on various public land management issues and provide suggestions on how concerns may be addressed.

SOILS

It is the County’s position that:

- Soil is the basic building block for virtually all land uses. The protection of soils from wind and water erosion and the maintenance of fertility are critical to sustaining a viable agricultural economy, sustaining wildlife populations, and high levels of air and water quality.

- The Natural Resource Conservation Service (NRCS) soil survey is the basis for all public land soil related activities.
- It supports the need for completion of a NRCS soil survey that includes public, private and trust lands in the County.
- The County supports the prioritization of soil survey mapping and the uniform use of ecological site descriptions developed by the Natural Resources Conservation Service as the foundation for the inventory, evaluation, setting of monitoring objectives, and management of rangelands and forestlands.
- Ecological sites are the basic units of soils and associated plant communities and provide the basis for vegetative management objectives and the monitoring and extrapolations of management impacts to other areas. Soil related activities will be based on all available survey data until a final survey is published. Any deviations must be coordinated with the NRCS.
- Management programs and initiatives that improve watersheds, forests, and increased forage for the mutual benefit of wildlife and livestock will be emphasized.

AIR QUALITY

It is the County's position that:

- Maintaining the County's air quality at its current level is critical to the health and well being of its residents.
- A high level of air quality is important to future economic development as it reduces the possibility of restrictions on development due to exceeding air quality standards.
- Air quality baselines for the area must be established with the full participation of the County.
- All air quality related plans and decisions must be based on deviation from a baseline standard established for the County.
- To maintain high air quality the County must work to protect the area's air from degradation from non-area sources.
- All field development plans must provide for air quality monitoring. Data development must be coordinated with the findings.

- All air quality studies undertaken by or on behalf of a public land management agency or the state must be coordinated with the County.
- Non-area sources need to be identified and quantified prior to being used in determining air quality in the County and especially over Class I Air Sheds.
- Mitigation must be implemented to reduce or eliminate impacts of activities that individually or cumulatively would result in exceeding state or federal air quality standards.

WATER RESOURCES

It is the County's position that:

- Allocation of water resources in Beaverhead County is governed by applicable Montana laws and the Prior Appropriation Doctrine.
- All waters of the state are subject to appropriation for beneficial use and are considered essential to the future prosperity and quality of life of the state.
- The protection and development of its water resources are essential to short and long term economic and cultural viability.
- All water rights desired by the federal government must be obtained through the state water appropriations system.
- Management and resource-use decisions by federal land management and regulatory agencies concerning the vegetative resources within the County should reflect serious consideration of the proper optimization of the yield of water within the watersheds' ecological capabilities.
- Proper management of public land watersheds that supply the majority of the agricultural, domestic, and industrial water use in this water-short area is critical.
- An adequate supply of clean water is essential to the health of County residents and the continued growth of its economy.
- Agencies must analyze the affect of decisions on water quality, yields, and timing of those yields. Actions, lack of action, or permitted use that results in a significant or long-term decrease in water quality or quantity will be opposed.
- Agency actions must analyze impacts on facilities such as dams, reservoirs, delivery systems, monitoring facilities, etc., located on or down stream from land covered by any water related proposal.

- Movement toward nationalization or federal control of state water resources or rights will be opposed.
- Privately held water rights should be protected from federal and/or state encroachment and/or coerced acquisition.
- The quality and quantity of water shall not be reduced below current levels.
- It will support projects that improve water quality and increases quantity and dependability of the water supply.
- All potential reservoir diversion sites and delivery system corridors shall be protected from any federal or state action that would inhibit future use.
- It will seek to amend the Wilderness Act to allow for the temporary storage of water using natural methods on existing lakes or ponds.
- Any proposed sale, lease, exchange or transfer of water must adequately consider and satisfy the County's interest and concerns and fully analyze the effect on existing ground water, return flows, riparian and wetlands.
- It will oppose any proposal that fails to benefit the County or compensate for losses to the County and/or its residents.
- It recognizes and will protect the existence of all legal canals, laterals, or ditch rights-of-way.
- All federal and state mandates governing water or water systems shall be developed in cooperation with the County and be funded by those agencies.
- It supports livestock grazing and other managed uses of watershed and holds that, if properly planned and managed, multiple use is compatible with watershed management.
- It endorses state water laws as the legal basis for all water use within the County.
- Beneficial use is the basis for the appropriation of water in the state.
- It will support all reasonable water conservation efforts. Water conserved should be allocated to those persons or entities whose efforts created the savings.
- When wetlands are created by fugitive water from irrigation systems and law requires mitigation of impacts from conservation and other projects, the creation of artificial wetlands should be considered only after all other mitigation possibilities have been analyzed. Creation of artificial wetlands is contrary to the intent of water conservation.

- Managers of public lands must protect watersheds with respect to water quality with the assurance that water yield will not be decreased but improved.
- All development plans must provide for water quality monitoring. Data development must be coordinated with the findings provided to the County.
- All water quality studies undertaken by or on behalf of a public land management agency must be coordinated with the County.

FORAGE ALLOCATION / LIVESTOCK GRAZING

It is the County's position that:

- Management of public lands must maintain and enhance agriculture to retain its contribution to the local economy, customs, culture and heritage as well as a secure national food supply.
- Healthy forests, rangelands, and watersheds are necessary and beneficial for sustaining water quality and yield, wildlife, livestock grazing, and other multiple-uses.
- Management programs and initiatives that increase forage for the mutual benefit of the watersheds, livestock operations, and wildlife species should utilize all proven techniques and tools.
- Most of the public lands in the County were classified as chiefly valuable for livestock grazing and were withdrawn from operation of most of the public land laws. The available forage was then allocated between wildlife and grazing preference holders, such that the established grazing preference represented the best professional judgment of the Bureau of Land Management at that time. The government cannot properly change these decisions without amending the original withdrawal and revising the land use plan based upon sound and valid monitoring data.
- The National Forest System lands are managed under land uses that determine the suitability and availability of the land for livestock grazing. Like the public lands, national forest system lands are to be managed to support the local community's economy and culture.
- Forage allocated to livestock may not be reduced for allocation to other uses. Current livestock allocation will be maintained.
- The government agencies should support financially the needed structural and vegetation improvements to ensure there is sufficient forage especially when there is pressure from other land uses.

- The continued viability of livestock operations and the livestock industry should be supported on the federal lands within the County by management of the lands and forage resources and by the proper optimization of animal unit months for livestock in accordance with the multiple use provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C 1701 et seq., the provisions of the Taylor Grazing Act of 1934, 43 U.S.C. 315 et seq., the provisions of the Public Rangelands Improvement Act, 43 U.S.C. 1901 et seq.
- Land management plans, programs and initiatives should provide that the amount of domestic livestock forage (expressed in animal unit months) for permitted active use as well as wildlife forage, shall be at least the maximum number of animal unit months sustainable by range conditions in grazing allotments and districts based on an on-the-ground scientific analysis. If conditions warrant reductions, they will be allocated among all grazing animals on a prorated basis. If other factors contribute to lost forage or poor conditions, such as other forms of public land development, compensatory mitigation measures will be imposed to address livestock reductions and the impacts on livestock operations.
- It opposes the relinquishment or retirement of grazing animal unit months in favor of conservation easements, wildlife, wild or feral horses and other uses.
- It opposes the transfer of grazing animal unit months to wildlife or wild or feral horses.
- Any reductions in domestic livestock animal unit months must be temporary and scientifically based upon rangeland conditions.
- Policies, plans, programs, initiatives, resource management plans, and forest plans may not allow the placement of grazing animal unit months in a suspended use category unless there is a rational and scientific determination.
- That if the condition of the rangeland allotment or County in question will not sustain the animal unit months proposed, the allotment will be placed in suspended use.
- Any grazing animal unit months that are placed in a suspended use category or subject to temporary or permanent reductions should be returned to active use when range conditions improve.
- Policies, plans, programs, and initiatives related to vegetation management should recognize and uphold the preference for domestic grazing over alternate forage uses while upholding management practices that optimize and expand forage for grazing and wildlife in conjunction with state wildlife management plans and programs in order to provide maximum available forage for all uses.

- On all federal lands, animal unit months that have been reduced due to rangeland health concerns should be restored to livestock when rangeland conditions improve and should not be converted to wildlife use.
- Upon termination of a permit, livestock permittee will be compensated for the remaining value of improvements or be allowed to remove such improvements that permittee made on his/her allotment.
- Forage reductions resulting from forage studies, fire, drought or other natural disasters will be implemented on an allotment basis and applied proportionately based on the respective allocation to livestock, wildlife and wild horses.
- Reductions resulting from forage studies will be applied to the use responsible for the forage impact and allocated on a prorated basis when the cause is due in whole or in part to other factors such as drought or fire.
- Permittee may sell or exchange permits. Such transactions shall be promptly processed.
- Changes in season of use or forage allocation must not be made without full and meaningful consultation with permittee.
- The permitted seasons of use set forth in a management plan may be adjusted and still be in conformance with the plan if:
 1. Meeting, maintaining, or making progress towards range management standards officially adopted by the managing agency or for national forest system lands are consistent with the land use plan.
 2. Managing agency and the permittee sign an agreement documenting monitoring plan.
 3. With coordination, consultation and cooperation, the managing agency develops grazing management practices determined necessary including those that provide for physiological requirements of desired plants.
- Livestock allocations must be protected from encroachment by wild horses and wildlife.
- Permanent increase or decreases in grazing allocations reflecting changes in available forage will be based on the vegetative type of available forage and applied proportionately to livestock or wildlife based on their respective dietary needs.
- In order to mitigate impacts from energy and other development to livestock operators on federal and state lands in the County, it is the County's policy that:

1. Annual operator meetings be held with permittees and a contact person must be identified by each operator who will maintain contact with livestock operator to coordinate activities.
2. Pipeline projects shall be coordinated to lessen the impact on natural movement of livestock through pasture or allotments. Coordination shall include leaving gaps in the trenches to allow livestock movement. Completion of pipeline work should be accomplished while livestock are not on allotments.
3. Compensation for livestock lost to oil and gas activities, including deaths from pits and animals hit on roads be provided.
4. A fund be established to develop range improvement projects away from industrial activity, or alternatively, a commitment to fund these projects as development is proposed.
5. Livestock movement corridors shall not be impacted to the point livestock movement is restricted.
6. Standardized fencing of development sites shall be required to prevent wildlife and livestock from drinking contaminated water or otherwise coming to harm.
7. Maintenance of cattle guards on all roads shall be required to keep livestock from getting onto highways, drill pads or other allotments.
8. Speed limits must be enforced to lessen the chance of animals getting hit on roads.
9. A provision that when/if the level of industrial activity dominates the pasture or allotment to a point that it is not economical for the permittees to continue grazing said allotments, operator mitigation may include replacement of feed, spring grazing pasture, hay, etc, for the duration of the impact period.
10. The developer will adopt compensatory mitigation to address the impacts of development on livestock operators. Such mitigation may include vegetation treatments to improve forage and provide stock water availability and distribution on or adjacent to affected allotments.

VEGETATION

It is the County's position that:

- The proper management and allocation of forage on public lands is critical to the viability of the County's agriculture, recreation and tourism industry.
- Management of forage resources directly affects water quality and water yields.
- Increases in available forage resulting from conservation practice, improved range condition, or development of improvements by livestock operators or other allocated forage users will be credited to that use.

- Increases in available forage resulting from practices or improvements implemented by managing agencies will be allocated proportionately to all forage allocations, unless the funding source specifies the benefactor.
- Vegetation composition shall not be manipulated to benefit a single plant or animal species. Vegetation composition must be based on ecologic site capabilities so as to insure sustainability.
- The encroachment of Juniper, Douglas Fir, and the expansion of sagebrush and weeds over many thousands of acres of range in Beaverhead County threatens its multiple use. Without a significant effort to control this invasion and expansion, watersheds, wildlife, water quality, recreation, and grazing will be damaged.

FOREST / FIRE MANAGEMENT

It is the County's position that:

- Forest management must comply with the Multiple-Use/Sustained Yield Act of 1960. Forest and woodlands should be managed and administered for outdoor recreation, livestock grazing, timber harvesting, watershed protection and wildlife in the best interests of the American people.
- All forest and woodlands must be managed for sustained yield, multiple use, forest health and ecologically sustainable vegetative composition.
- Fire, timber harvesting, and treatment programs must be managed as to prevent waste of forest products.
- Management programs must provide for fuel load management and fire control to prevent catastrophic events and reduce fire potential at the urban and industrial interface.
- Management and harvest programs must be sustainable and designed to provide opportunities for local citizens and small businesses.
- It will protect timber resources and promote the continuation or rebuilding of a sustainable wood products industry.
- It will promote sale sizes that provide opportunities for a wide spectrum of producers that allow for local entrepreneurship.
- Fire, natural or prescribed, is a viable tool for habitat vegetative treatment when properly applied. However it should not replace harvest of timber products as the primary method to manipulate forested areas and must not create waste of forest products.

- Federal land management agencies should participate in the National Forest / County Partnership Restoration Program to formulate a multi-year plan that encompasses:
 1. Community-based cooperation and coordination with local stakeholders.
 2. Integration of best management practices that incorporate peer reviewed science.
 3. Expedited implementation of forest and watershed enhancement projects at the stand and landscape levels.
 4. Flexible planning.
 5. Conservation forestry conclusions and proposals for action should be consistent with the following:
 - a) Avoid management scenarios that result in a static forest condition.
 - b) No restrictions on particular size or age of wood material.
 - c) Concentrate activities on current condition as compared to desired condition.
 - d) Contains an aggressive timetable for management implementation.
 - e) Use of a systemic, diagnostic approach to anticipate forest health problem.
 - f) Creation of forests that are ecologically sustainable.
 - g) Accurate accounts for the cost of failure to maintain forest health and provides for long-term risk analysis.
 - h) Preparation of the forest for periods of drought and fortification against disease infestations.
 - i) Harvest and utilization of forest products and materials to finance management prescriptions to meet desired condition.

LAND EXCHANGES, ACQUISITIONS, AND SALES

It is the County's position that:

- A private property owner has a right to dispose of or exchange his property as seen fit within applicable law.
- Federal and state governments now hold sufficient land to protect the public interest.
- Federal lands shall be available for disposal when such disposal meets the important public objective of community expansion or economic development or when the disposal would serve the public interest.
- Federally managed lands that are difficult to manage or which lie in isolated tracts shall be offered for disposal.

- There shall be no net loss of the private land base. No “net loss” shall be measured in acreage or fair market value.
- The County should be compensated for net loss of private lands with public lands of equal value. Tax base resulting from exchanges shall be compensated for by the appropriate acquiring agency.
- A private property owner should be protected from federal, state and county encroachment and/or coerced acquisition.
- The County is to be consulted on any acquisition or disposal actions.
- Lands must be made available for disposal under the Recreation and Public Purposes Act and Special User Act in resource management plans and upon request by an appropriate entity in accordance with the acts.
- Federal and state land management agencies shall consider local government needs for local resources such as rock, gravel, road base, etc in all management decisions.

RECREATION AND TOURISM

It is the County’s position that:

- Federal lands offer a broad range of recreational opportunities on public lands, including, but not limited to, hunting, fishing, horseback riding, camping, nature appreciation, interpretive trips, wildlife watching, boating, and other tourism-related activities. Public lands also support businesses that offer such opportunities to the public, including outfitters and guides, outdoor camps, wilderness/survival schools, dude ranches, etc.
- Federal and state land management shall support recreation and tourism and associated businesses in the County, including the broad range of activities from off-road vehicle use to primitive outdoor adventures.
- Management plans and decisions must provide opportunities to meet the increased demand for dispersed recreational opportunities.
- The area has outstanding potential for further development of recreation and tourism.
- Resource development, recreation, and tourism are compatible when properly managed.

- Motorized, human, and animal-powered outdoor recreation should be integrated into a fair and balanced allocation of resources within the historical and cultural framework of multiple-uses.
- Outdoor recreation should be supported as part of a balanced plan of economic growth.
- Potential developments should include family oriented activities and developments that are accessible to the general public and not limited to special interest groups.
- It supports cultivating recreational facility development and maintenance partnerships with other entities, agencies and special interest groups.
- Federal land outdoor recreational access shall not discriminate in favor of one particular mode of recreation to the exclusion of others.
- Existing levels of motorized public access to traditional outdoor recreational designations in the county shall be continued, including both snow machine and off-highway vehicle use.
- Traditional levels of group camping, group day use and all other forms of outdoor recreation, motorized and non-motorized, shall be continued.
- The permitting process for commercial recreational permits on federal lands in the county shall be streamlined and expedited.
- Permitting of commercial business enterprises on federal lands that reflect the custom and culture of the county in terms of recreation and outdoor lifestyles/uses shall be encouraged.
- Outfitting and lodge operations are an important part of local history and tradition as well as contribute substantially to the local economies. Management decisions must provide for the continuation or expansion of these activities and fully disclose the impacts to them.
- Residences on state or federal lands, and access to them, shall continue to be authorized.

WILDLIFE

It is the County's position that:

- Federal and state agencies must work collaboratively with the County to manage and conserve game species and their habitats in a manner that respects private property rights and state management authority over wildlife resources.

- With proper management and planning, healthy wildlife populations are not incompatible with the development of other resources and resource use.
- Properly managed wildlife habitats and populations are important to the area's recreation and tourism economy and the preservation of the culture and lifestyles of its residents.
- Predator and other wildlife numbers must be controlled at a level that protects habitats, livestock, private property and other wildlife species from loss or damage.
- Trapping is an historic, environmentally sound, and scientifically proven method of controlling predatory animals and should be maintained.
- Chemical control when properly managed is a safe and effective predator control and should be utilized only by state and federal wildlife services.
- "Guidelines To Manage Sage Grouse And Their Habitat," written by John W. Connely, Michael A. Schrorder, Alan R. Sands, and Clait E. Braun, represent definitive research on sage grouse and their habitat. This publication should be the basis for the creation of any state or local sage grouse management plan.
- Any state or federal sage grouse study group must include a County representative.
- Wildlife habitat must comply with Healthy Rangeland Standards and other standards that govern rangeland health. Wildlife populations must be reduced when it has been determined that wildlife is responsible for habitat degradation. Such reductions must not be shifted to livestock.
- It favors quickly and effectively adjusting wildlife population goals and population census numbers in response to decreases in the amount of available forage caused by catastrophic events, drought, or other climatic adjustments.
- Reduction in forage allocation resulting from forage studies, drought, or other natural disasters shall be shared proportionately by wildlife.
- Wildlife target levels and/or populations must not exceed available wildlife forage as determined by proper monitoring.
- In evaluating a proposed introduction or reintroduction wildlife species, priority will be given to species that will provide increased recreational activities.
- The provisions of "Executive Order 20070817: Facilitation of Hunting Heritage and Wildlife Conservation" must be incorporated into all management decisions.
- Local and commercial use of wildlife resources must be balanced to prevent loss of recreational opportunities for local residents.

- The use of agreements between willing private landowners and federal and state agencies that compensate the private landowner for providing and maintaining wildlife habitat should be pursued whenever possible. Private lands often contain the highest quality wildlife habitats in the area.
- No restrictions may be placed on a resource or a resource use to provide for protection or expansion of species classified as predators under state statute.

SPECIAL DESIGNATIONS

It is the County's position that:

- It is clearly demonstrated that a proposed designation:
 1. Is not a substitute for a wilderness suitability recommendation.
 2. Is not a substitute for managing areas inventoried for wilderness characteristics after 1993 under the BLM interim management plan for valid wilderness study areas.
 3. There is no justification for application of de facto wilderness management.
- Access and development of mineral and other resources and uses have been fully analyzed and such designation needs outweigh the loss of value of these resources.
- Special designations, such as wilderness, areas of critical environmental concern (ACEC), wild and scenic rivers, critical habitat, semi primitive and non-motorized travel, etc., when not properly planned and applied, often result in single purpose or non-use and are detrimental to the area economy, life styles, culture, and heritage.
- Needed protections can be provided by well-planned and managed use and these options must be exhausted before special designations are considered.
- Designations must be made in accordance with the spirit and direction of the acts and regulations that created them.
- Designations not properly planned or managed are inconsistent with the mandates that public lands be managed for multiple use and sustained yield.
- No special designations should be proposed until it is determined and substantiated by verifiable scientific data that:
 1. A need exists for the designation.
 2. Protections cannot be provided by other methods.
 3. The area in question is truly unique when compared to other area lands.

WILDERNESS DESIGNATIONS / ROADLESS AREAS

It is the County's position that:

- The County's support for any recommendations made under a statutory requirement to examine the wilderness option during the revision of land and resource management plans, or other methods will be withheld until it is clearly demonstrated that:
 1. The duly adopted transportation plans of the state and county or counties within the planning area are fully and completely incorporated into the baseline inventory or information from which plan provisions are derived.
 2. Valid state or local roads and rights-of-way are recognized and not impaired in any way by the recommendations.
 3. The possibility of future development of mineral resources by underground mining or oil and gas extraction by directional or horizontal drilling or other non-surface disturbing methods are not affected by the recommendations.
 4. The need for additional administrative or public roads necessary for the full use of the various multiple-uses, including recreation, mineral exploration and development, forest health activities, and grazing operations on adjacent land, or on subject lands for grand-fathered uses, are not unduly affected by the recommendations.
 5. Analysis and full disclosure is made concerning the balance of multiple-use management in the proposed areas.
 6. The analysis compares the full benefit of multiple-use management to the recreational, forest health, and economic needs of the state and the counties to the benefits of the requirements of wilderness management.
 7. The conclusion of all studies related to the requirement to examine the wilderness option are submitted to the County for review and action, and the results in support of or in opposition to, are included in any planning documents or other proposals that are forwarded to the United States Congress.
 8. Areas must merit the suitable requirements contained in the Wilderness Act of 1964 unless requirements are changed by Congress.
- Managing public lands for "wilderness characteristics" circumvents the statutory wilderness process and is inconsistent with the multiple-use and sustained-yield management standard that applies to all Bureau of Land Management (BLM) and the United States Forest Service lands that are not wilderness study areas.
- The only legal designations of Wilderness Study Areas (WSA) are those designated under the Wilderness Act of 1964 and under section 603 of the Federal Land Policy and Management Act (FLPMA). On BLM administered lands, the opportunity to create additional wilderness ended in 1991 except as authorized by Congress.

- Some or all of the area WSA designations pending before Congress are legally and/or technically flawed and the County will pursue that position when the WSAs go before Congress for approval.
- The 1999 Wilderness Study Area Planning Project and the Wilderness Inventory and Study Procedures H6310-1 were legally and technically flawed.
- The public lands that were determined to lack wilderness character during previous wilderness review processes cannot be managed as if they were wilderness based on new or revised views of wilderness character. These areas were studied and released and must remain subject to the full range of multiple uses.
- That any proposed wilderness designations in the County forwarded to congress for consideration must be based on a collaborative process in which support for the wilderness designation is unanimous among federal, state, and county officials.
- All Wilderness Study Areas (WSA's) pending Congress, which were not recommended for wilderness designation by the Secretary of Interior, shall be released and managed for multiple use and sustained yield.
- Wilderness designation is not an appropriate, effective, efficient, economic or wise use of land. These lands can be adequately protected with existing management options.
- The creation of wilderness limits access for the elderly and the physically impaired. All wilderness management plans must provide for access for these individuals to the fullest extent possible provided by law.
- Wilderness management must provide for continued and reasonable access to and development of property rights within the area and provide for full use and enjoyment of these rights.
- Wilderness Study Areas released by Congress must be managed based on the principles of multiple use and sustained yield. The management plans must be amended in a timely manner to reflect change in status.

AREAS OF CRITICAL ENVIRONMENTAL CONCERN [ACEC'S]

It is the County's position that:

- The County' support for designation of an Area of Critical Environmental Concern (ACEC), as defined in 43 U.S.C. Sec. 1702, within federal land management plans will be withheld until:

1. It is clearly demonstrated that the proposed area satisfies all the definitional requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. Sec. 1702(a).
2. It is clearly demonstrated that the area proposed for designation as an ACEC is limited in geographic size and that the proposed management prescriptions are limited in scope to the minimum necessary to specifically protect and prevent irreparable damage to the relevant and important values identified, or limited in geographic size and management prescriptions to the minimum required to specifically protect human life or safety from natural hazards.
3. It is clearly demonstrated that the proposed area is limited only to areas that are already developed or used or to areas where no development is required.
4. It is clearly demonstrated that the proposed area contains relevant and important historic, cultural or scenic values, fish or wildlife resources, or natural processes which are unique or substantially significant on a regional basis, or contain natural hazards which significantly threaten human life or safety.
5. The federal agency has fully analyzed regional values, resources, processes, or hazards for irreparable damage and its potential causes resulting from potential actions which are consistent with the multiple-use, sustained-yield principles, and the analysis describes the rationale for any special management attention required to protect, or prevent irreparable damage to the values, resources, processes or hazards.
6. It is clearly demonstrated that the proposed designation is consistent with the plans and policies of the County where the proposed designation is located.
7. It is clearly demonstrated that the proposed ACEC designation will not be applied redundantly over existing protections provided by other state and federal laws for federal lands or resources on federal lands
8. The difference between special management attention required for an ACEC and normal multiple-use management has been identified and justified.
9. That any determination of irreparable damage has been analyzed and justified for short and long term horizons.

WILD AND SCENIC RIVERS

It is the position of the County that:

- All eligible river segments in the resource planning area should be completely evaluated for suitability for inclusion in the National Wild and Scenic River System.
- The proposal will not suspend or terminate any studies for inclusion in the National Wild and Scenic River System at the eligibility phase.

- The proposal will fully disclaim any interest in water rights for the recommended segment as a result of the adoption of the plan.
- Management authorities fully disclose recommendations, rationale and evaluation of impacts for inclusion in the National Wild and Scenic River System of projects upstream, downstream, or within the recommended segment.
- It is clearly demonstrated that the agency with management authority over the river segment commits to not use an actual or proposed designation as a basis to impose Visual Resource Management Class I or II prescriptions that do not comply with the provisions of Subsection (8)(t).
- It is clearly demonstrated that including the river segment and the terms and conditions for managing the river segment as part of the National Wild and Scenic River System will not prevent, reduce, impair, or otherwise interfere with: a) the state and its citizens' enjoyment of complete and exclusive water rights in and to the rivers of the state as determined by the laws of the state; or b) local, state, regional, or interstate water compacts to which the state or any county is a party.
- It is clearly demonstrated that the terms and conditions of the federal land and resource management plan contains a recommendation for inclusion in the National Wild and Scenic River System.
- County support for the addition of a river segment to the National Wild and Scenic Rivers System, 16 U.S.C. Sec.1271 et seq., will be withheld until or unless:
 1. It is clearly demonstrated that water is present and flowing at all times.
 2. It is clearly demonstrated that the required water-related value is considered outstandingly remarkable within a region of comparison.
 3. The rationale and justification for the conclusions are disclosed.
 4. The plans and policies of the state and the county or counties where the river segment is located are analyzed and properly considered in the suitability phase of the evaluation.
 5. The effects of the addition upon the local and state economies, agricultural and industrial operations and interests, outdoor recreation, water rights, water quality, water resource planning, and access to and across river corridors in both upstream and downstream directions from the proposed river segment have been evaluated in detail by the relevant federal agency.
 6. It is clearly demonstrated that the provisions and terms of the process for review of potential additions have been applied in a consistent manner by all federal agencies.
 7. The rationale and justification for the proposed addition, including a comparison with protections offered by other management tools, are clearly analyzed within the multiple-use mandate and the results disclosed.

8. It is clearly demonstrated that the managing federal agency that is proposing the segment for inclusion in the National Wild and Scenic River System will not use the actual or proposed designation as a basis to impose management standards outside the federal land management plan.

INTRODUCED, THREATENED, ENDANGERED, AND SENSITIVE SPECIES, RECOVERY PLANS AND EXPERIMENTAL POPULATIONS

It is the County's position that:

- After desired wildlife population numbers are achieved, hunting must be the preferred method of population control and prevention of wildlife movement outside designated ranges.
- It opposes the creation or expansion of grizzly bear, wolf, wolverine, and lynx populations; and the protection of their habitats, ranges or migration corridors.
- Any plan for the management of a predator that has naturally or through introduction or re-introduction or other means repopulated the County must provide for its control by any means when it travels outside it's designated range or becomes a threat to people, property, property rights, livestock, or other wildlife species.
- Any plan that provides for the introduction, reintroduction, natural repopulation, or the management of any predator must provide for timely compensation to owners for direct and indirect cost associated with the loss of life, loss or damage to livestock and property rights. Compensation must be equal to the actual value of the loss (not limited to market value) and include costs associated with development of such claims. Requirements placed on livestock producers to verify the losses of livestock must not be overly restrictive and the producer must be compensated for the cost of meeting such requirements.
- Designations or reintroductions must not be allowed to grow beyond physical boundaries and scope resulting in detrimental effects on the economy, life styles, culture and heritage.
- No designations or reintroductions shall be made until it is determined and substantiated by verifiable scientific data that; a) there is a need for such action, b) protections cannot be provided other methods, and c) the area in question is truly unique when compared to other area lands.
- Designation or reintroduction plans, guidelines and protocols must not be developed or implemented without full public disclosure and cooperation and coordination of the County.

- Recovery plans must provide indicators to track the effectiveness of the plan, identify at what point recovery is accomplished and be self-terminating when the point of recovery is reached.
- Recovery plans must contain provisions for management after the plan is terminated.
- It supports alternatives to listing under the ESA including conservation plans, initiatives or agreements to address threats to species and their habitats.

PUBLIC ACCESS

It is the County's position that:

- Federal and state land management shall support recreation and tourism and associated businesses in the County including activities ranging from off-road vehicle use to primitive outdoor adventures.
- Access to and across public lands is critical to the use, management, and development of those lands and adjoining state and private lands.
- To the extent possible and provided for by law, access to public lands for all users including the elderly and the physically impaired shall be ensured.
- No roads, trails, rights-of-way, easements or other traditional access for the transportation of people, products, recreation, energy or livestock may be closed, abandoned, withdrawn, or have a change of use without full consultation and coordination with the County and public disclosure and analysis.
- Future access must be planned and analyzed to determine its disposition at the completion of its intended life to ensure continued access. In the event that removal of access is deemed appropriate, resulting disturbances shall be reclaimed.
- County roads on public lands shall remain open unless it has been determined by the County that the subject road is no longer needed as part of the County's transportation system.
- Access to all water related facilities such as dams, reservoirs, delivery systems, monitoring facilities, livestock water and handling facilities or other access needed for full enjoyment of property rights, permits, etc., must be provided. This access must be economically feasible with respect to the method and timing of such access.
- The degree of access to or across federal lands shall not entail encumbrances or restrictions on private property rights or privileges.

- A trail system shall be developed on federal lands within the county that provides a wide range of recreational opportunities and experiences for all users. Special emphasis shall be placed on the creation of a loop system.

CULTURAL / HISTORICAL / PALEONTOLOGY RESOURCES

It is the County's position that:

- The County supports the protection, study, and/or excavation of unique archeological features that occur in the County, including the responsible stewardship of these resources through balancing resource protection with visitor values.
- It is the County's position that the National Historic Preservation Act (NHPA) is the basis for cultural and historical reservation and defines federal agency's responsibility for protection and preservation of the County's cultural and heritage resources.
- All management decisions regarding cultural resources shall include appropriate opportunities for participation by the County.
- Federal and state agencies must not jeopardize private property rights or existing land uses, such as oil and gas exploration, mining, logging and harvesting of forest products, road maintenance, and grazing, through the protection of cultural and archeological sites. This can be accomplished by carefully assessing the sensitivity and importance of the site relative to the economic and cultural impacts associated with land management decisions based around cultural and archeological sites in the county. Beaverhead County realizes there can be a balance of existing uses and the need to protect cultural sites.
- Priority shall be given to retention and display of locally collected artifacts within the County.
- Federal land management agencies should provide public education, visitation opportunities at cultural and archeological sites where feasible, and sufficient site protection either physically or by non-publication.
- All management decision providing for the protection of cultural resources must be based on the quality and significance of that particular resource.
- Sites and trails will be allocated to other resource users based on their natural and relative preservation value. Such use allocation must be based on cultural resources, not areas of land.
- Potential adverse effects to significant and high quality cultural resources will be managed to the extent possible through avoidance and confidentiality of location before other protections are considered.

- Many sites represent a unique culture and are closely related to early religious settlements of the area. They continue to have historical significance and are held by many residents as reverent or consecrated sites. These sites must be preserved and remain accessible.
- The preservation and perpetuation of heritage and culture is important to the area economy as well as to the life styles and quality of life of the area residents.
- The maintenance of the resources and their physical attributes such as trails, cabins, livestock facilities, etc., is critical to present and future tourism development.
- The land, its people and their heritage form an inseparable trinity for the majority of the area residents and this relationship must be considered in all proposed actions.
- Livestock grazing and the resulting lifestyles and imprint on the landscapes of the west are some of the oldest enduring and economically important cultural and heritage resources in the west, and must be preserved and perpetuated.
- Management plans must provide opportunity for amateur collectors and students of natural resource related sciences to study, explore, and collect related items as provided for by law.
- Public land management agencies should promote these resources with educational material, signage, and information centers where appropriate.

OFF HIGHWAY VEHICLES (OHV)

It is the County's position that:

- Off highway vehicles should be used responsibly, the management of off-highway vehicles should be uniform across all jurisdictions to prevent use concentrated use on any particular jurisdiction.
- OHVs have become an important segment of the County's recreation industry as well as an important mode of transportation for farmers, ranchers, and resource development.
- It supports the current policies of open OHV areas.
- It will support limiting OHV use and travel to existing roads, trails, and designated trail systems.
- When the necessity for a closure has been established, additional trails and areas must be opened to offset the loss of that recreational opportunity.

- Public land management agencies must implement and maintain an aggressive OHV education and enforcement program on reduction of resource impacts.
- The non-recreational use of OHVs, such as development and livestock operations, must be provided for in all areas unless restricted by law.

WILD HORSES

It is the County's position that:

- It opposes the introduction or reintroduction of wild horses or burros on public lands within the County.
- The presence of uncontrolled and improperly managed wild horses on public lands adversely impacts soil, water, wildlife and vegetative resources, spreads equine diseases, and is a threat to the domestic horse industry. In order to prevent such impacts a herd management plan must be developed.
- Herd management plans must include provisions for periodic gathering of all horses in the unit to; a) limit populations to planned levels, b) remove trespass horses, c) test for equine diseases as prescribed by the state veterinarian, and d) prevent habitat degradation.
- If not properly managed wild horse populations adversely affects the County's economy by spreading disease and reducing forage available for wildlife and livestock.
- Wild horses assigned to herd units must be physically identified to ensure that feral or fugitive horses are not assimilated into wild horse herds on public lands.
- All unauthorized feral horses are in trespass and must be removed from public lands.
- Any future legally established herds must consist only of wild horses that possess Spanish Barb characteristics.
- Horse management plans must contain provisions for the maintenance of the health of wild horses and the prevention of equine diseases.
- No herds will be located in areas that do not provide barriers, natural or otherwise, to prevent herd movement, trespass to private lands, or mingling with domestic herds.
- As with livestock and wildlife, horses must be subject to rangeland standards or other directives that govern rangeland health.

ENERGY AND MINERAL RESOURCE

It is the County's position that:

- In support of the National Energy Policy Act and to reduce the nations dependency on imported oil, all public lands must remain open to the greatest extent possible for the exploration and development of energy and energy related products. This is to be accomplished with full consideration of the impacts to other public land resources and uses.
- Continued access to energy and mineral resources associated with public lands is paramount to the security and well being of the County's residents; the county, state and national economies.
- It is technically possible to permit appropriate access to mineral and energy resources while protecting other resources from irreparable harm.
- Resource management planning should seriously consider all available mineral and energy sources.
- The waste of fluid and gaseous minerals within developed areas should be prohibited.
- Support for mineral development provisions within federal land management plans will be withheld until the appropriate land management plan and environmental impact statement clearly demonstrates:
 1. That the authorized planning agency has considered and evaluated the mineral and energy potential in all areas of the planning area as if the areas were open to mineral development under standard lease agreements.
 2. The establishment of a baseline from which the affect of management prescriptions can be analyzed and evaluated for its impact on the area's baseline mineral and energy potential.
 3. That the development provisions do not unduly restrict access to public lands for energy exploration and development.
 4. That the authorized planning agency has supported any closure of additional areas to mineral leasing and development or any increase of acres subject to no surface occupancy restrictions by adhering to; a) the relevant provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. Sec. 1701 et seq., b) other controlling mineral development laws; and c) the withdrawal and reporting procedures set forth in the Federal Land Policy and Management Act of 1976, 43 U.S.C. sec. 1701 et seq.
 5. That the authorized planning agency evaluated whether to repeal any moratorium that may exist on the issuance of additional mining patents and oil and gas leases.

6. That the authorized planning agency analyzed all proposed mineral lease stipulations and adopted the least restrictive necessary to protect against damage to other significant resource values.
 7. That the authorized planning agency evaluated mineral lease restrictions to determine whether to waive, modify, or make exceptions to the restrictions on the basis that they are no longer necessary or effective.
 8. That the authorized federal agency analyzed all areas proposed for no surface occupancy restrictions.
 9. That the analysis evaluated whether the directional drilling feasibility analysis or analysis of other management prescriptions demonstrated that the proposed no surface occupancy prescription in effect, sterilized the mineral and energy resources beneath the area.
 10. That the authorized planning agency has evaluated all directional drilling requirements in no surface occupancy areas to determine whether directional drilling is feasible from an economic, ecological, and technical standpoint.
- If it is determined that if the minerals are effectively sterilized, the BLM must report the area as a withdrawal under the provisions of the Federal Land Policy and Management Act.
 - Any proposal or action taken by state or federal agencies that may result in restrictions on reasonable and economical access to mineral resources shall be opposed.
 - Identification of energy and mineral potential and location is important for planning future needs and resource management. Such potential must be fully analyzed and impacts disclosed in any management or planning action.
 - After environmental analysis and as provided for in the governing resource management plan, all tracts will be available and offered for lease or open to claim as provided by law.
 - All permits and applications must be processed on a timely basis. Procedures and required contents of application must be provided to the applicant at the time of application.
 - To the extent technically and economically feasible, all produced water should be recycled for use in drilling operations, other development, or reclamation purposes.

FISHERIES

Fishing has been a traditional part of life in Beaverhead County even before the first settlers. In the early days, fishing was a necessary part of survival, and though today it is less essential, it still provides a food resource for many people. Beaverhead County is renowned for the blue ribbon streams in the county and provides excellent fishing

opportunities for county residents and visitors. Income for county residents is provided by such activities as employment as guides, selling supplies and equipment to anglers, and providing meals and housing to anglers.

It is the County's position to:

- Preserve and enhance the fisheries resource in Beaverhead County.
- Prevent the spread of diseases such as whirling disease.
- Prevent the degradation of fisheries through over use.
- Maintain healthy forests for productive watersheds.
- Strike a balance between native and introduced species of fish where both are currently present in a fishery.
- If it is scientifically determined that introduced species are out competing, displacing, or harming the native fish populations, prior to taking any action, the economic impact on Beaverhead County should be determined and considered.
- Strike a balance between the commercial (guides & outfitters) and recreational anglers.
- If overcrowding or over use becomes a problem residents will be given preference over non-residents similar as to what is done for hunting
- Encourage the designation of a section of the Beaverhead River for the season long exclusive use and enjoyment of the unguided and unoutfitted public.
- Minimize the conflicts between anglers and other resource uses.

MITIGATION / HABITAT IMPROVEMENT

It is the County's position that:

- The best method for accomplishing well planned and successful habitat improvements or mitigation is through a local habitat collaborative planning group. Facilitated by the County this group should consist of local governments, federal and state resource managers, industry, and permittees interested in the creation of productive and properly functioning habitats.

- Impacts of development can be mitigated more efficiently in a planned manner through wildlife habitat mitigation banking. When implemented, this system could provide necessary habitat for wildlife while providing for multiple use.
- Analysis of the effect of mitigation must be made to insure the value of the resource being mitigated remains within the County.
- Before offsite mitigation is considered, all possible onsite mitigation opportunities are exhausted. Mitigation analysis should address onsite mitigation opportunities, opportunities adjacent to the project area, then opportunities within the area of economic, cultural and heritage influence of the County, in that order.
- When considering offsite mitigation geographically outside of the project area the connection to the lost resource must be clear.
- Any conservation initiative, mitigation or compensatory mitigation programs or studies must be coordinated with and provide for full participation of the County.
- All disturbances of habitats must be reclaimed as soon as feasible after impacts have been created.
- No off-site mitigation may be considered until onsite opportunities have been exhausted or that proper analysis shows that habitat losses cannot be mitigated on-site.
- Off-site mitigation is voluntary on the part of project proponents.
- Off-site mitigation must provide full involvement of the County.
- Off-site mitigation should not be permanent, but be of duration appropriate to the anticipated impacts being mitigated.
- The most cost effective method of mitigation or habitat improvement is to pool committed mitigation funds to fund larger efforts to mitigate multiple impacts. This can be accomplished through a mitigation banking system that provides for the banking of dollars or mitigation credits.
- It favors habitat improvement projects that are jointly sponsored by cattlemen, sportsmen, and wildlife groups who participate in such activities. Preferred methods are chaining, logging, seeding, burning, and other direct soil and vegetation prescriptions that have been demonstrated to restore forest and rangeland health, increase forage, and improve watersheds for the mutual benefit of domestic livestock, wildlife, and watersheds.
- The use of agreements between willing private landowners and federal and state agencies that compensate the private landowner for providing and maintaining

wildlife habitat should be pursued whenever possible. Private lands often contain the highest quality wildlife habitats in the area.

TRANSPORTATION

It is the County's position that:

- Resource plans must minimally ensure a network of roads on public lands that provide for:
 1. Movement of people, goods, and services across public lands.
 2. Access to federal lands for people with disabilities and the elderly.
 3. Access to state lands and school and institutional trust lands to accomplish the purposes of those lands.
 4. Access to in holdings and for the development and use of property rights.
 5. Reasonable access to a broad range of resources and opportunities throughout the resource planning area including:
 - a) Search and rescue needs
 - b) Public safety needs
 - c) Predator control
 - d) Public safety
 - e) Recreational opportunities
 - f) Access for resource maintenance and administration.
- Transportation and access provisions for all other existing routes, roads, and trails across federal, state, and school trust lands within the state should be determined and identified. Agreements should be executed and implemented as necessary to fully authorize and determine responsibility for maintenance of all routes, roads, and trails.
- Reasonable development of new routes and trails for motorized, human, and animal-powered recreation should be implemented.
- It opposes any additional evaluation of national forest service lands as "roadless" or "unroaded" beyond the forest service's second roadless area review evaluation and opposes efforts by agencies to specially manage those areas in a way that:
 1. Closes or declassifies existing roads unless multiple side by side roads exist running to the same destination and state and local governments consent to close or declassify the extra roads.
 2. Permanently bars travel on existing roads.
 3. Excludes or diminishes traditional multiple-use activities, including grazing and proper forest harvesting.
 4. Interferes with the enjoyment and use of valid, existing rights, including water rights, local transportation plan rights, grazing allotment rights, and mineral leasing rights.

5. Prohibits development of additional roads reasonably necessary to pursue traditional multiple-use activities.
- County support for any forest plan revision or amendment will be withheld until the appropriate plan revision or amendment clearly demonstrates that:
 1. Established roads are not referred to as unclassified roads or a similar classification.
 2. Lands in the vicinity of established roads are managed under the multiple-use, sustained yield management standard.
 3. No roadless or unroaded evaluations or inventories are recognized or upheld beyond those that were recognized or upheld in the forest service's second roadless area review evaluation.
 4. It supports the development of additional roads reasonably necessary to pursue traditional multiple-use activities.
 5. Proposed development plans must contain a transportation plan that clearly identifies a) all roads within the project area by jurisdiction, b) roads or road segments to be reconstructed or constructed, c) the standard to which the roads will be constructed or maintained, and d) who will construct and or maintain them.

APPENDICES: A THROUGH F

APPENDIX A: PAYMENT AND COMPENSATION TO BEAVERHEAD COUNTY FOR FEDERAL LANDS

Payment and compensation to Beaverhead County for all Federal lands are being compiled by Headwaters Economics and will be included here when they become available.

APPENDIX B: MULTIPLE USE AND COORDINATION WITH FEDERAL AND STATE AGENCIES

SELECTED CITATIONS OF FEDERAL CODE AND CASE LAW AFFECTING COUNTY PLANNING:

This Plan provides a positive guide for the Resource Use Committee and the Board to coordinate efforts with federal and state land management agencies. This will insure that the development and implementation of land use plans and management actions are compatible with the best interests of Beaverhead County and its citizens. The Plan is designed to facilitate continued, revitalized, and varied usage of federally and state managed lands in the county.

The Resource Use Committee, the Board, and the citizens of Beaverhead County recognize that federal law mandates coordinated planning of federally managed land with local governments. They positively support varied use of these lands. This varied usage necessarily includes continuation of the historic and traditional economic uses, which have been made of federal- and state-managed lands within the county. It is therefore the policy of Beaverhead County that federal and state agencies will inform the Board of all pending or proposed actions affecting local communities and citizens, and coordinate with the Board in planning and implementation of those actions. Federal laws governing land management mandate this planning coordination. They include, but are not limited to, the following particulars:

BUREAU OF LAND MANAGEMENT

The Federal Land Policy and Management Act, 43 U.S. Section 1701, states the National Policy to be: “the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other federal and state planning efforts.” See 43 USC Section 1701 (a)(2). 43 U.S.C.

Section 1712 (c) sets forth the “criteria for development and revision of land use plans.” Section 1712 (c) (9) refers to the coordinate status of a county that is engaging in land use planning. It requires the Secretary [of Interior] to “coordinate the land use inventory, planning, and management activities with the land use planning and management programs of other federal departments and agencies and of the State and local governments within which the lands are located.” Section 1712 also provides that the “Secretary shall assist in resolving, to the extent practical, inconsistencies between federal and non-federal government plans.” These provisions give preference to those counties who are engaging in land-use planning. Counties with a planning program thus

have preference over the general public, special interest groups, and even counties not participating in land-use planning.

Because of the requirement that the Secretary [of the Interior] “coordinate” land use, inventory, planning, and management activities with local governments, it is reasonable to read the requirement of assisting in resolving inconsistencies to mean that the resolution process takes place during planning instead of at completion of planning when the draft federal plan is released for public review.

The section further requires that the “Secretary [of the Interior] is to “provide for meaningful public involvement of state and local governmental officials... in the development of land use programs, land use regulations, and land use decisions for public lands.”

When read in the light of the “coordinate” requirement of this section, it is reasonable to conclude “meaningful involvement” to refer to on-going consultations and involvement throughout the planning phase, not merely at the end. This latter provision of the statute also distinguishes local government officials from members of the general public or special interest groups..

Section 1712 (c)(9) further provides that the Secretary of the Interior must assure that the BLM’s land use plan be “consistent with State and local plans” to the maximum extent possible under federal law and the purposes of the Federal Land Policy and Management Act (FLPMA). It is reasonable to read this statutory provision in association with the requirement of coordinated involvement in the planning process.

The provisions of Section 1712(c)(9) set forth the nature of the coordination required by the Bureau with planning efforts by Indian tribes, other federal agencies, and state and local government officials. Subsection (f) of Section 1712 sets forth an additional requirement that the Secretary of the Interior “shall allow an opportunity for public involvement” which again includes Federal, State and local governments. The “public involvement” provisions of Subsection (f) do not limit the coordination language of Section 1712(c)(9) or allow the Bureau to simply lump local government officials with special interest groups of citizens or members of the public in general. The coordination requirements of Section 1712(c)(9) set apart for special involvement those government officials who are engaged in land use planning, as is the case in Beaverhead County. This statutory language that gives preference to the county makes sense because it is already engaged in land use planning. The Board has an obligation to plan for future land use to serve the welfare of all of the people county, and to promote continued operation of the government in the best interest of the people of Beaverhead County.

Historically, the Congress, the Bureau of Land Management, and the Federal Courts have recognized that community economic stability is an important consideration in the management of federally managed lands. In interpreting the Taylor Grazing Act, 43 U.S.C. Section 315 et seq. (the Act which created the agency, that become the Bureau of Land Management), the Courts have recognized the purpose of the Act “is to stabilize the livestock industry and to permit the use of public range according to needs and qualifications of livestock operators with base holdings.” See *Chournos v. United States*, 193 Fd2d 321 (10th Cir. Utah 1951), Cert den. 343 U.S. 977 (1952). In *Red Canyon Sheep Co. v. Ickes*, 98 Fd2d 308 (1938), the Court stated that the purpose of the Taylor Grazing Act is to provide the “most beneficial use possible of public range because the livestock industry of the West is an important source of food supply for the people of the nation.” *Red Canyon* also pointed out that “in the interest of the stock growers themselves” the Act was intended to define “their grazing rights and to protect those rights by regulation against interference.”

Similarly, Bureau of Land Management Regulations themselves mandate the agency to coordinate its land use plans with local governments that have adopted comprehensive land use plans of their own. Some of these are shown below:

43 C.F.R. Section 1601.3-1(a)

In addition to public involvement, the BLM is obligated to coordinate its planning processes with land use plans of local governments.

43 C.F.R. Section 1610.3-1(c)(1)

“In providing guidance to BLM personnel, the BLM State Director shall assure such guidance is as “consistent as possible with existing officially adopted and approved resource related plans, policies or programs of other State agencies, Indian tribes and local governments that may be affected”

43 C.F.R. Section 1610.3-1(e)

The BLM is obligated to take all practical measures to resolve conflicts between federal and land use plans of local government..

43 C.F.R. Section 1610.3-2(a)

The BLM plan must be consistent with officially approved and adopted local land use plans, so long as such local plans are consistent with federal law and regulations.

43 C.F.R. Section 1610.3-2(e)

Prior to BLM resource management plan or management framework plan approval; the BLM shall submit to the governor a list of known inconsistencies between the BLM plans and local plans.

43 C.F.R. Section 1610.3-2(c)

The BLM has no duty to make its plan consistent with a local government plan if the local government does not notify the BLM existence of its local plan.

USDA FOREST SERVICE

Pertinent parts of United States Forest Service Regulations are, as follows:

16 U.S.C. Section 1604(a)

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 and other Federal agencies.

36 C.F.R. Section 221.3(a)(l)

The Forest Service is obligated to consider and provide for “community stability”¹ in its decision-making processes. See also S. Rept. No. 105.22; 30 Cong. Rec. 984 (1897); The Use Book at 17.

36 C.F.R. Section 219.7(a)

The Forest Service is obligated to coordinate with equivalent and related planning efforts of local governments.

36 C.F.R. Section 219.7(d)

The Forest Service is obligated to meet with local governments, to establish a process for coordination. At a minimum, coordination and participation with local governments shall occur prior to Forest Service selection of the preferred management alternative.

¹**Community stability” is defined as a combination of local custom, culture and economic preservation.**

36 C.F.R. Section 219.7(d)

The Forest Service in its decision-making processes is obligated to coordinate² with local governments prior to selection of the preferred management alternative.

36 C.F.R. Section 219.7(c)

The Forest Service is obligated, after review of the county plan, to display the results of its review in an environmental impact statement. See also 40 C.F.R. Sections 1502.16(c) and 1506.2

36 C.F.R. Section 219.7(c)(4)

The Forest Service is obligated to consider alternatives to its proposed alternative if there are any conflicts with county land use plans.

36 C.F.R. Section 219.7(f)

The Forest Service is required to implement monitoring programs to determine how the agency's land-use plans affect communities adjacent to or near the national forest being planned.

COURT CASES UPHOLDING LOCAL LAND USE PLANNING

California Coastal Commission v. Granite Rock Co., 480 U.S. 572 (1987)

State land use planning is allowed on federal lands as long as such land use planning does not include zoning. Federal agencies cannot claim "Constitutional Supremacy" if the agency can comply with both federal law and the local land use plan.

Wisconsin Public U.S. Intervenor v. Mortier, 111 S. Ct. 2475 (1991)

When considering preemption, the U.S. Supreme Court will not assume that the State's historic powers are superseded by federal law unless that is the clear manifest purpose of Congress

² coordinate is defined as "equal, of the same rank, order, degree or importance; not subordinate." *Blacks Law Dictionary 303 (5th ed. 1979).*

ENDANGERED SPECIES ACT

Montana Farm Bureau Federation, et al. v. Babbitt, No. 93-0168-E-HLR (Dec. 14, 1993)

The Fish and Wildlife Service is required to follow all procedural mandates in the Endangered Species Act (ESA) when listing a species as threatened or endangered, including (1) listing the species within one year of publication of the notice of proposed listing, otherwise Fish and Wildlife Service must withdraw the regulation. (2) providing actual notice to local governments prior to listing; (3) providing adequate public review of data used to list the species; and (4) adequately considering and responding to public comments regarding the proposed listing.

16 U.S.C. Section 1533(b)(5)(A)(ii)

Not less than ninety days before the effective date of the regulation, the Fish and Wildlife Service is required to give actual notice to local governments of its intent to propose a species for listing or change or propose critical habitat.

50 C.F.R. Section 423.16(c)(i)(ii)

Once notified, the local government has the opportunity to comment on the proposed species listing or critical habitat designation.

16 U.S.C. Section 1533(i)

The Fish and Wildlife Service must directly respond to the “State agency”³

16 U.S.C. Section 1533(f)(5)

Other federal agencies must also consider local government and public comments regarding the management of threatened or endangered species.

16 U.S.C. Section 1533(b)(1)(A)

The listing of a species as threatened or endangered by the Fish and Wildlife Service is to be based on the best scientific and commercial data available.

³ Under the ESA, a “state agency” is a division, board, or other governmental entity that is responsible for the management and conservation of fish, plant, or wildlife resources within a state. 50 C.F.R. Section 424.02(1)

16 U.S.C. Section 1533(b)(1)(A)

The Fish and Wildlife Service shall list species only after taking into account efforts of state or political subdivisions to protect the species.

16 U.S.C. Section 1533(b)(2)

Critical habitat designations must take economic impacts into account. Areas may be excluded as critical habitat based upon economic impacts unless the failure to designate the area as critical habitat would result in extinction of the species.

Douglas County v. Lujan, 810 F. Supp. 1470 (1992)

The Fish and Wildlife Service is required to complete full National Environmental Policy Act (NEPA) documentation when designating critical habitat.

16 U.S.C. Section 1533(f)(1)

The Fish and Wildlife Service shall develop and implement recovery plans for the survival of endangered species unless it finds that such a plan will not provide for conservation of the species.

National Wildlife Federation v. Coleman, 529 F.2d 359 (1976) cert. denied 429 U.S. 979 (1977)

Pursuant to the Endangered Species Act, the Fish and Wildlife Service is responsible for species listing, the designation of critical habitat and the development of protective regulations and recovery plans. Once a species is listed, federal agencies have the responsibility to consult with the Fish and Wildlife Service under Section 7 of the ESA. However, once consultation has occurred, the agency is then free to make the final determination. The Fish and Wildlife Service does not have veto power over federal agency actions.

54 Fed. Reg. 554 (January 6, 1989)

The Sensitive Species Program was created on January 6, 1989 by the Fish and Wildlife Service and is implemented by all federal agencies. These federal agencies are to give "special consideration" to those plant and animal species that the Fish and Wildlife Service is considering for listing but lacks the scientific data to list.

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The National Environmental Policy Act requires that all federal agencies consider the impacts of their actions on the environment and on the preservation of the culture⁵, heritage, and custom⁶ of local government.

16 U.S.C. Section 4331

“It is the continuing responsibility of the federal government to use all practicable important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice.”

Thus, by definition, the National Environmental Policy Act requires federal agencies to consider the impact of their actions on the custom of the people as shown by their beliefs, social forms, and “material traits”. It is reasonable to read this provision of the National Environmental Policy Act as requiring that federal agencies consider the impact of their actions on rural resource-dependent counties. Beaverhead County is such a county. For generations, families have depended upon the “material traits” of ranching, farming, mining, timber production, wood products, hunting, fishing, outdoor recreation, and other resource-based lines of work for their economic livelihoods.

42 U.S.C. Section 4332 (2)(c)

All federal agencies shall prepare an environmental impact statement (EIS) or an environmental assessment (EA), (i.e. a NEPA document) for “every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment.”

42 U.S.C. Section 4332 (c)(iii)

Such EIS or EA shall include, among other things, alternatives to the proposed action.

⁵ The term “culture” is defined as “customary beliefs , social forms, and material traits of a group; the integrated pattern of human behavior passed to succeeding generations. See *Webster’s New Collegiate Dictionary*, G. & C. Merriam Co., (1975).”

⁶ A custom is a usage or practice of the people, which, by common adoption and acquiescence, and by long and unvarying habit, has become compulsory and has acquired the force of law with respect to the place or subject-matter to which it relates. See *Bourier’s Law Dictionary* 417 (1st ed. 1867).

42 U.S.C. Section 4332 (c) Copies of comments by State or local governments must accompany the EIS or EA throughout the review process.

40 C.F.R. Section 1502.16(c)

Each NEPA document shall include a discussion of possible conflicts between the proposed federal action and local land use plans.

40 C.F.R. Section 1506.2 (b)

Federal agencies shall “cooperate to the fullest extent possible” to reduce duplication with state and local requirements. Cooperation shall include:

- (1) Joint planning
- (2) Joint environmental research
- (3) Joint hearings
- (4) Joint environmental assessments

40 C.F.R. Section 1506.2 (d)

Environmental impact statements must discuss any “inconsistency of a proposed plan with any approved state or local plan and laws (whether or not federally sanctioned).” Where inconsistencies exist, the EIS should describe the extent to which the agency would reconcile the proposed action to the plan or law.

40 C.F.R. Section 1508.20(e)

Mitigation includes (a) avoiding the impact altogether, (b) limiting the degree of the impact, (c) repairing, rehabilitating or restoring the affected environment, (d) reducing the impact by preservation opportunities, or (e) compensating for the impact by replacing or providing substitute resources or environments.

Douglas County v. Lujan 810 F. Supp. 1470 (1992)

A local government, because of a concern for its environment, wildlife, socio-economic impacts, and tax base, has standing to sue federal agencies and seek relief for violations of NEPA.

WILD AND SCENIC RIVERS ACT

16 U.S.C. Section 1271

It is Congressional policy to protect "... historic, cultural or other similar values in free-flowing rivers or segments thereof."

16 U.S.C. Section 1279 (b)

Wild and scenic river designations on federal lands cannot affect valid existing rights.

16 U.S.C. Section 1282 (b)

The Secretary of the Interior, the Secretary of Agriculture, or the head of any other Federal agency, shall assist, advise and cooperate with states or their political subdivisions to plan, protect, and manage river resources. Such assistance, advice, and cooperation may be through written agreements or otherwise.

16 U.S.C. Section 1276(c)

The study of any river for designation under the Act shall be pursued in as close cooperation with appropriate agencies of the affected state and its political subdivisions as possible, [and] shall be carried on jointly if request for such joint study is made by the state "

16 U.S.C. Section 1281(e)

The Federal agency charged with the administration of any component of the national wild and scenic rivers system "may enter into written cooperative agreements with □ the appropriate official of a political subdivision of a state for state or local governmental participation in the administration of the component."

16 U.S.C. Section 1283 (c)

Wild and scenic river designations cannot affect valid existing leases, permits, contracts or other rights.

16 U.S.C. Section 1277(c)

The federal government is precluded from condemning or taking private land adjacent to a wild or scenic river so long as the local zoning ordinances protect the value of the land.

HISTORIC PRESERVATION ACT REGULATIONS

36 C.F.R. Section 800.5(e)(1)(i)

If a federal, state, or local action is determined to have an adverse affect on a historic property, the state and federal Historic Preservation officer shall consult with the head of the local government, if requested by the local government.

CLEAN AIR ACT

33 U.S.C. Section 1251(g)

Federal agencies shall cooperate with state and local agencies to develop comprehensive solutions to prevent, reduce, and eliminate pollution in concert with programs for managing water resources.

33 U.S.C. Section 1252 (A)

The Environmental Protection Agency (EPA) “shall, after careful investigation, and in cooperation with other federal agencies, state water pollution control agencies, interstate agencies, and the municipalities and industries involved, prepare or develop comprehensive programs” for preventing water pollution.

SOIL AND WATER RESOURCES CONSERVATION ACT

16 U.S.C. Section 2003(b)

“Recognizing that the arrangements under which the federal government cooperates through conservation districts with other local units of government and land users have effectively aided in the protection and improvement of the nation’s basic resources, it is declared to be the policy of the United States that these arrangements and similar cooperative arrangements should be utilized to the fullest extent practicable”

16 U.S.C. Section 2008

“In the implementation of the Act, the Secretary [of Agriculture] shall utilize information and data available from other federal, state and local governments.”

RURAL ENVIRONMENTAL CONSERVATION ACT

16 U.S.C. Section 1508

“The Secretary [of Agriculture] shall, in addition to appropriate coordination with other interested federal, state, and local agencies, utilize the services of local, county, and state soil conservation committees.”

RESOURCE CONSERVATION ACT OF 1981

16 U.S.C. Section 3411 (5)

Congress finds solutions to “chronic erosion-related problems should be designed to address the local social, economic, environmental, and other conditions unique to the area involved to ensure that the goals and policies of the federal government are effectively integrated with the concerns of the local community “

16 U.S.C. Section 3432

“The local unit of government is encouraged to seek information from and the cooperation of ... (2) agencies of the Department of Agriculture or other federal agencies “

16 U.S.C. Section 3451

“It is the purpose of this subtitle to encourage and improve the capability of state and local units of government and local nonprofit organizations in rural areas to plan, develop, and carry out programs for resource conservation and development.”

16 U.S.C. Section 3455

“In carrying out the provisions of this subtitle, the Secretary [of Agriculture] may□ (2) cooperate with other departments and agencies of the federal government, state, and local units of government and with local nonprofit organizations in conducting surveys and inventories, disseminating information, and developing area plans “

16 U.S.C. Section 3456 (a)(4)

The Secretary of Agriculture may provide technical and financial assistance only if “the works of improvement provided for in the area plan are consistent with any current comprehensive plan for such area.”

PRESIDENTIAL EXECUTIVE ORDER 12866

REGULATORY PLANNING AND REVIEW (September 30, 1993)

INTRODUCTION:

“The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves health, safety, environment, and well being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory policies that respect the role of state, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a system today.”

Section I (b)(9)

“Wherever feasible, agencies shall seek views of appropriate state, local and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of federal regulations on state, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize federal regulatory actions with related state, local and tribal regulatory governmental functions.”

Section 5(b)

“State, local and tribal governments are specifically encouraged to assist in the identification of regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification or be otherwise inconsistent with the public interest.”

Section 6 (a)(1)

“In particular, before issuing a notice of proposed rule making, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those who are expected to be burdened by any regulation (including, specifically, state, local and tribal officials) Each agency also is directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rule making.”

PRESIDENTIAL EXECUTIVE ORDER 12630

GOVERNMENTAL ACTIONS AND INTERFERENCE WITH CONSTITUTIONALLY PROTECTED PROPERTY RIGHTS (March 15, 1988)

Section 1 (a)

“The Fifth Amendment of the United States Constitution provides that private property shall not be taken for public use without just compensation Recent Supreme Court decisions, however, in reaffirming the fundamental protection of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions that have an impact on constitutionally protected property rights, have also reaffirmed that governmental actions that do not formally invoke the condemnation power, including regulations, may result in a taking for which just compensation is required.”

Section 1(c)

“The purpose of this Order is to assist federal departments and agencies in undertaking such reviews and in proposing, planning, and implementing actions with due regard for the constitutional protections afforded by the Fifth Amendment and to reduce the risk of undue or inadvertent burdens on the public fisc resulting from lawful governmental action.”

Section 3(c)

“The Just Compensation Clause [of the Fifth Amendment] is self actuating, requiring that compensation be paid whenever governmental action results in a taking of private property regardless of whether the underlying authority for the action contemplated a taking or authorized the payment of compensation. Accordingly, governmental actions that may have significant impact on the use of value or private

property should be scrutinized to avoid undue or unplanned burdens on the public fisc⁸.”

⁸ **Fisc**, noun [Latin *fiscus*]: A state or royal treasury. Webster’s Collegiate Dictionary

APPENDIX C: RESOURCE USE COMMITTEE

The Resource Use Committee is appointed by the Beaverhead County Commissioners and consists of five (5) members. The members are appointed for two-year terms. Current members are:

Bill Allen

Parke Scott

Craig Taylor

Mel Rice

Nate Finch

***JS Turner, City of Dillon Representative

APPENDIX D: DUE PROCESS: The Elements of Fair Play

R. Marlin Smith: Partner, Ross, Hardies, O'Keefe, Babcock & Parsons

Land-use regulation is set against a constitutional backdrop that establishes certain limits for such regulation. Two of the most important of these constitutional limitations come from the Fifth Amendment of the U.S. Constitution, which is made applicable to the state and its instrumentalities by the Fourteenth Amendment and which provides that no person may be "deprived of life, liberty or property, without due process of law" This requirement of due process has two aspects, commonly called procedural due process and substantive due process.

The constitutional requirement of procedural due process essentially requires that the procedures used in decision making -- whether it be administrative or judicial decision making -- be fair, giving all interested persons an adequate opportunity to make their views heard. Substantive due process is the term sometimes applied to the constitutional requirement that statutes, ordinances, rules, and decisions must not be arbitrary or capricious. That is, there must be a rational relationship between the exercise of legislative or rule-making authority and the achievement of some legitimate public purpose.

PROCEDURAL DUE PROCESS

The constitutional requirement of fair procedures has nine general aspects:

(1) **NOTICE**. Adequate and timely notice of proceedings and of the proposed decision-making or rule-making process is a fundamental aspect of due process. The U.S. Supreme Court, in a frequently cited decision [Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306, 314 (1950)], has said that notice must be ". . . reasonably calculated, under all the circumstances, to apprise interested parties of the tendency of the action and afford them an opportunity to present their objections. . . . The notice must be of such nature as reasonably to convey the required information . . . and it must afford a reasonable time for those interested to make their appearance. . . ."

Both the enabling acts of the various states and municipal zoning ordinances usually provide that notice of both legislative hearings and administrative hearings on zoning matters be given in some fashion to all interested parties. Due process requires that the owner of the land and other interested persons be given prior notice before any action is taken which would make a material change in the regulations applicable to a particular parcel, or group of parcels, of land [Gulf and Eastern Development Corp. v. City of Fort Lauderdale, 354 So.2d 57 (Fla. 1978); American Oil Corp. v. City of Chicago, 331

N.E.2d 67 (Ill. App. 1975); Nesbit v. City of Albuquerque, 575 P.2d 1340 (N.M. 1977)]. Publication is the most commonly required form of notice, although posting on the property affected is also frequently required. In some circumstances, such as where a proposed condemnation is involved, publication and posting have been held insufficient notice [Schroeder v. City of New York, 71 U.S. 208 (1962)]. Increasingly, statutes and municipal ordinances have required that notice be mailed, usually by certified mail, to all property owners (or taxpayers of record) within a specified distance of the property which will be affected by the zoning action.

The notice must be adequate: the average citizen reading it, whose rights may be affected, must understand the general purpose, nature, and character of the proposed action [Moore v. Cataldo, 249 N.E.2d 568 (Mass. 1969); Nesbit v. City of Albuquerque, *supra*, Note 2; Yoga Society of New York v. Town of Monroe, 392 N.Y.S.2d 81 (App. Div. 1977); Sellers v. City of Asheville, 236 S.E.2d 283 (N.Car.App. 1977); Barrie v. Kitsap County, 527 P.2d 1377 (Wash. 1974)]. Moreover, there is some authority for the view that an application for one type of zoning relief cannot rest on public notice for a different type of relief. Thus, for example, an applicant cannot be given a special-use permit when the notice stated that he was seeking a variation. [See, Foland v. Zoning Board of Appeals, 207 N.Y.S.2d 607 (N.Y.S. Ct. 1960) and Village of Larchmont v. Sutton, 217 N.Y.S.2d 929 (N.Y.S.Ct. 1961).]

The timeliness of the notice is also important. Minimum notice times are ordinarily specified in state enabling legislation and in municipal ordinances. A zoning action that does not comply with these statutory time periods is invalid [Lunt v. Zoning Board of Appeals, 191 A.2d 553 (Conn. 1963); Slagle v. Zoning Board of Appeals, 137 A.2d 542 (Conn. 1957); George v. Edenton, 230 S.E.2d 695 (N.Car.App. 1976); Sibarco Stations, Inc. v. Town Board of Vestal, 288 N.Y.S.2d 8 (N.Y.App. Div. 1968)].

To summarize, procedural due process demands that there must be notice of an action, it must adequately apprise interested persons of the intended action, and it must be given within the prescribed time periods and within sufficient time to allow interested individuals to make appropriate preparations.

(2) OPPORTUNITY TO BE HEARD. It is central to the concept of procedural due process that all persons interested in a prospective decision be given an opportunity to offer their views and to supply evidence in their support. This concept is embodied in the virtually uniform requirement that there be no changes in zoning regulations, and that no special permits, special exceptions, or variations be granted until a public hearing has been held. The failure of a local legislative body to conduct an appropriate hearing that gives everyone a fair opportunity to be heard may invalidate any subsequently adopted

ordinance or regulation. [See, e.g., Bowen v. Story County Board of Supervisors, 209 N.W.2d 569 (Iowa 1973); Baltimore v. Mano Swartz, Inc., 299 A.2d 828 (Md. 1973); and Lima v. Robert Slocum Enterprises, 331 N.Y.S.2d 51 (App. Div. 1972).]

The hearing must be open to the public. Any decision that is based on proceedings held in a closed session, with the public excluded, will be held void [Blum v. Board of Zoning and Appeals, 149 N.Y.S.2d 5 (N.Y.S.Ct. 1956)]. While there are some older court decisions that support the view that private deliberations prior to a public vote are permissible, an increasing number of states have adopted open meeting or "sunshine laws" which require that the deliberations of local governmental bodies, as well as the actual vote, be public. The Washington and Oregon courts have carried this requirement a step further by holding that local boards and commissions may not even receive information outside of the presence of all of the parties [Smith v. Skagit County, 453 P.2d 832 (Wash. 1969) and Fasano v. Board of County Commissioners of Washington County, 507 P.2d 23 (Ore. 1973)].

A hearing in which there is no meaningful opportunity to be heard and which in fact frustrates the right of persons to be heard is no hearing at all. One such case was described by Justice Grice of the Georgia Supreme Court in Pendley v. Lake Harbin Civic Ass'n, [198 S.E.2d 503 (Ga. 1973)].

The evidence in this complaint for injunctive relief shows 36 zoning petitions were scheduled to be heard before the Commissioners of Clayton County on October 11, 1972, at 7:30 o'clock p.m.; that the hearings continued until 3:30 o'clock a.m., October 12, 1972; that from 1,200 to 1,500 people were present to attend the public meeting; that the hearings were held in the commissioners' hearing room, which accommodates approximately fifty people; that there were three other larger rooms in the courthouse where the hearings could have been legally held; that people were packed so closely in the entire corridor outside the hearing room that those interested in various petitions could not get close to the door, much less inside the hearing room.

The record discloses substantial evidence to support the findings of the trial judge, such as the following. One man swore that when he arrived for the hearing there was already an "enormous" crowd gathered in the hearing room and the hallway outside; that it took him thirty-five minutes to get from the hallway into the hearing room, which he managed only through the help of friends who were already inside; that there were no microphones in use and it was difficult to hear the proceedings even inside the hearing room; that when he asked the commissioners to clear the hearing room to let in persons who want to speak pro or con on each petition in turn they took no action on the

request; and that he then left the hearing to enable some other interested person to have a chance to get in.

The Georgia court, in holding that there had been no public hearing under such circumstances, referred with approval to this ruling of the trial court:

Zoning is a matter of highest governmental business. The government's business should not be conducted in unreasonable places, at unreasonable hours. To do so would seem to defeat the intent of the General Assembly to insure reasonable, orderly, and public hearings when required by law. The court finds that conducting the county business of zoning after mid-night and into the early morning hours, and on a day other than as previously advertised, and in one of the small public meeting rooms in the courthouse where only a small number of the approximately 1,200 to 1,500 people present had access, was unreasonable to the extent that the general public was deprived of an effective, meaningful public hearing before the commissioners of Clayton County to which they were entitled by law.

Although the more generally accepted view is still that decisions with respect to the zoning of particular tracts of land are legislative decisions [see Meyer v. County of Madison, 287 N.E.2d 159 (Ill.App. 1972); Golden Gate Corp. v. Town of Narragansett, 359 A.2d 321 (R.I. 1976); and Charlestown Homeowners Ass'n. v. LaCoke, 507 S.W.2d 876 (Tex. Civ.App. 1974)], there have been an increasing number of decisions which have followed the lead of the Oregon Supreme Court in Fasano v. Board of County Commissioners of Washington County [*supra*, Note 9], in holding that when the local legislative body is considering a rezoning or a request to use a tract of land in a particular way, then the decision is not legislative at all but is in fact a quasi-judicial decision [Snyder v. City of Lakewood, 542 P.2d 371 (Colo. 1975); Lowe v. City of Missoula, 525 P.2d 551 (Mont. 1974); Fleming v. City of Tacoma, 81 Wash.2d 292, 502 P.2d 327 (1972); and Golden v. Overland Park, 224 Kan. 591, 584 P.2d 130 (1978)]. The distinction is of great importance because, as the Fasano decision indicates, if the local hearing is regarded as quasi-judicial or adjudicative, rather than legislative, then all interested persons are entitled to a "trial type" hearing, whereas less rigorous procedures will satisfy due process requirements when the matter to be determined involves issues of legislative fact or recommendations with respect to public policy.

(3) THE RIGHT OF CROSS-EXAMINATION. When the hearing is regarded as adjudicative or quasi-judicial, all parties must be accorded the opportunity to question their opponents and the opposing witnesses. Courts have generally been reluctant to hold that cross-examination is a necessary element of fair procedure in legislative hearings, perhaps because of a concern that local boards are inadequately equipped to

deal with evidentiary rules. However, one recent Illinois decision has required that an opportunity to cross-examine be afforded in legislative hearings. In E & E Hauling v. County of Du Page, [396 N.E.2d 1260 (Ill.App. 1979)], the court held that a zoning board of appeals, sitting to consider a proposed rezoning with respect to which it would only make a recommendation to the county board, must not only give interested persons the right to appear and give evidence but must also give them the right to examine witnesses offered by opposing parties. In an earlier Connecticut decision, the Supreme Court of that state had explained why the right to cross-examination was an important aspect of fair procedures: "...[a zoning board] often deals with important property interests; and a denial of a right to cross-examine may easily lead to the acceptance of testimony at its face value when its lack of creditability or the necessity for accepting it only with qualifications can be shown by cross-examination" [Wadell v. Board of Zoning Appeals, 68 A.2d 152 (Conn. 1949)].

The Wadell decision makes a persuasive argument that, to the greatest extent possible, local zoning boards should not accept testimony offered at its face value. By permitting the cross-examination process to disclose the extent to which the testimony should be credited or qualified, local hearings will be made procedurally fairer.

(4) DISCLOSURE. There must be an opportunity to see, hear, and know all of the statements and evidence considered by the body making the local decision. Private communications with the decision makers, called ex parte communications, destroy the credibility of the hearing process and deprive it of an appearance of fairness. The decisions in the state of Washington have developed the requirement that a public hearing must not only be fair, it must appear to be fair. Thus, in Smith v. Skagit County [supra, Note 9; cf. Fasano v. Board of County Commissioners of Washington County, Supra, Note 9], the court invalidated a decision that rested in part on information received at a meeting from which the public and opponents of the proposal were excluded. In that case, the court explained:

It is axiomatic that, whenever the law requires a hearing of any sort as a condition precedent to the power to proceed, it means a fair hearing, in appearance as well. A public hearing, if the public is entitled by law to participate, means then a fair and impartial hearing. When applied to zoning, it means an opportunity for interested persons to appear and express their views regarding proposed zoning legislation The term "public hearing" then presupposes that all matters upon which public notice has been given and on which public comment has been invited will be open to public discussion and that persons present in response to the public notice will be afforded reasonable opportunity to present their views, consistent, of course, with the time and space available. Where the law expressly gives the public a right to be heard . . . the

public hearing must, to be valid, meet the test of fundamental fairness, for the right to be heard imports a reasonable expectation of being heeded. Just as a hearing fair in appearance but unfair in substance is no fair hearing, so neither is a hearing fair in substance but appearing to be unfair.

One of the commonest breaches of the right of interested parties to have an opportunity to be acquainted with, and to respond to, all of the information received by the decision-making body is the practice of considering staff reports which have not been circulated to the interested parties or which are not made available in advance of the hearing. It is not unusual for plan commissions and zoning boards to receive such staff reports at the last minute, or even after the public hearing has closed, without those reports ever having been distributed to members of the public and interested persons given the opportunity to peruse them and to respond to assertions made in them. The failure to disclose all of the information that is taken into account by the decision-making body destroys the fairness of the decision-making process and may be held to deprive the parties of procedural due process.

(5) FINDINGS OF FACT. When an administrative decision is involved, the findings or reasons for the decision are an essential aspect of due process. In some instances, the applicable statute or ordinance requires findings of fact and in others, the courts have imposed that requirement. [See, e.g., Shay v. District of Columbia Board of Zoning Adjustment, 334 A.2d 175 (D.C. App. 1975); Reichard v. Zoning Board of Appeals, 290 N.E.2d 349 (Ili.App. 1972); Metropolitan Board of Zoning Appeals v. Graves, 360 N.E.2d 848 (Ind. App. 1977); Bailey v. Board of Appeals of Holden, 345 N.E. 2d 367 (Mass. 1976); and see generally, 3 Rathkopf, The Law of Zoning and Planning, pp. 37-69 to 37-70 (4th ed., 1980)].

Findings of fact are ordinarily not required where the decision is characterized as a legislative one. This means that in most zoning actions findings of fact are not necessary. However, one consequence of the Fasano rule in the Washington courts has been a requirement that rezoning decisions with respect to particular parcels of land, which are characterized as quasi-judicial, be supported by adequate findings of fact. The Oregon Supreme Court held in South of Sunnyside Neighborhood League v. Board of Commissioners, [569 P.2d 1063 (Ore. 1977)] that while no particular form for such findings is required, there must be a clear statement of what the decision-making body believed to be all of the relevant and important facts on which it based its decision. In that case, the court found that the very generalized findings were too incomplete and speculative to meet the requirement that there be adequate findings. Certainly it is not sufficient for the decision-making body simply to parrot the words of the statute and call its product findings of fact [Harber v. Board of Appeals, 228 N.E.2d 152 (Ill.App. 1967)].

Some years ago, Justice Smith of the Michigan Supreme Court, in Tireman-Joy-Chicago Improvement Ass'n. v. Chernick, [105 N.W.2d 105 (Mich. 1960)], gave vent to an expression of Judicial exasperation with generalized and uninformative "findings" by a local zoning board:

Appellants complain of variances (exceptions) granted by defendant Board of Zoning Appeals without rhyme or reason. They say that the ordinance permitting the grant of variances is vaguely phrased and without specific standards (for example, "unnecessary hardship" is a ground). In addition they complain that the Board's action here was "wholly unwarranted under the facts." What, in truth, was the warrant for the Board's action? We are not told. The Board says we do not have to be told.

Thus, under the Board's argument, the citizen gets it going and coming. Were the legislative standards followed by the Board? There are no specific standards to be followed. What, then, are the reasons for the Board's finding the broad standard of "unnecessary hardship" to be satisfied? No one knows. No reasons are given, In other words it boils down to this: there is unnecessary hardship because there is unnecessary hardship, and, because there is unnecessary hardship, the standard (of unnecessary hardship) is satisfied. Thus by mumbling an incantation the bureaucrat forecloses effective judicial review.

Explicit and careful findings of fact enable all persons interested in the local decision to know just exactly what was decided. That, too, is an essential element of procedural due process.

(6) CONFLICTS ON INTEREST AND THE APPEARANCE OF CONFLICT OR IMPROPRIETY. When a local official has a direct or indirect financial interest in the decision, that decision is infected with the potential bias of the individual and will not be permitted to stand. [See Low v. Madison, 60 A.2d774 (Conn. 1948); Olley Valley Estates, Inc. v. Fussell, 208 S.E.2d 801 (Ga.1974); and Cra11 v. Leonminster, 284 N.E.2d 610 (Mass. 1972).]

The appearance of fairness doctrine developed by the Washington courts, mentioned above, has been applied quite frequently to invalidate decisions in which the interest of one of the decision makers deprives the decision of the appearance of fairness. In Fleming v. City of Tacoma, [502 P.2d 327 (Wash. 1972)], one of the councilmen was employed as an attorney by the successful petitioners for a rezoning amendment less than 48 hours before the city council voted on the request. The Washington Supreme Court held that the proceeding in which the amendment was approved was fatally infected by the appearance of unfairness created by the councilman's conduct.

Consequently, the ordinance was declared invalid--even though the vote of the councilman in question was not necessary to pass the ordinance.

Subsequent Washington decisions have set aside a rezoning ordinance because two members of the planning commission were closely associated with a community organization whose members would benefit financially from the proposed rezoning [Save a Valuable Environment v. City of Bothel, 57 P.2d 401 (Wash. 1978)]. A decision has even been invalidated when it appeared that a member of the local decision-making body had an interest that might have influenced his vote, although in fact it did not [West Slope Community Council v. City of Tacoma, 569 P.2d 1183 (Wash. App. 1977)].

In Buell v. City of Bremerton, [495 P.2d 1358 (Wash. 1972)], the court applied the appearance of fairness rule to invalidate a zoning decision when the chairman had a possible interest because his property might appreciate in value as a result of the zoning. The court noted that the fact that the action could be carried without counting the chairman's vote was not determinative; the self-interest of one member of the planning commission could affect the action of the other members of the commission regardless of the fact that they themselves were disinterested. A New York court has gone so far as to invalidate a local planning decision because the controlling vote was cast by a town board member who was a vice-president of a large advertising agency that the court assumed might be "a strong contender" for obtaining advertising contracts for the project. The court preferred to believe that the board member's vote was prompted by the "jingling of the guinea" rather than by his conscience. So the court invalidated the decision, saying "like Caesar's wife, a public official must be above suspicion." [See Tuxedo Conservation and Taxpayers Asstn. v. Town Board of the Town of Tuxedo, 418 N.Y.S.2d 638 (App. Div. 1979).]

(7) PROMPT DECISIONS. Even adequate and timely notice, a full and completely fair public hearing, and absolute impartiality (free of any taint of bias) on the part of the decision-making official do not guarantee due process unless a decision is made promptly. The parties to a contested land-use decision have a right to expect prompt decisions, and failure to provide this is itself a failure to provide fair procedures.

In recent years, especially in environmental impact litigation, there has been a tendency for opponents of the project to use the environmental review process solely for the purpose of securing a delay in the ultimate decision. The decision-making body that permits itself to be a party to such procrastination effectively denies one or more of the groups involved the process to which they are constitutionally entitled.

(8) RECORDS OF PROCEEDINGS. Finally, it is central to the concept of procedural due process that complete and accurate records be kept of proceedings -- more than just skeletal minutes of what transpired. All exhibits must be preserved and there must be a stenographic record of all testimony heard and all of the statements made. Anything less will deprive the judiciary of the opportunity to engage in a meaningful review when the dispute finally reaches the judicial system. In McLennan v. Zoning Hearing Board of Mount Pleasant Township, [304 A.2d 520 (Pa. Comm. 1973)], the court expressed its exasperation with being required to review judicially a local zoning decision on a totally inadequate record: "These ordinances are absent from the record, and we are mystified as to how we are to decide this appeal without them. Additionally the Zoning Hearing Board merely kept a summary of the proceeding before it and made no stenographic record. In Camera, Jr. v. Danna Homes, Inc., 6 Pa. Commwth. 417, 296 A.2d 283 (1972), we remanded because the testimony was paraphrased by the Board's secretary rather than taken verbatim."

Like the requirement that decisions be made promptly, the requirement that a complete and adequate record be kept is central to due process. No hearing can be considered to have been a fair hearing if the matters taken into account by the decision-making body cannot be reconstructed when its decision is reviewed by others.

(9) SOME GROUND RULES FOR FAIR HEARINGS. No local decision-making body can conduct business in an orderly and efficient manner unless it has a set of rules which are available to any person who appears before the body. Unless the participants in the local hearing process can know the ground rules that will govern the hearing, they cannot adequately prepare themselves for the hearing. Nothing more surely deprives an individual of due process than if the parties to a proceeding are permitted to guess at what the procedures will be or, even worse, to prepare on the assumption that one set of rules will be followed only to have them changed by the decision-making body at the last second.

A local decision-making body, such as a zoning board or a plan commission, should, at the start of every hearing, recite briefly the rules that will be followed during the course of the hearing so that everyone understands in advance what procedures will be employed.

Disclosure of all of the information taken into account by the decision-making body is a critical element of procedural due process. However, disclosure of that information prior to the hearing contributes to the fairness of the hearing and also to the efficiency with which it can be conducted. Parties expecting to present evidence at a hearing should be required to supply in advance a list of the witnesses they propose to call and a brief

summary of the testimony that they expect to elicit from those witnesses. Any reports or studies prepared by a party for introduction at the hearing should be on file in advance so that they can be studied by other interested persons and so that copies for review and critique can be made at leisure. Staff reports should not be concealed until the penultimate moment before the decision is made; they should be prepared and circulated in advance. The objective of procedural due process is to guarantee that the decision-making body has before it all of the information that is pertinent to its decision in a fashion that is calculated to ensure, at best it can be done, that the decision-making process will be open, fair, and thorough -- which is the essence of the constitutional concept of procedural due process.

(10) SUBSTANTIVE DUE PROCESS. Plan commissions, zoning boards, and local governing bodies must be concerned not only with whether their procedures are fair, but also with whether the decisions they make are substantively constitutional. In its substantive aspects, the constitutional guarantee of due process is an assurance that no person will be deprived of his property for arbitrary reasons. A restriction on, or a deprivation of, rights in property is constitutionally supportable only if the conduct or use of property is restricted by reasonable legislation reasonably applied. That is, the legislation must be within the scope of the authority of the legislative body, rationally related to the achievement of a legitimate public purpose, and applied for a purpose that is consistent with the purpose of the legislation itself. (See State v. Johnson, 265 A.2d 711 (Maine 1970) and 1 Rathkopf, The Law of Zoning and Planning, pp. 6-10 to 6-11 (4th ed., 1980).]

The rule that regulation must meet substantive due process standards usually means, in the context of zoning ordinances, that the question of whether a zoning ordinance meets or does not meet that test depends, in part, on whether there is a reasonable use to which the property can be devoted under the restrictions in question. Zoning restrictions do not fail substantive due process standards simply because the landowner cannot devote his property to its most profitable use. [Arverne Bay Construction Co. v. Thatcher, 278 N.Y. 222, 15 N.E.2d 587 (1938); McCarthy v. City of Manhattan Beach, 41 Cal.2d 879, 264 P.2d 932 (1953); Trever v. City of Sterling Heights, 53 Mich.App. 144, 218 N.W.2d 810 (1974); Guaclides v. Borough of Englewood Cliffs, 11 N.J.Super. 405, 78 A.2d 435 (1951); Dusi v. Wilhelm, 25 Ohio Misc. 111, 266 N.E.2d 280 (1970). Occasionally, limitations on the use of land that really do not permit any reasonable use have been sustained. See Consolidated Rock Products v. City of Los Angeles, 57 Cal.2d 515, 20 Cal. Rptr. 638, 370 P.2d 342 (1962).]

This is a typical way that the courts phrase the reasonable use rule: "To sustain an attack upon the validity of the ordinance an aggrieved property owner must show that if

the ordinance is enforced the consequent restrictions upon his property preclude its use for any purpose to which it is reasonably adapted" [Arverne Bay Construction Co. v. Thatcher, *supra*, Note 29].

In some decisions, the question of whether regulations meet substantive due process Standards is decided by attempting to balance the burdens imposed on the landowner against the public benefit secured by the regulations. A typical formulation of this "balancing" test is:

.. .if the gain to the public is small when compared with the hardship imposed upon individual property owners, no valid basis for an exercise of the police power exists. It is not the owner's loss of value alone that is significant but the fact that the public welfare does not require the restriction and the resulting loss. Where, as here, it is shown that no reasonable basis of public welfare requires the restriction and resulting loss, the ordinance must fail and in determining whether a sufficient hardship on the individual has been shown the law does not require that his property be totally unsuitable for the purpose classified. It is sufficient that a substantial decrease in value results from a classification bearing no substantial relation to the public welfare. [Weitling v. County of Du Page, 186 N.E.2d 291 (Ill. 1962).]

In recent years, the courts have increasingly looked for evidence of a comprehensive planning process as the underpinning for municipal land-use regulations and as the best assurance that regulations will meet substantive due process standards. [Udell v. Haas, 288 N.Y.S.2d 888 (N.Y. 1968); Raabe v. City of Walker, 174 N.W.2d 789 (Mich. 1970); Forestview Homeowners Ass'n. v. County of Cook, 309 N.E.2d 763 (Ill.App. 1973); Dayless County v. Snyder, 556 S.W.2d 688 (Ky. 1977); and Fasano v. Board of County Commissioners of Washington County, *supra*, Note 9.] The courts are recognizing the fact that a decision made in the context of overall land-use policies is much less suspect than a decision made *ad hoc*, quite frequently in the midst of intense controversy.

CONCLUSION

The procedural and the substantive aspects of due process have become much more important to both landowners and local officials since the U.S. Supreme Court, in Owen v. City of Independence, [445 U.S. 622 (1980)], decided that any constitutional violation by local government, whether procedural or substantive, could subject the municipality to a damage award under Section 1983. The dissent of Justice Brennan in the recent decision by the Court in San Diego Gas and Electric v. City of San Diego, [44 CCH Sup. Bulletin, B 1594, B1635 (1981)] plainly indicates that at least some members of the Court are interested in encouraging municipalities "to err on the constitutional side of police power regulations." Thus municipal officials must continually be aware of the limits imposed on them by both procedural and substantive rules of due process.

APPENDIX E: A FRAMEWORK FOR COORDINATION

United States Department of the Interior
Office of the Solicitor
P.O. Box 31394
Billings, MT 59107-1394

January 13, 2000

TO: Scott Powers, Dillon Field Office
Bureau of Land Management

FROM: Richard K. Aldrich, Field Solicitor,
Pacific Northwest Region (Billings)

SUBJECT: BLM Compliance with Beaverhead County *Framework For Coordination* as a Part of the Beaverhead County Comprehensive Resource Use Plan, Beaverhead County, Montana

You have requested that our office provide you with advice concerning the Framework for Coordination for implementing the Beaverhead County Comprehensive Resource Use Plan. Specifically, you have asked our advice in addressing the terms “meaningful participation” and “coordination” as found in the following two paragraphs taken from the Framework.

“The County shall have meaningful participation in the planning process of the Coordinating Agencies and the County understands that to be most effective, it must be involved early in the planning process. To best achieve this, the County shall be involved at the point when an idea is being discussed to decide if it should become a proposal, project, plan, action decision, etc.”

Specifically, to begin this coordination process, the coordination agencies shall contact the Beaverhead County Board of Commissioners at the point when an idea is being discussed to decide if it should become a proposal, project, plan, action decision, etc.”

As a foundation for specific comments, we advise that the Federal Land Policy and Management Act of 1976 (FLPMA) requires the Secretary of the Interior to coordinate land use planning for Federal lands with State and local government, the extent consistent with federal laws [FLPMA Section 202(c)(9)]. FLPMA also provides the Secretary additional guidance regarding the type of coordination that is desirable or expected. FLPMA provides for: 1) meaningful involvement of State and local governments in the development of Federal land use plans and decisions; and 2) early public notice of proposed decisions that may have a significant impact on non-Federal lands.

Meaningful public involvement probably requires more than the timely exchange of information. It places an additional responsibility on BLM to thoroughly consider and incorporate, where appropriate, the ideas and comments of State and local entities into Federal land use plans and decisions. When the comments of State and local entities are not incorporated, the BLM should explain why as thoroughly and clearly as possible.

A question generated by the *Framework for Coordination* is the timing of involvement. The above statements imply County involvement from the very moment an action is first contemplated. We do not believe that this is what Congress intended. We do not believe that Congress intended to interrupt the free flow of thoughts and work by staff personnel as they are called upon to initially address any possible action. Bureau staff should be allowed to work with a possible action to determine whether it is reasonable that it will become a proposed action and shape the proposal so that it can be intelligently discussed. Meaningful involvement by the County probably begins at the point the staff recommends that a discretionary action be considered by the decision maker.

Another aspect of the *Framework* is that it appears to apply to any and all actions considered by the BLM. While FLPMA does not specifically limit what actions involvement and coordination are to apply to, FLPMA does state in Section 202 (c)(9) that:

. . . In implementing this directive, the Secretary shall, to the extent he finds practical, . . . 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, . . .

We conclude that BLM may focus on the phrases “to the extent he finds practical” and “public involvement.” The BLM has the authority to determine what is practical. The determination should not be arbitrary and should be as general in applications possible. Public involvement can be interpreted to require open meetings and that there is no need to have a meeting until the topic can be discussed publicly in a meaningful way. The sharing of technical information does not require a public meeting.

Concerning the word coordinate, initial reports regarding the Beaverhead Plan indicated that it is the intent of the County to prepare a land use plan for Federal Lands in Beaverhead County and that under FLPMA, the BLM must then reconcile inconsistencies between its land use plans for Federal lands and the County’s land use plan for Federal lands. We do not believe that FLPMA delegates the authority or jurisdiction to prepare a land use plan for Federal lands to the County. The 1996 United States District Court decision in *United States v. Nye County, Nevada*, 951 F. Supp. 1502 (D. Nev. 1996), is instructive on this question. Federal land use is governed by Congress and Congress has not delegated that authority to the States or local governments.

We note that Beaverhead County provides two definitions for the word “coordinate” in the *Framework*. Both of those definitions (American Heritage College Dictionary and Black’s Law Dictionary, 5th ed.) are for when the word is used as a noun. FLPMA uses the word as a verb. We believe the better definition to be “to bring into a common action, movement or condition; to regulate and combine in a harmonious action.” We further note that the verb phrase “shall coordinate” is conditioned by the phrase “to the extent consistent with the laws governing the administration of public lands.”

We understand that the process of working with Beaverhead County is ongoing. This opinion was generated so as to be of general assistance to the Field Manager and not as a complete legal opinion on the matter. If we can be of further assistance, please call (247-7583),

/s/ John C. Chaffin
John C. Chaffin
For the Field Solicitor

cc: BLM - MTSO
Branch of Public Lands

BEAVERHEAD COUNTY'S ADOPTED FRAMEWORK FOR COORDINATION

WHEREAS, Beaverhead County, as a political subdivision of the State of Montana, desires to fully participate in the planning and regulatory process at the Federal and State level; and

WHEREAS, the County desires to participate in a meaningful manner in the planning process of both State and Federal agencies; and

WHEREAS, Federal law and regulation repeatedly discuss "Coordination with other Federal agencies, State and local governments, and Indian Tribes," in NEPA, FLMA, (citations in Beaverhead County Resource Use Plan, Appendix 3; and

WHEREAS, Beaverhead County Commissioners have delegated part of this information gathering, decision making and planning process to the Resource Use Committee of the County Planning Board with County Resolution No. 99-2; and

WHEREAS, the County desires to implement a framework for participation in this process, to best facilitate "Coordination and Cooperation with other agencies"; and

WHEREAS, the State and Federal agencies recognize that the County is impacted by State and Federal planning and regulatory effect, and desire to encourage the County's meaningful participation in the same; and

WHEREAS, the County recognizes that State and Federal agencies are impacted by County planning and regulatory effect, and desire to encourage agencies meaningful participation in the same; and

WHEREAS, the County has cooperating status;

NOW, THEREFORE, BE IT RESOLVED that Beaverhead County and its designated agents desire to participate in the State and Federal planning process as follows:

- 1) Meaningful public involvement probably requires more than then timely exchange of information. It places an additional responsibility on BLM to incorporate, where appropriate, the ideas and comments of State and local entities into Federal land use plans and decisions. When the comments of State and local entities are not incorporated, the BLM should explain why as thoroughly and clearly as possible.

- 2) Staff should be allowed to work with a possible action to determine whether it is reasonable that it will become a proposed action and shape the proposal so that it can be intelligently discussed. Meaningful involvement by the County probably begins at the point the staff recommends that the decision maker consider a discretionary action.
- 3) Public involvement can be interpreted to require open meetings and that there is no need to have a meeting until the topic can be discussed publicly in a meaningful way. The sharing of technical information does not require a public meeting.
- 4) Beaverhead County recognizes that the process of coordination, cooperation, and consideration of land and resource planning options place certain responsibilities upon Beaverhead County. To this end Beaverhead County commits itself to respond to agencies enquiries to participate in the process describe herein, and to (show up) before, during, and after the public participation process. Beaverhead County further understands its obligation to share information and ideas with State and Federal agencies, in the similar manner outlined herein. Beaverhead County recognizes that the rights and obligation enumerated in this paragraph reciprocate amongst Local, State, and Federal agencies.

BEAVERHEAD COUNTY'S OUTLINE FOR COOPERATING AGENCY PARTICIPATION

PERTINENT PORTIONS OF 40CFR FOR PLANNING BOARD CONCERNING COOPERATING AGENCY STATUS

40 CFR (Code of Federal Regulations) Protection of Environment:

<http://www.epa.gov/lawsregs/search/40cfr.html>

Chapter V ---Council on Environmental Quality

[http://ecfr.gpoaccess.gov/cgi/t/text/text-](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=184d642de12103ac26d02c1c2e4c80b7&c=ecfr&tpl=/ecfrbrowse/Title40/40cfrv3)

[idx?sid=184d642de12103ac26d02c1c2e4c80b7&c=ecfr&tpl=/ecfrbrowse/Title40/40cfrv3_2_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=184d642de12103ac26d02c1c2e4c80b7&c=ecfr&tpl=/ecfrbrowse/Title40/40cfrv3_2_02.tpl)

Index

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=39779aba7cbd9aed4b6f59a5704aad05&rqn=div5&view=text&node=40:32.0.3.3.10&idno=40>

Topic	Sections
Cooperating Agency	1500.5(b), 1501.1(b), 1501.5(c), 1501.5(f), 1501.6, 1503.1(a)(1), 1503.2, 1503.3, 1506.3(c), 1506.5(a), 1508.5.

1500.5(b),--Purpose

(b) Emphasizing interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document (§1501.6).

1501.1(b),--Purpose

(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document

1501.5(c),--Lead Agencies

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

- (1) Magnitude of agency's involvement.
- (2) Project approval/disapproval authority.
- (3) Expertise concerning the action's environmental effects.
- (4) Duration of agency's involvement.
- (5) Sequence of agency's involvement.

1501.5(f),

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

1501.6--Cooperating agencies.

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

- (1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.
- (2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.
- (3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

- (1) Participate in the NEPA process at the earliest possible time.

(2) Participate in the scoping process (described below in §1501.7).

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b)(3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council.

1503.1(a)(1)--Inviting Comments

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any Federal agency, which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;

(ii) Indian tribes, when the effects may be on a reservation; and

(iii) Any agency which has requested that it receive statements on actions of the kind proposed.

1503.2—Duty to Comment

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in §1506.10. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment.

1503.3—Specificity of Comments

(a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.

1506.3(c)—Adoption

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

1506.5—Agency Responsibility

(a) *Information.* If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers (§1502.17). It is the intent of this paragraph that acceptable work not be redone, but that it be verified by the agency.

(b) *Environmental assessments.* If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment.

(c) *Environmental impact statements.* Except as provided in §§1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under §1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency.

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. 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.

APPENDIX F: RESOLUTION 99-2

BOARD OF COUNTY COMMISSIONERS BEAVERHEAD COUNTY, MONTANA

Resolution of the Board of County Commissioners, Beaverhead County, Montana.

WHEREAS, Montana statutes provide for counties to improve the present health, welfare, and safety of its citizens and recognize the need of the agriculture industry and business for future growth; and

WHEREAS, the State of Montana has enacted laws which empower the County Commissioners to develop land use, resource management, and environmental planning processes necessary to serve the public health, safety, convenience and welfare; and

WHEREAS, the National Environmental Policy Act, and the Council on Environmental Quality Regulations at 40 CFR, Section 1506.2 and other regulation and the Intergovernmental Cooperation Act provide mechanisms for intergovernmental coordination and cooperation and joint environmental planning; and

WHEREAS, the National Environmental Policy Act, and the Council on Environmental Quality Regulations require that the assessment of the direct, indirect, and cumulative effects of Federal agency planning decisions on the environment including the ecological, aesthetic, historic, cultural, economic and other impacts that may occur as a result of private and/or governmental actions.

WHEREAS, Beaverhead County has adopted a land use plan which sets forth a general declaration of the County's customs, culture, and economic stability and provides a framework for the analysis and resolution of land planning issues including environmental, social, cultural and other impacts that may occur as a result of private and/or governmental action.

WHEREAS, the National Environmental Policy Act provides that land and resource management plan established by Federal agencies must analyze local government plans to make them consistent where possible.

NOW THEREFORE BE IT RESOLVED, by the Board of County Commissioners of Beaverhead County, Montana, that Beaverhead County has established a Planning Board according to State law and has adopted a master plan for Beaverhead County.

Regarding any actions undertaken by the Federal land management agencies that consider, propose, or take any action that may affect or have the potential of affecting the use of land or natural resources in Beaverhead County, Montana. Beaverhead County shall encourage the Federal land management agencies to the fullest extent:

- A. Consider the effects such actions have on (i) community stability; (ii) maintenance of custom, culture and economic stability; and (iii) conservation and use of the environment and natural resources, as part of the action taken; and
- B. coordinate procedures to the fullest extent possible with the County, prior to and during the taking of and federal action; and
- C. establish a process for such coordination, with the County by understanding or other agreement binding on the agencies including joint planning, joint environmental research and data collection, joint hearings, and joint environmental assessment; and
- D. submit a list and description of alternative in light of possible conflicts with the County's ordinances, policies and plans, including the Comprehensive Plan; consider reconciling the proposed action with the County's ordinances, policies and plans, including the Comprehensive Plan; and after such consideration, take all practical measures to resolve such conflict and display the results of such consideration in appropriate documentation; and
- E. assume that any proposed actions will have a significant impact on County conditions and that coordination and consultation with the County and review of data specific to the County is a necessary prerequisite to all such planning activities; and
- F. coordinate, in absence of a direct constitutional conflict, with the County to comply with Federal statutes and regulations, and County ordinances, policies and plans, including the Comprehensive Plan; and
- G. adopt appropriate mitigation measures with the concurrence of the County to adequately mitigate adverse impacts on local culture, custom, economic stability or protection and use of the environment; and
- H. preserve private property rights of citizens of Beaverhead county against violation through regulatory means or otherwise.

BE IT FURTHER RESOLVED, that Beaverhead County, Montana, notify all Federal agencies administering land or conduction programs in Beaverhead County, Montana, of adoption of this resolution and of the County's request for inclusion in all planning processes to the fullest extent required or permitted by law and in particular the National Environmental Policy Act.

Enacted in open session of the Commission on the 8th day of March, 1999.

Garth L. Haugland, Chairman
 Donna J. Sevalstad, Commissioner
 Neal Cherry, Commissioner

Commissioners Note to Resolution 99-2

Many times when counties pass resolutions such as 99-2, the perception is that there are problems with the federal land management agencies. For the record in Beaverhead County this is not the case. In fact the total opposite is true.

Since 1994, Beaverhead County has participated with the State and Federal agencies in a coordinated approach to planning in Beaverhead County. Adoption of this new approach to planning forced everyone to do business in an entirely different manner. At this time, Beaverhead County would like to recognize and commend all agency personnel for their proactive approach to this unique and different planning situation.

However, as a result of feedback from citizens active in the process, it became apparent that Beaverhead County needed to formalize the coordination process and develop its own resource plan.

Adoption of Resolution 99-2 will facilitate accomplishment of these goals.

RESOLUTION NO. 2010-23 Adopting the 2010 Beaverhead County Public Land's Resource Use policy and Plan

RESOLUTION NO: 2010- 23

RESOLUTION ADOPTING THE 2010 BEAVERHEAD COUNTY PUBLIC LAND'S RESOURCE USE POLICY AND PLAN

WHEREAS, Beaverhead County, Montana, pursuant to the provision of Title 76, Chapter 1, Part 6, Montana code Annotated, has authority to adopt a Beaverhead County Public Land's Resource Use Policy and Plan with respect to land and property contained within Beaverhead County, Montana; and

WHEREAS, Beaverhead County has previously adopted a Beaverhead County Resource Use Plan with respect to Beaverhead County, Montana; and

WHEREAS, the Beaverhead County Planning Board proposed a 2010 Beaverhead County Public Land's Resource Use Policy and Plan; and

WHEREAS, prior to the submission of the proposed 2010 Beaverhead County Public Land's Resource Use Policy and Plan to Beaverhead County, the Planning Board gave notice of the proposed Public Land's Resource Use Policy and Plan and held a public hearing on this Plan, said public hearing being held on the 10th day of June 2010; and

WHEREAS, at least ten (10) days prior to the date set for the hearing the Planning Board caused to be published in the Dillon Tribune Examiner a notice of the time and place of hearing on the proposed Beaverhead County Public Land's Resource Use Policy and Plan pursuant to the provision and 76-1-602, M.C.A.; and

WHEREAS, after consideration of the recommendations and suggestions elicited at the public hearing, the Planning Board passed a motion recommending that the 2010 Beaverhead County Public Land's Resource Use Policy and Plan be adopted; and

WHEREAS, after receiving the Planning Board's recommendation, the Beaverhead County Commissioners gave notice of the proposed Public Land's Resource Use Policy and Plan and held a public hearing on this Policy and Plan, said public hearing being held on the 28th day of June 2010; and;

WHEREAS, at least ten (10) days prior to the date set for the hearing the Beaverhead County Commissioners caused to be published in the Dillon Tribune Examiner a notice of the time and place of hearing on the proposed Public Land's Resource Use Policy and Plan pursuant to the provision and 76-1-602, M.C.A.; and

WHEREAS, after consideration of the recommendations and suggestions elicited at the public hearing, and pursuant to the provisions and requirements of Title 76,

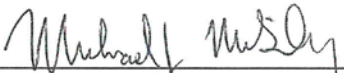
Resolution No: 2010-23
Resolution Adopting The Beaverhead County Public Land's Resource Use Policy and Plan
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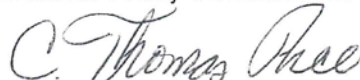
Chapter 1, Part 6, Montana Code Annotated, **IT IS HEREBY RESOLVED**, by the Commissioners of Beaverhead County, Montana, that the 2010 Beaverhead County Public Land's Resource Use Policy and Plan attached hereto and by this reference made a part hereof, is hereby adopted and made an addendum of the Beaverhead County Growth Policy.

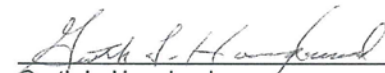
IT IS THE INTENTION of the Beaverhead County Commission that this 2010 Beaverhead County Public Land's Resource Use Policy and Plan replaces the 2001 Beaverhead County Resource Use Plan.

DATED THIS 6th day of July 2010.


BEAVERHEAD COUNTY COMMISSION

BY: 
Michael J. McGinley
Chairman
Beaverhead County Commissioners


C. Thomas Rice
Commissioner


Garth L. Haugland
Commissioner

ATTEST:


Debra L. Scott
Beaverhead County Clerk and Recorder