BEAVERHEAD COUNTY PUBLIC LAND'S RESOURCE USE POLICY AND PLAN

July 2025

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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 understands 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 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 with carrying 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 customs 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 fully ensure consistency in planning and decision-making as required by law. The Board will notify other government agencies of actions 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

Located in the southwest corner of Montana, Beaverhead County is the largest county in the fourth largest state in the country. It is sparsely populated with only 1.69 persons per square mile and a total population of 9,371. The county covers an area of 5,543 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. Located in the valleys, irrigated and partially irrigated croplands produce hay, potatoes, barley, and wheat. Pasture also exists in river and stream bottoms. These land uses comprise of more than 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 consist 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 University of Montana-Western, 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.

Beaverhead County is extremely rich in an abundance of mineral resources. Many of these minerals are very important to the county's economy and potentially could be a boon to the county's future in terms of jobs, taxes and development. Beaverhead County contains large deposits of gold, silver, talc, phosphate, rare earths and other minerals. Many of these minerals are vital to maintaining and growing our modern society. There are also large deposits of strategic minerals that are vital to the defense of the country.

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 on 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 a 25.7 percent lower than the national average in real income and earned income, an out-migration of the young working age groups and declining business activity. Beaverhead County experienced a 9 percent population growth between 2010 and 2020.

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 manages 59 percent of the 3.55 million acres of land in Beaverhead County. The state of Montana owns 10 percent, 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 sued 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, customs 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 RVing, OHVing, 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 are available in the **Beaverhead County Growth Policy 2022** (see Appendix G) and future Resource Use Policy and Plan components 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.

The 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 impacts 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 Board 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 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 customs 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 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 the 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, ensure 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 customs 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.
- Reduce wildfire risk to communities, watersheds and infrastructure.
- Maintain a high level of cooperation and coordination between the public land managing agencies and the emergency response agencies in the County.
- Promote management programs and initiatives that improve watersheds,

forests, and increased forage for the mutual benefit of wildlife and livestock will be emphasized.

- 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 lifestyles and rights of area residents. (An economic analysis was conducted in the BLM's Dillon RMP and all decisions are tied to this analysis.) Reference **NACo Economic Trends in Public Lands Counties May 2025** (see Appendix G) for specific residential affordability, employment, income and population growth data for Beaverhead County where over half the county is federally owned and managed.

- 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, including both wind and solar, 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 its 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 Commission believes that resource and land use management decisions made in a cooperative and coordinated manner, with federal and state agencies and county officials, will not only maintain and revitalize the multiple use of all lands in Beaverhead County but 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.

- Federal and state agencies shall consider **Exec Order 13790 – Promoting Agriculture and Rural Prosperity in America** (See Appendix G). Beaverhead County is in position to provide a reliable, safe and affordable food, fiber, and forestry supply that is critical to America's national security, stability, and prosperity. It is in the national interest to promote American agriculture and protect the rural communities where food, fiber, forestry, and many of our renewable rules are cultivated.

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 there exists 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 with 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 with 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 with certification that applicable data used in the 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 with 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 and State 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 wildlife habitat and agricultural productivity.

- Federal and state agencies shall comply with **Exec Order 14192 – Unleashing Prosperity through Deregulation** (See Appendix G) in reducing undue burdens of federal regulations on the citizens of Beaverhead County.

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 monitoring objectives, and management of rangelands and forestlands.

- Promote management programs and initiatives that improve the physical, biological, and chemical properties of soil health for the mutual benefit of wildlife, livestock, and people (e.g., initiatives that promote the use of woody or vegetative amendments; regenerative grazing practices; and/or practices that promote vegetative diversity while maintaining living roots in the soil as long as possible every year).

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 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 the 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 and timing 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 effect 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 downstream 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.

- It will support projects that improve water quality and increase 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.

- 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.

- 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.

- 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 or tail water from irrigation systems and law requires mitigation of the impacts, preserving the artificial wetlands shall not be considered unless all other mitigation possibilities have been analyzed and found to be unachievable.

- 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.

- Irrigated agriculture makes a major contribution to the economic base of the County and is of critical importance to economic stability. Alfalfa, grass and grain hays, silage, livestock pasture, small grains, and potatoes constitute the majority of crops in Beaverhead County. Specialty crops, such as waxy barley, canola, and nursery and vegetable crops, are also important products.

- These irrigated crops are integral to the production of livestock in Beaverhead County, and to the stability of the custom, culture, and economy of the county.

- Productive watersheds must be maintained for the preservation of irrigated agriculture.

- Water rights established historically and beneficially used by the citizens of Beaverhead County including but not limited to, the purposes of agriculture (irrigation and stock water) domestic use, industrial use, mining and power uses are recognized as private property rights and are to be protected as such.

- Recognition and acknowledgement of the concept that ditch easements include owner rights to enter, inspect, repair and maintain a canal or ditch.

- Land planning decisions shall limit encroachment upon or impairment of easements for canals or ditches, without the permission of the easement owner.

- Maintain healthy forests for productive watersheds.

- The Montana Water Quality Act (Title 75, Chapter 5, Mont. Code Ann.) provides the authority and standards for water quality in Beaverhead County.

- Any land use inventory, planning or management activities affecting point or non-point sources and water quality in Beaverhead County, either directly or indirectly, is coordinated through local government and is consistent with the Resource Use Management Plan of Beaverhead County.

- All management plans and land use practice modifications proposed by either state or federal agencies premised on water quality issues are coordinated through local government and are consistent with the protection of private property rights.

- Continue installation and maintenance of floodplain protection structures.

- Encourage the use of upstream storage structures and water retention, through a combination of:

1. On stream Storage
2. Off stream storage
3. Structural storage
4. Non-structural storage

- Develop accurate and detailed floodplain mapping in consultation with landowners.

- Discourage construction of structures in floodplain areas and encourage flood proofing of structures situated in floodplain areas.

- Participate in the process to develop a consistent definition of wetlands and lands adjacent to wetlands.

- In developing a wetlands definition, attempt to include the following components:

  1. Define wetlands as naturally occurring areas of predominantly hydric soils presently support hydrophytic vegetation because of the existing wetland hydrology.

  2. Define hydric soil as a soil that in its natural state is saturated, flooded or ponded long enough during the active growing season to have predominantly anaerobic conditions at the surface.

  3. Define hydrophytic vegetation as a predominance (2/3) of obligate wetland plants and facultative wetland plants.

- Develop a coordinated approach to establishing riparian management plans, which include all uses of the area and impacts and influences.

- Utilization allowances should be designed to enhance the range resource and provide an accurate and verifiable system for the comprehensive monitoring and evaluation of the entire range resource in a pasture or grazing rotation system. Utilization allowances and monitoring and evaluation systems should not make the mistake of measuring one area while excluding other areas of the range resource.

- Beaverhead County encourages the development of riparian management plans in concert and coordination with landowners, ranchers, and the appropriate state and federal agencies.

- Coordinate with other agencies any designation of Wild and Scenic Rivers, and other policies regarding riparian management in Beaverhead County.

- Coordinate with other agencies and private entities managing land, waterways, and wetlands containing Threatened or Endangered species

- The county should receive notification of all state, regional, interstate, and federal actions that have any impact on the water of the county prior to such actions being initiated. It shall be the policy of the county to comment on these actions where appropriate.

- Develop appropriate Memorandums of Understanding to implement the coordinated management of riparian areas.

- Develop a county water use policy to ensure water quantity and water quality.
- Ensure that such policies do not unreasonably impact water users within the county.
- Review all water policies periodically to determine that they are appropriate and adequate.
- Engage the County in the development, planning, and the management of the water resources of the county.
- Encourage cost sharing or reimbursement of costs incurred by permittees for riparian protection or improvement.

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 the 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 should not be reduced.
- The county supports reduced regulations on grazing allotments or permits, in particular, livestock ownership or title and eligibility of base property requirements, especially to operations going through family, business or ranch transitions.

- The government agencies should support financially the necessary 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 bison/buffalo or feral horses and other uses.

- It opposes the transfer of grazing animal unit months to wildlife or wild bison/buffalo 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 bison/buffalo or feral 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, or alternative uses permitted, must not be made without full and meaningful consultation with the permittee.

- All affected lease holders and/or in-holders shall be notified when special-use permits are applied for that may impact their interest.

- 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 bison/buffalo or feral 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.

- To mitigate multiple use impacts to grazing permittees from other development/ operations on public lands in the County

    1. Annual developer/operator meetings shall be held with grazing permittee(s). A contact person, who will maintain contact with the grazing permittee(s), must be identified by the developer/operator.

    2. Pipeline projects shall be coordinated with Beaverhead County 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 mining, logging, 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. Cattle guards or gates shall be required on all roads to keep livestock from getting onto highways, development/operation areas, or other allotments.

    8. Speed limits should be established and enforced to lessen the chance of animals getting hit on roads.

    9. If the level of development/operation activity dominates the grazing allotment(s) such that it is not economical for the permittee(s) to continue grazing said allotment(s), developer/operator mitigation including but not limited to replacement of feed, spring grazing pasture, hay, etc. shall be required for the duration of the impact period.

    10. The developer will adopt compensatory mitigation to address the impacts of development on livestock operators.
        - Mitigation measures may include but not limited to vegetation treatments to improve forage, stock water provision and distribution on or adjacent to affected allotments.
        - Upon completion of the development/operation, the developer/operator shall reclaim the character and productivity of the land and water to its pre-development condition.
        - The developer/operator must prepare a decommissioning and restoration

plan prior to approval for development and operations. The plan must be approved by the County.

- The benefits of managed livestock grazing for fire control, weed control, and wildlife habitat enhancement shall be recognized and analyzed during planning and included in NEPA documents.
- The County's position is livestock grazing is the only tool available to land managers that can be used to mimic the historical grazing disturbance necessary to enhance the health of the range resource. Unlike wildlife use, land managers can manage livestock's grazing distribution and timing to gain the appropriate disturbance. If land managers lose this management tool, there is no replacement. Without managed livestock grazing, brush, timber, and annuals will replace the perennial grasses and forbs, and fuel loading will lead to a catastrophic wildfire scenario throughout the rangelands in the County with no solution.
- Supports **Presidential Exec Order 13790 – Promoting Agriculture and Rural Prosperity in America** (See Appendix G)

VEGETATION AND WEEDS

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 ecological site capabilities to ensure 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 and increases fire severity. Without a significant effort to manage this invasion and expansion, watersheds, wildlife, water quality, recreation, and grazing will be damaged.

- Public land managers at the federal, state and county level shall work in close coordination with private landowners to ensure effective weed management in Beaverhead County per the Weed Policy Control doc (add to Reference G).

- Noxious weed populations on state and public lands in Beaverhead County shall be promptly treated to prevent their spread, in coordination with the Beaverhead County Weed Department.

- Promote the protection of the grassland resource from the invasion and expansion of juniper, Douglas Fir, sagebrush, and weeds.

- Participate in the review of and require the inclusion of management measures for woody species in grassland management plans.

- Require coordination and the implementation of County Weed Control policies in grassland management plans.

- Continue the county commitment to funding weed management programs in Beaverhead County.

- Public land managers at the federal, state, and local level shall work in close coordination with private landowners to ensure effective weed management in Beaverhead County.

- Noxious weed populations on public lands in Beaverhead County shall be managed to contain infestations, prevent spread to new areas, and reduce the extent and density of established noxious weed populations to within acceptable limits, and whenever possible eradication, in coordination with the Beaverhead County Weed Department.

- Prevent the introduction, reproduction, and spread of designated noxious weeds, and potential new invaders into and within Beaverhead County.

- Practice integrated weed management, including herbicide, cultural, mechanical, and biological methods, or a combination of methods.

FOREST MANAGEMENT

It is the County's position that:

- Federal and state agencies shall consider **Executive Order 14225 – Immediate expansion of American Timber Production** to increase timber production on federally managed public lands. (See Appendix G)

- 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.

- Ensure Wildland Fire Management programs provide for Fuels Management and fire control to prevent catastrophic events and reduce fire potential at the urban

and industrial interface.

- Beaverhead County supports the Department of Interior's Secretarial Order 3336 – Rangeland Fire Prevention, Management, and Restoration. Beaverhead County expects the BLM to comply with SO 3336 and all subsequent reports and guidance.

- 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 to prevent waste of forest products.

- Management programs must provide fuel load management and fire control to prevent catastrophic events and reduce fire potential at the urban and industrial interface.

- Work with utility companies to reduce their wildfire risk on utility right of ways and jointly identify opportunities for mitigation.

- 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 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.

- Beaverhead County requests the federal and state agencies shall provide the following information in all planning documents:
    - Provide a description of the relationship with, and dependency on that specific seral stage of vegetation.
    - Disclosure of the current Stand Age/Proportion of Stand (%) growth curve relative population or quantities of each age population for that vegetation.
    - Disclosure of a historic or idealized Stand Age/Proportion of Stand (%) growth curve for that vegetation.
    - Disclosure of if and how the current Stand Age/Proportion of Stand (%) growth curve for that vegetation varies for a historic or an idealized growth curve.
    - Disclosure of the current “seedling”, “nursery”, “juvenile” and middle-aged populations or quantities of that vegetation species.
    - Analysis and disclosure whether there are sufficient populations or quantities of earlier growth stages to replenish the current specific seral population.
    - Disclosure of any special needs of the vegetation to initiate sprouting or growth, i.e.: fires of a certain temperature for lodgepole pine, or fresh gravel from spring floods for cottonwoods.

- Analysis and disclosure of what changes would be required to maintain the current level of the specific seral stage populations when the current populations reach the end of their life expectancy.

- Land management agencies should provide both tabular data and utilize graphs, to the extent possible, to better disclose the analysis and relationships described above.

WILDLAND FIRE MANAGEMENT

It is the County's position that:

- Rangeland Fire Prevention, Management, and Restoration. Beaverhead County expects the BLM to comply with SO 3336 and all subsequent reports and guidance.

- Work with utility companies to reduce their wildfire risk on utility right of ways and jointly identify opportunities for mitigation.

- Support aggressive suppression and prevention of wildfires where private property structures or historic values are threatened.

- Support agencies to exempt heavy equipment restrictions in WSAs, RWAs, and WMAs where containment could be achieved without the destruction of private property, e.g. fences, timber stands, and pastureland for grazing. This could be as simple as allowing an existing road to be lightly bladed for access and to conduct back fire from that road.

- Partner with local/volunteer fire departments to enhance preparedness and response efforts.

- Request that federal and state agencies incorporate local fire department plans and policies into fire suppression and control plans.

- Request state and federal firefighting response activities to be coordinated with local fire agencies as required by NEPA and NFMA.

- Request state and federal firefighting agencies maximize the use of cooperative firefighting agreements (e.g. Montana Master Cooperative Wildland Fire Management and Stafford Act Response Agreement. DNRC. 2018. Cooperative Fire Control Agreement Between the State of Montana and Beaverhead County).

- Support land management agencies, universities, emergency services, and others in efforts to engage the public in understanding the severity of wildfire risk and mitigation efforts that can save lives and minimize damage and prepare homes, properties, and communities for wildfire, especially those in the Wildland-Urban Interface. (WUI)

- All public land management plans shall comply with the current Beaverhead County CWPP

- Facilitate enlarging and integrating public land treatments in WUI areas.

- Support post-fire stabilization and restoration activities of forests and rangeland damaged

by wildfires to protect habitat and wildlife, and to reduce the potential for erosion and the introduction or spread of invasive annual grasses or noxious weeds.

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 or exchange when such disposal or exchange meets the important public objective of community expansion or economic development or when the disposal or exchange would serve the public interest.
- Public lands that lie in isolated tracts shall be offered for disposal or exchange.
- 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 opposes conservation easements on Federal and State land.
- A private property owner should be protected from federal, state and county encroachment and/or coerced acquisition.
- Beaverhead County is to be consulted by any state or federal agency on any acquisition, disposal or exchange actions including the use of eminent domain.
- Lands must be made available for disposal or exchange 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.
- Beaverhead county supports conservation easements to be restricted to a maximum of 99 years.

RECREATION AND TOURISM

It is the County's position that:

- Federal and state agencies shall consider **Bureau of Economic Analysis -**

Outdoor Recreation Satellite Account, U.S. and States, 2022 (see Appendix G) and the importance of expanding outdoor recreation opportunities in Beaverhead County.

- Federal and state land management shall support a broad range of recreation and tourism activities and associated businesses in the County as part of a balanced plan of economic growth.

- 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.

- Public land recreational access shall not favor one type of recreation to the exclusion of other types.

- Existing opportunities for legal public access (motorized and non-motorized) to traditional outdoor recreation in the county shall be continued.

- Federal and state land management agencies should consider new technologies including electric bikes and electric motorcycles during travel planning to provide these access opportunities to the public.

- Traditional opportunities for group camping, group day use, and all other forms of outdoor recreation, motorized and non-motorized, shall be continued and expanded, as needed.

- Potential developments should be available to all age groups, accessible to the public, and not limited to special interest groups.

- Access to and permitting of recreation residences on public lands shall continue.

- Cultivating recreational facility development and maintenance partnerships with other entities, agencies and special interest groups is supported.

- Multiple use of public lands is supported. Resource development, recreation, and tourism are compatible when properly managed.
- The permitting process for commercial recreational permits on public lands should be streamlined and expedited.
- All affected lease holders and/or in-holders shall be notified when special-use permits are applied for that may impact their lease.
- Motorized, mechanized, human, and animal-powered outdoor recreation should be integrated and protected in management plans that balance these user opportunities with resource capacities 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 activities for all age groups and developments that are accessible to the 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 and state land outdoor recreational access shall not discriminate in favor of one mode of recreation to the exclusion of others.

- Expanding opportunities for motorized access to traditional recreational destinations in the county shall be encouraged, including both snowmobiling and off-highway vehicles.

- Permitting commercial business enterprises on public lands that reflect the custom and culture of the county in terms of recreation and outdoor lifestyles and uses is encouraged.

- Public land management decisions should consider the continuation or expansion of outfitting and guide operations and fully disclose the impacts of them.

- Residences on state or federal lands, and access to them, shall continue to be authorized.

- Beaverhead County supports accessibility, Improvement, maintenance, and development of motorized and non-motorized trails to facilitate recreation and access to natural resources for residents and visitors. This position reflects the no net loss of our open road and trail system.

- Federal and state land management agencies should coordinate road and trail signage to be consistent across jurisdictions.

- Beaverhead County supports expanding and maintaining adequate means of access to public lands for those with limited mobility and to meet or exceed compliance with the American Disabilities Act.

- Beaverhead County supports special authorizations and permits granted to disabled veterans, elderly and individuals with physical disabilities to access public lands.

- Expand levels of motorized public access to traditional outdoor recreation designations in the county.

- Beaverhead County supports motorized access for game retrieval and firewood gathering.

- Recreation plans should consider the potential impacts that motorized, human, and animal-powered travel may have on soils, vegetation communities and invasive plant species, wildlife, and water quality, and should seek to minimize negative impacts to natural resources.

WILDLIFE

It is the County's position that:

- Federal and state agencies must work collaboratively with the County to manage and conserve game and non-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.

- Wildlife management should prioritize human safety, protecting livestock and pets, and preserving hunting opportunities.
- The following documents should form the basis for the creation of any federal, state or local sage grouse management plan:
    - **Natural Resources Conservation Service, A framework for conservation action in the Sagebrush Biome, Working Lands for Wildlife**, United States Department of Agriculture, Washington, D.C. (2021-2025),
        - https://www.nrcs.usda.gov/sites/default/files/2022-06/sagebrushFramework.pdf (28 pages)
    - Connelly, John & Schroeder, Michael & Sands, Alan & Braun, Clait. (2000). **Guidelines to manage sage grouse populations and their habitats**. Wildlife Society Bulletin. 28. 10.2307/3783856.
        - https://www.researchgate.net/publication/237254690_Guidlines_to_manage_sage_grouse_populations_and_their_habitats
    - Conway, C.J., Meyers, A., Launchbaugh, K., Musil, D., Makela, P., Roberts, S., 2022. **The Grouse & Grazing Project: Effects of cattle grazing on sage-grouse demographic traits** – 2022 Annual Report. College of Natural Resources, University of Idaho. **
        - https://idahogrousegrazing.org/wp-content/uploads/2023/02/conway-et-al.-2022.-grouse-grazing-2022-annual-report.pdf

- 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.

- Prioritize dispersal of large herds of elk and performing damage hunts, as opposed to feeding and/or confinement, when possible, to achieve harvest goals. `

- Approximately 5.29 % of Montana's land mass is in a Brucellosis Designated Surveillance Area including a large percentage of Beaverhead County. Coordination with Beaverhead County from FWP, MDOL and APHIS to assist in promptly removing elk as rapidly as possible to prevent co-mingling with domestic cattle being promoted in area ranchers' Brucellosis Prevention and Surveillance Herd Management Plans shall be a priority to ensure the public health and economic well-being of Beaverhead County's valuable cattle industry.

- 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 of native 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 residents.
- The use of agreements between willing private landowners and federal and state agencies that compensate the private landowner for providing, maintaining, and improving 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 used to provide for protection or expansion of species classified as predators under state statute.

- (Rob V) Livestock grazing is the only tool available to land managers that can be used to mimic the historical grazing disturbance necessary to enhance the health of the range resource. Unlike wildlife use, land managers can manage livestock's grazing distribution and timing to gain the appropriate disturbance. If land managers lose this management

tool, there is no replacement. Without managed livestock grazing, brush, timber, and annuals will replace the perennial grasses and forbs, and fuel loading will lead to a catastrophic wildfire scenario throughout the rangelands in the County with no solution.

- If wildlife populations and/or wildlife use are creating or significantly contributing to non-compliance with land management standards, the County's position is the land management agency will initiate the same compliance process with the wildlife management agency it has in place for other users of the range resource to ensure equal treatment, due process and fair play for all users.

- When wildlife populations exceed goals and/or targets, and/or wildlife populations are significantly contributing to noncompliance with land management standards, the County supports creating an interdisciplinary team (ID Team) to resolve the wildlife resource issues. The ID Team members would consist of government entities including, but not limited to, the County, appropriate land management agencies, and appropriate wildlife management agencies. The County would participate on the ID Team as a NEPA cooperating agency and/or as a coordinating agency under NFMA, FLPMA, etc.

SPECIAL DESIGNATIONS

It is the County's position that:

- A special designation recommendation must be supported by a study establishing eligibility and suitability for the proposed designation. The planning and management of Special Designations (e.g. wilderness, WSAs, areas of critical environmental concern (ACEC's), wild and scenic rivers, critical habitat, semi primitive and non-motorized travel, etc.) must support the area economy, lifestyles, culture, and heritage.

- There is no justification for application of "de facto wilderness management". Managing areas that are not formally designated as wilderness but are managed as if they were to protect their wilderness characteristics is not justified.

- Access and development of mineral and other resources and uses have been fully analyzed and such Special Designation must outweigh the loss of value of these resources.

- Needed protections can be provided by well-planned and managed use and these options must be exhausted before Special Designations are considered.

- Special Designations must be made in accordance with the spirit and direction of the acts and regulations that created them.

- Special Designations not properly planned or managed are inconsistent with the mandate that public lands be managed for multiple use and sustained yield.

- Special Designations should only be proposed once substantiated by

verifiable scientific data and NEPA analysis 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.

- Valid state, county, and local roads and rights-of-way including RS2477 are recognized and not impaired in any way by the recommendations.

- All special designation management plans must provide access for these individuals as provided by law. Beaverhead County supports special authorizations and permits granted to disabled veterans, elderly and individuals with physical disabilities to access public lands.

Wilderness Designations

It is the County's position that:

- The County supports the full disclosure of the rigorous analysis required by the Wilderness Act of 1964, including but not limited to:

    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 including RS2477 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. Tracts of land free from roads, trails or other human development possess unquantifiable value in the form of solitude, escape from human manipulation, and relatively intact ecosystems.

    5. 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.

    6. Analysis and disclosure is made comparing the benefits of multiple-use management to the benefits of wilderness management for the recreational, forest health, and economic needs of the state and the counties.

7. The conclusion of all studies related to the requirement to examine the wilderness option are submitted to the County for review and decision, and the results in support of or in opposition to, are included in any planning documents or other proposals forwarded to the United States Congress.

8. Areas recommended for wilderness (RWAs) designation by management agencies must be reviewed for both eligibility and suitability prior to being proposed or managed as wilderness under 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 Congressionally designated wilderness 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).
- 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 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.

- 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.

- 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 fully provide access for these individuals as 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.

- Beaverhead County supports special authorizations and permits granted to disabled veterans, elderly and individuals with physical disabilities to access public lands.

Wilderness Study Areas

It is the County's position that:

- 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.

- Wilderness Study Areas shall be managed under the guidelines set forth in the Wilderness Study Act of 1977 which allows the historic and existing uses prior to 1977 to continue.

- 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. (see Appendix G).

- The Montana Wilderness Study Act of 1977 required the Secretary of Agriculture to review certain lands within 5 years to determine suitability for preservation as wilderness and report the findings to the President. The review period ended in 1982, and a vast majority of the lands identified have never formally been recommended by the Secretary of Agriculture for designation as wilderness.

Roadless Areas

It is the County's position that:

- Failure by Congress to release lands designated for study by the Montana Wilderness Study Act of 1977, the National Landscape Conservation System or designated as roadless by the Roadless Conservation Rule severely impedes Montana citizens from multiple uses of the lands, thereby harming agriculture, timber harvesting and other multiple use interests as well as Montana families economically supported by those activities and should be released in order to secure the rights of Montana citizens to use these public lands for public purposes unless Congress confirms a study area for inclusion in the National Wilderness Preservation System.

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 County will develop its own management plan for any proposed Wild and

Scenic River segment or similar designation in the county.

- 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 BLM Visual Resource Management Class I or II prescriptions that do not comply with the provisions of Subsection (8)(t) of the Wild and Scenic Rivers Act.

- 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.

- The County supports the full disclosure of the rigorous analysis required by National Wild and Scenic Rivers System, 16 U.S.C. Sec.1271 et seq., including but not limited to:

  1. It is clearly demonstrated that water is always present and flowing.

  2. It is clearly demonstrated that the required water-related value is considered outstandingly remarkable within a region of comparison.

  3. The publicly available record of analysis fully discloses the rationale and justification for the conclusions, including, but not limited to:
     - A disclosure of the reasons and values for the WSR nomination.
     - Disclosure of the analysis comparing the nominated river segment(s) with other regional and national river segments, and
     - Disclosure of the analysis as to how the nominated river segment(s) are outstandingly remarkable when judged against the other regional and national river segments of comparison.

  4. Documentation and disclosure of non-governmental land managers, private

property owners, determinations of eligibility and suitability for the river segments on their respective lands. The Commissioners note there is nothing in the WSR Act allowing government agencies to ignore a private land manager's determination or substitute the agencies' analysis for a private land manager's determination(s).

5. Onsite verification that the features, values, and/or reasons for the river segment nomination are actually on the lands managed by the agency.

6. 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.

7. The effects of the designation 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.

8. 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.

9. 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.

10. It is clearly demonstrated that the federal agency 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.

- Keeping populations off the Endangered Species List and delisting is necessary while also opposing 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 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 the 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.

- The economic impact of livestock depredation must include loss of fertility/birth rates, abortion due to stress, loss of weaning weights, as well as death and veterinary costs associated with large predators.

- Designations or reintroductions must not be allowed to grow beyond physical boundaries and scope resulting in detrimental effects on the economy, lifestyles, 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, and

    b. Protections cannot be provided by other methods

- Designation or reintroduction plans, guidelines and protocols must be developed or implemented with 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.

Sensitive Species, Recovery Plans and Experimental Populations

Beaverhead County requests the Federal and State agencies shall provide the following information in all planning documents. If an animal species of special interest is significantly dependent on specific seral state of vegetation, i.e. late seral or old growth, the land management agencies will fully analyze and disclose:

- Provide a description of the relationship with, and dependency on that specific seral stage of vegetation.

- Disclosure of the current Stand Age/Proportion of Stand (%) growth curve relative population or quantities of each age population for that vegetation.

- Disclosure of a historic or idealized Stand Age/Proportion of Stand (%) growth curve for that vegetation.

- Disclosure of if and how the current Stand Age/Proportion of Stand (%) growth curve for that vegetation varies for a historic or an idealized growth curve.

- Disclosure of the current “seedling”, “nursery”, “juvenile” and middle-aged populations or quantities of that vegetation species.

- Analysis and disclosure whether there are sufficient populations or quantities of earlier growth stages to replenish the current specific seral population.

- Disclosure of any special needs of the vegetation to initiate sprouting or growth, i.e.: fires of a certain temperature for lodgepole pine, or fresh gravel from spring floods for cottonwoods.

- Analysis and disclosure of what changes would be required to maintain the current level of the specific seral stage populations when the current populations reach the end of their life expectancy.

- The effects on the special interest animal populations when the existing plant populations continue to decline and age and the quantity and/or quality of that seral stage vegetation changes.

- Land management agencies should provide both tabular data and utilize graphs, to the extent possible, to better disclose the analysis and relationships described above.

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 disabled veterans, 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. If 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 and state lands shall not entail encumbrances or restrictions on private property rights or privileges.

- A trail system shall be developed on federal and state 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 and connecting neighboring communities.

- Federal and state land management agencies should coordinate road and trail signage to be consistent across jurisdictions.

- Federal and state land management agencies should consider new technologies including electric bikes and electric motorcycles during travel planning to provide these access opportunities to the public.

- BLM, USFS and Montana state land managers must coordinate planning actions for public access and cross jurisdictional connectors.

CULTURAL / HISTORICAL / PALEONTOLOGICAL / ARCHEOLOGICAL RESOURCES

It is the County's position that:

- It 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.

- 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 the retention and display of locally collected artifacts within the County.

- Federal and state 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 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 lifestyles 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 (BLM, USFS, State) to prevent a concentrated use on any jurisdiction.

- Federal and state land management agencies should coordinate road and trail signage to be consistent across jurisdictions.

- Federal and state land management agencies should consider new technologies including electric bikes and electric motorcycles during travel planning to provide these access opportunities to the public.

- 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 policies and the future development of open OHV areas, expanded trail systems, including loop opportunities, and connectors to small communities.

- It supports managed OHV use and travel on 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 to reduce impacts to resources.

- The non-recreational use of OHVs, such as development and livestock operations, must be provided in all areas unless restricted by law.

- Federal and state land management agencies must consider access using new technologies including electric wheelchairs (wheeled or tracked), e-bikes and electric motorcycles during travel planning to provide these access opportunities to the public.
- Federal and State agencies should consider OHV use has less adverse effects on wildlife than non-motorized use when completing Travel Management Plans, Forest Plans, or Land Management Plans as revealed by "Effects of Recreation on Animals Revealed as

Widespread through a Global Systematic Review" completed by the Colorado State University. (See Appendix G)

WILD HORSES / FREE ROAMING BISON / FERAL LIVESTOCK

It is the County's position that:

- It opposes the introduction or reintroduction of wild horses, free roaming bison or burros and feral pigs or livestock 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. 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 wild horse populations are not properly managed, it 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 or free roaming bison are in trespass and must be removed from public lands.
- 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

The minerals on federal and state lands are divided into three categories, each subject to different laws and regulations. **Leasable** minerals include oil, gas, coal, phosphate, oil shale and others. **Locatable**, which are subject to the Mining Law of 1872, as amended, and include gold, silver, copper, talc and a long list of other minerals. **Salable** minerals (mineral materials) generally include sand, gravel, building stone and others and are sold based on an appraised price.

Federal and state agencies shall consider information and mineral inventories provided through the Montana Bureau of Mines and Geology for Beaverhead County (See Appendix G – **BeaverheadCountyCriticalMineralsFactSheet**-2023).

Federal and state agencies shall consider **Exec Order 14156 – Declaring National Energy Emergency** (See Appendix G) in identifying potential oil, gas and mineral development and the importance of such development in Beaverhead County to meet a reliable, diversified, and affordable supply of energy to drive our Nation's manufacturing, transportation, agriculture, and defense industries, and to sustain the basics of modern life and military preparedness.

Leasable (including Oil and Gas, Coal, Oil Shale and Phosphate)

It is the County's position that:

- Oil, gas and mineral deposits (mineral resources) are found in widely scattered and/or in inconvenient locations. Oil, gas and mineral rights and mining claims (mineral rights) are private property, bound by legal descriptions, owned by their individual rights owners and cannot be shuffled about and re-distributed to other entities. The "sterilization" of mineral rights is defined as the process of making mineral resources inaccessible for future use and may be a compensable "taking" under the U.S. Constitution's 5th Amendment. The compensation of rights holders for a "taking" does not make the County and/or State of Montana whole for lost tax revenue for roads and schools, the local population whole for lost wages and community economic activity or the Country whole for the void in the nation's infrastructure created by the missing mineral resources, especially if they are critical or strategic in nature. The County's position is, if mineral resources are found in areas possessing "wilderness characteristics", any exploration, development and/or extraction will be subject to all applicable federal, state and local laws.

- As per the National Energy Policy Act, the County supports energy efficiency, developing renewable energy, incentivizing alternative fuels, and supporting domestic oil and gas production, modernizing energy infrastructure, and nuclear energy development.

- Subject to requirements in the National Environmental Policy Act, public lands must remain open to the greatest extent possible to achieve these energy goals.

- This must be accomplished with full consideration of the impacts to other public land resources and uses.

- Continued access to energy and mineral resources on public lands is paramount to the health, safety and welfare of the County's residents, and the county, state and national economies.

- The adverse effects of waste fluid and gaseous minerals within developed areas should be considered and mitigated.

- Support for mineral development provisions within federal land management plans will not be considered until, as a minimum, 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 and apply site specific stipulations on applicable areas.

2. That the development provisions do not unduly restrict access to public lands for energy exploration and development.

3. That the authorized planning agency cannot close areas to mineral leasing or subject to no surface occupancy restrictions without adhering to:

    - the relevant provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. Sec. 1701 et seq

    - other controlling mineral development laws; and

    - 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.

4. That the authorized planning agency cannot close areas to mineral leasing or increase acres subject to no surface occupancy restrictions without adhering to the relevant provisions, in the Federal Land Policy and Management Act of 1976, 43 U.S.C. Sec. 1701 et seq., including the withdrawal and reporting procedures, and other controlling mineral development laws

5. That the authorized planning agency analyzed updated proposed mineral lease stipulations and adopted the least restrictive necessary to protect against damage to other significant resource values.

6. 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.

7. That the authorized state and federal agency analyzed all areas proposed for no surface occupancy restrictions.

8. 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 prohibits the mineral and energy resources beneath the area.

9. 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 inaccessible for future extraction, they 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 unreasonable restrictions to access 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 public land 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.

- Non-potable produced water should be hauled off-site or processed on site and reinjected into a non-potable reservoir.

- The county supports the development of non-energy leasable minerals such as phosphate. Phosphate is vital to agriculture as a fertilizer and to other industries.

Locatable and Salable Minerals

It is the County's position that:

- The federal and state agencies will coordinate with the county to establish mineral material sites in strategic locations. Hauling materials such as gravel for long distances can significantly raise the cost to the county for building and maintaining roads and other facilities. This is also true for other mineral materials that are needed by the county such as riprap, fill material, stone, etc.

- The federal and state agencies will also work to establish material sites to provide mineral materials to private industry, other government entities such as cities and Beaverhead County residents.

- The federal and state agencies will continue to provide mineral material to government entities on a free use basis.

- The Montana Department of Environmental Quality will assist the county in obtaining state and federal permits for the above-mentioned mineral material sites.

- When approving mining proposals, the federal and state agencies will not impose mitigation

measures that are unreasonably burdensome and costly to the company. The federal and state agencies shall consider mitigation measures from the company.

- Approvals must be completed in a timely manner, recognizing that for private industry and the County, time is money.

- The federal and state agencies will ensure that reasonable access is granted for claim staking, mineral exploration and development.

- When reviewing mineral proposals, the federal and state agencies will ensure that environmental impacts are fully analyzed through the NEPA process, and that undue and unnecessary degradation does not occur.

- The county recognizes that protection of threatened and endangered species is important, however, the federal and state agencies will not impose restrictions that are unreasonably restrictive and burdensome to mining and exploration.

- It is the county's position that the federal and state agencies should avoid actions that reduce the lands available for locatable mineral exploration and development. This includes mineral withdrawals, acquiring or exchanging lands with stipulations that prohibit mineral entry, establishing Wilderness areas, converting the Wilderness Study Areas to designated Wilderness Areas or any other actions that would prohibit mineral development.

- The federal and state agencies will notify, coordinate, cooperate and consult with the county on mineral related proposals submitted.

- The county supports efforts to make abandoned mine features safe, however, the county is opposed to actions that destroy the ability to reuse the feature or to gain access to acquire geologic information or actions that destroy discovery on a mining claim.

- The county supports efforts to remove historic, mine waste rock, tailings and other material especially if it could pose a threat to the environment. This could include actions by private entities with an acceptable operations plan.

- The County opposes withdrawing mine waste repository for mineral entry as the change in mineral value or extraction method may make them an important source of future minerals.

- During resource management planning, the agencies should consider proven mining areas along with historical use.

- If congress lifts the moratorium on patenting mining claims, the agencies should move quickly and efficiently to process applications.

- The County supports **Montana Code Annotated 2023, TITLE 82. MINERALS, OIL, AND GAS CHAPTER 2. MINING GENERALLY Part 2. 82-2-201** (See Appendix G). Right-of-way of owners of mines. The owner of a mining claim held under the laws of the United States by patent or otherwise or under the local laws and customs of the state has a right-of-way over and across the land or mining claim of another, patented or otherwise, as prescribed in this part.

- It is the County's position that Areas of Environmental Concern should not be established for the

purpose of prohibiting or restricting mineral development.

Renewables

It is the County's position that:

- The county supports renewable energy development such as but not limited to wind, solar, geothermal, hydro, biomass and storage on public lands subject to NEPA and/or MEPA analysis.
- Siting of renewable energy facilities on public lands must be done in coordination with the county and must balance the impacts with multiple use.
- Location of right of ways for transmission lines or pipelines must be coordinated with the county.
- The county opposes the use of eminent domain in connecting new energy production facilities on public lands to existing transmission lines or pipelines when crossing private property.

Nuclear Power

It is the County's position that:

- It is in support of the mining of minerals for nuclear power generation in the County, subject to all applicable federal, state and local laws.
- It is in support of the siting of Small Modular Reactors (SMRs), with power outputs of 12 MWe or less, in the County for emergency, educational, evaluation, testing and/or research purposes, on a site specific and case by case basis, as approved by the Commissioners, and subject to all applicable federal, state and local laws.
- It is in opposition to the siting of nuclear waste processing, warehousing and/or storage facilities in the County.

Geothermal

It is the County's position that:

- It is in support of development of Geothermal resources in the County, subject to all applicable federal, state and local laws.

FISHERIES

Even before the first settlers, fishing was a traditional part of life in Beaverhead County. 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 overuse.
- Maintain healthy forests for productive watersheds.
- Work with state to 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 overuse becomes a problem, residents will be given preference over non-residents similar as to what is stated in the Constitution of the State of Montana, Article IX Section 7, Preservation of Harvest Heritage.

  > *"The opportunity to harvest wild fish and wild game animals is a heritage that shall forever be preserved to the individual citizens of the state and does not create right to trespass on private property or diminution of other private rights"*

- Continue the designation of a section of the Beaverhead River for the season long exclusive use and enjoyment of the unguided and non-outfitted public like is currently and historically done.
- Minimize the conflicts between anglers and other resource uses.

MITIGATION HABITAT AND IMPROVEMENT

It is the County's position that:

- All development proposals must include habitat impact analysis and site restoration plans that have been reviewed and approved by the county.
- 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.

- An analysis of the effect of mitigation must be made to ensure the value of the resource being mitigated remains within the County.

- Offsite mitigation proposals will not be considered unless all possible onsite mitigation opportunities are exhausted, or analysis shows that habitat losses cannot be mitigated on-site. Mitigation analysis should address onsite mitigation opportunities, opportunities adjacent to the project area, and opportunities within the area of economic, cultural and heritage influence of the County, in that order. When considering offsite mitigation geographically outside 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 coordination with the County.

- All disturbances of habitats must be reclaimed as soon as reasonably practicable after impacts have been created.

- Off-site mitigation is voluntary on the part of project proponents.

- Off-site mitigation must provide full coordination with 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.

- Improvement projects for land and rangeland health should be jointly sponsored by landowners, land managers, sportsmen, wildlife groups, and others who participate in and/or benefit from forest and rangeland health. Preferred methods are but are not limited to mechanical woody species control, 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 and state lands for people with disabilities, disabled veterans and the elderly.

    3. Access to state lands and school and institutional trust lands to accomplish the purposes of those lands.

    4. Access to inholdings 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.

- Federal and state land management agencies should coordinate road and trail signage to be consistent across jurisdictions.

- Federal and state land management agencies should consider new technologies including electric wheelchairs (wheeled or tracked), e-bikes and electric motorcycles during travel planning to provide these access opportunities to the public.

- 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. Reference **MCA 7-14-2615(3) of Montana Public Road Law**:

- *The board may not abandon a county road or right-of-way used to provide existing legal access to public land or waters, including access for public recreational use as defined in **23-2-301** and as permitted in **23-2-302**, unless another public road or right-of-way provides substantially the same access.*

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 that are 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 that are 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.

PREDATOR CONTROL

It is the County's position that:

- It is important to exercise control of predatory animals to reduce property damage and protect human safety, agriculture, wildlife and the economy is supported.

- Protecting and maintaining trapping as a historic and environmentally sound method of controlling predatory animals and contributes financially to FWP and reduces the financial burden on the public and state wildlife management agencies.

- Large predators such as bears, mountain lions and wolves will be managed to prioritize the protection of humans, pets and livestock.

- Management strategies of large predators shall enhance the safety of the public during outdoor recreational and livelihood activities.

- Citizens' opportunities to hunt large game and large predator species is protected and preserved.

- In accordance with MCA 87-1-217, wildlife management agencies shall coordinate and consult with the county commissioners and the sheriff's department prior to state and federal policy decisions involving large predators, finalizing annual plans or changes to relocation plans and provide written and verbal communication within 24 hours of capturing and prior to relocating a large predator to a different area.

- The economic impact of livestock depredation must include loss of fertility rates, abortion due to stress, loss of weaning weights, loss of weight at sale, as well as death and veterinary costs associated with large predators.

- The use of a multiplier/true cost of damage and loss of livestock associated with large predators.

- In accordance with MCA 87-1-217, support the FWP use of lethal action to take problem wolves that attack livestock if the State objective of breeding pairs or a sustainable population has been met.

- Disease bearing vectors, predators and rodents that are a threat to private property or public health shall be controlled in accordance with recognized and proven sound environmental restraints including chemical controls in coordination with private property owners and local and government agencies.

- Encourage control of disease bearing vectors, predators and rodents that are a recognized threat to public health.

- Encourage protection of private lands bordering federal and state lands from predatory animals and property damage.

- This protection should fall within the boundaries of good husbandry and sound environmental restraints, not to exclude chemical control.

- Encourage retention of and expansion of an animal damage-control plan for the protection of livestock and crops.

- Government and private entities are encouraged to coordinate their pest control actions

and regulations with those of Beaverhead County.

- Government and private entities are encouraged to prepare and implement plans for controlling predatory animals and rodents in accordance with recognized and proven husbandry practices.

LAW ENFORCEMENT

It is the County's position that:

- The peace and dignity of the people of Beaverhead County are preserved and protected including their rights and privileges established under the Montana Constitution and the Constitution of the United States. The Beaverhead County Sheriff has the ultimate law enforcement authority in the County.

- Interagency cooperative agreements are developed to ensure full cooperation of federal and state law enforcement agencies with the Beaverhead County Sheriff.

- Beaverhead County Sheriff is to be advised of all law enforcement activities in Beaverhead County.

- Beaverhead County Sheriff must have prior notification and determine approval to any state and/or federal law enforcement agencies before any investigations, searches, arrests, or any other law enforcement activities occur in the County.

- Obtain the maximum federal and state funding available to support local law enforcement and related activities, which may include fighting fire, search and rescue, and other activities as needed.

- Apply for and have state and federal agency support and concurrence to budget and appropriate funds for local law enforcement and related activities.

USING WILLINGNESS-TO-PAY IN ECONOMIC ANALYSIS

It is the County's position that:

- The current practice of direct comparison of economic activity (dollars) and willingness-to-pay (WTP) data expressed in "dollars" is arbitrary and capricious. Economic activity dollars are real whereas WTP "dollars" are intangible values, meaning no government agency can value or accept WTP intangible "dollars" as payment for fees and/or taxes due.

- The WTP process would be more reliable by:

    - Collecting WTP information with the stated purpose of the agency in the use of this information to set fees for public access to non-market goods and services, like camping, fishing, hiking, etc.,

or

- Utilizing revealed preference data about consumers' actual past choices to determine their true willingness to pay, instead of what consumers say they would hypothetically be willing to pay.

GEO-ENGINEERING AND CLIMATE MODIFICATION

It is the County's position that:

- Any government agencies proposing climate modification, geo-engineering and/or any other deliberate intervention in the atmosphere for a purpose involving climate change, must fully disclose the plans and analysis to the Beaverhead County Commissioners and the residents of the County at the earliest, and all later stages of the planning process prior to implementation.

APPENDICES: A THROUGH G

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

Payment and compensation to Beaverhead County for all federal lands as determined in the 2024 report from NACo and can be found on their website, here:
https://ce.naco.org/?profile_fips=30001
https://www.mtcounties.org/resources-data/pilt/

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 17 I2 (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-l(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 (I897); 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.

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[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 coordinate[2] 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

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[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.

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[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 F2d 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 culture[5], heritage, and custom[6] 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 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.

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[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 fisc[8]."

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

APPENDIX C: RESOURCE USE POLICY AND PLAN UPDATE COMMITTEE 2025

The Resource Use Committee has been appointed by the Beaverhead County Commissioners and consists of 19 members. Current members are:

Kerry White (Chairman)
Robert Van Deren
Bill Allen
Travis Hansen
Parke Scott
JS Turner
Alan Conover
Troy Smith
Heath Martinell
Kathy Heller
Colin Peterson
Tassi Duffner
Tony Johnson
Robert Des Jardins
Sean Claffey
Mark Stosich
Robert Gunderson
John Harrison
Nancy Conover

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 court-house 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 (III.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 (Iii.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); 0lley 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. Commwlth. 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 (Iii.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, THERFORE, 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-idx?sid=184d642de12103ac26d02c1c2e4c80b7&c=ecfr&tpl=/ecfrbrowse/Title40/40cfrv32_02.tpl

Index
http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=39779aba7cbd9aed4b6f59a5704aad05&rgn=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.

RESOULTION NO. 2010-24 Adopting the 2010 Beaverhead County Public Land's Resource Use Policy and Plan

RESOLUTION NO: 2010- 24

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,

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

APPENDIX G: REFERENCES

- 2001 Beaverhead County Resource Use Plan, on file with the County
- 2010 Beaverhead County Resource Use and Policy Plan, on file with the County
- Beaverhead County Growth Policy – 2022
    a. https://beaverheadcounty.org/wp-content/uploads/2022/11/Beaverhead-Co-Growth-Policy-FINAL.pdf
- NACo Economic Trends in Public Lands Counties
    a. https://www.naco.org/sites/default/files/2025-05/Economic-Trends-Public-Lands.pdf
- Bureau of Economic Analysis
    a. Outdoor Recreation Satellite Account, U.S. and States, 2022 | U.S. Bureau of Economic Analysis (BEA)
- OHV Effects of Recreation on Animals Revealed as Widespread through a Global Systematic
    a. https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0167259
- Executive Order 14156 – Declaring National Energy Emergency
    a. https://www.federalregister.gov/documents/2025/01/29/2025-02003/declaring-a-national-energy-emergency
- Executive Order 13790 – Promoting Agriculture and Rural Prosperity in America
    a. https://www.govinfo.gov/content/pkg/DCPD-201700275/pdf/DCPD-201700275.pdf
- Executive Order 14192 – Unleashing Prosperity through Deregulation
    a. https://www.whitehouse.gov/presidential-actions/2025/01/unleashing-prosperity-through-deregulation/
- Executive Order 14225—Immediate Expansion of American Timber Production
    a. https://www.whitehouse.gov/presidential-actions/2025/03/immediate-expansion-of-american-timber-production/
- MACO – Montana Association of Counties, Coordination Handbook
    a. https://www.naco.org/sites/default/files/documents/USFS-Guidebook.pdf
    b. https://www.mtcounties.org/
- Montana Code Annotated 2023, TITLE 82. MINERALS, OIL, AND GAS CHAPTER 2. MINING GENERALLY Part 2. 82-2-201
    a. https://archive.legmt.gov/bills/mca/title_0820/chapters_index.html
    b. https://archive.legmt.gov/bills/mca/title_0820/chapter_0020/part_0020/section_0010/0820-0020-0020-0010.html

- Montana School of Mines – BeaverheadCountyCriticalMineralsFactSheet-2023
    a. https://mbmg.mtech.edu/pdf-publications/fs9.pdf

- **FS and BLM Wilderness Study Areas in Beaverhead County**

    - **West Pioneer WSA**
      148,150 acres in the Beaverhead-Deerlodge Forest northwest of Dillon
      Traditional homelands of the Sélish (Bitterroot Salish) and Shoshone-Bannock peoples, the West Pioneer WSA is the largest remaining roadless area in southwest Montana. Rolling and forested, the West Pioneers provide gentle contrast to the craggy summits of the East Pioneers and are home to a large population of elk. The crest of the range offers spectacular views of the Continental Divide and East Pioneers, while creeks meander through meadows to the east into the Wise River and on to the famous Big Hole. Along the divide, backpackers can find a dozen small lakes tucked away in tumbledown cirques.

    - **Bell and Limekiln Canyons WSA**
      9,650 acres near the Clark Canyon Reservoir southwest of Dillon. Traditional homelands of the Sélish (Bitterroot Salish) and Shoshone-Bannock peoples.

    - **Blacktail Mountains WSA**
      17,479 acres just south of Dillon. Traditional homelands of the Sélish (Bitterroot Salish) and Shoshone-Bannock peoples.

    - **Centennial Mountains WSA**
      27,691 acres south of Red Rock Lakes on the Idaho border in southwest Montana. Traditional homelands of the Sélish (Bitterroot Salish) Shoshone-Bannock peoples.

    - **Farlin Creek WSA**
      1,139 acres between Dillon and Wisdom. Traditional homelands of the Sélish (Bitterroot Salish) and Shoshone-Bannock peoples.

    - **Henneberry Ridge WSA**
      9,806 acres south of Bannack State Park near Dillon. Traditional homelands of the Sélish (Bitterroot Salish) and Shoshone-Bannock peoples.

    - **Hidden Pasture Creek WSA**
      15,509 acres in the Beaverhead Mountains west of Dell. Traditional homelands of the Sélish (Bitterroot Salish) and Shoshone-Bannock peoples.