



Montana Legislative Services Division
Legislative Environmental Policy Office

March 5, 2009

TO: Senator Aubyn Curtiss

FR: Todd Everts, Legislative Environmental Analyst and Legal Staff

RE: Coordination status of Montana State and Local Governments Under the Federal Land Policy and Management Act of 1976 (FLPMA) and the Multiple-Use Sustained Yield Act of 1960 (MUSA)

You have asked whether the adoption of a growth policy is a prerequisite for a Montana state or local government to implement coordination status under FLPMA or MUSA. The short answer to your question is "no" - a state or local government can implement coordination status through other plans, policies, or laws, other than a growth policy. Now for the long answer

The U.S. Forest Service under MUSA and the U.S. Bureau of Land Management (BLM) under FLPMA are both required to coordinate their natural resource and land planning processes with those of state, local, and tribal jurisdictions. The Forest Service must coordinate "with the land and resource management of State and local governments."¹ The Forest Service must provide opportunities for coordination between the Forest Service planning efforts and those of other resource management agencies.² The Forest Service is required to seek assistance (where appropriate) from state and local governments in the planning process.³ If there is any inconsistency between the Forest Service planning process and state and local plans and laws, the Forest Service is required to discuss the inconsistencies and document in the plan the extent to which the Forest Service would reconcile its proposed action with the state or local plan or law.⁴

Unlike the Forest Service, the BLM's land use planning process is explicitly required to "be consistent with State and local plans to the maximum extent consistent with Federal law and the purposes of [FLPMA]".⁵

¹16 U.S.C 1604(a)

²36 C.F.R. 219.9

³Id.

⁴40 C.F.R. 1506.2(d)

⁵43 U.S.C. 1712(b)(9)

BLM's regulations require that BLM resource management plans must be:

*consistent with officially approved or adopted resource related plans, and the policies and programs contained therein, of other Federal agencies, State and local governments and Indian tribes, so long as the guidance and resource management plans are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands, including Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise, and other pollution standards or implementation plans. (emphasis added)*⁶

The BLM is also required:

that in the absence of officially approved or adopted resource-related plans of other Federal agencies, State and local governments and Indian tribes, guidance and resource management plans shall, to the maximum extent practical, be consistent with *officially approved and adopted resource related policies and programs of other Federal agencies, State and local governments and Indian tribes*. Such consistency will be accomplished so long as the guidance and resource management plans are consistent with the policies, programs and provisions of Federal laws and regulations applicable to public lands, including, but not limited to, Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise and other pollution standards or implementation plans. *(emphasis added)*⁷

Montana law authorizes local governments to create planning boards.⁸ If requested by a local government governing body (county or city-county government), a planning board is required to prepare a growth policy.⁹ Growth policies are land use planning documents, that at the discretion of the local government, can include a number of elements, including but not limited to, land use, economic conditions, local service, and natural resources.¹⁰

The federal laws and regulations cited above clearly provide that the consistency requirements for coordination apply to state and local government local plans, resource related plans, policies

⁶43 C.F.R. 1610.3-2(a)

⁷43 C.F.R. 1610.3-2(b)

⁸76-1-101, MCA

⁹76-1-106(1)

¹⁰76-1-601(3)

and programs, and state and local laws. Also note that the federal requirements cited above do not limit coordination to just county or city government, but extend coordination to “state and local government”. Units of local government could also include school districts, irrigation districts, fire districts, cities, and towns. Under Montana law, a growth policy can be requested by a governing body of a city or county.

In conclusion, a growth policy is not the only mechanism a local government can use when implementing “coordination” status with federal management agencies. If you have any other questions, don’t hesitate to contact me.

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