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Sent: Tuesday, May 29, 2012 3:34 PM
To: zSMP; earnest spees; Jo Anne Estes; harry bell; Jay Petersen
Cc: Lois Perry; Keith Olson [REDACTED]; Sue Forde
Subject: COORDINATION PROCESS 43 UNITED STATES CODE SECTION 1712

This is my comment for the SMP Update

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Federal Congressional Mandate 43 United States Code Section 1712

The coordination process is the most effective method for protection of the rights of citizens to own and use property. It provides a process through which local government can bring administrative agencies to the negotiating table on issues related to the **community's economic stability** and social and cultural cohesiveness.

The statutes create a process through which **local government has an equal position at the negotiating table with federal and state government agencies.** They create a process which mandates agencies to work with local government on a government-to-government basis. **Implicit in the mandate of coordination is the duty of the governmental representatives to work together in an effective relationship to seek to reach agreement on consistency between federal, state and local plans and policies.**

The first land use statute on the federal level that required coordination with local government was the Federal Land Policy and Management Act passed in 1976. **Congress defined the term "coordination" by specifying exactly how the federal agency should negotiate with local government. 43 United States Code Section 1712 orders that the Bureau of Land Management coordinate its "land use inventory, planning and management actions with...any local government..."** Congress directs that the agency implement this requirement by doing the following:

- 1.** Keep apprised of State, local and tribal land use plans;
- 2.** Assure that consideration is given to local plans when developing a federal plan, policy or management action;
- 3.** Provide early notification (prior to public notice) to local government of development of any plan, policy or action;
- 4.** Provide opportunity for meaningful input by local government into development of the plan, policy or action; and
- 5.** Make all practical effort to resolve conflicts between federal and local policy, and reach consistency.

Coordination Overview

Federal and state statutes require administrative agencies to work coordinately with local government -- to "coordinate" with local government in developing and implementing plans, policies and management actions.

The statutes create a process through which local government has an equal position at the negotiating table with federal and state government agencies. They create a process which mandates agencies to work with local government on a government-to-government basis. Implicit in the mandate of coordination is the duty of the governmental representatives to work together in an effective relationship to seek to reach agreement on consistency between federal, state and local plans and policies.

The coordination process is the most effective method for protection of the rights of citizens to own and use property. It provides a process through which local government can bring administrative agencies to the negotiating table on issues related to the **community's economic stability** and social and cultural cohesiveness.

Citizens are limited in their ability to influence the decisions of government agencies. Their only participation, as individuals in the decision making-process, is through offering written or oral comments as to the agency's proposal. Most always, their oral remarks are limited to three minutes maximum. **The agency's only responsibility is to summarize the public comments; they are under no obligation to negotiate any alteration of plans, policies or actions based on public input.**

In federal actions where the National Environmental Policy Act requires an environmental assessment or an environmental impact statement, the agencies have only the **duty to summarize public comments** in the assessment or statement.

When **local government represents its constituents'** positions through coordination, the agencies have **much broader duties.** **The agencies must listen to the local input, must analyze the local position to determine** whether there is conflict between the proposed agency action and the local plan or policy and must use good faith effort to resolve any existing conflict to achieve consistency between the proposed plan, policy or action and the local plan or policy.

When Congress or the state legislature orders agencies to coordinate their activities with local government, they require the agencies to **go to the negotiating table on an equal footing with local government.** The word "coordinate" is a word of common usage, a word of daily usage in general public communication. It is not a term of art or a term of scientific and special meaning.

Definition

Federal and state courts have said repeatedly that when the legislative body uses a word of common, everyday usage without specific definition it is presumed that the legislative intent was to use the word as it is commonly defined for public use.

The common dictionary definition of "coordinate" shows that a person or party operating in "coordinate" fashion is **operating as a party "of equal importance, rank or degree, not subordinate."** (Webster's New International Dictionary)

The American Heritage Dictionary defines "coordinate" as **"one that is equal in importance, rank, or degree."** It also states that as a verb the term means "to harmonize in a common action or effort," "to work together harmoniously." It defines the term "coordination" as "the act of coordinating; the state of being coordinate; harmonious adjustment or interaction."

The Courts which have been put to the task of defining the meaning of the term have gone to the dictionary definitions. In [California Native Plant Society v. City of Rancho Cordova](#), 172 Cal. App. 4th 603, 91 Cal. Rpr. 3d. 571 (Third App. Dist. 2009) the Court said this of "coordinate":

"... the concept of 'coordination' means more than trying to work together with someone else. Even under the City's definition of the word 'coordination' means negotiating with others in order to work together effectively. To 'coordinate' is 'to bring into a common action, movement, or condition'; it is synonymous with 'harmonize.'" (Merriam-Webster's Collegiate Dictionary. Supra, at p. 275, col. 1) Indeed, the very dictionary the City cites for the definition of the word 'coordinate' defines the word 'coordination' as 'cooperative effort resulting in an effective relationship.' (New Oxford Dict., supra, at p. 378, col.3)
"Although the city suggests 'coordination' is synonymous with 'consultation' -- and therefore, the city satisfied its 'coordination' obligation under the general plan at the same time it satisfied 'consultation' obligation under the plan -- that is not true. While the City could 'consult' with the Service [Fish and Wildlife] by soliciting and considering the Service's comments on the draft EIR, the City could not 'coordinate' with the Service by simply doing those things. . . . by definition 'coordination' implies some measure of cooperation that is not achieved

merely by asking for and considering input or trying to work together.”

The California case involved interpretation of a city General Plan relating to land use restrictions and zoning requirements. The plaintiff urged the court to set aside two city actions approving residential and commercial development on the ground that the city had not followed the General Plan’s requirement that mitigation of the impact of such developments be set in “coordination” with the United States Fish and Wildlife Service.

The city argued that all coordination requires is soliciting input, carefully considering the input and responding to comments by the inputting party. Thus, the city argued that by soliciting input from the Fish and Wildlife Service, by considering the input and responding to it, it “tried” to work together with the service and satisfied the “coordinate” requirement of its General Plan. As seen above, the Court repudiated the argument, holding that **“coordination” requires far more than just seeking, considering and responding to input comments.**

Within the accepted dictionary definitions relied on by the California Court, when local government asserts the coordination authority granted to it by statute, **it can and should expect to approach the negotiating table on an even par with the state or federal agency involved.** It can and should expect that the state or federal agency will enter negotiations prepared to work effectively toward resolution of conflicts which may exist between local and state or federal policy, plan or action.

In the state of Texas, when the Eastern Central Texas Sub-Regional Planning Commission was formed and asserted its authority to coordinate with the Texas Department of Transportation, as provided by [Section 391 of the Local Government Code](#) of Texas, it relied on the **“equal, not subordinate”** definition of the word. The Texas Court of Civil Appeals referred to the dictionary definition when defining the term “coordination” in *Empire Ins. Co. of Texas v. Cooper*. (138 S.W.2nd 159 (1940))

It is patently obvious that when a legislature uses the word “coordinate” or “coordination” it means more than “cooperate” or “consult”. As the California court reasoned in *Native Plant Society*, supra, if the legislature intended mere cooperation or consultation, it could and would have said so.

Congressional Mandate

The first land use statute on the federal level that required coordination with local government was the Federal Land Policy and Management Act passed in 1976. **Congress defined the term “coordination” by specifying exactly how the federal agency should negotiate with local government. 43 United States Code Section 1712 orders that the Bureau of Land Management coordinate its “land use inventory, planning and management actions with...any local government...”** Congress directs that the agency implement this requirement by doing the following:

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The National Forest Management Act requires the Forest Service to coordinate with local government; in [16 United States Code Section 1604](#), Congress ordered the Service to “develop, maintain, and, as appropriate revise land use resource management plans. . .coordinated with the land and resource management planning processes of State and local governments and other Federal agencies.”

Both the Bureau of Land Management and the Forest Service issued rules for implementation of “coordination” and the rules reflect the statutory mandate of seeking consistency between federal and local plans, policies and actions.

The “coordination” mandate is included in every other natural resource management statute which Congress has passed since 1976. Even in the Homeland Security Act, Congress directs that coordination exist with local government AND with local officials.

The most recent Congressional direction that coordination take place is in the Owyhee Public Lands Management Act of 2009, in which the Secretary of Interior is directed to implement the act in coordination with the County, State and Tribes.

Given the dictionary definition of the term and concept of “coordination,” given the actions which the agencies must take under FLPMA, it is apparent that Congress intended to require equal base negotiations to reach consistency.

In 1982, the Secretary of Agriculture issued the [first rules](#) to define coordination as required by the National Forest Management Act. Those rules required Forest Service line officers to take the same steps as those required of Bureau of Land Management officers by FLPMA. The bottom line for compliance with the 1982 rules is to reach consistency.

The 1982 rules are significant and relevant because they are the only Forest Service rules issued in the last three decades that have passed judicial muster, and thus are still applicable. All successor planning rules have been declared invalid because of NEPA violations in the rule making process.

When a unit of local government -- any unit of local government that is a political subdivision under state law -- exercises its statutory authority to “coordinate,” it can and should expect the federal or state agency to negotiate with it on an equal footing, making a good faith effort to reach consistency between federal/state and local plan, policy or action.

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Where is Coordination Defined in Federal Law?

Congress originally defined coordination in the Federal Land Management and Policy Act (FLPMA) at [43 USC 1712](#). This is the only federal statute where Congress specifically set forth criteria as to the duties an agency must carry out under coordination. However, even though coordination is not defined in the same detail as FLPMA, it is required in other natural resource laws and many critical regulatory laws where Congress ensured local priorities were to be considered when federal agencies prepare plans, policies and management actions.

Federal courts have held that if Congress defines a word in one statute, and uses the same word in a sister statute, then they intended the same definition to equally apply in all similar statutes. Therefore, the criterion for coordination defined in FLPMA applies to every other federal statute where Congress directs the agencies to coordinate with local government.

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