

Bonner County

Natural Resource Plan



Updated 11/17/2017

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1 INTRODUCTION

The Board of County Commissioners ("BOCC") of Bonner County, Idaho ("County") recognizes that one goal of the County's citizens, and therefore its government, is the continuation of a lifestyle, which 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 rural county. Many people who live in the County are reliant upon the land and its productive use. Private ownership and the incentives provided by private ownership is a driving force that supports the livelihood of many of the County's citizens.

The BOCC also recognizes that the economic, business and social structure is dependent upon its natural resources. Federal and state-managed lands make up approximately 60 percent of the area of the County. Moreover, the County's economy is affected by the operations, activities, and policy decisions on federal and state land. State and federal agencies are charged by law with governing state owned and federally managed lands inside the County's political boundary in the best interest of all citizens. Federal and State planning decisions may create benefits for a great many citizens outside the County, but have the potential of transferring a disproportionate amount of fiscal and social costs and responsibilities to the County.

The BOCC recognizes the need for a local government plan that clearly states the goals, objectives and policies of the County in regards to management of the natural resources located on public lands in the County. This plan is to be incorporated by Federal and State agencies in their planning processes. The BOCC initiated the development of this Plan by encouraging the formation of an ad-hoc citizen group to do research and draft this document. A diverse group of citizens of Bonner County, Idaho formed the Bonner County Natural Resource Committee ("Committee"), with the purpose of creating a document for local government to use as a plan and policy statement regarding the use, conservation, and management of all natural resources in Bonner County. A broad spectrum of interests, including Logging, Agricultural, Construction, Business, Recreation, and Conservation are represented, and the effort to include all interests is ongoing.

This document provides guidelines and specific action plans and is intended and designed to be supplemented and/or amended as needs change, as better information becomes available, and as unforeseen problems may arise. For a more detailed explanation of the need and legal basis for coordination please see "COORDINATION MANDATE" in Appendix C. The BOCC has accepted the work of the Committee to assist the BOCC in formulating goals, objectives, policies and plans with respect to public land and natural resource use issues. These are embodied in this document, which bears the title of Bonner Natural Resource Plan ("Plan"). The BOCC has adopted the Plan by

resolution. The Resolution is found in Appendix J.

2 BONNER COUNTY

2.1 Government

Bonner County ("County") is a general law county and, is a political subdivision of the State of Idaho ("State"), having corporate powers and exercising the sovereignty of the State within its boundaries, as provided in the Idaho Constitution, those powers specified by statute and those necessarily implied therefrom.

Only the County BOCC of Commissioners ("BOCC") can exercise the powers of the County by agents and officers acting under the authority of the BOCC. The BOCC 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 BOCC is charged with protecting the health safety and welfare of all of the citizens and land owners of the County.

2.2 Geography

According to the [U.S. Census Bureau](#), the county has a total area of 1,919 square miles (4,970 km²), of which 1,735 square miles (4,490 km²) is land and 185 square miles (480 km²) (9.6%) is water.^[4]

Land Distribution

Agency	Acres	Square Miles	Percent of Total
Federal Land	493,027.00	770.35	44.33%
BLM	11,520.00	18.00	1.04%
National Forest	472,655.00	738.52	42.50%
Other	8,852.00	13.83	0.80%
AGENCY TOTALS	493,027.00	770.35	44.33%
State Land	169,703.00	265.16	15.26%
Endowment Land	167,238.00	261.31	15.04%
Fish and Game	1,660.00	2.59	0.15%
Parks and Recreation	805.00	1.26	0.07%
AGENCY TOTALS	169,703.00	265.16	15.26%
County	4,521.00	7.06	0.41%
Municipal Land	4,117.00	6.43	0.37%
Private Land	440,698.00	688.59	39.63%
AGENCY TOTALS	449,336.00	702.09	40.41%
GRAND TOTAL	1,112,066.00	1,737.60	100.00%

3 PURPOSE AND NEED

The purpose of the Plan is to make clear the culture, heritage, custom, economic needs and values of the citizens of Bonner County in regards to the natural resources found within the boundary of the County. It is imperative that these cultural realities be taken into consideration by any and all State and Federal Agencies when said Agencies develop plans that impact the use of land and natural resources within the County.

Federal and state agencies are charged by law with managing lands under their jurisdictions within the County political boundary in the best interest of all its citizens.

Laws and regulations of the United States ("Federal Laws") and of the State of Idaho ("State Laws") mandate that planning and actions of the Federal and State agencies be coordinated with the plans of local government, these specific laws being in part the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), the National Forest Management Act (NFMA) and all relevant Idaho Statutes.

The customs and cultures of Bonner County are historically tied to the land. Bonner County exists as a direct result of the natural resources found here and the industries they support. Agriculture, mining, forestry, and fishing are examples of the resource based industries on which we depend. The preservation of our customs and culture and the stewardship that has evolved as a result is a critical component in protecting the land for future generations. Local government has the responsibility to protect private property, the local tax base, economic stability, and in general the well-being of the local community. These critical functions are profoundly impacted by the land management decisions of federal and state agencies.

Congress has long recognized the importance of local governance to the effective management of the nation's resources. It has provided for the involvement of units of local government in every federal land use statute passed in the past 35 years. In many of these statutes, Congress has mandated that the federal land use agencies "coordinate" their policies and management activities with local government.

This Congressional directive to coordinate means the federal agencies shall give prior notice to counties of agency plans and management activities and requires agencies to make every effort to ensure their policies and management activities are consistent with local plans. Congress has directed federal agencies to coordinate with local government because they recognize local authority must be consulted and involved in the decision making process at the earliest stages and prior to the public input process.

In their decision making the federal agencies must consider the effect their decisions will have on local customs and culture, community stability, and economic stability. Conservation and use of the environment and natural resources must be considered as part of the action taken.

The federal agencies must coordinate their land management decisions with Bonner County by meeting the following requirements:

- 1) Shall coordinate procedures to the fullest extent possible with Bonner County on an equal basis; not with Bonner County as a subordinate, prior to and during the consideration of any federal or state action; 43 U.S.C. 1712
- 2) Shall meet with Bonner County to establish, through a memorandum or otherwise, the process for such coordination including but not limited to joint planning, review environmental assessment; 43 U.S.C. 1712

For more information on the County's relationship to the federal and state government refer to Appendices B, C and D.

The BOCC finds it necessary to address the use and management of resources in addition to taxes within the political jurisdiction of the County in all of its planning efforts. The BOCC reached its decision in part because many recent land use and management decisions over private and county owned lands, and those managed by federal and state governments are being made at Federal and State levels with no viable input from the local county government or its citizens. Federal and State decisions may transfer a disproportionate amount of fiscal and social costs and responsibilities to local communities and citizens and have a substantial and significant impact on the economic stability of the County. The BOCC is therefore legitimately entitled to full participation in the planning process utilized by federal and state agencies for determining and implementing land use plans and other actions in the County. The BOCC's interest extends to land use plans or action formulation, development, and implementation, which include monitoring and evaluation.

The BOCC recognizes that it is its duty and obligation to enter into official resource planning activities and requires the federal and state agencies to coordinate with the County in accordance with federal and state laws.

In accordance with federal and state laws regarding public-land use planning and the protection of private property interests, the BOCC seeks to maintain and to revitalize the various multiple uses of the federal and state managed lands. To that end, the BOCC has adopted this Plan, which includes goals, objectives and policies regarding the various multiple uses of state and federally managed lands in the County.

The BOCC believes that resource and land use management decisions made in a

coordinated manner by federal and state agencies with county officials will not only maintain and revitalize the multiple use of all lands in the County, but will also enhance environmental quality.

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

- To revitalize and maintain the concept of multiple use on all lands in the County.
- To maintain that the concept of multiple-use shall be an inclusive rather than exclusive term; hence avoiding the setting of one use against another.
- The protection of private property rights and private property interests, including investment backed expectations that may be impacted by public land management decisions.
- 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.

4 GENERAL PROVISIONS AND GUIDANCE

The general planning guidelines set out in this plan present the standards of law, fact, and planning by which the BOCC will be guided in its official capacity as the executive authority of the County. The guidelines include constitutional and statutory standards for land management with which the BOCC will be guided. This local government Plan must be incorporated in the process of planning and managing federal and state lands within the geographic boundaries of the County.

- 4.1 GOAL: Decisions and actions of the federal and state agencies regarding public lands both within and adjacent to the County will become consistent with the Plan.
- 4.1.1 Policy: Any Federal or State agency, or any government operating under the auspices of any Federal or State agency, proposing policy changes, rules promulgation, planning actions, or regulations within Bonner County must publish written notice in the local county newspaper. Written notice shall be provided to the Bonner County BOCC of Commissioners with reasonable advance notice prior to consideration of any Federal or State policy changes, regulations or planning actions affecting Bonner County in accordance with USC 5 (I) 6-601 and 6-602.
- 4.1.2 Policy: Federal and State agencies shall coordinate their plans and activities

with the County by integrating the applicable findings, goals, objectives, and policies of this Plan into their planning documents and activities.

- 4.1.3 Policy: Commercial uses on public lands may be permitted but not to the detriment of public access and public use, unless the public access or use causes an inherent safety risk to the public or commercial use.

The BOCC has developed a process of coordination to be used by federal and state agencies regarding any proposed actions that will alter or impact resources in the County.

- 4.2 GOAL: To maintain a clear and efficient system of communication, documentation, and process that will enable and enhance the coordination of Federal and State agency planning and activities with the County.
- 4.2.1 Policy: A general announcement of the existence of the Plan and the method of obtaining a copy of the Plan shall be transmitted to the Federal government and to the State government. Upon becoming aware of any decision-making process which will have the potential to affect any aspect of the County discussed in the Plan, the Plan shall be submitted to the agency or agencies involved in that process with a letter stating the reason for submission of the Plan. It is expected that the Plan will be in the hands of such decision-making body well before decisions are made, and preferably before the planning process begins.
- 4.2.2 Policy: The County shall provide upon request and at a reasonable fee a current copy of the Plan, with all supplements, amendments, appendices, and attachments, to any federal or state governmental agency or any member of the public.
- 4.2.3 Policy: The fee for a copy of the Plan shall be consistent with fees charged by the State for documents of a similar nature. The County may waive the fee at its discretion.
- 4.2.4 Policy: Federal and state agencies proposing actions that will impact the County, its citizens, and resources therein shall prepare and submit in writing 90 days prior, report(s) on the purposes, objectives and estimated impacts of such actions, including economic, to the Bonner County BOCC of Commissioners, 1500 Highway 2 West, Suite 308, Sandpoint, Idaho 83864 for review. The BOCC will then determine appropriate action to be taken by the County, and provide input, information and comment on proposed actions or activities.
- 4.2.5 Policy: It is the policy of the BOCC to consider, review, and comment upon all draft plans and environmental impact statements affecting public land

and land-based resources in the County.

For more information on coordination between the County and federal and state agencies, please refer to Appendices C, D, and F.

5 CONSTITUTIONAL PRINCIPLES AND PRIVATE PROPERTY

Laws contrary to the Constitution are void.

The general misconception is that a statute passed by legislators bearing the appearance of law constitutes the law of the land. The U.S. Constitution is the supreme law of the land and any statute, to be valid, must be in agreement.

Under "Constitutional Law" in 16 American Jurisprudence 2d, we find the rule governing the applicability of unconstitutional statutes:

1. Total unconstitutionality:

The general rule is that an unconstitutional statute, whether federal or state, though having the form and name of law, is in reality no law, but is wholly void, and ineffective for any purpose, since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it, an unconstitutional law, in legal contemplation, is an inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted.

"No one is bound to obey an unconstitutional law and no courts are bound to enforce it"

It is the desire of the County's citizens, and therefore its government, to ensure the continuation of lifestyles which assure quiet enjoyment of private property rights and property interests and assures the highest degree of protection of these rights. Many people who live in this county are reliant upon both private and public land and its productive use.

The BOCC 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 as close to the people as possible; that is at the local government. The BOCC is charged to carry out its specified and inherent duties to operate the government of the County in the best interests of all its citizens and to protect and preserve the county's tax base.

The following principles govern this Plan

- a. Limited powers have been granted to the federal government.
- b. Those limited powers have been separated into legislative, judicial and executive branches.
- c. Processes developed in one branch are checked and balanced by the other branches.

The Committee and the BOCC accept, support, and sustain the Constitution of the State of Idaho and the Constitution of the United States.

- 5.1 Objective: Identify and implement mechanisms that preserve or increase the amount of private land in the County to enhance the tax base and encourage rural development in the County
- 5.2 Policy: The County shall do all in its power to protect private property rights.
- 5.3 GOAL: 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. See Appendix E
- 5.4 GOAL: Protect private property and private property rights and promote the continuation of private economic pursuits.
- 5.5 GOAL: Protect local custom and culture.
- 5.5.1 Objective: Encourage traditional and viable economic structures.
- 5.6 GOAL: Develop new economic opportunities through reliance on free markets.
- 5.7 GOAL: Enhance environmental quality.
- 5.8 GOAL: Ensure due process by observance and proper use of the elements of due process, namely:
 - Notice
 - Opportunity to be heard
 - The right of cross-examination
 - Disclosure
 - Findings of fact
 - Conflicts of interest and the appearance of conflict or impropriety
 - Prompt decisions
 - Records of proceedings
 - Ground rules for fair play
 - Substantive due process

For a more complete discussion of this topic, please refer to “Due Process” in Appendix F.

6 COMMUNITY STABILITY

The County has been known for the extraction of natural resources. Those resources then were shipped from the county in raw form or manufactured and shipped in a “value added” state. A major goal of the BOCC is to show support for the manufacturing in the county to create finished products from natural resources extracted within the boundaries of the County.

The county’s economy is greatly dependent on businesses operating on private lands as well as those federal and state lands. These include timber harvesting, agriculture, mining, livestock grazing, other commercial activities, and recreation. These businesses create the base for economic stability within the county and are therefore vital to the effective use of private land in the county. Because 39.6% of the land in the County is privately owned, effective use of that private land is greatly dependent on the management style and techniques of the federal and state land and water managers.

Recognizing the critical tie between use of the federal and state lands and the economic stability of the county, the BOCC will actively work to provide a voice for individual citizens and for local communities in planning the future management decisions, practices, and uses of the public lands in the County.

7 ECONOMY

In order for the County to provide needed schools, health care, police protection and other services, industry and commerce within the County must be encouraged and strengthened.

A primary purpose of this Plan is to foster coordination between federal and state management agencies with the County. These interests include but are not limited to timber, agriculture, mining, recreation, wildlife and all other activities related to, and reliant upon, the availability of natural resources on private, federal and state managed lands.

Counties and states are not allowed to tax the federally managed lands including tribal trust lands, within their boundaries. The County must understand how activities and management actions on federal, state, and privately controlled lands impact the economic underpinnings of the local community.

The County is directly affected by policies and decision making on federal, state and private lands. Timber production, agriculture, recreation, and mining,

are the primary resource areas that provide income and promote community stability.

The Secure Rural Schools and Self Determination Act has provided levels of Federal support to the County through State distribution since 2000 and renewed in 2008 through 2011. When this funding is no longer available the County must promote a sustained revenue stream to replace the Federal subsidies or drastic cutbacks in County services budgets could occur. Returning title of federally held lands back to State ownership is a viable solution that should be explored by the County and supported by the County at the State level. Proper management of these lands will insure a stable long term income stream for both State and County. The BOCC is aware of the Good Neighbor Authority and recognizes its value and will continue to support it. <https://www.fs.fed.us/managing-land/farm-bill/gna>

It is the goal of the County to encourage and enhance natural resource industries following the long heritage and tradition of its citizens.

- 7.1 GOAL: Promote an economic environment that will result in increased local economic benefit from resources contained on private and public lands.
 - 7.1.1 Objective: Obtain funding for research to address economic issues related to the County.
 - 7.1.2 Objective: Increase natural resource based employment opportunity
 - 7.1.3 Objective: Develop a system for input-output studies which will measure and monitor the economic impacts of actions of federal and state agencies, and to establish the system's use by all Federal and State agencies
- 7.2 GOAL: Encourage reliance on self-determination by residents of the County with respect to use of resources available from private and public lands.
- 7.3 GOAL: Maintain open market economic conditions with respect to methods used to obtain economic benefit from resources on private and public lands.

8 LAND TENURE, DISPOSITION, ACQUISITION, AND USE

- 8.1 Findings: Land is the basis for the natural resources which are essential to local industry and residents. 39.6% of the land in the County is in private ownership. It is this land that comprises the County tax base that must support most County services. The BOCC recognizes that land is essential to local industry and residents
- 8.2 Policy: It is the policy of the County that the design and development of all federal and state land dispositions and acquisitions, including boundary

adjustments or land exchanges, be carried out for the benefit of individual property owners and to the benefit of the citizens of the County.

- 8.3 Policy: The BOCC opposes any changes in ownership that shall provide a net gain of Federal /State owned or managed land in the County that circumvents or disregards the findings of coordination efforts between Bonner County and Federal/State agencies.
- 8.4 GOAL: All public lands in the County shall be managed in coordination with the BOCC, its representatives, and thereby the citizens of the County.
- 8.5 GOAL: Develop programs that enhance the effectiveness of local government in the public land planning process, and the effects that resource uses have on the County.
- 8.6 GOAL: Land tenure adjustments for any government agency should provide for no net loss of private land, private property rights or interests including investment-backed expectations, or loss of property tax revenue to Bonner County.
 - 8.6.1 Objective: Identify and recommend for sale or trade those isolated tracts of state and federally managed lands which could be better and more efficiently managed by the private sector.
- 8.7 GOAL: The design and development of all federal and state land dispositions and acquisitions, including land adjustments and exchanges should be carried out to the benefit of the residents of Bonner County.
 - 8.7.1 Objective: The County should suffer no net loss in tax revenue.
 - 8.7.2 Objective: The County should suffer no net loss in private acreage.
 - 8.7.3 Objective: The citizens of the County should suffer no adverse aggregate economic impacts.
 - 8.7.4 Objective: All governing bodies investigate and attempt to increase opportunities for local economic development by increasing the private use of all public lands within the county.
 - 8.7.5 Policy: No federal or state agency shall acquire any private land or right within private land within Bonner County without first exhausting all efforts through due diligence in meeting all objectives, goals, and policies of this plan. (43USC 1712 (c) (9))
 - 8.7.6 Objective: Federal and state-managed lands that are difficult to manage, or which lie in isolated tracts should be considered for exchange within the

county or at least, within the Panhandle National Forest, or for outright sale to private parties.

- 8.7.7 Policy: The general public and the BOCC shall be notified of, consulted with, and have an opportunity to be heard at public hearing upon, and be otherwise involved in all federal and state land sales, trades, purchases, adjustments or other changes in ownership or control in Bonner County
- 8.8 Policy: The County shall be notified and have the opportunity to investigate and evaluate any proposed change in public land ownership to determine if the proposed change is in the best interest of the County. Further, all government agencies involved with the proposed change shall coordinate with the County in implementing proposed planning activities.
- 8.9 Policy: The County shall have the option to coordinate and set requirements on proposed public land designations or uses for hazardous and non-hazardous waste storage, as well as the types of such waste.
- 8.10 Policy: Before a federal or state land agency establishes a land use change, an economic, environmental and cultural heritage impact study on the proposed change shall be conducted at the expense of the agency proposing the change, and mitigation measures shall be adopted in coordination with the County.
- 8.11 Policy: Each economic, environmental and cultural heritage impact study pertinent to Policy 8.7 shall address community stability, local custom and culture, effects on the local economy, grazing rights, flood prone areas, timber and mining revenue, access, and other concerns identified.

9 MINING

- 9.1 Findings: Mining production in the County contributes to the livelihood and wellbeing of many of its residents and contributes significantly to its economy. The County must strive to protect its mining heritage. This heritage includes small and large commercial operations. The County must protect the vital natural resources that are necessary to keep these enterprises in operation.
- 9.2 GOAL: Continue and promote mining use of federal and state lands consistent with historical practice.
- 9.3 GOAL: Mining shall be an accepted practice in Bonner County.
 - 9.3.1 Objective: Establish reasonable guidelines for land patents.
 - 9.3.2 Objective: Establish reasonable guidelines for patenting mining claims.

- 9.3.3 Objective: Streamline mining claim applications and limit application costs.
- 9.3.4 Policy: All government agencies shall follow existing laws which regulate mining.

9.4 **Recreational Mining**

- 9.4.1 Policy: Recreational placer mining using hand tools and with the use of dredges with an input diameter of 4 inches or less shall be allowed on public land. Free-use permits may be required for these practices.

9.5 **Commercial Mining**

- 9.5.1 Commercial mining operations in the County include mineral mining and architectural rock mining, both of which provide significant economic value to the County.
- 9.5.2 Policy: Commercial mining shall be allowed on public lands in accordance with current Federal and State law.

10 LIVESTOCK GRAZING

- 10.1 Findings: Livestock production in the County contributes to the livelihood and well-being of many of its residents and contributes significantly to its economy. The County must strive to protect its ranching heritage. This heritage includes small and large commercial operations and subsistence operations. The County must protect the vital natural resources that are necessary to keep these enterprises in operation.
- 10.2 GOAL: Continue agricultural use of federal and state lands consistent with historical practice.
 - 10.2.1 Objective: Retain the use of public lands for grazing.
 - 10.2.2 Objective: Increase acres and Animal Unit Months (AUM) available for grazing allotments on public lands in Bonner County. Develop the capacity for additional AUMs on all suitable public lands.
- 10.3 GOAL: Support the agriculture industry.
 - 10.3.1 Objective: Provide economically feasible grazing rates.
 - 10.3.2 Objective: Enhance and protect riparian areas in balance with livestock needs.
 - 10.3.3 Objective: Increase use of grazing and availability of herbicides to control

noxious weeds.

- 10.4 GOAL: Encourage consistent management of livestock populations in balance with wildlife protection on public lands.
- 10.5 GOAL: Use a practical and common sense approach to riparian management to insure water quality is maintained for downstream users.
- 10.6 GOAL: Use sound management practices and develop innovative grazing plans. Promote sharing of innovative grazing plans with the County.
- 10.7 GOAL: Have in place a rapid response process to address land resource issues which includes team members from the agricultural community and the timber industry.
- 10.8 Policy: Federal and State agencies shall work cooperatively with the involved ranchers/farmers, and other interested parties to address resource concerns on a site-specific basis.
- 10.9 Policy: Federal and State agencies shall use approved methods to control undesirable vegetation encroachments and enhance, maintain or increase current grazing levels.
- 10.10 Policy: Federal and State agencies shall maintain or increase forage available with structural improvements.
- 10.11 Policy: Federal and State agencies shall use deferred entry or rest rotation along with structural improvement such as fences or cattle guards.
- 10.12 GOAL: Manage public lands so as to maintain and enhance desired plant communities for the benefit of watersheds, timber resources, wildlife, water quality, recreation and livestock grazing.
 - 10.12.1 Objective: Effective planning and management to maintain and enhance desired plant communities is the primary option.
- 10.13 Policy: A management plan for each specific allotment shall be developed.
 - 10.13.1 Objective: Encourage utilization of standards and guidelines that are scientifically proven, peer reviewed, consistent with historical use and practice and politically neutral.
 - 10.13.2 Objective: Develop and encourage programs to enhance the effectiveness of local government in the public land planning process for grazing.
 - 10.13.3 Objective: Allow for allotment management planning that will utilize a

coordinated resource management and planning approach to ensure grazing on federal and state lands in the future.

- 10.14 Objective: Encourage mechanisms to allow subleasing of grazing rights or allotments on state or federal ground.
- 10.15 Objective: Encourage mechanisms to allow flexibility of grazing allotments or grazing lease agreements.
- 10.16 GOAL: Enable the BOCC to take an active role by responding in writing to any management plans.
- 10.17 Policy: Each proposed closure of a grazing allotment shall be coordinated with the County.

11 IRRIGATION AND AGRICULTURE

- 11.1 Findings: Irrigated and dry land agriculture contributes to the economic base of the county.
- 11.2 GOAL: Protect agricultural land and promote the continuation of agricultural pursuits.
- 11.3 GOAL: Recognize and develop strategies for protection of the private rights and interests in irrigation and water rights.
 - 11.3.1 Objective: No net loss of private use, rights or interests in irrigation and water development structures on public lands.
- 11.4 GOAL: Protect and maintain productive watersheds for the preservation of irrigated agriculture.
 - 11.4.1 Objective: Maintain healthy forests for productive watersheds.
- 11.5 GOAL: Water rights, flume grades, and irrigation ditch easements are to be allowed, encouraged, and protected.
 - 11.5.1 Objective: Ensure that the adjudication process protects existing water rights and does not violate either the letter or the spirit of Article XV, Sections 3 and 4 of the Idaho Constitution.
- 11.6 GOAL: Promote, create and maintain water storage and conveyance structures.

12 FIRE MANAGEMENT

- 12.1 Findings: The BOCC recognizes that wildfire is a mostly naturally occurring, inevitable event. Erosion following forest fires created many of our terrain features. Many residents repeat stories, legends and the history of the 1910. Every citizen of the County is surrounded by forest and thus lives within harm's way of a nearby wildfire.
- 12.2 Policy: The County fire and fuels management plan shall be the guiding document for fire prevention, fire readiness and fire suppression activities.
- 12.3 Policy: Every wildfire on public land as well as private property shall be fought and extinguished as quickly as reasonably practicable.
- 12.4 GOAL: Require both fire suppression and the utilization of fire to support and expand multiple uses and achieve management goals.
 - 12.4.1 Objective: High hazard fuels and/or fuel accumulations will be reduced in accordance with Idaho Code.
 - 12.4.2 Objective: Any land designated fire use or any planned future designation as inventoried road-less area, road closure, planned non-motorized, back country, or no management, shall have a 30 meter strategic fire break planned and implemented. The strategic fire break shall be devoid of flammable materials to protect adjacent landowners, when determined necessary and required by the BOCC and Planning Department.
 - 12.4.3 Objective: Require utilization of fire suppression in areas where fire would endanger human safety and public or private property, or valuable vegetation that will support and expand multiple uses.
 - 12.4.4 Objective: Encourage the adoption of the following policies by regulatory entities.
- 12.5 Policy: The use of fire as a "prescribed burn" for slash removal or debris cleanup shall follow established Idaho Code. Fire suppression is necessary in areas where fire would endanger human safety and public or private property, or valuable vegetation that would support and expand multiple uses.
- 12.6 Policy: Wildfires allowed to burn within any designated Wilderness and Research Natural Areas (RNA)s are to be closely watched so that if control is considered appropriate to keep the fire within the Wilderness or RNA boundaries control shall be initiated in a timely manner.
- 12.7 Policy: Outside of Wilderness and RNAs a wildfire may on rare occasions be

allowed to burn itself out or burn to a more suitable or appropriate locality where control can more readily be established. The decision to not make an aggressive control effort must be based on a prescribed set of criteria acceptable to the County. These prescribed conditions include but are not limited to consideration of safety and health of persons, slope, aspect, fuel load and moisture on the forest floor, temperature, predicted winds, and other weather variables and surrounding habitation or culture including homes, buildings, bridges, roads, and other infrastructure, as well as past forest management investments.

- 12.8 Policy: Initial attack shall be initiated in a timely manner following receipt of a fire report.
- 12.9 Policy: In the planning of prescribed burns on public lands, where feasible, all resources subject to being destroyed by the prescribed burn shall be marketed before burning.
- 12.9.1 Policy: Areas that are burned on public lands and are five acres or more in size and are reasonably accessible to log hauling trucks shall be salvage harvested for merchantable products. Proposals for new road construction which would be needed to complete harvest and subsequent silvicultural and fuel treatment activities will be subjected to non-harvest analysis. The non-harvest analysis shall determine the effects of leaving the salvageable timber unharvested, including the following effects:
 - (a) insect infestation risks,
 - (b) fuel hazard including risk of re-burn,
 - (c) net loss of economic benefit vs. economic value of salvage timber,
 - (d) negative responses of flora and fauna.
- 12.9.2 Silvicultural treatment of burned areas will include additional site preparation where desirable and may include regeneration of appropriate species of trees and vegetation where this activity is preferable to natural regeneration. Salvage actions shall allow for and include adjacent trees or products damaged, in poor health, or are imminently subject to wind-throw or beetle attack and are within 100 feet of the exterior perimeter of the burned area. Salvage must be completed within 18 months of establishment of safe access to the burned area.
- 12.10 GOAL: To increase human health standards for the County by reducing dangerous airborne particles released during fires.
- 12.10.1 Objective: To reduce health hazards affecting County residents related to catastrophic fires.
- 12.11 Policy: Residents of the County shall not be restricted from any clearing of fuel breaks and fire breaks to protect their own private property from

imminent harm resulting from an active wildfire, insofar as that action does not require the resident to initiate a burn-out activity on his/her property or harm another resident's private property, consistent with current law.

- 12.11.1 Policy: Public wild land burning areas shall first have as much merchantable material removed (logs, posts, poles, etc.) as is practicable prior to ignition, and not be initiated unless fuels are of a moisture content to provide for a safe burn that also results in a complete-burning, low smoke emission fire.

13 NOXIOUS WEEDS

- 13.1 Findings: The BOCC is the weed control authority for the Bonner County, See Idaho code section 22-2474. Ongoing programs to identify locations of all noxious weeds and to initiate management and/or eradication efforts will continue. All state agencies are required to control noxious weeds on state managed lands. The state law contemplates cooperation by federal agencies in controlling noxious weeds on the federally managed lands. See Idaho Code section 22-2476. The Federal Public Range lands Improvement Act virtually mandates such cooperation agreements and, if necessary, legal actions will be utilized to assure protection of vital land resources from noxious weed occupation or invasion
- 13.2 GOAL: Eradicate to the extent possible noxious weeds within Bonner County, and eliminate any new infestation that may become established and/or exist in the County.
- 13.2.1 Objective: Support the BOCC as the weed authority for Bonner County.
- 13.2.2 Objective: Continue the BOCC's commitment to funding weed control programs in the County.
- 13.2.3 Objective: Encourage an increase to the County weed budget and procure alternative funding for weed control.
- 13.2.4 Objective: Increase ongoing programs to identify the location of all noxious weeds, and initiate management and eradication.
- 13.2.5 Objective: Support cooperative agreements to assure the protection of all public lands from noxious weed invasion or occupation, but no road closure or area closure shall result from these agreements.
- 13.2.6 Objective: Require enforcement of Noxious Weed Free Seed Forage Program on public land in the County.
- 13.2.7 Objective: Encourage the implementation of County weed control policies in grassland management plans on public and private lands.

14 FOREST MANAGEMENT

- 14.1 Findings: Sound science and common sense support the premise of active forest management on the public forested lands in the County. Forest management practices on public land shall include a stable timber-harvesting program, which is essential to maintain healthy forest, ecosystems and to provide employment and economic security to individuals and businesses in Bonner County. Investment in equipment and technology cannot be made without economic stability. The Panhandle National Forest and the Idaho Department of Lands have the capability to demonstrate that proactive forest management can meet the needs of forest health, multiple use, public access and economic stability.

Forest management shall follow the mandates of the 1897 Organic Act and adhere to the Multiple-Use/Sustained Yield Act of 1960 as well as the later acts: National Forest Management Act; National Environmental Policy Act; and the Endangered Species Act. The County portions of the Panhandle National Forest shall be managed and administered for outdoor recreation, livestock grazing, timber harvesting, watershed protection, public access and wildlife in the best interests of the American people and primarily the people of the County. These resources shall be managed for sustained multiple use in perpetuity so that future generations will have the opportunity to benefit from, use and enjoy them. The resource management depicted here shall foster permanent system roads and trails open to the public.

The use of wood products is important to our nation. Estimates show the demand for wood products is increasing about one percent per year. Many individuals, businesses, communities, and local governments depend on a stable supply of this renewable resource.

A management policy of no action or arms-length management is unacceptable, irresponsible, and potentially disastrous. What is needed is a cooperative, hands-on, proactive approach to forest management that uses timber harvesting as a tool to accomplish overall forest health and fuels management to ensure a healthy and vibrant forest for current and future generations.

Bonner County has productive soils and lands that are highly suitable for growing commercial timber. The major species in the County are Douglas Fir, Ponderosa Pine, Western Larch, Grand Fir, Western Red Cedar, White Pine, Spruce and Lodge Pole Pine.

Varying tree stands may have a different rotation age, stocking density, species diversity, access availability, or environmental and economic

viability. However, all public lands provide products that may be suitable for harvest.

- 14.2 GOAL: Recognize the importance of forest products to the economic well being of the County.
- 14.3 GOAL: Achieve good forest health to ensure a healthy and vibrant forest of tree species relatively resistant to disease, insects, and low intensity wildfire for the use and enjoyment of current and future generations.
 - 14.3.1 Objective: All Federal timberlands that are available and potentially suitable for timber management should be classified as suitable for sustained timber production to promote forest health, protection, and maintain sustained economic returns.
 - 14.3.2 Objective: There must be a reasonable level of Federal revenue sharing with local governments. No more than 20% of timber sales on a 5 year running average will be "Stewardship Contracts" where all the revenues are retained by the Forest Service and no revenue is shared with local Government.
 - 14.3.3 Objective: On Federal timberlands suitable for timber harvest, a minimum harvest level to capture the equivalent of 80% of the annual mortality shown by the most recent forest inventory is necessary to maintain and improve forest health, control hazardous fuel buildup, and support the local economy and local government. Allowable harvest levels should be equivalent to the average annual gross growth per acre shown by the inventory applied to suitable timberland acres.
 - 14.3.4 Objective: Protect our environmental capital assets by significantly harvesting fire and pest caused mortality.
 - 14.3.5 Objective: Maintain and restore watershed health and vigor by demonstrating active forest management.
 - 14.3.6 Objective: Enhance and restore wildlife habitat.
 - 14.3.7 Objective: Promote the early detection and treatment of insect and disease infestations.
- 14.4 Policy: Salvage sales shall be vigorously promoted.
- 14.5 Policy: Establish active management that can meet economic needs, while maintaining and restoring watershed and forest health.
- 14.6 Policy: Explore harvest methods that enhance wildlife habitat, through

vigorous new growth and a natural mosaic.

- 14.7 Policy: Encourage the local manufacture and use of forest and forest by-products.
- 14.8 Policy: Harvest of trees in fire damaged, insect infested, blow-down, or other damaged areas shall be aggressively pursued. Live trees may be harvested from the damaged areas to meet stand structure, size class, species, stocking or other needs. Accept up to 25% of live healthy tree (and/or volume) removal from the site's adjacent perimeter, in conjunction with the damage harvest. This policy shall be a baseline component for all directions and decisions.
- 14.9 Policy: Salvage shall be an accepted method of removal under an emergency status. Salvage sales shall be excluded from determining minimum sale quantities. Minimum sale quantities shall be determined from regularly scheduled sales. If there is a salvage component of a scheduled sale that salvage component shall only then be included for the minimum sale quantity.
- 14.10 Policy: There shall be no upper limit to allowable sale quantity, as each year may be variable, but there shall be a minimum allowable sale quantity.
- 14.11 Policy: The County opposes the wanton waste of our natural resources. Therefore, in the event of manmade or natural disasters, the County encourages salvage and restoration activities be commenced as soon as legally possible following the event to minimize insect infestation, soil erosion, resource waste and maximize the financial return to the county.
- 14.12 GOAL: Realize a sustainable and continuous supply of timber, forage, firewood, wildlife, fisheries, recreation, and water supplies utilizing multiple uses on our public forest lands.
 - 14.12.1 Objective: Support the least amount of areas required, as a single use or restricted use designation. Examples of a single use restriction are an Administrative Site, a fenced natural springhead, or other singularly concise area able to be segregated from its immediate surroundings.
 - 14.12.2 Objective: Support the maximum area of land possible to be excluded from single-use or restrictive-use designations, and that excluded land be available for active and sound management.
 - 14.12.3 Objective: Support local land managers on site-specific management decisions when multiple use is provided for.
- 14.13 GOAL: Ensure stability in commodity-oriented and aesthetic based planning

and decision-making processes. Recognize that both are essential to the wellbeing of the County.

14.13.1 Objective: Provide stability within the ecological limits of the land so that companies will make needed investments that provide economic stability and jobs.

14.14 GOAL: Educate the public on the benefits of long-term sustained yield.

14.14.1 Objective: Encourage public education on the reasons why both science and common sense support active management of our public lands.

14.14.2 Objective: Educate public land managers, local officials, and the public on the importance of public lands to local infrastructure maintenance.

15 WATER RIGHTS

15.1 Findings: All existing rights to the use of any waters for any useful or beneficial purpose are recognized and confirmed by the Idaho Constitution. See Appendix D for text of applicable law.

15.2 GOAL: Surface and subsurface water rights historically established and used by the citizens of the county including but not limited to, the purposes of agriculture (irrigation and stock water), domestic, culinary, industrial, mining and power uses are recognized as property rights and are to be protected as such. No federal, state, county or municipal agency shall infringe or diminish these established water rights.

15.1.2 Objective: Any new or additional development of surface water or groundwater will be consistent with Idaho laws.

15.3 GOAL: Allocation of water resources in the County are governed by applicable Idaho laws.

15.4 Objective: Any land use inventory, planning or management activities affecting water resources in the County, either directly or indirectly, is to be coordinated with local government and is to be consistent with the Plan.

15.4.1 Objective: Use of water resources in the County is consistent with local culture and community stability with particular emphasis on the continued habitation of the community and the economic stability of the community

15.4.2 Objective: Recognize that water used for recreation, fish, and wildlife purposes provide a positive benefit to the County although these uses are not historically recognized as historic water rights. These uses are generally non-consumptive uses of water.

16 DITCHES, DIKES AND CANAL

- 16.1 Findings: Ownership of water rights and ditch water rights are distinct property rights.
- 16.2 GOAL: Ditch easements are recognized as property rights and will be protected as such.
 - 16.2.1 Objective: Encourage recognition and acknowledgement of the concept that ditch easements include owner rights to enter, inspect, repair and maintain a canal or ditch.
 - 16.2.2 Objective: Implement and encourage the implementation of policies that limit encroachment upon or impairment of easements for dikes, canals, or ditches without the permission of the easement owner.
 - 16.2.3 Objective: Adopt and implement policies encouraging the owners of dikes, canals, or ditch easements to be reasonable in the use of their easement.

17 WATER AND HYDROLOGY

- 17.1 Findings: The mountainous character of the county and its geographical orientation combine with prevailing weather patterns to produce a county climate of considerable variability with the higher mountains receiving more precipitation than valley bottoms. Precipitation received is normally absorbed into the mountain soil profile, and is generally not a major contributor to annual run-off. Rivers and streams contribute heavy run-off of snowmelt during the winter, spring and early summer. Floodplain areas exist along river courses in the lower valleys, and a number of floods have occurred in the County.
- 17.2 GOAL: Productive watersheds must be maintained for water quality.
 - 17.2.1 Objective: Maintain healthy forests for productive watersheds.
 - 17.2.2 Objective: Support the Clean Water Act's focus of achieving fishable and swimmable water quality standards.
- 17.3 GOAL: Allow for production of energy from non-water consumption (excluding evaporation) generation sites.
 - 17.3.1 Objective: Support non water-consumptive processes for electrical or other power generation methods.

18 WATER QUALITY

- 18.1 Findings: The County is blessed with clean water. Lake Pend Oreille dominates the surface water sources in Bonner County and is also the unique key component of the great Spokane Valley-Rathdrum Prairie (SVRP) aquifer. This aquifer is one of the most productive aquifers in the world. Water volume in the entire SVRP aquifer is estimated to be about 10 trillion gallons with an average of about 250 to 650 Mgal of water flowing through the aquifer daily at the Idaho–Washington border (MacInnis and others, 2000). Primary drainages include the Pend Oreille, Priest, Pack and Clark Fork rivers. Numerous streams drain into all of these large river drainages. These watersheds and related sub basins encompass land that is primarily timbered mountains and valleys. The bottomlands are generally privately owned with considerable lands dedicated to grazing and agriculture. Section 303 (d) (1) (A) of the Clean Water Act requires that each State shall identify those waters within its boundaries for which water quality standards are impaired. Approximately ten Bonner County streams have segments listed as impaired, primarily from sediment and temperatures (IDEQ 2003). Efforts have been undertaken to resolve these issues and considerable progress has been made and efforts will continue in the future to fully restore the streams to the required standards.
- 18.2 Goal: The Idaho Water Quality Act provides the authority and standards for water quality in the county.
- 18.2.1 Objective: Any land use inventory, planning or management activities affecting point or non-point sources and water quality in the County, either directly or indirectly, shall be consistent with this applicable Idaho and Federal Codes.
- 18.2.2 Objective: All management plans and land use practice modifications proposed by either state or federal agencies premised on water quality issues are coordinated with the BOCC and are to be consistent with the protection of private property rights.
- 18.2.3 Objective: To recognize the economic and social benefits of customary land use activities in the County.
- 18.2.4 Objective: Encourage the restoration of all impaired streams in the County.
- 18.3 Policy: Protect and preserve present and future community drinking and irrigation water sources.

19 FLOODPLAINS AND RIVER TERRACES

- 19.1 Findings: Floodplains are the relatively narrow and variable valley floors

constructed by active streams. Floodplains usually include the riparian and wetland areas. The floodplain is a part of the active erosional and depositional activity of river channels. An extensive dike system has been constructed in some areas to protect lands from the damages caused by this flooding activity.

19.2 GOAL: Continue to mitigate damage prone areas in the floodplain.

19.2.1 Objective: Continue installation and maintenance of floodplain protection structures.

19.2.2 Objective: Develop accurate and detailed floodplain mapping in consultation with landowners, state and federal agencies.

20 WETLANDS

20.1 Findings: Wetlands help regulate water levels within watersheds; improve water quality; reduce flood and storm damages; provide important fish and wildlife habitat; and support hunting, fishing, and other recreational activities. Wetlands are most common on floodplains along rivers and streams (riparian wetlands). They also occur in isolated depressions surrounded by dry land (for example basins and "potholes"), along the margins of lakes and ponds, and in other low-lying areas where the groundwater intercepts the soil surface or where precipitation sufficiently saturates the soil (vernal pools and bogs). Wetlands include marshes and wet meadows dominated by herbaceous plants; swamps dominated by shrubs, and wooded swamps dominated by trees. Wetland sites may provide critical habitat for many species and they support a greater concentration of wildlife species, recreation, and other activities than any other type of location on the landscape.

20.2 GOAL: Require a coordinated and creative approach to wetlands issues.

20.2.1 Objective: The County will make decisions considering advice equally from water, wildlife and agriculture agencies as well as from landowners to achieve acceptable workable solutions and mutual benefits, both economic and otherwise, on these issues.

20.2.2 Objective: Participate in the process to develop a consistent definition of wetlands that meets statutory requirements.

21 RIPARIAN AREAS

21.1 Findings: Riparian areas are the zones bordering lakes, reservoirs, potholes, springs and seeps, wet meadows, vernal pools, and ephemeral,

intermittent, or perennial streams. They are of prime importance to water quality, water quantity, stream stability, and fisheries habitat. Abundant water, forage, and habitat attract a proportionately greater amount of use.

- 21.2 GOAL: Require a coordinated approach to establishing riparian management plans, which include all uses of the area and impacts and influences.
 - 21.2.1 Objective: Utilization allowances shall be designed to enhance the management of riparian resources and provide an accurate and verifiable system for the comprehensive monitoring and evaluation of the entire resource 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.
 - 21.2.2 Objective: The BOCC shall encourage the development of riparian management plans and multiple use plans in coordination with landowners, ranchers, water rights owners and the appropriate local, state and federal agencies.
 - 21.2.3 Objective: Develop a consistent and functional definition of riparian areas. The County shall define riparian areas as areas of land directly or indirectly influenced by permanent water. Riparian areas have visible vegetation or physical characteristics reflective of permanent water influence. Excluded are such sites as ephemeral streams or washes or seasonal ponds that do not exhibit the presence of vegetation dependent upon free water in the soil.
- 21.3 Policy: The BOCC shall 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, and require adequate mitigation by these agencies before affecting the public or private needs of land or water, or Rights of Use of private property in the County.
- 21.4 Policy: The agencies shall work to coordinate with the County for the proposed actions with this plan prior to adoption and implementation, based on the local needs identified or referred to in Policy 22.3.
- 21.5 Policy: While the BOCC recognizes the importance of riparian areas, multiple use is to be given equal weight in decision making.
- 21.6 GOAL: Develop a protective use policy for waters within the County to ensure water quantity and water quality are maintained, improved and/or increased where applicable.
 - 21.6.1 Objective: Ensure that such policies do not unreasonably impact water

users or water rights owners within the County.

- 21.6.2 Objective: Review all water policies periodically (at least once every three years) to determine that they are appropriate and adequate.
- 21.6.3 Objective: The BOCC may seek advice and direction from the Bonner County Soil and Water Conservation District as well as other science-based pertinent sources for the planning, development, and management of the water resources of the County.
- 21.6.4 Objective: Encourage and support cost sharing, and streamline the reimbursement of fees that are incurred by permittees for riparian protection or improvement.
- 21.7 Policy: Healthy forests on public lands shall be maintained to ensure productive watersheds.
- 21.8 Policy: Riparian improvements requiring permits or fees must be from established Federal or State agencies or dike and drainage districts with authority to make such requirements of landowners. All other permits or fees must be coordinated with the BOCC.

22 PREDATOR CONTROL

- 22.1 Policy: The County opposes any Government, private or other entity's attempt to introduce predators or increase the predator population through introduction of exotic, experimental, non-native species or subspecies of wildlife. The introduction and/or reintroduction of individual predatory wildlife species from outside the area is destructive, costly and hazardous. Further, such introductions can be specifically damaging to citizens who depend upon their heritage of subsistence activities.
- 22.2 GOAL: Support control of predatory wildlife to reduce property damage or loss.
 - 22.2.1 Objective: Maintain various trapping and hunting methods as historic, accepted and environmentally sound methods of controlling predatory wildlife. Insure public participation is allowed in current and future efforts of predator control using the aforementioned methods.
 - 22.2.2 Objective: All persons have certain inalienable rights. Any person who perceives an immediate threat of life or injury to himself or others, or loss to property, by any predator of any status or classification, shall have the right to take any action necessary against injury or loss. Any predator that by its actions creates the perception to any person of a threat of life, injury, or property loss may be killed. In all cases, only the person making the

perception of an immediate threat can determine the appropriate action needed.

- 22.3 GOAL: Control disease bearing vectors, predators, rodents and insects that are a recognized threat to public health and/or personal, real and public property.
- 22.3.1 Objective: Protect private lands bordering, near or influenced by federal and state lands from predatory animals, disease bearing vectors and property damage.
- 22.3.2 Objective: This protection shall fall within the boundaries of good husbandry and sound environmental restraints, not to exclude chemical control or burning.
- 22.3.3 Objective: Develop an animal damage-control plan for the protection of livestock and crops.
- 22.3.4 Policy: Federal and State agencies and private entities shall coordinate their animal and pest control actions and regulations with these County endorsed principles and guidelines.

23 WILDLIFE

- 23.1 Findings: Hunting big game, furbearers, waterfowl, and upland game birds has been a traditional part of life in the County. Historically, hunting and trapping were a necessity for subsistence, and remains prevalent today. Bonner County offers excellent hunting and trapping opportunities for County residents and visitors. Income for County residents is provided by such activities as employment as guides, fur harvest and selling furs, selling supplies and equipment to hunters and providing meals and housing to out-of-town guests and hunters.
- 23.2 GOAL: Maintain and improve wildlife habitat in order to sustain viable and harvestable populations of big game, furbearers and upland game species, as well as wetland-riparian area habitat for waterfowl, furbearers, and a diversity of other game and non-game species.
- 23.3 GOAL: The Idaho Fish and Game Department shall coordinate with the County to develop specific Wildlife Management Plans.
- 23.3.1 Objective: Wildlife Management Plans should include annual head counts, population targets, harvest guidelines, special hunts to mitigate damage to private property, and guidelines for future site-specific management plans affecting upland, water fowl, furbearer and big game habitats.

- 23.3.2 Objective: Wildlife Management Plans will be directed toward maintaining healthy balanced wildlife populations by encouraging predator control measures and habitat improvements including the use of controlled burns.
- 23.3.3 Objective: Encourage studies to monitor wildlife relationships with available habitat and the impact on vegetation enhancement projects.
- 23.3.4 Objective: Initiate cooperative studies with willing private landowners on wildlife damage and related concerns. Encourage private landowners to allow hunting and trapping on their lands whenever populations are in conflict with landowners.
- 23.3.5 Objective: Identify wildlife population fluctuations related to both habitat condition and other non-habitat impacts on reproduction and survival.
- 23.4 Policy: Federal and state agencies are required to coordinate with the County on plans and regulations regarding wildlife.
- 23.5 Policy: The Idaho Department of Fish and Game shall coordinate with the County in consultation with all affected landowners, lessees, and permittees to develop specific wildlife population targets, harvest guidelines, and late-season and special hunts when harvest guidelines will not be met.

24 FISHERIES

- 24.1 Findings: In the early days, fishing was a necessary part of survival. Although less essential, it still provides an important resource for many people. Bonner County is renowned for 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.
- 24.2 GOAL: Preserve and enhance the fisheries resources in the County.
 - 24.2.1 Objective: Prevent the degradation of fish communities.
 - 24.2.2 Objective: Maintain healthy forests for productive watersheds.
- 24.3 GOAL: Achieve an appropriate balance between native and introduced species of fish where both are currently present in a fishery.
 - 24.3.1 Objective: If sound scientific evidence proves that introduced species are out competing, displacing, or harming the native fish populations, prior to taking any action, the economic and cultural heritage impact on the County shall be determined and considered.

- 24.4 GOAL: Achieve an appropriate balance between the commercial (guides & outfitters) and recreational anglers. Encourage active use of these aquatic resources.
- 24.4.1 Objective: If excessive fishing pressure becomes a problem, residents will be given preference over non-residents. Ease burdens on subsistence fishing for residents.
- 24.5 GOAL: Minimize the conflicts between anglers and other resource uses, but provide for all uses in appropriate areas.
- 24.6 GOAL: Any public agency activity that will impact the existing fishery must have an Environmental Impact Statement in place that addresses the economic and cultural heritage impact to the County, with a plan to mitigate the consequences and compensate those impacted.

25 RECREATION

- 25.1 Findings: Recreation and tourism are an important part of local business viability and are enjoyed throughout the county. Many recreation activities occur and include but are not limited to, fishing, hunting, trapping, mining, berry and mushroom picking, dispersed camping, picnicking, hiking, equestrian activities and use of pack animals, snowmobiling, snowshoeing, cross-country skiing, mountain biking, and off highway vehicle use. Local businesses depend heavily on those who enjoy the vast recreational opportunities in the County. The County shall work to maintain this culture of many uses of the land within the County.
- 25.2 GOAL: Encourage a broad spectrum of recreation opportunities on the lands in the County.
- 25.2.1 Objective: Provide opportunities for horseback riding, primitive and non-motorized activities as well as camping and motorized uses.
- 25.2.2 Objective: Encourage recreation activities that enhance opportunities for economic development in the County.
- 25.2.3 Objective: Encourage recreational activities on public lands in the County that increase the capacity for federal and state land resources to provide more economic return to the County.
- 25.3 Policy: Through active management of the entire forest, there should be no need to close roads and developed campgrounds except when hazardous or public safety conditions exist.
- 25.4 GOAL: Encourage recognition of the social, cultural, and economic

significance of recreation in the County and encourage implementation of policies that will insure the viability of various recreational opportunities.

- 25.4.1 Objective: Developed recreation sites on public lands offering a high level of amenities and services should be maintained or expanded by offering for bid long term (25 years or more) leases for private enterprise investors to install, manage and maintain visitor improvements and services and to charge fees necessary to provide such facilities and services.
- 25.4.2 Objective: Federal and State agencies should provide free of charge low level improvements, especially those needed to accommodate dispersed public recreation such as trail head parking, outhouses, stock ramps and hitching rails, boat launch sites, trash containers, etc.
- 25.5 Policy: The County supports the Off Highway Vehicle (OHV) Route Designation Rule and recognizes this as the way active management of recreation trails are established and maintained.
 - 25.5.1 Goal: While the county supports the OHV Rule, it will be the goal of the county to have the option to take over control (maintenance, control of access) of any forest service road that is proposed to be decommissioned in the event that closure of said road limits public access to the given area, limits county services to said area, limits the county's abilities to provide emergency services or poses an economic hardship to the county. This policy and goal would make the case that the county gets the option of having the road jurisdictionally transferred first before they actually close it.
 - 25.5.2 Objective: Route management on Federal and State lands will maintain a reasonable balance between routes open for public motorized use and routes closed to such use. A reasonable balance that provides non-motorized access in the multiple use portion of the forest should result in a minimum of 75% of system routes open for public motorized access and use. During hunting season routes open to motorized use should be well distributed across the forest so that public use is not concentrated but dispersed throughout the forest.
 - 25.5.3 Objective: The multiple use trail system on non-wilderness Federal and State lands must provide a reasonable balance of opportunities for a broad spectrum of users. Since there are thousands of acres of wilderness and other special classified areas closed to motorized use in the state, no more than 25% of the trails in the county will be closed to motorized use. Federal and State land managers will work with various user groups to identify the most desirable locations for restricted trails to provide quality opportunities for various uses such as, equestrian activities, hiking, cross-country skiing and mountain biking. Additionally, other routes shall be open to

motorcycles, snowmobiles and/or ATV's, and other motorized vehicles as well as for expanded multiple use trail opportunities.

- 25.5.4 Objective: Encourage private land managers to work with the county, state and federal land managers to develop route systems through intermingled ownership for recreational activities.

26 ENERGY AND MINERAL RESOURCES

- 26.1 Findings: Energy and mineral resources exist on both private and government-managed lands within the county. These resources have great economic potential for the citizens of Bonner County. The County recognizes that the full development of its abundant mineral resources is desirable and necessary to the economic well-being and stability of the county, state, and the nation. Energy and mineral resource extraction is consistent with the local history, custom and culture. Therefore energy and mineral resources of the County shall be managed according to the following goals, objectives and policies:
- 26.2 GOAL: Encourage energy generation capabilities for County and individual needs.
- 26.3 GOAL: To assure adequate opportunities for commercial and non-commercial activities and to provide for free personal uses.
- 26.4 GOAL: To identify, describe and manage renewable and non-renewable land based resources.
- 26.4.1 Objective: Allow both commercial and non-commercial activities.
- 26.5 Policy: Usable land based resources shall include both commercial and noncommercial uses, as well as public and private uses.
- 26.6 Policy: Commercial uses shall be managed for, but not to the elimination or exclusion of other multiple uses or resources.
- 26.7 Policy: On all public lands in the County there shall be no personal use fee or tax or charge of any nature for personal use of usable land based resources, except for uses described in Objective 25.4.1. Permits may be required as specified by Federal or State law.
- 26.8 Policy: On all public lands in the County all things of earth or mineral in origin are nonrenewable resources, including oil or gas fields that are capable of being harnessed or put into production. These examples are not all inclusive as there may be others determined at future times.

- 26.9 Policy: On all public lands non-renewable resources are to be environmentally managed and harvest shall be an accepted practice.
- 26.10 GOAL: Encourage environmentally acceptable and appropriate mineral and energy resource exploration and development in the County as provided within the State and Federal Statutes.
- 26.11 GOAL: Ensure compliance with all existing state and federal laws regarding oil, gas and mineral exploration and/or their production.
- 26.11.1 Objective: Carefully evaluate proposed revisions of the General Mining Law of 1872 for undue adverse impact on the mining industry in the County.
- 26.12 Policy: The appropriate state and federal representatives shall inform the BOCC of any proposed revisions of the General Mining Law of 1872. The BOCC will make recommendations regarding any such proposed revisions of the General Mining Law of 1872 in order to influence the outcome to favor the custom, culture, and economy of the County.
- 26.13 Policy: Commercial mining shall be allowed on public lands in accordance with current Federal and State law. Commercial rock quarrying and surface rock gathering and/or stripping from slopes is governed by the Idaho Surface Mining. The County shall coordinate with the public agencies to assure that those activities are allowed only if erosion control/prevention and vegetation can be established in an ongoing manner. Further, coordination should assure upon completion of work, the visual quality of the site is aesthetically acceptable. The scenic beauty of the valley and mountain landscapes is of great importance to County residents, state and county visitors, and the tourist industry, and must be maintained.
- 26.13.1 Objective: Mineral and energy resource exploration and development are among the historic multiple uses on state and federally managed land; their continuance is compatible with the multiple-use principle and shall be encouraged.

27 CULTURAL, GEOLOGIC, AND PALEONTOLOGICAL RESOURCES

- 27.1 Findings: The County contains many special features, which by their remote and rugged nature are largely self-protected. Where an imminent threat to these special features is identified, mitigation efforts necessary to protect significant scientific, educational, and recreational value will be identified. Many other special features are susceptible to damage by recreation seekers.
- 27.2 GOAL: Encourage the preservation of all parts of our cultural heritage as

long preservation does not impede economic growth or recovery and does impact private property rights.

- 27.2.1 Objective: Recognition and protection of special features in the County, including campsites, pictographs, historic routes, other historic sites, including the many mines, mining claims and mills scattered throughout the County, while maintaining public access, education and resource uses.

28 OTHER RESOURCES

- 28.1 Findings: The BOCC acknowledges that all of the public lands of the County shall be available for all of its residents and its visitors. This availability includes various uses as seen by recreation, industry, harvest of renewable plant and wildlife species, commercial and non-commercial uses, and others that flow throughout our lives and our history on a daily basis. The BOCC believes that in order to complement and complete our present and future needs, we need to be assertive in the management and use of all of our usable land based resources to the best of its potential.

Our usable land based resources include renewable and non-renewable resources, non-extractive resources, and regulated or managed resources. On all public lands in the County there shall be no unusable land based resources.

To accomplish that perspective, and to ensure that these principles shall be the direction that is followed in all management plans, multiple resource use options and access to them in the County, the BOCC has set forth the following goals, objectives and policies.

- 28.2 Policy: On all Public Lands in the County non-extractive resources shall also constitute use of hydropower, wind power and solar power for the purpose of electrical generation. These examples are not all inclusive as there may be others determined at future times. Proposed County solar and wind projects will be put on the general County-wide ballot for voters to approve subject to state law; and shall not be approved in secrecy or behind closed doors.
- 28.3 GOAL: To provide for non-extractive land resources.
- 28.4 Policy: Non-extractive resource use shall be allowed and encouraged for personal and commercial use.
- 28.5 Policy: The BOCC expects that a future use may be discovered or determined for a resource that has yet to be identified in this Plan. This intent allows for future innovations and capabilities.

- 28.5.1 Policy: On all public lands in the County all things alive or that had been alive, and water, are renewable resources. Examples of renewable resources are forest products, mushrooms, firewood, Christmas trees, berries, craft making materials, grasses, forbs, shrubs and wildlife. These examples are not all inclusive as there may be others determined at future times.
- 28.6 Policy: On all Public Lands gathering or harvesting thereof the renewable resources of shall be an accepted practice.
- 28.7 Policy: Viewing forests and landscapes is a form of non-extractive use. This use may include traveling by foot, horseback, watercraft and motor vehicle including snowmobiles and OHV. This use shall be accepted as normal public land use within the County.

29 WILDERNESS

- 29.1 Findings: The BOCC opposes any federal wilderness or restricted use designations that circumvents or disregards the findings of coordination efforts between Bonner County and Federal/State agencies. At this time no portion of Bonner County is designated as wilderness lands managed by the Panhandle National Forest. The County recognizes that there are adequate acreages of designated wilderness outside the County and sees no need for the creation of any new restricted use lands including but not limited to wilderness, wild lands, corridors, conservancies, monuments, roadless areas, migration routes and connectivity lands (here and after referred to as "Restricted use lands") inside the County.
- 29.1.1 Policy: The BOCC opposes the re-designation as wilderness or any other restricted use as defined in 29.1 of any Federal /State lands that are currently or have been designated multiple use lands that circumvents or disregards the findings of coordination efforts between Bonner County and Federal/State agencies.
- 29.1.2 Policy: No new federal or state land acquisitions shall be designated as wilderness or other restricted use as defined in 29.1. No new federal land acquisitions within the County will be supported by the County.
- 29.1.3 Goal: Where appropriate and desirable, plan timber sales for: (a) salvage; (b) forest health; (c) reduction of forest fire fuel loads; (c) maintenance of a desirable mix of species as well as wildlife habitat and forage areas.
- 29.1.4 Objective: To identify inventoried roadless areas where timber harvest is desirable for any of the above reasons.
- 29.1.5 Policy: The USFS Interim Directive shall be consulted for direction in roadless area management.

- 29.1.6 Policy: The agency shall coordinate with the County to plan timber sales within inventoried roadless areas identified as meeting above criteria starting in areas developed sufficiently with roads. In areas where roads are insufficient, activities shall be initiated as the need arises (as originally provided by the USFS Interim Directive).
- 29.2 Goal: Identify and inventory existing routes where forest recreation would be enhanced within inventoried roadless areas. Identify those routes that are suitable for the various types of OHVs, as authorized under the Interim Directive.
- 29.2.1 Policy: All Travel Plans shall include the BOCCs' recommendation(s). Each responsible Federal and State agency shall coordinate with the County to obtain the desired mix of trail uses.
- 29.3 Policy: The BOCC requires due notification according to the Wilderness Act of 1964 and requires coordination concerning any inventoried roadless area being recommended for wilderness or wilderness study area by the managing agency or agencies.
- 29.4 GOAL: Uphold the legal requirements and qualifications set forth by the Wilderness Act, including those providing for the continuation of historical uses.
- 29.4.1 Objective: To review current wilderness recommendations in relation to the impacts on natural resource based industries, the economic stability of the County, and on the custom and culture of the citizens of the County.
- 29.4.2 Policy: In areas other than designated Wilderness, Research Natural Area (RNA), or other administratively withdrawn area, or restricted use lands, all government agencies shall reestablish, open and maintain all routes, rights-of-way, buildings and uses that existed in all areas prior to the agencies' proposal for designation as roadless, semi-primitive, and/or wilderness areas.
- 29.4.3 Objective: To eliminate multiple use land being closed in "study areas" awaiting the determination of whether the land does meet the wilderness requirements and qualifications set forth by the Wilderness Act and then kept closed indefinitely while awaiting congressional designations, which may never occur.
- 29.4.4 GOAL: Protect Idaho's water resources and water adjudication system regardless of Wilderness designation status.
- 29.4.5 Objective: To reinforce the recognition that a wilderness designation does not affect state authority over water resources. Idaho's substantive and

procedural laws controlling appropriation and allocation of water resources remain the primary authorities over waters in the County and in any area within the County that may be designated by Congress as a wilderness area.

- 29.4.6 Objective: To protect any interests in ditches, private property, historical uses, reservoirs or water conveyance facilities and easements or Rights-of-Way associated with those interests, from impairment or diminution by any wilderness designation.
- 29.4.7 Objective: To reaffirm that the rights to access, enter, inspect, repair, and maintain those interests listed in 29.4 are not affected by any wilderness designation. These rights shall include the use of mechanized vehicles and equipment for repairs and maintenance of such facilities.
- 29.5 Policy: The BOCC opposes any designations of Biological Connecting Corridors and/or Buffer Area designations in the County adjacent to Wilderness or restricted use areas that circumvents or disregards the findings of coordination efforts between Bonner County and Federal/State agencies.

30 WILD AND SCENIC RIVERS

- 30.1 Findings: The National Wild and Scenic Rivers Act, 16 U.S.C. 88 1271-1287, provides the guidance for identification and designation of individual river segments for study, and for recommendation for inclusion as a Wild and Scenic River. Section 1271 calls for protection of "certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values."
- Under 16 U.S.C. § 1283, any federally managed lands which include, border on, or are adjacent to any river included in, or under consideration for inclusion in, the national system must be managed by the Secretary of Interior so as to protect such rivers in accordance with the purposes of the Act. However, 16 U.S.C. § 1283 Co), provides that the section is not to be "construed to abrogate any existing rights, privileges, or contracts affecting Federal lands held by any private party without the consent of said party."
- 30.2 GOAL: The evaluation recommendation of any Wild and Scenic River segments or similar designations in the County shall be coordinated with the County.
- 30.2.1 Objective: The County will review all management plans for any proposed Wild and Scenic River segment or similar designation in the County.
- 30.2.2 Objective: Uphold the legal requirements and qualifications set forth by the Wild and Scenic Rivers Act including those providing for the continuation of

existing uses.

30.2.3 Objective: Review any proposed Wild and Scenic River recommendations in relation to the impacts on natural resource based industries, the economic stability of the County, and on the custom and culture of the citizens of the County.

30.2.4 Objective: All government agencies shall reestablish, open and maintain all roads, rights-of-way, buildings and uses that were present within areas proposed for but not designated as Wild and Scenic Rivers.

31 THREATENED, ENDANGERED, AND SENSITIVE SPECIES

31.1 Findings: (a) The keystone of good environmental stewardship lies in a healthy resource base. Endangered and threatened species, as well as all plants and all animals, depend on the intricate balance of stable ecological, economic, and social functions of the immediate local community.
(b)The County will pay particular attention to all species designated in any category or classification for protection, or consideration of protection, under the Endangered Species Act. The County will actively promote ideas to remove ESA listed species from the ESA list.
(c)The County believes that protection of endangered and threatened species can be most effectively achieved by coordination between private landowners and public land users rather than imposing land-use restrictions and penalties.

31.2 GOAL: The County will take an active approach in the consideration of any species' designation or critical habitat designations in any category or classification for protection or consideration of protection, under the Endangered Species Act or similar designations in the County based on factual scientific evidence and current pertinent data obtained within and outside the County.

31.2.1 Policy: The County shall consider the information from the above scientific analysis if the County chooses to develop a management plan. State and federal agencies shall consider this plan when coordinating for any species in the County or species affecting the County designated for protection under the Endangered Species Act.

31.2.2 Policy: Federal and state agencies shall coordinate with the County to prepare an analysis of the economic and social impacts an introduction or reintroduction will have on the County prior to the introduction or reintroduction of any species designated for protection under the Endangered Species Act in the County.

31.2.3 GOAL: Any threatened or endangered species designation should not disrupt

uses of any land, and it should be consistent with the Plan.

32 ACCESS

32.1 Findings:

(a) For the purposes of this section "route" means all roads, routes, trails, and passageways by whatever name or terminology known shall be all-inclusive in the rest of this section.

(b) A special function of these public lands in the County is that they are intended for the personal use and enjoyment of its residents and visitors. The BOCC intends that maintaining the access and use of the public lands shall be the guiding principle for management, and that there shall be no personal use or access fee, or charge for its use and access.

(c) The BOCC recognizes that a number of historic routes on state and federal land have been removed from maps, gated, obstructed, decommissioned or otherwise made not easily available to the residents of this county and its visitors. Federal and State agencies shall coordinate with the BOCC to manage access or closure of these routes on currently held lands and future land acquisitions to enhance, encourage and allow access wherever feasible on all routes.

(d) Access to public lands within the county plays an integral role in the economic stability and future prosperity of the County.

(e) The BOCC also recognizes that there may be special needs to regulate access to certain sites such as administrative sites, temporary maintenance activities, or for temporary safety reasons to ensure public safety.

(f) The prevailing federal law with respect to roads and rights-of-way is RS 2477 (the Act of July 26, 1866) which states in Section 8: "The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

(g) Federal statute defines federal land rights-of-way as follows: Any road, trail, access or way upon which construction has been carried out to the standard in which public rights-of-way were built within historic context. These rights-of-way may include, but not be limited to, horse paths, cattle trails, irrigation canals, waterways, ditches, pipelines or other means of water transmission and their attendant access for maintenance, wagon roads, jeep trails, logging roads, homestead roads, mine to market roads, and all other ways.

To ensure that these principles shall be followed in all management plans, and for multiple use and access in the County, the BOCC has set forth the following goals, objectives and policies for all Public Lands in the County.

32.2 Policy: Any County transportation plan shall optimize accessibility across all federal and state managed lands within the County.

32.2.1 Objective: A route inventory will be maintained. The inventory will include,

but not be limited to a database, maps, GIS information, GPS locations, photographs and anecdotal accounts of historic travel.

- 32.3 Policy: Federal and state land management agencies shall provide the County with a complete inventory of all roads and rights-of-way in the County subject to review and amendment by the County.
- 32.3.1 Objective: Set requirements to provide access to and use on all existing routes on public lands and all routes currently existing and/or were on the agency's route system at the time the 1986-87 forest plans were made official.
- 32.4 Policy: On all public lands all routes shall remain open for use and access by the public, to the type of vehicles for which the routes were originally intended or historically used as well as for snowmobiles and more recently developed off-highway vehicles (OHVs).
- 32.5 Policy: No special interest group or individual may assert any exclusion toward another group, individual, or resource use.
- 32.6 Policy: All existing routes on state and federal lands shall be maintained or repaired in a timely manner and as funds are available. Except where public safety is jeopardized, and/or where erosion control is necessary and imminent, lack of maintenance or repair shall not be a reason for closure. Users and user groups shall be allowed to repair routes at the discretion of appropriate state and federal agencies.
- 32.7 Policy: Route designations on official maps shall not be the exclusive authority for their presence. Many maps no longer correctly delineate road and trail locations while their existence is still present on the ground. Discernable presence shall verify their present or former existence.
- 32.8 Policy: All uses and accesses shall be inclusive, and not to the point of exclusion or limitation of multiple use or access.
- 32.9 GOAL: To provide for temporary or emergency closure for certain sites or needs, and for the limitations of the closures.
- 32.10 Finding: Natural obstructions shall include but not be limited to snowfall, snow slide, avalanche, rock slide, rock fall, washout, tree fall, blow down, mudslide, vegetative re-growth and other naturally occurring phenomena.
- 32.11 Policy: Where natural obstructions on any routes exist, state and federal agencies are encouraged to repair where feasible to maintain the route allowing continued access.

- 32.11.1 Objective: Temporary or emergency closures may be allowed.
- 32.12 Policy: Temporary game-management closures need to be coordinated with the County and shall be for scientifically determined needs. Scientific data may be provided by the County. The Data Quality Act shall regulate the review of all data.
- 32.13 Policy: Causes of closure for emergency purposes may include high fire risk, forest fires, floods, construction, maintenance, repair or other immediate public safety concerns.
- 32.14 Policy: Any route may be temporarily closed by unanimous proclamation by the BOCC for emergency purposes, for a period no longer than 30 consecutive days.
- 32.15 Policy: The proclamation by the BOCC shall specify the terms of the temporary or emergency closure to include the reason for the closure, duration of the closure, permitted or scheduled breaks during the closure, and any scheduled suspensions of the closure.
- 32.15.1 Objective: Except for routes designated for use by snowshoers and/or cross country skiers, all routes shall be open to snowmobiling unless it can be shown through sound scientific data that damage could occur or is occurring to natural resources, including but not limited to wildlife, and/or wildlife habitat. In some instances those same considerations may determine that areas may be closed to non-motorized uses as well.
- 32.15.2 Objective: Special methods of permanent closure shall be allowed, with limitations.
- 32.16 Policy: Any route to a protected administrative site may be closed as long as no other access is blocked behind this closure.
- 32.17 Policy: The special administrative closure shall only be for site protection, its administrative use and its access.
- 32.18 Policy: Any administrative site maybe opened and then re-closed, needed.
- 32.19 GOAL: To maintain the historic right to travel over federal and state managed lands wherever necessary in pursuit of mining, ranching, farming, logging, recreational activities, motorized vehicle use, and all other historic and cultural uses with no use fees.
- 32.19.1 Objective: To support the economy of the county.
- 32.19.2 Objective: To keep all routes going to and inside of public lands open for the

enjoyment of all the public including but not limited to recreation and game retrieval.

32.19.3 Objective: To control the spread of noxious weeds.

32.19.4 Objective: To protect the environment.

32.19.5 Objective: To identify routes (both system roads and decommissioned roads) that would better serve as motorized trails and to remove these identified roads from the road inventory, thereby removing them from maintenance requirements and maintaining them as trails for various types of vehicles such as OHV's.

32.19.6 Objective: To encourage the adoption of rules controlling off road recreational use of all off-road vehicle types including OHV's and motorcycles.

32.20 Policy: Federal and State agencies will coordinate with the County to develop rules, administrative regulation, or regulations regarding the use of OHV's.

32.20.1 Objective: To encourage the education of users for responsible on and off road use, including maintenance of maximum noise limits and spark arrestors.

32.20.2 Objective: To encourage the development of dispersed campsites.

32.21 Policy: All routes are open to OHV access with the exception that some routes may be closed to certain vehicle types for certain periods of the year. Any such closures will be adequately signed on the ground and shown on the travel plan map for the particular vehicle types and closure types.

32.22 Policy: Routes closed to normal 4-wheeled vehicles (cars, trucks, jeeps, SUVs) during certain periods shall be left open to low impact vehicles such as lightweight OHV's.

32.23 Policy: Route closures and obliterations in the County shall not occur where there may be possible RS 2477 rights-of-way, without meaningful coordination and concurrence between the BOCC, local interested parties, and relevant federal and state land management agencies.

32.24 Policy: Federal and state agencies shall coordinate all handicapped access issues with the county.

32.24.1 Policy: To qualify for special access consideration handicapped individuals shall provide a state issued handicapped hunting/fishing license or a

medically prescriptive document from their physician to declare their need for mechanized/motorized assistance.

- 32.24.2 Policy: The handicapped person may elect to be accompanied by a non-handicapped person or persons equipped with mechanized/motorized equipment, without restrictions or constraints to either party, for reasons of safety for the handicapped individual.

33 LAW ENFORCEMENT

- 33.1 Findings: The Chief law enforcement in Bonner County is the office of Sheriff. It is a unique and special Constitutional office and is a part of the Check and Balance System. The Sheriff takes an oath to uphold, preserve, and defend the Constitution of the United States and the Constitution of the State in which his county exists. The Sheriff takes on the special responsibility of preserving and protecting the rights, liberties, and freedoms of the people within his county against unlawful acts, including any unlawful act committed by public officials working in the government. He has a direct obligation toward the people living within his county. There is no lawful authority for judges or a court to direct the law enforcement activities of a county sheriff. He is not part of the judicial system. He holds executive power and can charge judges or federal officials who violate the law. The Tenth Amendment confirms that the federal government has fixed powers, and it may not substitute its will for the best interests and the will of the people, nor exercise authority beyond the limits set out in the Constitution. Laws repugnant to the Constitution are void.
- 33.2 GOAL: To preserve and protect the peace and dignity of the people of the County; protect their rights and privileges established under the Idaho Constitution and the Constitution of the United States.
- 33.2.1 Objective: To develop coordination agreements between federal law enforcement agencies and the Bonner County Sheriff (Sheriff).
- 33.2.2 Objective: To develop coordination agreements between state law enforcement agencies and the Sheriff.
- 33.2.3 Policy: The Sheriff shall be advised of all law enforcement activities in the County.
- 33.2.4 Policy: The Sheriff shall have prior notification by any state or federal law enforcement agency of any investigations, searches, arrests, or any other law enforcement activities. Prior to any enforcement activities being conducted by any agency (federal, state, county, tribal or municipality), the Bonner County Sheriff will be notified and give final approval in writing.

- 33.2.5 GOAL: To enhance the county law enforcement-training program through available state and/or federal funds and state and/or federal training programs and facilities.
- 33.2.6 Objective: To obtain available federal and/or state funding to support local law enforcement and related activities, which may include fighting fire, search and rescue, and other activities as needed. Federal or state funding will only be accepted if it provides an actual benefit to County residents. Efforts to militarize the Bonner County Sheriff's office shall be discouraged.
- No provisions of funding provided by the federal and state government shall abridge or alter the mission as stated in section 33.1.
- 33.2.7 Objective: To create a written policy and/or protocol for working with federal and state law enforcement agencies.
- 33.3 Finding: 638 contracts between Federal Agencies and Indian Tribes for law enforcement on reservations do not extend to LEO authority over Non-Tribal Citizen's within the reservation boundaries. (Oliphant v US) (Montana v US).
- 33.3.1 Policy: The Sheriff may enter into LEO Agreements (AKA Cross-Deputizing) with federal Agencies to utilize Tribal Police for County Law Enforcement when in the best interests of the county... Such agreements shall ensure that Non-Tribal citizen's Constitutional or civil rights are not violated.
- 33.3.2 Policy: Tribal Police when acting under such an agreement with the County Sheriff are accountable to the County Sheriff for all policing of Non-Tribal Citizen's and shall operate within the sheriff department personnel policies, the laws of the State, and US Constitution.
- 33.3.3 Policy: Violations of Non-Tribal citizen's Constitutional or civil rights will result in immediate termination of cross deputization agreements.
- 33.3.4 GOAL: A current copy of the 638 contract shall be on file with the Bonner County sheriff.
- 33.4 GOAL: To provide necessary resources and support for law enforcement.

34 THE CONTINUING PROCESS

- 34.1 The BOCC recognizes that this plan is a work in continuous progress, and as such amendments are to be expected in the future. It will require the cooperation, work, and dedication of many county residents. Additional planning alternatives will be developed and added to this plan. The ongoing planning will include consideration of all historic and current land uses in the County. The plan should be reviewed at least bi-annually in its entirety by

the appointed ad-hoc committee.

- 34.2 Severability: If any section, subsection, sentence, clause or part of this plan or any portion adopted by reference therein is for any reason held to be unconstitutional, invalid, and ineffective by any court of competent jurisdiction, such decision shall not affect the validity of effectiveness of the remaining portions of this code, or any part thereof.

35 FEDERAL AGENCIES

- 35.1 Introduction: This section itemizes specific guidelines, standards, and requirements for coordination of the various Federal Agencies with the County. These agencies are listed in Appendix K.
- 35.2 Policy: Develop Memorandums of Understanding to implement the coordinated management of public lands. These MOU's shall identify laws affecting, satisfying and protecting the local needs, economy, customs, history, heritage, culture and other needs of the County and its residents.

35.3 US DEPARTMENT OF AGRICULTURE, FOREST SERVICE

Findings:

(a) Governing Laws, General:

- (i) National Forest Management Act of 1976 (16 USC 36.1604(a)),
- (ii) Federal Land Policy and Management Act (43 USC 1701-1785)

(b) Inventoried Roadless Areas (IRAs):

The Wilderness Act of 1964 requires that all unroaded areas within the national forests that are 5,000 acres in size or larger be inventoried so that their suitability for Wilderness designation may be analyzed. The term "inventoried roadless area" (IRA) describes the condition that existed at the time of inventory – an IRA was not to include any roads or evidence of timber harvest, agricultural practices, sluices, or irrigation ditches. Some IRAs do have some of those encumbrances. It must be understood that IRA is a description of the existing condition, and is not a governmental designation.

In 2000, then President Clinton initiated a ruling termed the Roadless Area Conservation Proposed Rule (Clinton Rule). Because the Clinton Rule violated almost all the forest and land management acts passed by Congress up to that effective date, the Clinton Rule was challenged by several lawsuits and finally rescinded by Wyoming District 10 Judge Brimmer.

President George W. Bush then established the "Bush Rule", which relaxed some of the constraints on management of the IRAs but authorized the Forest Service to develop an interim directive. The Forest Service issued the interim directive describing "Management of Inventoried Roadless Areas" as

Directive No. 1920-2004.1 with an effective date of July 16, 2004 and an expiration date of January 16, 2006.

Recently, lawsuits filed to challenge the 10th Circuit (Brimmer) ruling were upheld on appeal in the 10th Circuit Court. Thus, the Bush Rule and the Interim Rule were reversed, putting the roadless decision making guidelines back to the Clinton Rule. At the time of this writing the Clinton Rule is again being challenged by 10th District Judge Brimmer. January 16, 2006 has passed but the interim directive is still being honored by the Forest Service.

The Bush Rule is in limbo but the Forest Service cannot violate it at this time. The above-cited interim directive provides some direction that may still be valid for management of IRAs; i.e. (1) timber harvest for certain reasons may take place; (2) temporary road construction may take place (with the proper authority), (3) existing trail usage that was authorized at the time of inventory may continue, including off-highway vehicle (OHV) and snowmobile use. (Source: USFS Directive No. 1920-2004.1)

c) The Forest Plan of each National Forest defines Management Areas, each of which includes the following: Description, Goals, Standards, Schedule of Management Practices, and Monitoring and Evaluation Requirements. The BOCC requires that for those Management Areas with acreage within the County, the Standards, Schedule of Management Practices, and Monitoring and Evaluation Requirements be carried out, in coordination and agreement with the goals, objectives, and policies stated in this document and its amendments under the various applicable headings.

- 35.3.1 Policy: The "interim directive" shall be honored until final court and legislative actions have been settled.
- 35.3.2 GOAL: Plan timber sales for (1) forest health, (2) reduction of forest fire fuel loads, (3) maintenance of a desirable mix of native species as well as wildlife habitat and forage areas, and (4) salvage.
- 35.3.3 Policy: The BOCC requires identification of Inventoried Roadless Areas (IRA) where timber harvest is desirable for any of the reasons stated in GOAL 35.4.2.
- 35.3.4 Policy: The Forest Service will coordinate with the County to plan timber sales within IRAs identified as meeting above criteria, starting in areas developed sufficiently with roads. In areas where roads are insufficient to enable appropriate timber harvest, activities will be initiated as the need arises, as provided in the currently honored rule or directive.
- 35.3.5 Policy: The Forest Service Travel Management Plan shall be coordinated with the County.
- 35.3.6 Policy: The BOCC requires that for those Management Areas with acreage

within Bonner County, the Standards, Schedule of Management Practices, and Monitoring and Evaluation Requirements be carried out, in coordination and agreement with the goals, objectives, and policies stated in this document and its amendments under the various applicable headings.

35.3.7 IDAHO PANHANDLE NATIONAL FOREST

35.3.8 Findings. The BOCC finds that:

The Idaho Panhandle National Forest Plan of 1987, excluding amendments, fulfills the management requirements for the Idaho Panhandle National Forest.

35.4 US FISH AND WILDLIFE SERVICE

35.4.1 Findings. The US Fish and Wildlife Service was created by the Fish and Wildlife Act of 1956 (16 USC 742a-742j) and by that Act is responsible for administering the Endangered Species Act (16 USC 1531-1544), and has jurisdiction within the County.

35.4.2 Policy. In the event of any change in listing status, proposal for change in listing or initial listing status of any species under the jurisdiction of the US Fish and Wildlife Service, the County should initiate coordination per 43 USC 1712 (c) (9).

35.5 US DEPARTMENT OF HOMELAND SECURITY

35.5.1 Title 6 Domestic Security Chapter 1 Homeland Security Organization Subchapter 1 section 112 (b) (3) states that the Secretary shall coordinate with non-federal entities through the Office of State and Local Coordination (established under section 361 of this title) (including the provision of training and equipment) with state and Local Government personnel, agencies, and authorities, with the private sector and with other entities.

35.5.2 Pub. L. 108-458 title VII Section 7405 Dec. 17, 2004 118 Stat. 3851 provided that: " The Secretary of Homeland Security shall ensure that effective and ongoing coordination of Federal efforts to prevent, prepare for, and respond to acts of terrorism, major disasters and other emergencies among the divisions of the Dept. of Homeland Security, including the Directorate of Emergency Preparedness and Response and the Office of State and Local Government Coordination and Preparedness".

36 IDAHO STATE AGENCIES

36.1 Findings: It is recognized that the profound impact of human activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological

advances, recognizing the critical importance of restoring and maintaining environmental quality to the overall welfare and human development, and further recognizing that governmental regulation may unnecessarily restrict the use and enjoyment of private property, declares that it is the continuing policy of the state of Idaho, in cooperation with the federal government, local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which humans and nature can coexist in productive harmony, to recognize the right to use and enjoy private property free of undue government regulation, and to fulfill the social, economic, and other requirements of present and future generations of Idahoans."

36.2 IDAHO DEPARTMENT OF LANDS

36.3 IDAHO DEPARTMENT OF PARKS AND RECREATION

36.4 IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

36.5 IDAHO DEPARTMENT OF WATER RESOURCES

36.6 IDAHO DEPARTMENT OF FISH AND GAME

APPENDIX A - BONNER COUNTY FACTS

BEARFACTS 1996 – 2013

(Bureau of Economic Analysis, US Dept. of Commerce)

Bonner County, Idaho (16009)

Bonner is one of 44 Metropolitan Statistical Areas (counties) in [Idaho](#). It is part of the Sandpoint, ID Micropolitan Statistical Area. Its 2014 population of 41,585 ranked 8th in the state.

PER CAPITA PERSONAL INCOME (Latest figures available)

In 2014, Bonner had a per capita personal income (PCPI) of \$33,786. This PCPI ranked 25th in the state and was 92 percent of the state average, \$36,734, and 73 percent of the national average, \$46,049. The 2014 PCPI reflected an increase of 2.1 percent from 2013. The 2013-2014 state change was 3.1 percent and the national change was 3.6 percent. In 2004, the PCPI of Bonner was \$25,078 and ranked 23rd in the state. The 2004-2014 compound annual growth rate of PCPI was 3.0 percent. The compound annual growth rate for the state was 2.5 percent and for the nation was 3.0 percent.

TOTAL PERSONAL INCOME

In 2014, Bonner had a total personal income (TPI) of \$1,404,994*. This TPI ranked 10th in the state and accounted for 2.3 percent of the state total. In 2004, the TPI of Bonner was \$973,910* and ranked 9th in the state.

APPENDIX B - COMPENSATION TO COUNTIES FOR FEDERAL LANDS

FOREST RESERVE OR 25% FUND AND SRS PAYMENTS

These payments are calculated annually and are 25% of the revenue earned by the national forests within their respective counties. This revenue is derived from timber sales, grazing fees, land use fees, recreation charges, utility fees, mineral revenues, and admission or user fees. The funds when sent to the counties are earmarked for schools and roads.

Historically Bonner County has received an average of \$926,881.69 per year from these funds. However, revenues have been declining due to lack of timber sales due to environmental groups and Forest Service policy changes. This decline in revenues adversely effects the funding for schools in the county.

Bonner County has Resolution #2015-36 in effect allocating these funds within the county.

PILT and SRS Payments						
YEAR	PILT PAYMENT	TOTAL ACRES	\$/ACRE	SRS PAYMENT	TOTAL ACRES	\$/ACRE
1999	\$ 167,699.00	455,711	\$ 0.37	\$ -		
2000	\$ 124,115.00	455,357	\$ 0.27	\$ -		
2001	\$ 208,492.00	455,357	\$ 0.46	\$ -		
2002	\$ 136,019.00	455,356	\$ 0.30	\$ -		
2003	\$ 82,792.00	455,314	\$ 0.18	\$ -		
2004	\$ 86,352.00	455,316	\$ 0.19	\$ 1,128,148.00	436,130	\$ 2.59
2005	\$ 138,377.00	455,316	\$ 0.30	\$ 1,154,103.26	436,170	\$ 2.65
2006	\$ 116,328.00	455,257	\$ 0.26	\$ 1,165,644.29	436,170	\$ 2.67
2007	\$ 122,690.00	454,936	\$ 0.27	\$ 1,165,643.79	436,170	\$ 2.67
2008	\$ 255,316.00	454,936	\$ 0.56	\$ 1,072,899.84	436,090	\$ 2.46
2009	\$ 289,913.00	454,853	\$ 0.64	\$ 922,483.08	436,089	\$ 2.12
2010	\$ 367,321.00	454,843	\$ 0.81	\$ 880,815.68	436,089	\$ 2.02
2011	\$ 477,771.00	454,843	\$ 1.05	\$ 841,183.60	436,088	\$ 1.93
2012	\$ 528,602.00	454,843	\$ 1.16	\$ 808,061.23	436,017	\$ 1.85
2013	\$ 557,408.00	454,771	\$ 1.23	\$ 747,029.77	434,402	\$ 1.72
2014	\$ 625,832.00	454,126	\$ 1.38			
2015	\$ 654,437.00	454,126	\$ 1.44			
Totals	\$ 4,939,464.00	7,735,261	\$ 0.64	\$ 9,886,012.54	4,359,415	\$ 2.27
Averages	\$ 290,556.71	7,279,550	\$ 0.04	\$ 659,067.50	435,942	\$ 1.51
		Payments		Acres	\$/Acre	
Grand Totals		\$ 14,825,476.54	\$	12,094,676.00	\$ 1.23	

Appendix C

APPENDIX C - CITATIONS OF FEDERAL CODE AND CASE LAW AND COORDINATION MANDATE

BRINGING CONTROL BACK HOME

As a result of the political domination of the environmental movement in America over the last 30 years, federal and state land use management agencies have dramatically increased their regulatory power, impacting virtually every use of land in America.

During this time, the anti-grazing, anti-logging, anti-natural resource industry groups have maintained regular, often daily, contact with federal agency personnel. They influence such personnel just as special interest lobbies influence congressional staff, thrusting their concepts and strategies directly into the decision making process. Often they have filed lawsuits to successfully impact agency decisions. As a result of the lawsuits, agency personnel are often heard to say, "If we do what you ask, the environmentalists will sue us." As this outside influence over resource management has intensified, the agency staffs have also been infiltrated by individuals with an anti-resource industry bias.

These dynamics have diverted the management agencies from their original purpose of managing for the betterment of the resource and the nation. Meanwhile, landowners and workers within the resource industry have tried to influence management decisions by reason and through members of Congress. They have been less intrusive to the daily activities of the agency, more reluctant to make daily efforts to persuade, cajole or harass agency personnel. These efforts have not and cannot match the personal, up close impact of the conservation groups. So, the economic stability of local citizens and the social cohesiveness of rural counties have suffered.

Local governments have felt powerless as they watch the agencies control their citizen's property rights and destroy the local economy and social structure.

County officials, in particular, have the responsibility to protect the local tax base, value of private property, economic stability of towns intimately associated with natural resource production, the well-being of the school system and, in general, the well-being of the local community. These critical functions are closely entangled with federal management decisions. Congress has long recognized the importance of local authorities to the management of the federal lands and to the actions of resource management agencies. It has provided for the involvement of local authority in every federal land use statute passed over the past 35 years. Not only has Congress recognized the importance of county input, but they have also provided for input from local units of government, giving water districts and school districts and other local entities the same ability to protect their citizens. Congress has expressed this mandate most clearly by directing federal land use

agencies to “coordinate” their policies and management activities with local government.

The rule of coordination is clearly defined at 43 USC 1712 (c).

As local governments have witnessed the drift of federal agencies to the anti-resource persuasion, many different approaches have been pursued in an attempt to give local governments a say in how their communities will be affected. Some have even attempted to place the local entity in a higher status or more “supreme” position than is allowed by law. These approaches have failed.

The “coordination” process developed by Fred Kelly Grant, first implemented by Owyhee County, Idaho and Modoc County, California, and promoted by Stewards of the Range and the American Land Foundation, is different. It is not an attempt to gain supremacy over federal agencies. It is not an attempt to become a “cooperative agency” which lowers the local government to agency status. Neither does it place local government on equal footing with the federal government. Rather, it places local government on a level of working government to government with the federal agencies through coordination.

The “Coordination” mandate is simple.

It requires federal agencies to coordinate their plans and management activities with local government. It requires prior notice be given to the local government of agency plans and management activities, prior to the notice given the general public which includes environmental organizations, and prior to implementation. It requires that the agencies make their policies and management activities consistent with local plans.

The burden to comply is on the federal agencies.

The federal agencies often resist efforts at coordination. They would prefer that local government believe it has no real seat at the table except to hear what the managers have decided. But this is not what Congress has mandated. Local governments, which understand the rule of coordination, are in an important position to insist that their community not become endangered by federal and state land use regulations.

When local governments require federal agencies to coordinate with them, they are simply requiring the agency to follow federal law. Failure on the part of the agency to coordinate means it is breaking the law.

Using the Congressional mandate of “coordination” is a way to bring the decision making process back to the local level. It is a way that the citizens can have meaningful input themselves by participating on a coordination workgroup where they can help write, implement and enforce local plans and ensure the policy

pursued by the local government respects all the elements of private property and individual liberty that ensure a strong community.

Those local governments and their citizen workgroups, that have properly implemented a coordination plan and diligently insisted on agency compliance, have had tremendous success protecting the land, resources and livelihoods of their citizens. *American Land Foundation & Stewards of the Range. Copyright 2007*

Coordination of Federal Agencies with Local Government

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

The BOCC recognizes that federal laws mandate coordinated planning of federally managed land with local government. 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 the County that federal agencies will inform the BOCC of all pending or proposed actions affecting local communities and citizens, and coordinate with the BOCC 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:

U.S. FOREST SERVICE

Federal laws which regulate the Federal agencies including the US Forest Service are found in the United States Code (USC) and the Code of Federal Regulations (CFR).

The citations listed here are not all-inclusive but are the most pertinent to the basis for coordination.

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA):42 USC 4321-4347

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 culture¹, heritage, and custom² of local government.

¹ 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).

² 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 USC 4331(a)

"...(I)t 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. Sanders 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 USC 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 USC 4332 (c) (iii) "...such EIS or EA shall include, among other things, alternatives to the proposed action."

FEDERAL REGULATIONS IMPLEMENTING NEPA

40 CFR 1502.16(c)

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

40 CFR 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 CFR 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 CFR 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.

NATIONAL FOREST MANAGEMENT ACT (NFMA) 16 USC 1600-1614

16 USC 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."

NFMA PLANNING RULES 36 CFR 221.3(a) (I)

The Forest Service is obligated to consider and provide for "community stability"³ in its decision-making processes. See also S. Rept. No. 105.22; 30 Cong. Rec. 984 (1897); The Use Book at 17.

36 CFR 219.7(a)

The Forest Service is obligated to coordinate⁴ with equivalent and related planning efforts of local governments.

36 CFR 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.

36 CFR 219.7(d)

The Forest Service in its decision-making processes is obligated to coordinate⁴ with local governments prior to selection of the preferred management alternative.

36 CFR 219.7(c)

The Forest Service is obligated, after review of the county plan, to display the

³ "Community stability" is defined as a combination of local custom, culture and economic preservation.

⁴ "coordinate" is defined as "equal, of the same rank, order, degree

results of its review in an environmental impact statement. **See also 40 CFR 1502.16(c) and 1506.2**

36 CFR 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 CFR 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.

FEDERAL LAND POLICY AND MANAGEMENT ACT: 43 USC 1701-1785

43 USC 1701(a)(13) "the Federal Government should, on a basis equitable to both the Federal and local taxpayer, provide for payments to compensate States and local governments for burdens created as a result of the immunity of Federal lands from State and local taxation."

43 USC 1712(c) "In the development and revision of land use plans, the Secretary shall

(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located , including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended [16 U.S.C. 460l-4 et seq.], and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall 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, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act."

Summary: Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds

consistent with Federal law and the purposes of this Act.

FLPMA PLANNING RULES 43 CFR 1600 et seq.

43 CFR 1601.0(5) Definitions:

(b) "Conformity or conformance means that a resource management action shall be specifically provided for in the plan, or if not specifically mentioned, shall be clearly consistent with the terms, conditions, and decisions of the approved plan or plan amendment."

(c) "Consistent means that the Bureau of Land Management plans will adhere to the terms, conditions, and decisions of officially approved and adopted resource related plans, or in their absence, with policies and programs, subject to the qualifications in Sec. 1615.2 of this title."

(d) "Guidance means any type of written communication or instruction that transmits objectives, goals, constraints, or any other direction that helps the District and Area Managers and staff know how to prepare a specific resource management plan."

(e) "Local government means any political subdivision of the State and any general purpose unit of local government with resource planning, resource management, zoning, or land use regulation authority."

(g) "Officially approved and adopted resource related plans means plans, policies, programs and processes prepared and approved pursuant to and in accordance with authorization provided by Federal, State or local constitutions, legislation, or charters which have the force and effect of State law."

43 CFR 1601.0(7) Scope.

(a) "These regulations apply to all public lands."

(b) "These regulations also govern the preparation of resource management plans when the only public land interest is the mineral estate."

ENDANGERED SPECIES ACT: 16 USC 1531-1544

16 USC 1533(b)

(5) "With respect to any regulation proposed by the Secretary to implement a determination, designation, or revision referred to in subsection (a)(1) or (3) of this section, the Secretary shall—

(A) Not less than 90 days before the effective date of the regulation—

(ii) give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county, or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, and each such jurisdiction, thereon;"

16 USC 1533(i) "Submission to State agency of justification for regulations inconsistent with State agency's comments or petition If, in the case of any regulation proposed by the Secretary under the authority of this section, a State agency to which notice thereof was given in accordance with subsection (b)(5)(A)(ii) of this section files comments disagreeing with all or part of the proposed regulation, and the Secretary issues a final regulation which is in conflict with such comments, or if the Secretary fails to adopt a regulation pursuant to an

action petitioned by a State agency under subsection (b)(3) of this section, the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition. "

Summary: The Fish and Wildlife Service must directly respond to the "State agency"⁵

16 USC 1533(f) (5) "Each Federal agency shall, prior to implementation of a new or revised recovery plan, consider all information presented during the public comment period under paragraph (4)."

16 USC 1533(b)(1)(A) "The Secretary shall make determinations required by subsection (a)(1) of this section solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction; or on the high seas."

Summary: 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.

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

16 USC 1533(b)(2) "The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) of this section on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned."

Summary: 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.

16 USC 1533(f)(1) "The Secretary shall develop and implement plans (hereinafter in this subsection referred to as "recovery plans") for the conservation and survival of endangered species and threatened species listed pursuant to this section, unless he finds that such a plan will not promote the conservation of the species. The Secretary, in developing and implementing recovery plans, shall, to

⁵ Under the ESA, a "state agency" is a division, BOCC, 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)

the maximum extent practicable—

(A) give priority to those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity;

(B) incorporate in each plan—

(i) a description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species;

(ii) objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list; and

(iii) estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal."

Summary: 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.

CASE LAW RELATED TO THE ENDANGERED SPECIES ACT

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.

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.

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)

Comment: 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.

WILD AND SCENIC RIVERS ACT 16 USC 1271 - 1287

16 USC 1271 "It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes."

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

16 USC 1279 (b) "Lands constituting bed or bank of river; lands within bank area All public lands which constitute the bed or bank, or are within one-quarter mile of the bank, of any river which is listed in section 1276 (a) of this title are hereby withdrawn from entry, sale, or other disposition under the public land laws of the United States for the periods specified in section 1278 (b) of this title. Notwithstanding the foregoing provisions of this subsection or any other provision of this chapter, subject only to valid existing rights, including valid Native selection rights under the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], all public lands which constitute the bed or bank, or are within an area extending two miles from the bank of the river channel on both sides of the river segments referred to in paragraphs (77) through (88) of section 1276 (a) of this title are hereby withdrawn from entry, sale, State selection or other disposition under the public land laws of the United States for the periods specified in section 1278 (b) of this title."

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

16 USC 1282 (b) "Assistance of Secretaries of the Interior, Agriculture, or other Federal agency heads; use of Federal facilities, equipment, etc.; conditions on permits or other authorizations

(1) 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, landowners, private organizations, or individuals to plan,

protect, and manage river resources. Such assistance, advice, and cooperation may be through written agreements or otherwise. This authority applies within or outside a federally administered area and applies to rivers which are components of the National Wild and Scenic Rivers System and to other rivers. Any agreement under this subsection may include provisions for limited financial or other assistance to encourage participation in the acquisition, protection, and management of river resources.

(2) Wherever appropriate in furtherance of this chapter, the Secretary of Agriculture and the Secretary of the Interior are authorized and encouraged to utilize the following:

(A) For activities on federally owned land, the Volunteers in the Parks Act of 1969 [16 U.S.C. 18g et seq.] and the Volunteers in the Forest Act of 1972 (16 U.S.C. 558a-558d).

(B) For activities on all other lands, section 6 of the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 460l-8] (relating to the development of statewide comprehensive outdoor recreation plans).

(3) For purposes of this subsection, the appropriate Secretary or the head of any Federal agency may utilize and make available Federal facilities, equipment, tools and technical assistance to volunteers and volunteer organizations, subject to such limitations and restrictions as the appropriate Secretary or the head of any Federal agency deems necessary or desirable.

(4) No permit or other authorization provided for under provision of any other Federal law shall be conditioned on the existence of any agreement provided for in this section.

Summary: The Secretary of the Interior, the Secretary of Agriculture, or the head of any other Federal agency, shall assist, advice 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 USC 1276(c) State participation

The study of any of said rivers shall be pursued in as close cooperation with appropriate agencies of the affected State and its political subdivisions as possible, shall be carried on jointly with such agencies if request for such joint study is made by the State and shall include a determination of the degree to which the State or its political subdivisions might participate in the preservation and administration of the river should it be proposed for inclusion in the national wild and scenic rivers system.

16 USC 1281(e) "Cooperative agreements with State and local governments

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 Governor of a State, the head of any State agency, or the appropriate official of a political subdivision of a State for State or local governmental participation in the administration of the component. The States and

their political subdivisions shall be encouraged to cooperate in the planning and administration of components of the system which include or adjoin State- or county-owned lands."

16 USC 1283 (b) "Existing rights, privileges, and contracts affecting Federal lands

Nothing in this section shall be construed to abrogate any existing rights, privileges, or contracts affecting Federal lands held by any private party without consent of said party."

16 USC 1277(c)

Curtailment of condemnation power in urban areas covered by valid and satisfactory zoning ordinances Neither the Secretary of the Interior nor the Secretary of Agriculture may acquire lands by condemnation, for the purpose of including such lands in any national wild, scenic or recreational river area, if such lands are located within any incorporated city, village, or borough which has in force and applicable to such lands a duly adopted, valid zoning ordinance that conforms with the purposes of this chapter. In order to carry out the provisions of this subsection the appropriate Secretary shall issue guidelines, specifying standards for local zoning ordinances, which are consistent with the purposes of this chapter. The standards specified in such guidelines shall have the object of

(A) prohibiting new commercial or industrial uses other than commercial or industrial uses which are consistent with the purposes of this chapter, and

(B) the protection of the bank lands by means of acreage, frontage, and setback requirements on development.

Summary: 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 16 USC 470

16 USC 470 -1 "It shall be the policy of the Federal Government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organizations and individuals to—

(6) assist State and local governments, Indian tribes and Native Hawaiian organizations and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities."

HISTORIC PRESERVATION ACT PLANNING RULES

36 CFR 800.5(e) When the effect is adverse. If an adverse effect on historic properties is found, the Agency Official shall notify the Committee and shall consult with the State Historic Preservation Officer to seek ways to avoid or reduce the effects on historic properties. Either the Agency Official or the State Historic Preservation Officer may request the Committee to participate. The Committee may participate in the consultation without such a request.

(1) Involving interested persons. Interested persons shall be invited to participate as consulting parties as follows when they so request:

(i) The head of a local government when the undertaking may affect historic properties within the local government's jurisdiction;

CLEAN AIR ACT 42 USC 7401-7431

42 USC 7401 "Congressional findings and declaration of purpose

(a) Findings The Congress finds—

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

(3) that air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source is the primary responsibility of States and local governments; and

(4) that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.

(b) Declaration

The purposes of this subchapter are—

(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution prevention and control programs.

(c) Pollution prevention: A primary goal of this chapter is to encourage or otherwise promote reasonable Federal, State, and local governmental actions, consistent with the provisions of this chapter, for pollution prevention."

CLEAN WATER ACT 33 USC 1251 et seq.

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

Summary: 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 USC 2001 et seq.

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 PROGRAM 16 USC 1501 et seq

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 USC 3401 et seq.

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."

DATA QUALITY ACT: Uncodified, amends the PRA. 44 U.S.C. 3501 et seq.

Sec. 515 (a) "In General -- The Director of the Office of Management and Budget shall, by not later than September 30, 2001, and with public and Federal agency involvement, issue guidelines under sections 3504(d)(1) and 3516 of title 44, United States Code, that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies in fulfillment of the purposes and provisions of chapter 35 of title 44, United States Code, commonly referred to as the Paperwork Reduction Act.

(b) Content of Guidelines. --

The guidelines under subsection (a) shall --

(1) apply to the sharing by Federal agencies of, and access to, information disseminated by Federal agencies; and

(2) require that each Federal agency to which the guidelines apply --

(A) issue guidelines ensuring and maximizing the quality, objectivity, utility and integrity of information (including statistical information) disseminated by the agency, by not later than 1 year after the date of issuance of the guidelines under subsection (a);

(B) establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines issued under subsection (a); and

(C) report periodically to the Director --

(i) the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency; and

(ii) how such complaints were handled by the agency. "

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 rulemaking, 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 fisc⁶."

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 managed 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

APPENDIX D

CITATIONS OF IDAHO LAW

CONSTITUTION OF THE STATE OF IDAHO-ARTICLE XV-WATER RIGHTS

Section 1. Use of waters a public use. The use of all waters now appropriated, or that may hereafter be appropriated for sale, rental or distribution; also of all water originally appropriated for private use, but which after such appropriation has heretofore been, or may hereafter be sold, rented, or distributed, is hereby declared to be a public use, and subject to the regulations and control of the state in the manner prescribed by law.

Section 2. Right to collect rates a franchise. The right to collect rates or compensation for the use of water supplied to any county, city, or town, or water district, or the inhabitants thereof, is a franchise, and cannot be exercised except by authority of and in the manner prescribed by law.

Section 3. Water of natural stream -- Right to appropriate -- State's regulatory power--Priorities. The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied, except that the state may regulate and limit the use thereof for power purposes. Priority of appropriation shall give the better right as between those using the water; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall (subject to such limitations as may be prescribed by law) have the preference over those claiming for any other purpose; and those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes. And in any organized mining district those using the water for mining purposes or milling purposes connected with mining, shall have preference over those using the same for manufacturing or agricultural purposes. But the usage by such subsequent appropriators shall be subject to such provisions of law regulating the taking of private property for public and private use, as referred to in section 14 of article I of this Constitution.

Section 4. Continuing rights to water guaranteed. Whenever any waters have been, or shall be, appropriated or used for agricultural purposes, under a sale, rental, or distribution thereof, such sale, rental, or distribution shall be deemed an exclusive dedication to such use; and whenever such waters so dedicated shall have once been sold, rented or distributed to any person who has settled upon or improved land for agricultural purposes with the view of receiving the benefit of such water under such dedication, such person, his heirs, executors, administrators, successors, or assigns, shall not thereafter, without his consent, be deprived of the annual use of the same, when needed for domestic purposes, or to irrigate the land so settled upon or improved, upon payment therefor, and compliance with such equitable terms and conditions as to the quantity used and times of use, as may be prescribed by law.

Section 5. Priorities and limitations on use. Whenever more than one person has settled upon, or improved land with the view of receiving water for agricultural purposes, under a sale, rental, or distribution thereof, as in the last preceding section of this article provided, as among such persons, priority in time shall give superiority of right to the use of such water in the numerical order of such settlements or improvements; but whenever the supply of such water shall not be sufficient to meet the demands of all those desiring to use the same, such priority of right shall be subject to such reasonable limitations as to the quantity of water used and times of use as the legislature, having due regard both to such priority of right and the necessities of those subsequent in time of settlement or improvement, may by law prescribe.

Section 6. Establishment of maximum rates. The legislature shall provide by law, the manner in which reasonable maximum rates may be established to be charged for the use of water sold, rented, or distributed for any useful or beneficial purpose.

Section 7. State water resource agency. There shall be constituted a Water Resource Agency, composed as the Legislature may now or hereafter prescribe, which shall have power to construct and operate water projects; to issue bonds, without state obligation, to be repaid from revenues of projects; to generate and wholesale hydroelectric power at the site of production; to appropriate public waters as trustee for Agency projects; to acquire, transfer and encumber title to real property for water projects and to have control and administrative authority over state lands required for water projects; all under such laws as may be prescribed by the Legislature. Additionally, the State Water Resource Agency shall have power to formulate and implement a state water plan for optimum development of water resources in the public interest. The Legislature of the State of Idaho shall have the authority to amend or reject the state water plan in a manner provided by law. Thereafter any change in the state water plan shall be submitted to the Legislature of the State of Idaho upon the first day of a regular session following the change and the change shall become effective unless amended or rejected by law within sixty days of its submission to the Legislature.

TITLE 67
STATE GOVERNMENT AND STATE AFFAIRS
CHAPTER 65
LOCAL LAND USE PLANNING

67-6508 ... Nothing herein shall preclude the consideration of additional planning components or subject matter.

67-6528. Applicability of ordinances. The state of Idaho, and all its agencies, BOCCs, departments, institutions, and local special purpose districts, shall comply with all plans and ordinances adopted under this chapter unless otherwise provided

by law. In adoption and implementation of the plan and ordinances, the governing BOCC or commission shall take into account the plans and needs of the state of Idaho and all agencies, BOCCs, departments, institutions, and local special purpose districts. The provisions of plans and ordinances enacted pursuant to this chapter shall not apply to transportation systems of statewide importance as may be determined by the Idaho transportation BOCC. The Idaho transportation BOCC shall consult with the local agencies affected specifically on site plans and design of transportation systems within local jurisdictions. If a public utility has been ordered or permitted by specific order, pursuant to [title 61](#), Idaho Code, to do or refrain from doing an act by the public utilities commission, any action or order of a governmental agency pursuant to titles 31, 50 or 67, Idaho Code, in conflict with said public utilities commission order, shall be insofar as it is in conflict, null and void if prior to entering said order, the public utilities commission has given the affected governmental agency an opportunity to appear before or consult with the public utilities commission with respect to such conflict.

IDAHO STATUES TITLE 67 STATE GOVERNMENT AND STATE AFFAIRS CHAPTER 42 STATE PARKS

67-4223. Powers of BOCC. The park and recreation BOCC shall: **(f)** Cooperate with the United States and its agencies and local governments of the state for the purpose of acquiring, leasing, supervising, improving, developing, extending or maintaining lands which are designated as state parks, state monuments or state recreational areas and to secure agreements or contracts with the United States and its agencies or local governments of the state for the accomplishment of the purposes of sections 67-4218, et seq., Idaho Code.

IDAPA 58 TITLE 01 CHAPTER 1958.01.19 - SMALL COMMUNITIES IMPROVEMENT PROGRAM RULES

And

IDAPA 16 TITLE 01 Chapter 1916.01.19 - SMALL COMMUNITIES IMPROVEMENT PROGRAM RULES

012. DEPARTMENT ASSISTANCE IN PREPARING ENVIRONMENTAL PRIORITIES PLAN.

04. Scope of Assistance. To the extent possible based on available resources, and the number of current applicants, the Department's assistance to the small community, under Subsection 012.03, shall include helping the small community to:
(3-23-98)

a. Access available risk assessment resources; (3-23-98)

b. Provide public information and education, obtain public involvement, and elicit input from community residents and other interested parties; (3-23-98)

- c.** Coordinate with other agencies and local governments; and (3-23-98)
- d.** Identify other available resources. (3-23-98)

DRAFT

APPENDIX E -Guiding Constitutional Principles

DECLARATION OF INDEPENDENCE

Drafted by Thomas Jefferson between June 11 and June 28, 1776, the Declaration of Independence is at once the nation's most cherished symbol of liberty and Jefferson's most enduring monument. Here, in exalted and unforgettable phrases, Jefferson expressed the convictions in the minds and hearts of the American people. The political philosophy of the Declaration was not new; its ideals of individual liberty had already been expressed by John Locke and the Continental philosophers. What Jefferson did was to summarize this philosophy in "self-evident truths" and set forth a list of grievances against the King in order to justify before the world the breaking of ties between the colonies and the mother country.

IN CONGRESS, July 4, 1776.

The unanimous Declaration of the thirteen united States of America,

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to affect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpation's, pursuing invariably the same Object evinces a design

to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.-Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpation's, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the meantime exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the civil power.

He has combined with others to subject us to a jurisdiction foreign to our

constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences

For abolishing the free System of English Laws in a neighboring Province, establishing therein an arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large Armies of foreign Mercenaries to complete the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the

circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

APPENDIX F - DUE PROCESS

DUE PROCESS

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 BOCC 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 BOCC of Appeals, 191 A.2d 553 (Conn. 1963); Slagle v. Zoning BOCC 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 BOCC 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 BOCC 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. BOCC 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 BOCCs 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. BOCC of County Commissioners of Washington County, 507 P.2d 23 (Ore. 1973)].

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

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

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

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

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

Although the more generally accepted view is still that decisions with respect to the zoning of particular tracts of land are legislative decisions [see Meyer v. County of Madison, 287 N.E.2d 159 (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. BOCC 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 BOCCs 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 BOCC of appeals, sitting to consider a proposed rezoning with respect to which it would only make a recommendation to the county BOCC, 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 BOCC] 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. BOCC of Zoning Appeals, 68 A.2d 152 (Conn. 1949)].

The Wadell decision makes a persuasive argument that, to the greatest extent possible, local zoning BOCCs 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. BOCC 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 BOCCs 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 BOCC of Zoning Adjustment, 334 A.2d 175 (D.C. App. 1975); Reichard v. Zoning BOCC of Appeals, 290 N.E.2d 349 (Iii.App. 1972); Metropolitan BOCC of Zoning Appeals v. Graves, 360 N.E.2d 848 (Ind. App. 1977); Bailey v. BOCC 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. BOCC 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. BOCC 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 BOCC:

Appellants complain of variances (exceptions) granted by defendant BOCC 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 BOCC's action here was "wholly unwarranted under the facts." What, in truth, was the warrant for the BOCC's action? We are not told. The BOCC says we do not have to be told.

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

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

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

The appearance of fairness doctrine developed by the Washington courts, mentioned above, has been applied quite frequently to invalidate decisions in which the interest of one of the decision makers deprives the decision of the appearance

of fairness. In Fleming v. City of Tacoma, [502 P.2d 327 (Wash. 1972)], one of the Committeemen was employed as an attorney by the successful petitioners for a rezoning amendment less than 48 hours before the city Committee 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 Committeeman's conduct. Consequently, the ordinance was declared invalid--even though the vote of the Committeeman 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 Committee 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 BOCC 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 BOCC 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 Ass'n. v. Town BOCC 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 are 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 BOCC 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 BOCC 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 BOCC'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 BOCC 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 BOCCs, and local governing bodies must be concerned not only with whether their procedures are fair, but also with whether the decisions they make are substantively constitutional. In its substantive aspects, the constitutional guarantee of due process is an assurance that no person will be deprived of his property for arbitrary reasons. A restriction on, or a deprivation of, rights in property is constitutionally supportable only if the conduct or use of property is restricted by reasonable legislation reasonably applied. That is, the legislation must be within the scope of the authority of the legislative body, rationally related to the achievement of a legitimate public purpose, and applied for a purpose that is consistent with the purpose of the legislation itself. (See State v. Johnson, 265 A.2d 711 (Maine 1970) and 1 Rathkopf, The Law of Zoning and Planning, pp. 6-10 to 6-11 (4th ed., 1980).]

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

This is a typical way that the courts phrase the reasonable use rule: "To sustain an attack upon the validity of the ordinance an aggrieved property owner must show that if the ordinance is enforced the consequent restrictions upon his property preclude its use for any purpose to which it is reasonably adapted" [Arverne Bay Construction Co. v. Thatcher, supra, Note 29].

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

.. . if the gain to the public is small when compared with the hardship imposed upon individual property owners, no valid basis for an exercise of the police power exists. It is not the owner's loss of value alone that is significant but the fact that the public welfare does not require the restriction and the resulting loss. Where, as here, it is shown that no reasonable basis of public welfare requires the restriction

and resulting loss, the ordinance must fail and in determining whether a sufficient hardship on the individual has been shown the law does not require that his property be totally unsuitable for the purpose classified. It is sufficient that a substantial decrease in value results from a classification bearing no substantial relation to the public welfare. [Weitling v. County of Du Page, 186 N.E.2d 291 (Ill. 1962)]

In recent years, the courts have increasingly looked for evidence of a comprehensive planning process as the underpinning for municipal land-use regulations and as the best assurance that regulations will meet substantive due process standards. [Udell v. Haas, 288 N.Y.S.2d 888 (N.Y. 1968); Raabe v. City of Walker, 174 N.W.2d 789 (Mich. 1970); Forestview Homeowners Ass'n. v. County of Cook, 309 N.E.2d 763 (Ill.App. 1973); Dayless County v. Snyder, 556 S.W.2d 688 (Ky. 1977); and Fasano v. BOCC 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 G - PUBLIC INVOLVEMENT

BENEFITS AND APPLICATION OF THE RESOURCE PLAN

How the Plan Promotes Coordination in Decision Making

	Benefits of Natural Resource Use Plan	Application of Natural Resource Plan
Bonner County Natural Resource Committee	<ul style="list-style-type: none"> - Facilitates Compliance with Laws Requiring Coordination with Local Governments. - Provides a Methodology of Determining the View and Wishes of Bonner County. - Helps Ensure Continuity and Stability of County Policy. - Provides a Written Record of Previous Policy. 	<ul style="list-style-type: none"> - Reference of What the Commissioners Have Determined to be in the Best Interest of All Bonner County Citizens. - Reference for the Development of Additional or More Detailed Policies and Pending Decision Recommendations. - Reference of Views and Wishes of Citizens of Bonner County. - Reference of Possible Future Trends and Expected Actions.
Bonner County Commissioners	<ul style="list-style-type: none"> - Provides Process for Additional Avenues of Public Participation. - Enhances Decision Making by Providing a Simpler Way to Make Holistic Decisions. - Provides a Methodology of Determining the View and Wishes of Bonner County. - Helps Ensure Continuity and Stability of County Policy. - Facilitates Compliance with Laws Requiring Coordination with Local Governments. 	<ul style="list-style-type: none"> - Reference of Views and Wishes of Citizens of Bonner County. - Reference of Possible Future Trends and Expected Actions. - Reference of What the Commissioners Have Determined to be in the Best Interest of All Bonner County Citizens. - Framework to Efficiently Gather Information from the Citizens of Bonner County.

Appendix H

APPENDIX H - ACKNOWLEDGEMENTS

The Bonner County BOCC of Commissioners – Cary Kelly, Glen Bailey and Todd Sudick - wishes to acknowledge the Bonner County Natural Resource Committee for its effort in development of the Plan.

The Committee wishes to acknowledge, Sanders County, Montana, Benewah County, Idaho and Bonner County, Idaho for providing information and documents which were used in the development of this Plan. Each of these counties has adopted similar plans.

The Committee wishes to thank Mr. Fred Kelly Grant, attorney, for providing consultation and training in federal and state law related to coordination.

The Committee wishes to thank all the individual citizens who helped with information and technical expertise in developing this plan

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APPENDIX I - 1987
IDAHO PANHANDLE NATIONAL FOREST

The 1987 Idaho Panhandle National Forest Plan can be found online at:

<http://www.fs.fed.us/ipnf/eco/manage/forestplan/>

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APPENDIX J: RESOLUTION

RESOLUTION NO. 18-_____

Resolution of the BOCC of County Commissioners of the County of Bonner Asserting Legal Standing and Formally Implementing Coordination with all Federal and State Agencies Maintaining Jurisdiction Over Lands and/or Resources Located Within Bonner County, Idaho.

WHEREAS the BOCC recognizes its mandate provided in Idaho statutes to (1) protect and enhance the public health, safety, and welfare of the citizens of the County, (2) protect the tax base and encourage the economic stability of the County, and (3) encourage the agriculture and forestry industries and other businesses for future growth; and

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

WHEREAS laws and regulations of the United States ("Federal Laws") and of the State of Idaho ("State Laws") mandate that planning and actions of the Federal and State agencies must be coordinated with the plans of local government, these specific laws being in part the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), the National Forest Management Act (NFMA) and all relevant Idaho Statutes; and

WHEREAS the BOCC recognizes the need for a more reliable source of funds from use of resources on Federal lands; and

WHEREAS fourteen percent of the County is State land and the BOCC recognizes its legitimate interest in the management of that State land; and

WHEREAS NEPA states that Federal agencies must coordinate their management plans and actions with local government plans to make them consistent and requires 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; and

WHEREAS the BOCC invokes coordination of Federal land management with the County to promote sustainable revenue from the Federal Lands; and

WHEREAS the BOCC recognizes the applicability of the aforementioned Federal Laws and State Laws to its duties and requires full participation of the BOCC in the

planning and regulatory processes of all Federal and State agencies which have any jurisdiction within the County; and

WHEREAS the BOCC recognizes that meaningful local government involvement requires more than the timely exchange of information and places an additional responsibility on Federal and State agencies to incorporate the goals, objectives and policies of local government into Federal and State plans and decisions affecting any area under the local government's jurisdiction; and

WHEREAS the BOCC desires to continue developing a policy document referencing the applicable portions of the proposed Bonner County Natural Resource Plan to facilitate Federal and State coordination with the County.

NOW, THEREFORE, BE IT RESOLVED that the BOCC requires that all Federal and State planning and actions affecting the County be coordinated with the County adopted plans, resolutions, and ordinances as set forth and required by the respective Federal or State legislation which granted the power to take the subject action.

BE IT FURTHER RESOLVED, that all Federal and State agencies administering land or conducting activities in the County be notified of adoption of this resolution implementing coordination.

The foregoing was duly enacted as a Resolution of the BOCC of County Commissioners of Bonner County, Idaho on this ____ day of _____, 2017

BONNER COUNTY BOCC OF COMMISSIONERS

Glen Bailey, Chairman

Daniel McDonald, Commissioner

Jeff Connolly, Commissioner

ATTEST: Michael W. Rosedale

By _____
Deputy Clerk

This plan or any affected sections of this plan should be reviewed should a Federal or State plan impacting the County be changed or implemented. A full review should occur in no more than 7 years.

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