

Where Does the Congressional Coordination Mandate Come From?

(with sometimes liberal quoting from “Coordinating Government to Government” produced by the Trademark America Institute)

The earliest federal land management statute I’ve found requiring federal agencies to “coordinate” is the Recreation Coordination and Development Act of 1963 (Public Law 88-29, approved May 28, 1963, 77 Stat. 49). This statute declared a Congressional policy that "present and future generations be assured adequate outdoor recreation resources" and that "all levels of government and private interests . . . take prompt and coordinated action . . . to conserve, develop, and utilize such [their] resources for the benefit and enjoyment of the American people."

According to long-established and accepted precepts of statutory construction, if Congress does not specifically define a term within the legislation where it is used then the common-use definition, as found in any good dictionary, is understood to be that which was intended. Webster’s New Twentieth Century Dictionary, Second Edition (1971) defines coordination as “harmonious adjustment or functioning”. You’ll find similar definitions in any dictionary relating to cooperating or getting along in common purpose.

The first statute wherein Congress began to define the coordination process is the National Environmental Policy Act (NEPA), 42 U.S.C. 4331, in 1970. Also of importance, NEPA set forth a national intention of reaching a harmonious and productive environment for the entire natural environment . . . including humans; it required all federal agencies to prepare studies and statements of impacts, including the cumulative impacts of any project studied; and it established the President’s Council on Environmental Quality (CEQ), attached to the White House, to provide oversight of implementation by all federal agencies, whether or not there is a NEPA project involved.

Sec. 2 [42 USC § 4321].

The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality” or CEQ.

CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101 [42 USC § 4331].

(a) The Congress, recognizing the profound impact of man's 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 and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and 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 man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential

considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

CEQ regulations, subsection 1500.3 Mandate.

Parts 1500 through 1508 of this title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969...except where compliance would be inconsistent with other statutory requirements.

Subsection 1500.6 Agency authority.

The phrase 'to the fullest extent possible' ... means that each agency of the Federal Government shall comply ... unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

Subsection 1501.2 Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions ... avoid delays later in the process, and ... head off potential conflicts ...

(d)(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

With the passage of the Federal Land Policy Management Act, 43 U.S.C. 1711, in 1976, Congress further defined the coordination process, directing the Bureau of Land Management (through the Secretary of Interior) to "coordinate ... land use inventory, planning and management activities" with State and local governments and Indian Tribes.

The statute directs the BLM, when it is involved in management of the land or a program in which the local government is affected, FLPMA requires coordination such that:

"In the development and revision of land use plans, the Secretary shall --

(9) to the extent consistent with the laws governing the administration of 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 of the States and local governments within which the lands are located ...

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

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.

With passage of the National Forest Management Act, 16 U.S.C. 1602, in 1976, Congress directed the Forest Service to coordinate the development of, the maintenance of, and the revisions of land and resource management plans with local government. In this case the common usage of “maintain” is used, that is “2. (a) to keep in existence or continuance; (b) to keep in a certain condition or position, especially of efficiency, good repair, etc.; to preserve; as, the state *maintains* the roads.” (Webster’s New Twentieth Century Dictionary)

Section 1604: National Forest System land and resource management plans.

(a) Development, maintenance, and revision by Secretary of Agriculture as part of program; coordination.

As a part of the Program provided for by section 1602 of this title, 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.

“As a part of the Program provided for by section 1602 of this title, 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.”

Under several judicial and legal theories, the words coordinate and coordination as used in the NFMA mean the same as Congress has defined the terms in FLPMA.

Statutes are in “pari material” and thus must be read together and consistently. Professor Sutherland’s definitive work “Statutory Construction,” Section 5202, states: “Statutes are considered in “pari material” to pertain to the same subject matter when they relate to the same person or thing, or the same class of persons or things, or have the same purpose and object.”

FLPMA and NFMA are statutes in “pari material” because they both relate to management processes, procedures and directives from Congress by which the BLM and USFS must manage the public or federal lands. They even represent enactments by the same session of Congress, and they have the same “purpose and object.” And the United States Supreme Court has enunciated this principle on scores of occasions.

RESOLUTIONS

It is advisable for a unit of local government to invoke its coordination authority by Resolution so that the agencies realize that the invocation of authority is formal policy that the governing board stands behind.

It is clear that no resolution is REQUIRED in order to invoke coordination. The process is a self-starter, it requires nothing more than for the unit of local government to notify the agency that it is invoking the process.

The mandate of coordination exists through statutory authority of the legislature (Congress for federal statutes and the state legislatures for state statutes) imposed on the agencies. The mandate is an exercise of the legislative authority over process.

But, a Resolution shows formal policy, and carries that formality through the official records.

Most Resolutions should be simple, simply citing the statutes and state the invocation of the coordination process. (In the case of Mining Districts I believe additional verbiage explaining their validity as units of local government is time well spent, and should prevent unnecessary upfront rejections of your assertion letters to the agencies – Kathy)

These Resolutions of most units of local government should contain, but not necessarily be limited to, the following language, as an example:

Whereas _____ is a unit of local government in the State of _____;

Whereas _____ is therefore entitled to engage in the coordination process with all federal agencies as mandated by Congress:

(?- used by other local government entities)

Whereas _____ exercises the local police powers to protect public health, safety and welfare reserved to the States and to the People under the Tenth Amendment to the United States Constitution;

(?- used by other local government entities)

Whereas the proper exercise of those reserved powers requires that all federal agencies engage in the coordination process with _____;

(?- used by other local government entities)

Whereas the statutes of _____ State require that state agencies engage in coordination with _____, and the protection of the public health, safety and welfare of the people of _____ requires engagement in such coordination;

Therefore, It Is Hereby Resolved that _____ establishes the policy that it will engage in the coordination process with all federal agencies and with all state agencies;

IT IS FURTHER RESOLVED that since Congress defined the coordination process in the Federal Land Policy Management Act, and the United States Supreme Court has ruled that when Congress defines a

term, the term means the same in any statute that is in pari material, it is the policy of _____ that it will engage in the coordination process as defined by Congress in FLPMA.