

# BUDD-FALEN LAW OFFICES

L.L.C.

ATTORNEYS FOR THE WEST

**KAREN BUDD-FALEN**  
**BRANDON L. JENSEN**<sup>1</sup>  
**KATHRYN BRACK MORROW**<sup>1,2</sup>

**300 EAST 18<sup>TH</sup> STREET • POST OFFICE BOX 346**  
**CHEYENNE, WYOMING 82003-0346**  
**TELEPHONE: 307/632-5105**  
**TELEFAX: 307/637-3891**  
**WWW.BUDDFALEN.COM**

**FRANKLIN J. FALEN**<sup>3</sup>  
**JOSHUA TOLIN**<sup>1</sup>  
<sup>3</sup> ALSO LICENSED IN NEBRASKA, SOUTH  
DAKOTA AND NORTH DAKOTA

<sup>1</sup> ALSO LICENSED IN COLORADO  
<sup>2</sup> ALSO LICENSED IN NEW MEXICO

## MEMORANDUM

**TO: WYOMING ASSOCIATION OF CONSERVATION DISTRICTS**

**VIA: E-MAIL** [bobbie.frank@conservewy.com](mailto:bobbie.frank@conservewy.com)

**FROM: KAREN BUDD-FALEN /s/Karen Budd-Falen**  
**BUDD-FALEN LAW OFFICES, LLC**

**DATE: SEPTEMBER 3, 2013**

**RE: MAKING A DIFFERENCE IN FEDERAL DECISION-MAKING,  
PLANS, POLICIES AND PROGRAMS - SUBSTANTIVE  
PARTICIPATION BY LOCAL GOVERNMENTS IN FEDERAL  
AGENCY DECISION MAKING - TEMPLATE AND PROCEDURES  
FOR ADOPTION OF LOCAL LAND OR RESOURCE PLANS**

---

Locally elected governments and elected officials have far ranging and important responsibilities to their constituents, described by state statutes as protecting their “health, safety and welfare.” That responsibility includes specifically interacting with federal agencies on all federal issues impacting the local community, county or conservation district. To give the locally elected government the strongest voice it can have during this “government-to-government” interaction, local governments should adopt “local land use plans” or “resource plans” to set local policy regarding the use and management of federal lands and the adoptions of federal policies, programs and other types of federal decision-making.

Federal agencies and departments are mandated by various federal statutes to engage local governments in federal decision-making processes related to federal plans, policies and programs that will impact the local land use, management of natural resources, the citizens and the local tax base. The adoption of a local land use or resource plan by a local government is a critical tool allowing a local government to have a substantive impact on federal decisions, plans, policies and programs. In fact, federal agency consideration of a local land use plan, resource plan or “officially adopted policy” plays a key role in the success of a local government engaging as a cooperating agency or with consistency review under the National Environmental Policy Act, coordination under the Federal Lands Policy and Management Act or the National Forest

Management Act and in assisting in the Governor's consistency review process. There is wide agreement that having a well-written land use or resource plan considerably strengthens a local government's position when working with federal agencies.

The purpose of this Memorandum is to (I) define a local land use or resource plan for the purposes of substantively participating in federal decision-making processes; (II) present a summary of the federal statutory authority related to local cooperating agencies, coordination and consistency reviews; (III) provide a template or elements necessary for an effective local land use or resource plan; (IV) provide an analysis of the planning authority, process and procedures for conservation district land use planning; and (V) describe some final local land use plan requirements.

## **I. LOCAL "LAND USE PLAN"**

When people think of local "land use plans," they typically have in mind the general planning document that counties use to determine zoning, public services and facilities, transportation, and the like. But these plans apply to land that is largely *within* the county's jurisdiction and are based upon specific state authorization. By contrast, many rural counties and conservation districts have also officially adopted a *separate land use plan or natural resources management plan* that applies to the surrounding *federal land* and reflects the local government's position on federal decisions.

For those unfamiliar with local land use planning participation for federal decisions, the very idea may seem odd. Local governments do not have jurisdiction over the federal government, and local land use plans cannot require federal land managers to take specific actions. For example, a conservation district cannot dictate in its land use plan how many grazing animal unit months ("AUMs") will be allocated for a given grazing allotment, or that wild horse populations shall be managed below appropriate management levels ("AML") to provide more forage for livestock grazing. These decisions are within the authority of the federal agency. However, rural counties' socioeconomic well being, health, safety, and culture can be strongly impacted by the management of the surrounding federal or public lands. Moreover, local governments are generally required by state law to oversee the economic, social, and general well being of the people and resources that are within their jurisdictions, while soil and water conservation districts are required to provide for the ongoing stability and health of soil and water resources. The reasons a local government would go through a process to develop the type of land use plan described in this memorandum is to ensure the local socioeconomic well being, the culture and customs of the and natural resource health are considered in federal decisions.

There are two other important points local governments should consider in writing local land use or resource plans. First, it is critical that the various local governments, such as County Commissions and Conservation Districts, work closely together in making their land use or resource plans complimentary to each other, so that

the local governments can work together to influence federal agency decisions. Although counties and conservation districts have overlapping physical boundaries, their missions and areas of expertise are complimentary to each other. The goal in local land use or resource planning is to have plans that support the local citizens, the local economy and the local environment. That goal will not be realized if the various local governments write their plans in a vacuum without consideration of the expertise and data possessed by other local governments within an area.

Second, I recommend that local governments invite the various federal agencies to participate in the preparation of a local land use or resource plan. At a minimum, I believe that federal agencies should be given the opportunity to provide comments on draft plans. While it is certainly the choice of the various federal agencies whether they will provide input into the local land use or resource management plan, and the final content of the local land use or resource plan rests fully with the elected local body, providing an opportunity for federal input is necessary so that the local government is considering all comments and preparing a final document that best fits its needs and articulates its goals and visions for its area or district.

## **II. STATUTORY REQUIREMENTS FOR LOCAL GOVERNMENT-TO-FEDERAL GOVERNMENT INTERACTION AND INFLUENCE**

### **A. The National Environmental Policy Act (“NEPA”)**

NEPA applies to “every major Federal action significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). The courts have interpreted this to mean that every time the federal government spends any amount of money for almost any decision, NEPA compliance is required. There are several ways local governments can participate in the NEPA process, depending on the type of federal decision, the level of commitment of the local government and the goal of the local government.

First, the local government is to use its local land use or resource plan as part of the federal agency’s “consistency review” process. Under this option, if the federal agency, in the course of writing an environmental impact statement (“EIS”), receives a local land use or resource plan, NEPA commands the federal agency to “discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the [environmental impact] statement should describe the extent to which the [federal] agency would reconcile its proposed action with the [local government] plan or law.” 40 C.F.R. §§ 1506.2, 1506.2(d).

Second, NEPA requires that copies of comments by State or local governments must accompany the EIS or environmental assessment (“EA”) throughout the review process. 42 U.S.C. § 4332(c).

Local governments can participate in the NEPA process as a “cooperating agency.” 40 C.F.R. § 1508.5. Pursuant to NEPA, an applicant for cooperating agency status must both (1) be a locally elected body such as a conservation district board of supervisors or a county commission; and (2) possess “special expertise.” Wyoming statutes specifically authorize conservation district supervisors to “cooperate, including but not limited to representing the conservation district as a cooperating agency with special expertise as provided by the National Environmental Policy Act and in federal land planning implementation . . . .” Wyo. Stat. § 11-16-122(b)(viii).

A local government’s special expertise is defined as the authority granted to a local governing body by state statute. For example, Wyoming conservation districts have state statutory authority related to the conservation of soil and water resources, control and prevention of erosion, conservation, development, utilization and disposal of water, to stabilize the ranching or farming industry; preserve natural resources, protect the tax base, control floods, preserve wildlife, protect the public lands and protect and promote the health, safety and general welfare of the people of the State. See Wyo. Stat. § 11-16-103(b). In addition, Wyoming statutes state:

When representing a conservation district as a cooperating agency in matters related to the National Environmental Policy Act and in federal land use planning, implementation and management actions, supervisors of a conservation district shall be deemed to have special expertise on all subject matters for which they have statutory responsibility as provided in W.S. 11-16-122 including but not limited to all subject matters directly or indirectly related to stabilization of the agriculture industry, protection of natural resources including but not limited to data and information, conservation of soil and water resources, control and prevention of soil erosion, flood prevention or the conservation, development, utilization and disposal of water within the district.

Wyo. Stat. § 11-16-135. Thus, Wyoming statutes clearly provide conservation districts the special expertise to act as a “cooperating agency” in the NEPA process.<sup>1</sup>

## **B. Federal Land Policy and Management Act (“FLPMA”)**

FLPMA, which governs the BLM, provides detailed requirements for “coordination” and “consistency” with local land use plans. FLPMA both provides the

---

<sup>1</sup> Third, NEPA statutes also provide that local governments can have “joint planning authority.” 40 C.F.R. § 1506.2(b),(c). This provision only applies if state and/or local government has adopted a comparable NEPA requirement. Wyoming state statutes do not provide this comparable process, therefore, this option does not exist for Wyoming counties or conservation districts.

directive that the BLM engage local governments in coordination, as well as specific instructions to the BLM as a means to accomplish “coordination.” They are:

- ★ To the extent practical, the BLM must stay apprised of local land use plans.
- ★ The BLM must assure that local land use plans germane to the development of BLM land use plans are given consideration.
- ★ To the extent practical, the BLM must assist in resolving inconsistencies between local and BLM land use plans.
- ★ The BLM must provide for the meaningful involvement of local governments in the development of BLM land use programs, regulations, and decisions. This includes early notification of proposed decisions that may impact non-federal lands.

43 U.S.C. § 1712(c)(9).

Additionally, FLPMA requires BLM land use plans to be consistent with local land use plans, provided that achieving consistency does not result in a violation of federal law. FLPMA states:

Land use plans of the Secretary [of the Interior, BLM] 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.

43 U.S.C. § 1712(c)(9). Emphasis added.

In other words, according to FLPMA, if a BLM land use plan is inconsistent with a local land use plan, the BLM owes an explanation of how achieving consistency would have resulted in a violation of federal law.

Additionally, FLPMA requires that the BLM also provide for a Governor’s consistency review as part of the land use planning process. According to that provision:

(e) Prior to the approval of a proposed resource management plan, or amendment to a management framework plan or resource management plan, the State Director shall submit to the Governor of the State(s) involved, the proposed plan or amendment and shall identify any known inconsistencies with State or local plans, policies or programs. The Governor(s) shall have 60 days in which to identify inconsistencies and provide recommendations in writing to the State Director. If the Governor(s) does not respond within the 60-day period, the plan or amendment shall be presumed to be consistent. If the written recommendation(s) of the Governor(s) recommend changes in the proposed plan or amendment which were not raised during the public participation process on that plan or amendment, the State Director shall

provide the public with an opportunity to comment on the recommendation(s).

43 C.F.R. § 1610.3-2(e). Importantly, the regulations continue:

If the [BLM] State Director does not accept the recommendations of the Governor(s), the State Director shall notify the Governor(s) and the Governor(s) shall have 30 days in which to submit a written appeal to the Director of the Bureau of Land Management. The Director shall accept the recommendations of the Governor(s) if he/she determines that they provide for a reasonable balance between the national interest and the State's interest. The Director shall communicate to the Governor(s) in writing and publish in the Federal Register the reasons for his/her determination to accept or reject such Governor's recommendations.

Id.

By letter dated April 16, 2012, Wyoming's Governor committed to Wyoming's local governments (both county commissions and conservation districts) that the Governor would use locally adopted land use or resource plans for the Governor's consistency review pursuant to 43 C.F.R. § 1610.3-2(e). Thus local governments should additionally use this opportunity to assert local concerns, policies, desired future conditions and needs into federal land use planning processes and decisions through a consistency review.

### **C. The National Forest Management Act (“NFMA”)**

NFMA, which governs the U.S. Forest Service, requires the agency to “coordinate”. The NFMA requires:

[T]he 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.

16 U.S.C. § 1604(a). Emphasis added.

The fact that the Forest Service is directed to “coordinate” with local governments implies, by its plain meaning, that the Forest Service must engage in a process that involves more than simply “considering” the plans and policies of local governments; it must attempt to achieve compatibility between Forest Service plans and local land use plans.

### III. LAND USE PLAN TEMPLATE

Although there is no right or wrong way to write a local land or resource plan, the most effective ones I have seen contain all of the following elements:

#### A. County or District Background

This section of the land or resource plan includes a general description of the conservation district or county. That description should contain factual information on the history, economy, “custom and culture,”<sup>2</sup> importance and uses of the federal or public land from the local perspective, water needs and uses, soils and other natural features and the economic, cultural and natural resource values that are important to the local constituents.

I also recommend this section include a statement that the local government expects to (1) engage with the federal government, such as BLM and Forest Service through coordination, and to (2) be given early notification of any opportunities for cooperating agency status by all federal agencies as part of the NEPA process.

#### B. Local Policy Statements

The heart of a local land use or resource plan is a list of policy statements describing what the local government wants to happen (or not to happen) during federal decision-making processes. These policies should pertain to resources that the local government anticipates may be affected by future federal agency planning. For example, a local government may want to set policy on livestock grazing, timber extraction, road maintenance and closure, water, fire prevention and suppression, oil and gas or mineral extraction and potentially many others. If the local government is participating in a NEPA process, these can be thought of as the “desired future conditions.” The types of federal decisions that involve coordination, consistency reviews or cooperating agency

---

<sup>2</sup> Culture is defined as the customary beliefs, social forms and material traits of a group; an integrated pattern of human behavior passed to succeeding generations. *Webster’s New Colligate Dictionary*, 227 (1975). Custom is a usage or practice of the people, which 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. *Bouvier’s Law Dictionary*, 417 (1<sup>st</sup> ed. 1867). In translating these definitions to a local government’s land use plan, the questions that could be posed are what activities, events or elements of the physical or social environment have shaped the citizens, history or economy in the local area? Some considerations could be: is the local economy based upon some type of production agriculture or mining and how did that come about? Was the general ancestry in an area from a certain country and/or nationality and why? How have the long human traditions and economics in a particular area changed over time and why?

status prescribes future agency action (such as a BLM or Forest Service land use plan, economic analysis for critical habitat under the ESA, alternatives analysis under NEPA, etc). Thus the purpose of this section of the local land or resource plan should be the local government's "desired future condition" from the local perspective.

I would also recommend that this section be written with an eye toward influencing the types of federal decisions that will be impacting the local area. For example, all BLM and Forest Service offices keep quarterly lists of proposed upcoming actions or decisions. These lists can be reviewed so that a local government can anticipate the types of issues that should be brought to it in the future. With regard to endangered species listings or critical habitat designations, the multi-district settlement agreement and the U.S. Fish and Wildlife Service work plan lists plants and animals, by state, that will be reviewed and considered for listing or critical habitat by the FWS over the next five years. This is also information a local government can review to start to develop its policies or desired future actions to be considered by the federal agencies.

### **C. Local Data**

Policies or desired future conditions are strongest when local governments can support them with good factual information. For example, a policy that timber extraction continue on a National forest is much stronger if it is supported by data showing that forest thinning promotes forest health, and that logging is important to the local government's socioeconomic base. Even "soft" information, such as the cultural and historic relevance of logging within the local government is important to include. By contrast, it is not enough for a land use plan to simply state that the local government's policy is to support continued logging on federal lands. Rather, once a local government sets forth its policy statements, the local plan should include local data and information supporting socioeconomic, and environmental reasons for these policy statements. This data can include soil surveys, road and trail maps, tax base information, historical journals, wildlife population information, water rights information, descriptions of water storage or conveyances on federal lands, mineral location, water quality monitoring data, population statistics and information, economic information such as types of local employers, circulating dollar or value added industries, etc.

### **D. Analysis, Alternatives and Mitigation**

Finally, the local plan should present some analysis of both the negative and positive influences that can happen to the "desired future conditions" or policies because of actions by the federal government. For example, if the local government has a policy statement describing the requirements for local "economic stability," the data should show the facts necessary to achieve this policy. The analysis would then review the proposed actions of the federal agency to determine which federal actions are in line with the local government's policy statement. I do not believe this has to be an exhaustive list or analysis. However, the purpose of local government involvement in

federal agency decisions is to substantially influence those federal decisions by being able to predict whether federal actions will have a positive or negative impact on the local citizens, the environment and the economy.

Additionally, if there is an adverse impact on the natural environment, local citizens “custom and culture” or the local economy, NEPA requires the consideration of alternative actions or mitigation. Thus, local governments can use this part of the local land use plan to start to think about alternatives and/or mitigation to alleviate or lessen the impact of detrimental federal agency decisions.

#### **IV. PLANNING AUTHORITY, PROCESS AND PROCEDURES FOR WYOMING CONSERVATION DISTRICTS**

The purpose of this section of this memo is to analyze the distinctions between county and conservation districts planning authorities relating to land use plans, zoning, resource plans and the various types of enforcement. Part of the problem lies, I believe, in the confusion between traditional county land use planning as a prerequisite for zoning enforcement versus “land use plans” as the terms are used in FLPMA, NEPA and NFMA. There is no question that only Wyoming counties, not conservation districts, have authority to enforce land use plan decisions on private lands, through zoning. However, there is equally no question that both conservation districts and counties have the authority to develop land use and resource plans that set forth the policies and positions of the local governments which are required to be considered by federal agencies in their federal decision-making processes.

##### **A. Scope of Conservation District Land or Resource Planning Authority**

The Wyoming Conservation Districts Law is codified at Article 11, Chapter 16 of the Wyoming statutes (“Districts Law”). The Districts Law describes, among other matters, the powers and purposes of a conservation district. The law clearly states that conservation districts are legal subdivisions of the state of Wyoming. Wyo. Stat. §§ 11-16-102(a)(v), 11-16-113(c). In Wyoming, neither counties or the conservation districts are “home rule” political subdivisions, thus neither counties nor conservation districts have any power other than that expressly granted by the constitution or statutes, as well as powers reasonably implied from the expressly granted powers. *See, e.g., In re RB*, 294 P.3d 24, 28 (Wyo. 2013); *Wilson Advisory Committee v. Board of County Com'rs of Teton County*, 292 P.3d 855, 862 (Wyo. 2012). Therefore, a district’s powers are limited by its statutes.

Even without “home rule,” Wyoming statutes provide authority for conservation district land use or resource plans.<sup>3</sup> Section 11-16-122 of the Districts Law gives authority to districts to:

Develop and implement comprehensive resource use and management plans for range improvement and stabilization, conservation of soil, water and vegetative resources, control and prevention of soil erosion and for flood prevention or the conservation, development, utilization and disposal of water within the district, which plans shall include range management provisions and shall specify in detail the acts, procedures, performances and avoidances necessary or desirable to carry out the plans, including the specification of engineering operation, fence and stockwater developments, methods of cultivation, the growing of grass and other vegetation, cropping and range programs, tillage and grazing practices, and changes in use of lands.

Wyo. Stat. § 11-16-122(b)(xvi).

Also, a District is empowered to:

Make, amend and repeal rules and regulations not inconsistent with this act, to implement its purposes and powers.

Wyo. Stat. § 11-16-122(b)(xxvi).

The reason the Wyoming Legislature created the District’s law include “the conservation of soil and soil and water resources of this state, and for the control and prevention of soil erosion, and for flood prevention or the conservation, development, utilization, and disposal of water, and thereby to stabilize the ranching or farming operation, to preserve natural resources, protect the tax base, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the public lands, and protect and promote the health, safety and general welfare of the people of this state.” See Wyo. Stat. § 11-16-103(b).

Read together, these statutes authorize a conservation district to development and implement resource plans that relate to the use, conservation, and management of soil, range, and water resources.

---

<sup>3</sup> Separately, Wyoming Conservation Districts have authority to develop long term strategic plans and watershed plans. See Wyo. Stat. §§ 11-16-103(b), 11-16-122(b)(v)(xvi) (xvii). The land use or resource plans discussed in this memo is separate and distinct from the District’s long term strategic and watershed plans, although they should be complimentary of each other and can be adopted via the same process.

## **B. Legal Effect or Enforcement of Conservation District Land Use or Resource Plan**

Wyoming's Districts Law does not discuss a resource plan's legal significance, nor was I able to find any Wyoming court cases involving a District land or resource plan. There were several cases describing the effect or county land use plans (as opposed to county zoning), one of which held:

Municipal planning in Wyoming has as its goal the development of a "master plan for the physical development of the municipality." Wyo. Stat. Ann. § 15-1-503(a). "The plan shall be made for the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the municipality which will best promote the general welfare as well as efficiency and economy in the process of development." Wyo. Stat. Ann. § 15-1-504. Planning, therefore, is more than a suggested pattern of land use; it involves the planning of all the usual public improvements and services which go into making up the community.

Zoning is a planning tool that must be used in accordance with a comprehensive plan. Comprehensive zoning consists of the division of the whole territory of a municipality into districts, and the imposition of restrictions upon the use of land in such districts. Zoning regulations permit a municipality to apply constant and consistent pressure upon landowners to the end that land use will be guided by the community plan and the public interest. [. . .] The comprehensive plan is the policy statement; the zoning ordinances are what have the force and effect of law.

*Snake River Brewing Co., Inc. v. Town of Jackson*, 39 P.3d 397, 402-03 (Wyo. 2002) (some internal quotation marks and citations omitted).

The case of *Ford v. Board of County Commissioners of Converse County* presented a situation where Converse County had enacted a land use plan, but no zoning regulations. 924 P.2d 91 (Wyo. 1996). The Wyoming Supreme Court discussed the relationship to between planning and zoning and concluded that even with a land use plan, but no zoning regulations, Converse County had no authority to regulate the use of property at issue in the case. *Id.* at 95. In other words, the court held that the land use plan, although valid, was a guiding policy statement; however, land use plans, in and of themselves, do not mandate or prohibit any specific use of a specific piece of property.

As stated above, while I could not find any Wyoming cases related to a conservation district land or resource plan, I believe a Wyoming court may analogize this body of law to planning actions by a District. Like counties and municipalities, Districts are empowered to create resource plans and also adopt rules and regulations. Also like counties, without zoning—which districts have no authority to do—a land use plan would

be a guiding policy statement but such plan would not mandate or prohibit and specific use of a specific piece of property.

### C. Applicable Procedures

Wyoming District Law is also silent as to the procedures that would apply in adopting a land or resource plan. However, like most jurisdictions, Wyoming has enacted the Wyoming Administrative Procedure Act (“WAPA”) to provide default procedures for governmental action when the relevant statute is silent. WAPA applies to actions by state “agencies,” defined as:

any authority, bureau, board, commission, department, division, officer or employee of the state, a county, city or town or other political subdivision of the state, except the governing body of a city or town, the state legislature, the University of Wyoming and the judiciary.

Wyo. Stat. § 16-3-101(b)(I).

As a political subdivision of the state, a conservation district is almost certainly an “agency” under WAPA, and so subject to its provisions.<sup>4</sup> The provisions of the WAPA which I believe specifically govern a conservation district’s adoption of a land use or resource plan include:

- ★ “Make available for public inspection all rules and all other written statement of policy or interpretations formulated, adopted or used

---

<sup>4</sup> While I believe that the WAPA governs conservation district actions, I do not believe that the Districts are required to comply with the WAPA rulemaking requirements specifically at Wyo. Stat. §§ 16-3-103 and -104. With regard to the WAPA rulemaking procedures, the WAPA states, “Prior to an agency's adoption, amendment or repeal of all rules other than interpretative rules or statements of general policy, the agency shall [comply with procedures].” Wyo. Stat. § 16-3-103(a). The Wyoming Supreme Court has also opined that the WAPA rulemaking procedures only apply when agency action is “substantive or legislative, as opposed to interpretive.” *Matter of Bessemer Mt.*, 856 P.2d 450, 453 (Wyo. 1993), citing *Mountain States Legal Foundation v. Hodel*, 668 F. Supp. 1466, 1475 (D. Wyo. 1987). The *Hodel* case states that a substantive or legislative rule is one affecting individual rights and obligations, that is, “the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency.” *Hodel*, 668 F. Supp. at 1475-76. Thus, because a conservation district’s resource plan is not enforceable on an individual piece of property, but rather is a policy statement, the WAPA rulemaking procedures do not apply to development of a land or resource plan.

by the agency in the discharge of its functions;” Wyo. Stat. § 16-3-102(a)(ii);

- ★ Provide a 45 day public comment period on the draft plan;
- ★ Hold a public hearing if requested by at least 25 individuals or an organization;
- ★ “No agency rule, order or decision is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been filed with the registrar of rules<sup>5</sup> and made available for public inspection as required by this act. . . .” Wyo. Stat. § 16-3-102(b).

The other Wyoming statute with which districts should comply in adopting local land use or resource plans is the Wyoming Public Meetings law, codified at 16-4-401 *et seq.* The Public Meetings law applies to “agencies,” which includes the governing bodies of conservation districts. *See* Wyo. Stat. § 16-4-402(a)(ii). The requirements of the Public Meetings Act are triggered when there is a “meeting,” defined as “an assembly of at least a quorum of the governing body of an agency which has been called by proper authority of the agency for the expressed purpose of discussion, deliberation, presentation of information or taking action regarding public business.” Wyo. Stat. § 16-4-402(a)(iii). The major requirements include:

- ★ Meetings must be open to the public, unless otherwise provided (i.e., executive session).<sup>6</sup> Wyo. Stat. § 16-4-403(a).
- ★ An agency must adopt its own rules regarding the holding of regular meetings, unless regular meetings are not necessary to conduct business. Wyo. Stat. § 16-4-404(a).
- ★ If the agency does not hold regular meetings it must give notice of meetings to anyone who asks. Wyo. Stat. § 16-4-404(a).

---

<sup>5</sup> In this case, the registrar of rules is the County Clerk.

<sup>6</sup> All meetings of the governing body of an agency are public meetings, open to the public at all times, except as otherwise provided. No action of a governing body of an agency shall be taken except during a public meeting following notice of the meeting in accordance with this act. Action taken at a meeting not in conformity with this act is null and void and not merely voidable. Wyo. Stat. § 16-4-403(a).

- ★ If the presiding officer wishes to call a special meeting, the District must comply with the notice requirements in Section 16-4-404(b).<sup>7</sup>
- ★ Meeting minutes must be taken, and publication is required if there was any action taken at the meeting. Wyo. Stat. § 16-4-403(c).
- ★ Emergency meetings without notice are permitted under certain conditions. Wyo. Stat. § 16-4-404(d).

If it has not done so, each Conservation District should establish, by resolution, a regular meeting schedule and give notice of that schedule to the media, and to anyone who requests it or may be interested. The District's governing body should then take care to avoid having a quorum of its members discussing any business outside of these meetings. I would also recommend that the district make its draft land use or resource plan available for public review, hold one at least one public hearing regarding the proposed resource plan, give at least 30 days public notice of the hearing (such as via newspaper publication), even if done at a regularly-scheduled meeting, formally adopt the land use or resource plan via resolution, and then file the adopted plan with the County registrar of rules.

## **V. FINAL LOCAL LAND USE PLAN REQUIREMENTS**

There are some very important principals to keep in mind for local governments participating in federal agency decision-making processes. First, local land use plans cannot urge the violation of federal law. For example, a local land use plan that urges the building of new roads in a wilderness or the taking of threatened or endangered species is not valid and will not be considered by the federal decision-makers.

Second, a local land use plan does not create any new legal authority for a local government to "take over" the federal agencies. Nor are federal agencies simply required to comply with a local land use plan. Rather, local land use plans get their power and influence from the federal statutes that require the federal agencies to take these local plans into account when doing federal planning, making management decisions, or doing

---

<sup>7</sup> Special meetings may be called by the presiding officer of a governing body by giving verbal, electronic or written notice of the meeting to each member of the governing body and to each newspaper of general circulation, radio or television station requesting the notice. The notice shall specify the time and place of the special meeting and the business to be transacted and shall be issued at least eight (8) hours prior to the commencement of the meeting. No other business shall be considered at a special meeting. Proof of delivery of verbal notice to the newspaper of general circulation, radio or television station may be made by affidavit of the clerk or other employee or officer of the agency charged or responsible for distribution of the notice of the meeting. Wyo. Stat. § 16-4-404(b).

NEPA analyses. In effect, these statutes tell the federal agencies that if they have been presented with a local land use plan, the federal agencies must attempt to accommodate it in their planning and management decisions.

Third, as stated above, the special expertise of a local government is governed by state statute. If your state's statutes give the local government program authority or responsibility in a certain area(s), that is what your special expertise is.

I hope that this is helpful in preparation of your local land use plans. Should you have any questions, please do not hesitate to contact me.

-END-