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Cause for Rebellion? Examining How Federal Land Management Agencies & Local Governments Collaborate on Land Use Planning

Michelle Bryan*

with Graham Coppes, Katelyn Hepburn, and Ross Keogh**

Burnt Fork Creek in rural southwestern Montana runs through private lands that include subdivisions, irrigated farms, and historic ranches before arriving at the Lee Metcalf National Wildlife Refuge, where refuge staff struggle to use the little remaining water to provide critical habitat for the threatened bull trout.¹ Local government regulates the uses of these private lands that lie adjacent to and share an ecosystem with the Refuge, and the Refuge in turn draws over 260,000 visitors a year into the community.² Yet despite these deep economic and ecological connections, both federal and local officials note a lack of collaboration

on the planning of these lands.³ Last year, Ravalli County approved one of the largest residential subdivisions in its history next to the Refuge,⁴ and county commissioners are considering whether to pass a resolution demanding that the federal government turn over its lands to local control.⁵

In the more urban setting of San Francisco Bay's National Wildlife Refuge, local government holds a strong interest in preserving undeveloped open space and controlling the mosquito populations that thrive on the Refuge's wetlands.⁶ The Refuge, in the meantime, works to create a buffer between its wildlife habitat and nearby residential development, with the long-term plan of acquiring additional private holdings in the area.⁷ But here, as well, there are few connections made between federal and local land use planning, and local residents oppose the notion of expanded federal lands.⁸

At the national level, the Republican National Committee ("RNC") has adopted as part of its platform a Resolution in Support of Western States Taking Back Public Lands.⁹

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**Graham Coppes: J.D. expected 2015, *University of Montana School of Law, contributing to the writing of Part I.B and II of this Article*. Katelyn Hepburn: J.D. expected 2015, *University of Montana School of Law, contributing to the background interviews and the writing of Part II of this Article*. My thanks to Professor Michelle Bryan for her guidance and mentorship and for giving students the opportunity to be a part of this research. Ross Keogh, J.D. 2014, *University of Montana School of Law, contributing to the background interviews and the writing of Part I.B of this Article*.

1. Telephone Interview with Tom Reed, Refuge Manager, Lee Metcalf Wilderness Refuge (Jan. 8, 2014).
2. *Id.*

3. *Id.*; Telephone Interview with Terry Nelson, Planning Dir., Ravalli Cnty., Mont. (Feb. 26, 2014).
4. See, e.g., Perry Backus, *Ravalli County Board Recommends Approval of 509-Lot Legacy Ranch Subdivision*, MISSOULIAN (Apr. 20, 2013, 6:15 AM), http://missoulain.com/news/local/ravalli-county-board-recommends-approval-of--lot-legacy-ranch/article_09fea4c6-a963-11e2-9bf3-001a4bcf887a.html.
5. See, e.g., Perry Backus, *Crowd Urges Ravalli County Not to Attempt Takeover of Federal Lands*, MISSOULIAN (Dec. 10, 2013, 6:10 AM), http://missoulain.com/news/local/crowd-urges-ravalli-county-not-to-attempt-takeover-of-federal/article_63474bea-6138-11e3-bd2b-0019bb2963f4.html; Nancy Ballance, *Local Control of Federal Lands*, RAVALLI COUNTY REPUBLICANS, <http://ravco-gop.com/the-pachyderm-perspective/local-control-of-government-lands-by-nancy-ballance/> (last visited June 14, 2014).
6. Telephone Interview with Anonymous Source (Apr. 25, 2014).
7. *Id.*
8. *Id.*
9. REPUBLICAN NAT'L COMM., RESOLUTION IN SUPPORT OF WESTERN STATES TAKING BACK PUBLIC LANDS (adopted Jan. 24, 2014), *available at* <http://www.gop.com/wp-content/uploads/2014/01/RESOLUTION-IN-SUPPORT-OF-WESTERN-STATES-TAKING-BACK-PUBLIC-LANDS.pdf>.

This Resolution supports the efforts of Western states pushing for the transfer of federal lands into state and local control.¹⁰ The RNC's Resolution follows what is being called a "revival" of the Sagebrush Rebellion that swept through the western United States in the 1970s and 1980s.¹¹ In March 2012, for example, Utah Governor Gary Herbert signed a bill mandating that Congress relinquish federal public lands to the state by 2015.¹² Similar efforts are underway throughout the West, along with an equally strong countermovement to keep these lands in federal, public hands.¹³

Whatever the relative merits of the arguments on either side, this debate brings into focus the great disconnect that exists between management of federal and local lands. The federal government owns approximately 28% of the total land base in the United States (roughly 635-640 million acres) and 47% in the coterminous western states.¹⁴ These federal land holdings exist alongside, and are often commingled with, private lands subject to the regulatory control of local governments, of which there are approximately 2,725 in the West.¹⁵ As one planner observed, "wildlife move across eco-regions . . . but management approaches change across arbitrary boundaries. That is the management reality of land ownership on the landscape."¹⁶

To truly give meaning to "comprehensive land use planning" in shared places, there must necessarily be collaboration among all the regulators involved.¹⁷ This is especially true in an era of emerging large landscape management and conservation. "Since taking office in January 2009, President Barack Obama and his administration have made the concept of large landscape conservation a component, and often a focus, of many natural resource initiatives."¹⁸ Large landscape conservation centers on issues affecting "large areas of recognized conservation value" and requires a "broad-

based, multi-jurisdictional, multi-sectoral, multi-purpose (economic, social and environmental) approach."¹⁹ It focuses on connecting multiple types of lands "into whole, healthy landscapes."²⁰ Effective federal lands planning thus requires partnerships with local governments that have planning authority over non-federal holdings within the landscape, and vice-versa.

When the planning process works well, local governments and federal agencies can work as integral partners during their respective planning processes. In the words of one federal planner: "[C]ollaboration is really important because there is a lot of resource sharing among land managers, we have the same water, wildlife, and lands that often span ecosystems. We have to learn from each other and work together—tap into the knowledge that each party has."²¹ Another planner notes that "[i]n times of economic hardship, local government and stakeholder collaboration will be ever more important for federal agencies because of needed support and resources."²²

From the local government perspective, a guarantee of early and meaningful involvement in the federal land planning process is an important factor in determining whether to participate at all.²³ Likewise, local governments desire process consistency from one federal planning process to the next, along with adequate resources to devote to collaborative planning.²⁴ On the federal side, agencies desire local government participants who are well-informed about the federal planning process, do not use the process for political grandstanding, and reciprocate by including federal planners in local land use planning.²⁵

This Article examines how well federal agencies and local governments are collaborating in land use planning, with a particular focus on the West.²⁶ Part I provides a brief overview of local government planning as well as the overarching National Environmental Policy Act ("NEPA")²⁷ requirements that apply to federal planning. Part II offers a comparative summary of the varied planning approaches across federal agencies, with a particular focus on the role that local

10. *Id.*; see also Tristan Scott, *Montana Federal-Lands Policy Turns Political*, FLATHEAD BEACON (July 16, 2014), <http://flatheadbeacon.com/2014/07/16/montana-federal-lands-policy-turns-political/> (noting the growing legislative discussion and popularity in Montana of the "GOP-driven platform" of states "assuming control over lands now controlled by federal agencies").

11. For background on the Sagebrush Rebellion, see *infra* notes 65–66.

12. UTAH CODE ANN. § 63L-6-103 (LexisNexis 2012) ("On or before December 31, 2014, the United States shall: (a) extinguish title to public lands; and (b) transfer title to public lands to the state."); see also Robert Gehrke, *Herbert Signs Bill Demanding Feds Relinquish Lands in Utah*, SALT LAKE TRIB., Mar. 23, 2012; Kirk Johnson, *Utah Asks U.S. to Return 20 Million Acres of Land*, N.Y. TIMES, Mar. 23, 2012, at A10.

13. Compare AM. LANDS COUNCIL, <http://americanlandscouncil.org> (last visited June 14, 2014), with *Keep America's Public Lands in Public Hands*, WILDERNESS SOCIETY, <http://wilderness.org/keep-america%E2%80%99s-public-lands-public-hands> (last visited May 30, 2015). For an overview of the lands transfer movement, see Interview by Sally Mauk with Ken Ivory, State Representative, Utah (Dec. 10, 2013), available at <http://mtpr.org/post/leader-new-sagebrush-rebellion-argues-local-control-public-land>. For an overview of the countermovement, see *Keep America's Public Lands in Public Hands*, *supra*.

14. ROSS W. GORTE ET AL., CONG. RESEARCH SERV., R42346, FEDERAL LAND OWNERSHIP: OVERVIEW AND DATA 2–3 (2012), available at <https://www.fas.org/sgp/crs/misc/R42346.pdf>.

15. See U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2012 267 tbl.429 (131st ed. 2011) (using Census regions classified as the Mountain West and Pacific West, but does not include Central West states).

16. Telephone Interview with Tom Reed, *supra* note 1.

17. See MATTHEW MCKINNEY ET AL., LINCOLN INST. OF LAND POLICY, LARGE LANDSCAPE CONSERVATION: A STRATEGIC FRAMEWORK FOR POLICY AND ACTION 3 (2010).

18. *Id.* at 2.

19. *About*, PRAC. NETWORK FOR LARGE LANDSCAPE CONSERVATION, <http://www.largelandscapenetwork.org/about/> (last visited Oct. 14, 2014).

20. *What is Large Landscape Conservation?*, CENTER FOR LARGE LANDSCAPE CONSERVATION, <http://largelandscapes.org> (last visited Oct. 14, 2014).

21. Telephone Interview with Laura King, Refuge Program Specialist, Nat'l Bison Range (Jan. 22, 2014).

22. Telephone Interview with Eleanor Clark, Chief of Comprehensive Planning & Design, Yellowstone Nat'l Park (Oct. 23, 2013).

23. See 40 C.F.R. § 1501.2 (2014) ("Agencies shall integrate the [National Environmental Policy Act] process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.").

24. See, e.g., Telephone Interview with Brian Hopkins, Planning & Envtl. Coordinator, Bureau of Land Mgmt. Colo. River Valley Field Office (Apr. 1, 2014); Telephone Interview with Sky Murphy, Planning & Envtl. Coordinator, Bureau of Land Mgmt. Hollister Field Office (Apr. 3, 2014).

25. See PUB. LANDS COUNCIL, A BEGINNER'S GUIDE TO COOPERATING AGENCY STATUS 2, 17 (2012), available at <http://publiclandscouncil.org/CMDocs/PublicLandsCouncil/Coordination%20-%20CA%20status/PLC%20Cooperating%20Agency%20Handbook%209-26-12.pdf>.

26. While state and tribal governments are also an important part of the equation, this Article focuses exclusively on the local-federal collaboration, which is a subject less developed in both agency and academic literature.

27. National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321–4347 (2012).

governments can play in agency planning.²⁸ Based on case studies and interviews with federal and local officials, Part III then recommends how to improve federal-local planning efforts so that both federal and local land use planning can be more robust and effective across the landscape. The Article concludes that, while there is an increased awareness of the linkages between federal and local land use planning, and limited examples of emerging collaboration, there is significant room for improvement before we see truly integrated, large landscape planning in the West.

I. Overview of Local and Federal Land Use Planning

To bridge the disconnect between local and federal planning, one must first understand the larger legal context that informs the planning process for each level of government. For local governments, that planning is driven by state-adopted enabling legislation that, while variable from state to state, nonetheless shares some common concepts and vocabulary. For federal agencies, NEPA provides an overarching framework for federal land use plans developed with an environmental assessment (“EA”) or environmental impact statement (“EIS”).²⁹ Beyond the NEPA framework, however, variability exists under the statutes, regulations, manuals, and handbooks applicable to each agency. Part II addresses those unique aspects of agency planning in more detail.

A. Local Planning Generally

Local governments are the primary regulators of private land uses in the United States, relying on zoning and subdivision laws that are typically shaped by underlying comprehensive land use plans.³⁰ The concept of comprehensive local government land use planning first took hold in the 1920s, following on the heels of the U.S. Supreme Court’s validation of zoning.³¹ The land use planning of today is

largely the legacy of national model enabling legislation.³² In the 1920s, the U.S. Department of Commerce’s Standard State Zoning Enabling Act and the Standard City Planning Enabling Act spearheaded nationwide planning efforts.³³ The legislation, adopted by nearly all states, provided local governments with authority to create comprehensive plans, zoning regulations, and subdivision regulations.³⁴ The model legislation also specified key elements that the plans should address, such as infrastructure, economic goals, housing, and the like.³⁵ In a nutshell, local government planning involves creation of land use inventories and goals for a community’s future development, use of land, and conservation of resources over time. As discussed below, this planning can address issues and areas that squarely overlap with federal land use planning.

State comprehensive planning is sometimes required and sometimes optional.³⁶ This planning informs, guides, and in some states is binding upon the way local governments regulate zoning and subdivision review.³⁷ In Montana, for example, local governments that conduct planning must map and textually describe the natural resources in their jurisdiction and set land use goals and objectives for the community.³⁸ This planning can address wildfire response, threatened or endangered wildlife and habitat, forest lands, mineral resources, streams, rivers, lakes, and wetlands.³⁹ Similarly, depending on the situation, Washington either allows or requires plans to address “conservation, development, and utilization of natural resources,”⁴⁰ including “agricultural, forest, and mineral resource lands.”⁴¹ Likewise, Arizona local government plans must address topics such as recreation and open space, renewable energy, air and water quality, and natural resource conservation.⁴² Idaho local gov-

28. To date, there are relatively few articles summarizing the various planning processes. An excellent summary from a prior decade is George Cameron Coggins, *The Developing Law of Land Use Planning on the Federal Lands*, 61 U. COLO. L. REV. 307 (1990). Other informative articles that touch upon this area include Lyn Loyd Creswell, *Federal Agency—Local Government Land Use Negotiations: Vulnerabilities of the Federal Bargaining Position*, 33 J. URB. & CONTEMP. L. 3 (1998); Nestor M. Davidson, *Cooperative Localism: Federal-Local Collaboration in an Era of State Sovereignty*, 93 VA. L. REV. 959 (2007) (arguing for federal empowerment of localities in other, non-land use contexts); John W. Hart, Comment, *National Forest Planning: An Opportunity for Local Governments to Influence Federal Land Use*, 16 PUB. LAND L. REV. 137 (1995); Matthew Hilton, *Defending the Right of Local Governments to Contribute to Decision Making Regarding Public Lands in the Western United States*, 27 URB. LAW. 267 (1995); Karen W. Lowrie & Michael R. Greenberg, *Can David and Goliath Get Along? Federal Land in Local Places*, 28 ENVTL. MGMT. 703, 703–11 (2001) (comparing the Department of Energy’s reputation for collaboration with other land management agencies).

29. 42 U.S.C. §§ 4321–4347.

30. See PATRICIA E. SALKIN, AMERICAN LAW OF ZONING § 2:1 (5th ed. 2011); EDWARD ZIEGLER, RATHKOPF’S THE LAW OF ZONING AND PLANNING § 1:2 (4th ed. 2013).

31. See *Vill. of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 373 (1926), discussed in SALKIN, *supra* note 30, at § 5:1.

32. See STUART MECK, AM. PLANNING ASS’N, MODEL PLANNING AND ZONING ENABLING LEGISLATION: A SHORT HISTORY 1 (1996).

33. See *Standard State Zoning Enabling Act and Standard City Planning Enabling Act*, AM. PLANNING ASS’N, <http://www.planning.org/growingsmart/enablingacts.htm> (last visited Feb. 11, 2013) (copies of these model documents available).

34. Stuart Meck, *Model Planning and Zoning Enabling Legislation: A Short History, in 1 MODERNIZING STATE PLANNING STATUTES: THE GROWING SMART WORKING PAPERS 1, 2* (James Hecimovich ed., Am. Planning Ass’n 1996).

35. *Id.* at 9.

36. The American Planning Association reports that ten states have optional local planning, twenty-five states conditionally mandate local planning, and fifteen states mandate local planning. AM. PLANNING ASS’N, GROWING SMART LEGISLATIVE GUIDEBOOK: MODEL STATUTES FOR PLANNING AND THE MANAGEMENT OF CHANGE 7-278 (Stuart Meck ed., 2002), available at <http://www.planning.org/growingsmart/guidebook/print/> [hereinafter GROWING SMART GUIDEBOOK]. These planning approaches are well summarized in Edward J. Sullivan & Matthew J. Michel, *Ramapo Plus Thirty: The Changing Role of the Plan in Land Use Regulation*, 35 URB. LAW. 75 (2003).

37. See generally SALKIN, *supra* note 30, at §§ 5:1–5:16; see, e.g., OR. REV. STAT. § 197.175(2)(b) (2012) (requiring that local governments “[e]nact land use regulations to implement their comprehensive plans”); MONT. CODE ANN. §§ 76-1-601–607 (2013) (requiring consistency between zoning and subdivision law and growth policies); CAL. GOV’T CODE § 65860 (2009) (requiring consistency between zoning ordinances and the general plan of the county or city).

38. MONT. CODE ANN. § 76-1-601 (2013).

39. *Id.*

40. WASH. REV. CODE § 35A.63.062(1) (2012).

41. *Id.* § 36.70A.060 (2012).

42. See generally ARIZ. REV. STAT. §§ 9-461.05, 11-807 (2012) (municipal planning and county planning requirements, respectively). Colorado, too, calls for planning that addresses wildlife habitat and species, and even purports to al-

ernment plans must include an “analysis of areas, sites, or structures of historical, archeological, architectural, ecological, wildlife, or scenic significance.”⁴³ In places where such planning is optional, local governments arguably relinquish a major opportunity to shape the planning of shared, local-federal resources.

Planning enabling acts for local governments range from those providing the most basic contours to those requiring complex and detailed elements. Yet, even among the more detailed enabling statutes, there are very few that contemplate how local government planning might interface with federal planning on adjacent lands. Some western states place federal coordination responsibility with state-level agencies but make little mention of such coordination at the local level.⁴⁴ Others generically reference the idea of local governments coordinating with “other agencies,” but lack any specific direction about federal lands planning in particular.⁴⁵ Indeed, to the extent coordination is mentioned, it predominantly relates to local-state coordination or coordination among local governments within a region.⁴⁶

Even in the more recent American Planning Association’s Growing Smart Legislative Guidebook,⁴⁷ which contains model planning language for local governments, local-federal coordination receives minimal coverage. Instead, the Guidebook focuses on cautioning local governments not to exceed their jurisdiction or risk preemption by planning in ways that “interfere with” federal plans, laws, or authority.⁴⁸ The Guidebook also recommends model enabling language that completely exempts from local regulation all “lands owned or leased by the federal government.”⁴⁹ This guidance reflects the prevailing local government perspective of steering clear of federal issues when engaging in local government land use planning.⁵⁰

low local governments to plan for “roads on public lands administered by the federal government.” COLO. REV. STAT. § 29-20-104 (2012).

43. IDAHO CODE ANN. § 67-6508(k) (2012).

44. See, e.g., COLO. REV. STAT. § 36-1-144 (2012) (“The state board of land commissioners is authorized to enter into cooperative agreements on behalf of the state with any federal agency for the improvement and betterment of state owned lands . . .”); HAW. REV. STAT. § 225M-2(b)(3), (8) (2012) (providing that the state office of planning will facilitate “coordinated and cooperative planning” between state, local, and federal governments); NEV. REV. STAT. § 321.640 (2012) (“State participation in land use planning should be limited to . . . the acquisition and use of federal lands.”); N.M. STAT. ANN. § 3-56-5 (“The regional planning commission shall . . . coordinate regional planning with . . . the programs of federal departments and agencies . . .”); OR. REV. STAT. § 197.040(1)(d) (2012) (reciting a similar duty for the Oregon Land Conservation & Development Committee).

45. E.g., CAL. GOV’T CODE § 65103 (West 2010) (“Each planning agency shall perform all of the following functions: . . . (f) Promote the coordination of local plans and programs with the plans and programs of other public agencies.”); WASH. REV. CODE §§ 36.70.360, 36.70.480 (2012) (requiring similar general coordination).

46. E.g., ARIZ. REV. STAT. ANN. § 9-461.05(A) (1956) (requiring a local government to “coordinate the production of its general plan with the creation of the state land department conceptual land use plans”); COLO. REV. STAT. § 29-20-105 (2012) (authorizing local governments to engage in intergovernmental cooperation in planning and regulating land development).

47. GROWING SMART GUIDEBOOK, *supra* note 36.

48. *Id.* at 8-38-39.

49. *Id.* at 8-42-43.

50. For “on the ground” examples of this mentality, see *infra* notes 296-97 and accompanying text.

In the development of local plans, Oregon has a unique, and perhaps the longest standing, directive for local-federal collaboration, although it heavily favors local government:

It is expected that regional, state and federal agency plans will conform to the comprehensive plans of cities and counties. Cities and counties are expected to take into account the regional, state and national needs. Regional, state and federal agencies are expected to make their needs known during the preparation and revision of city and county comprehensive plans.⁵¹

Oregon’s local governments are specifically instructed to collaborate with federal agencies in areas such as natural resources, estuaries, and coastal shorelands.⁵²

There is an emerging effort to create federal land management coordination offices at the state executive level, which serve to coordinate the state’s interest in the planning process.⁵³ But there is much less sign of local efforts at coordination.⁵⁴ In the development of federal plans, Nevada does allow local governments, rather than the state, to “represent [their] own interests” vis-à-vis federal land if they adopt a master plan.⁵⁵ But even in this case there is no mention of coordinated land use planning, and the state’s focus seems driven more toward the acquisition of federal lands for development and expansion of the tax base⁵⁶ and increased local government control over management of federal lands.⁵⁷ Taking an even harder line against federal authority, in 2011, the Utah Legislature passed a law mandating that the U.S. Forest Service (“Forest Service” or “USFS”) and Bureau of Land Management (“BLM”) “produce planning documents consistent with state and local land use plans to the maximum extent consistent with federal law.”⁵⁸ Here, too, the posture is not so much local-federal collaboration as a counter-punch demanding that federal agencies make federal land use planning subservient to local planning.

Taking a more balanced approach, in 2012, Wyoming empowered local governments to take a direct role in federal land use collaboration:

Each board of county commissioners may: Represent the county, *including but not limited to representing the county as a cooperating agency with special expertise in matters related to the National Environmental Policy Act and in federal land planning, implementation and management actions . . .*⁵⁹

When representing a county as a cooperating agency in matters related to the National Environmental Policy Act and in federal land planning, implementation and management

51. OR. DEPT OF LAND CONSERVATION & DEV., OREGON’S STATEWIDE PLANNING GOALS & GUIDELINES Goal 2:3 (2010), available at http://www.oregon.gov/LCD/docs/goals/compilation_of_statewide_planning_goals.pdf.

52. See *id.* at Goals 5, 16, 17.

53. See, e.g., UTAH’S PUB. LANDS POL’Y COORDINATION OFF., <http://publiclands.utah.gov/> (last visited June 14, 2014).

54. See *supra* text accompanying note 44.

55. NEV. REV. STAT. § 278.243 (2013).

56. *Id.* § 321.7355.

57. *Id.* § 321.720(10).

58. UTAH CODE ANN. § 63J-8-104(1) (LexisNexis 2013).

59. WYO. STAT. ANN. § 18-3-504 (2012) (emphasis added).

actions, a board of county commissioners shall be deemed to have special expertise on all subject matters for which it has statutory responsibility, including but not limited to, all subject matters directly or indirectly related to the health, safety, welfare, custom, culture and socio-economic viability of a county.

The board of county commissioners of a county which has officially adopted a comprehensive plan pursuant to W.S. 18-5-202(b) may participate in efforts to coordinate the plan with federal agencies as provided in the Federal Land Policy and Management Act of 1976, the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976 and any other federal statute which provides for coordination with local governments and federal regulations adopted pursuant to those acts.⁶⁰

And, in 2013, the Montana Legislature expanded its Growth Policy Act to state that a local government can “use a growth policy as a resource management plan for the purposes of establishing coordination or cooperating agency status with a federal land management agency.”⁶¹ As these last two examples demonstrate, western states could do much to advance the issue of local-federal land use planning by simply noting, in nonadversarial language, the importance of that issue in their enabling legislation.

B. Federal Planning Generally

I. A Brief Historical Backdrop on Federal-Local Relations

Since the inception of federal land management agencies, western territories, along with their successive states, communities, and people, have struggled with the federal government over decisionmaking processes involving natural resources on federal lands.⁶² As early as 1906, county governments availed themselves of the political process to secure an ownership stake in the newly created forest reserves that surrounded and enveloped their communities.⁶³ Supported by the pressure of western politicians that were unreceptive to the new forest reserves, Congress declared that 10% of gross revenue generated from national forest lands within a county’s jurisdiction must be assigned to the benefit of the county.⁶⁴

The Sagebrush Rebellion was an outward manifestation of these regional management conflicts,⁶⁵ and western landowners, through their political representatives, demanded that the federal government surrender managerial author-

ity over public lands to the individual states.⁶⁶ Despite these efforts, federal courts have upheld federal agency authority to manage federal lands.⁶⁷ The legacy of this battle continues to be played out today,⁶⁸ with Utah leading the modern charge of demanding the extinguishment and transfer of title to federal lands within its jurisdiction.⁶⁹

Notwithstanding Utah’s bold attempt at a land takeover, some assert that managerial influence over federal public lands is of greater importance to most communities than an outright grant of title.⁷⁰ The enactment of local government land use plans and ordinances that purport to regulate federal lands across the West suggests as much.⁷¹ And the federal government—albeit several decades behind local government planning—appears to be responding with the passage of planning laws that reference local governments and local land use planning.

2. A Brief Overview of NEPA’s Application to Federal Planning

Although federal lands have existed for some time, it was only in 1974 that Congress first ordered a land management agency to engage in comprehensive planning.⁷² Today, BLM, the Forest Service, the U.S. National Park Service (“National Park Service” or “NPS”), and the U.S. Fish & Wildlife Service (“Fish & Wildlife Service”) all engage in some form of land use planning,⁷³ with the Federal Land Policy and Management Act (“FLPMA”)⁷⁴ and the National Forest Management Act (“NFMA”)⁷⁵ perhaps best exemplifying the federal government’s efforts to achieve coordinated and multilevel planning. Yet despite these legal strides, the various land management agencies lack any standardized process that would assure local governments a degree of uniformity in how they interface with federal planning. Presently, NEPA provides the only common denominator in federal planning,⁷⁶ with provisions allowing local governments an

60. WYO. STAT. ANN. § 18-5-208 (2012).

61. MONT. CODE ANN. § 76-1-607 (2013); see also MONT. CODE ANN. § 76-1-601(4)(d) (2013) (authorizing the same).

62. Thomas D. Lustig, *Recent Struggles for Control of the Public Lands: Shall We “Deliver It Up to Wild Beasts”?*, 57 U. COLO. L. REV. 593, 593–95 (1986).

63. SAMUEL T. DANA & SALLY K. FAIRFAX, *FOREST AND RANGE POLICY* 90–91 (2d ed. 1980).

64. *Id.*

65. See John D. Leshy, *Unraveling the Sagebrush Rebellion: Law, Politics and Federal Lands*, 14 U.C. DAVIS L. REV. 317, 317 (1980).

66. *Id.* at 320–21.

67. *E.g.*, *Kleppe v. New Mexico*, 426 U.S. 529 (1976) (upholding the federal government’s right to manage federal lands under the Property Clause); *Nev. State Bd. of Agric. v. United States*, 512 F. Supp. 166, 171 (D. Nev. 1981), *aff’d*, 699 F.2d 486 (9th Cir. 1983) (holding that federal regulation of western public lands is not a violation of the equal footing doctrine “merely because its impact may differ between various states because of geographic or economic reasons”).

68. Christi Turner, *After the Standoff, What’s Next for Bundy and BLM?*, HIGH COUNTRY NEWS (Apr. 18, 2014), <http://www.hcn.org/blogs/goat/after-the-standoff-whats-next-for-bundy-and-blm>.

69. See *supra* text accompanying note 12.

70. *E.g.*, Bruce Babbitt, *Federalism and the Environment: An Intergovernmental Perspective of the Sagebrush Rebellion*, 12 ENVTL. L. 847, 853 (1982).

71. William Chaloupka, *The County Supremacy and Militia Movements: Federalism as an Issue on the Radical Right*, 26 PUBLIUS: J. FEDERALISM 161, 163 (1996).

72. Coggins, *supra* note 28, at 308 (citing section V(b) of the Forest and Rangeland Renewable Resources Planning Act as the first official mandate, at 16 U.S.C. §§ 1600–1614 (2012)).

73. *Id.*; see also discussion *infra* Part II.

74. 43 U.S.C. § 1701 (2012).

75. 16 U.S.C. § 1600.

76. There is perhaps one additional commonality that does not appear to be in use: in a 2004 Executive Order on Cooperative Conservation, President George W. Bush mandated that local participation become an integral feature when the “Departments of the Interior, Agriculture, Commerce, and Defense and the Environmental Protection Agency implement laws relating to the environment

opportunity to participate as “cooperating agencies” in environmental review of federal agency land use plans.⁷⁷

Federal regulations provide that NEPA processes and agency planning go hand in hand, with the goals of “[i]ntegrating the NEPA process into early planning” and “emphasizing cooperative consultation among agencies.”⁷⁸ Agencies are instructed “to integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.”⁷⁹ To that end, NEPA environmental documents and agency planning documents should be “circulated and reviewed at the same time.”⁸⁰ Courts have held that the act of planning represents a major federal action requiring a NEPA process: public engagement, an assessment of risk and alternatives, the agency “hard look,” and either an EA or an EIS.⁸¹

and natural resources.” Exec. Order No. 13,352, 69 Fed. Reg. 52,989 (Aug. 26, 2004). The order provides the following:

Sec. 2. Definition. As used in this order, the term “cooperative conservation” means actions that relate to use, enhancement, and enjoyment of natural resources, protection of the environment, or both, and that involve collaborative activity among Federal, State, local, and tribal governments, private for-profit and nonprofit institutions, other non-governmental entities and individuals.

Sec. 3. Federal Activities. To carry out the purpose of this order, the Secretaries of the Interior, Agriculture, Commerce, and Defense and the Administrator of the Environmental Protection Agency shall, to the extent permitted by law and subject to the availability of appropriations and in coordination with each other as appropriate:

(a) carry out the programs, projects, and activities of the agency that they respectively head that implement laws relating to the environment and natural resources in a manner that:

- (i) facilitates cooperative conservation;
- (ii) takes appropriate account of and respects the interests of persons with ownership or other legally recognized interests in land and other natural resources;
- (iii) properly accommodates local participation in Federal decision-making

Presumably, federal land planning implementation would fall within the purview of this order. Although the order has existed for over a decade, interviews with agency officials suggest that there is little awareness of it, and it has not been a major driver of federal-local collaboration. Telephone Interview with Bryann Amme, Planning Chief, Bureau of Land Mgmt. (Aug. 23, 2013); Telephone Interview with Joel Larson, Mgmt. Program Analyst, Div. of Decision Support, Bureau of Land Mgmt. (Aug. 21, 2013). This Order could perhaps become a spring board toward greater land use planning coordination among agencies.

- 77. National Environmental Policy Act of 1969 § 101(a), 42 U.S.C. § 4321(a) (2012).
- 78. 40 C.F.R. § 1501.1 (2014); *see also* 40 C.F.R. § 1501.2 (2014) (“Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.”). In the case of the Forest Service, Congress further mandated that land use plans comply with NEPA. 16 U.S.C. § 1604(g)(1) (2012); Coggins, *supra* note 28, at 340.
- 79. 40 C.F.R. § 1501.2.
- 80. *Id.*
- 81. *See, e.g.*, Klamath Siskiyou Wildlands Ctr. v. Boody, 468 F.3d 549, 560 (9th Cir. 2006). *But see* Norton v. S. Utah Wilderness Alliance, 542 U.S. 55, 69–71 (2004) (concluding that not all statements within a federal land use plan are enforceable, binding commitments) (“*SUWA*”). Scholars note that some federal agencies have attempted unsuccessfully to use *SUWA* as a basis for avoiding NEPA’s application to planning altogether. *See generally* Michael C. Blumm & Sherry L. Bosse, Norton v. *SUWA and the Unraveling of Federal Public Land Planning*, 18 DUKE ENVTL. L. & POL’Y F. 105 (2007) (“[T]he Bush Administration seized upon the decision as a justification for redefining national forest land plans as aspirational in nature, without making any binding commitments as to particular authorized activities or land suitability. The Administra-

tion also moved to eliminate environmental review of national forest plans, claiming that, under its redefinition, plans produce no environmental effects, an effort that was subsequently stalled by the courts.”).

For a typical agency planning process, NEPA regulations allow—but do not require—the agency to designate any state or local agency or Indian tribe as having cooperating agency status.⁸² To qualify as a cooperating agency, a local government generally must show it has “specialized expertise,” typically involving experience in local socioeconomics or local natural resource issues.⁸³ The decision to grant or deny cooperating agency status to a nonfederal agency is a matter of agency discretion, and is not judicially reviewable.⁸⁴ Among the federal agencies, there appears to be a growing recognition of the value of local government cooperating agencies, although federal planners vary in the degree to which they encourage such involvement.⁸⁵ Beyond the basic regulatory requirements, the exact parameters of the cooperating agency role vary greatly and are largely determined on the ground.⁸⁶

Cooperating agency status provides local governments with a direct pipeline that is above and beyond what a member of the public enjoys. Federal regulations “emphasize agency cooperation early in the NEPA process,” and cooperating status, when granted, comes with a full suite of rights and responsibilities:

Each cooperating agency shall: (1) Participate in the NEPA process at the earliest possible time. (2) Participate in the scoping process⁸⁷ (3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise. (4) Make available staff support at the lead agency’s request to enhance the latter’s interdisciplinary capability. (5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.⁸⁸

Thus, NEPA regulations impose significant obligations on the cooperating agency to participate in the process and to make both staff and financial resources available to the effort. The precise nature of the lead-agency-cooperating-agency relationship is typically formalized in a memorandum of understanding.⁸⁹ In practice, local government cooperating agencies can become very involved, meeting frequently

tion also moved to eliminate environmental review of national forest plans, claiming that, under its redefinition, plans produce no environmental effects, an effort that was subsequently stalled by the courts.”).

- 82. 40 C.F.R. § 1508.5 (2014) (“A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.”).
- 83. *Id.*; *see also* PUB. LANDS COUNCIL, *supra* note 25, at 10–11.
- 84. Wyoming v. U.S. Dep’t of Agric., 661 F.3d 1209, 1241–43 (10th Cir. 2011); *see also* 43 C.F.R. 46.225(c) (2014).
- 85. *See generally* discussion *infra* Part III.
- 86. *Id.* Even in the case of the BLM, which uses a more detailed guidance manual, the parameters of the cooperating agency vary. *See generally infra* text accompanying notes 122–39.
- 87. Scoping determines the scope of environmental review and the significant issues to be analyzed, after publishing of a notice of intent and before issuing the environmental review document. 42 U.S.C. § 4332 (2012).
- 88. 40 C.F.R. § 1501.6 (2014).
- 89. 43 C.F.R. § 46.225(d) (2014).

with the lead federal agency, participating in project scoping, providing data relevant to the local community, and reviewing drafts of planning documents, along with the traditional opportunity to provide public comment.⁹⁰ For this reason, some local governments decline cooperating agency status.⁹¹ Even absent full cooperating agency status, however, many federal planners continue to extend extra participation privileges to local government officials to ensure the process remains collaborative.⁹² And with respect to the scoping phase, the regulations specify that agencies shall invite the participation of “affected . . . local agencies,” regardless of whether they have cooperating agency status.⁹³

Some agency officials view NEPA as the sole substantive mechanism for public engagement in the planning process,⁹⁴ while other officials view NEPA’s engagement process as a way to augment their agency’s specific planning processes.⁹⁵ Indeed, for all the notice and participation that NEPA accords local governments, interviews with agency planners indicate that many believe more is needed to foster true local-federal collaboration and build long-term relationships.⁹⁶ As one Fish & Wildlife Service project leader summarized: “NEPA and its legal requirements are not the [most] effective mechanism [for collaboration]. NEPA lacks a soul, which is what you need when you are dealing with people’s lives, cultures, and lands. That is why NEPA falls short; it is too sterile.”⁹⁷

3. A Brief Mention of Local Government Standing

Federal courts have also recognized that local governments have standing to challenge procedural deficiencies in agency planning, despite agency arguments to the contrary. In *American Motorcyclist Ass’n v. Watt*,⁹⁸ BLM neglected to, *inter alia*, provide key information to Inyo County during its preparation of the California Desert Conservation Area Plan, make the plan consistent with local comprehensive plans, and allow local governments an opportunity to raise inconsistencies and have them addressed, all in violation of FLPMA.⁹⁹ The U.S. District Court for the Central District of California observed:

[T]he harm caused by disruption of local comprehensive planning falls directly on the County, and may be fairly characterized as harm to the County in a proprietary sense.

90. See generally discussion *infra* Part III.

91. *Id.*

92. *Id.*

93. Scoping provides an opportunity to inject specific local resource concerns into the planning process. See 40 C.F.R. § 1501.7 (2014) (“As part of the scoping process the lead agency shall: Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds).”).

94. *E.g.*, Telephone Interview with Laura King, *supra* note 21.

95. *E.g.*, Telephone Interview with Richard (Rick) Potts, Project Leader, Charles M. Russell Nat’l Wildlife Refuge (Jan. 10, 2014).

96. See generally discussion *infra* Part III.

97. *E.g.*, Telephone Interview with Richard (Rick) Potts, *supra* note 95.

98. *Am. Motorcyclist Ass’n v. Watt*, 534 F. Supp. 923, 929 (C.D. Cal. 1981), *aff’d*, 714 F.2d 962 (9th Cir. 1983).

99. *Id.* at 932, 935–36.

Cf., *City of Davis v. Coleman*, 521 F.2d 661, 671 (9th Cir. 1975) (where agency action might adversely affect city water supply, and would frustrate city’s policy of controlled growth, injury in fact test is satisfied). Here, Inyo has shown that its ability to develop and adopt a general plan (as required by Cal. Gov’t Code §§ 65300–03) has been significantly impaired. This is sufficient to show injury to Inyo’s interests as a political entity, thereby satisfying the Article III “case or controversy” requirement. Accordingly, I conclude that County of Inyo has met the Article III “injury in fact” requirement . . . with respect to harm to its planning activities.¹⁰⁰

In 2013, the U.S. District Court for the District of Arizona similarly concluded that Mohave County had standing to sue BLM because “[t]he Coalition’s allegations in this case—that the [agency land use plan] will have economic consequences for Mohave County that will directly impair its ability to carry out its governmental functions, including implementation of its Land Use Plan—shows injury to the County’s concrete proprietary interests.”¹⁰¹ While these decisions arose under BLM procedures, presumably local governments could make similar standing arguments under both NEPA and the specific planning procedures of other agencies as well. For a discussion of those specific agency planning procedures, we now turn to Part II.

II. Planning by Federal Agency

A. Bureau of Land Management

Of all the federal land management agencies, BLM has arguably the most direct obligations to address local government planning as part of its federal planning process. Created in 1946 by the merging of the U.S. Grazing Service and the General Land Office, BLM’s first several decades reflected little or no forethought, let alone systemic planning.¹⁰² Thus, when President Ford signed FLPMA into law in 1976, its central focus on land management planning fundamentally altered the agency’s guiding principles.¹⁰³ When FLPMA is placed alongside NFMA, discussed below, one dominant theme emerges: in the best interest of the nation, public lands and their resources should be managed according to long-term, comprehensive plans that are carefully crafted through public involvement and cooperative governmental efforts.¹⁰⁴

100. *Id.* at 932. The U.S. District Court for the Central District of California ultimately held, however, that equity did not favor imposing a preliminary injunction against the agency restraining implementation of the Plan. *Id.* at 936–37.

101. *Yount v. Salazar*, Nos. CV11-8171-PCT DGC, CV12-8038 PCT DGC, CV12-8042 PCT DGC, CV12-8075 PCT DGC, 2013 WL 93372, at *13 (D. Ariz. Jan. 8, 2013).

102. George Cameron Coggins & Parthenia Blessing Evans, *Multiple Use, Sustained Yield Planning on the Public Lands*, 53 U. COLO. L. REV. 411, 447 (1982).

103. George Cameron Coggins, *The Law of Public Rangeland Management IV: FLPMA, PRIA, and the Multiple Use Mandate*, 14 ENVTL. L. 1, 26–27 (1983).

104. See 43 U.S.C. § 1701(a)(2) (2012); 36 C.F.R. § 219.12(d)(1) (2014).

Soon after FLPMA's passage, the then-Chairman of the Senate Committee on Energy and Natural Resources explained that the Act

represents a landmark achievement in the management of the public lands of the United States. For the first time in the long history of the public lands, one law provides comprehensive authority and guidelines for the administration and protection of the Federal lands and their resources under the jurisdiction of the Bureau of Land Management. This law . . . repeals many obsolete public land laws which heretofore hindered effective land use planning for and management of public lands.¹⁰⁵

Under FLPMA, BLM must now manage its public lands for multiple uses and sustained yield by balancing competing resource interests, including "scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values"¹⁰⁶ as well as for "domestic sources of minerals, food, timber, and fiber."¹⁰⁷ To achieve these goals, BLM must develop and implement land use plans for every individual tract of land under its authority.¹⁰⁸ These "resource management plans" are intended to govern the present and future uses based on the area's resource values.¹⁰⁹ In making these plans, BLM must compare the value of short-term resource consumption against the long-term benefits of resource conservation.¹¹⁰

Resource management plans share similarities to local government comprehensive plans in that they include inventories and contemplate the designation of lands for particular uses.¹¹¹ In fact, when the agency creates a resource management plan, it must "coordinate" that plan "with other federal, state, local and tribal plans to the extent practical."¹¹² BLM planners are instructed to comprehensively review the "policies, plans and programs" of local governments in an attempt to ensure multilevel consistency.¹¹³

Importantly, this coordination obligation exists *above and apart from* any cooperating agency collaboration under NEPA.¹¹⁴ As one local government training manual aptly explains:

Cooperating agency status occurs only within the context of developing an environmental impact statement [or] . . . an environmental assessment . . . under NEPA. Cooperating agency status *ends when the NEPA analysis is completed*. Coordination takes place in the general context of working to achieve compatibility between BLM or Forest Service plans and actions and local government plans and policies. Ideally, coordination is an *ongoing process*.¹¹⁵

Collaboration can become difficult, however, when local land use plans are inconsistent with an agency's federal obligations.¹¹⁶ In these situations, the regulations of the BLM provide a conflict preemption hierarchy that is "normally" followed.¹¹⁷ For example, one official noted local land use plans that call for no increases in federal land ownership within a county.¹¹⁸ BLM, however, may need to enter into a land swap that might result in additional acreage under BLM management and thus supersede the local plan.¹¹⁹ Livestock grazing and road access are other areas where local and federal objectives may be difficult to reconcile,¹²⁰ and where federal obligations will then trump.¹²¹

The BLM Land Use Planning Manual echoes the call for a "collaborative approach to planning," which means that "BLM must strive to work together with Federal, tribal, State, and *local governments* and other interested parties from the earliest stages and throughout the planning process to address common needs and goals within the planning area."¹²² The Manual defines collaboration as "a cooperative process in which interested parties, often with widely varied interests, work together to seek solutions with broad support for managing federal and other lands."¹²³ Further, "collaborative partnerships" and "collaborative stewardship" are concepts involving "people working together, sharing knowledge and resources, to achieve desired outcomes for public lands and communities."¹²⁴

Despite the agency's coordination mandate, interviews with BLM officials indicate that the primary way local governments participate in federal planning is through NEPA cooperating agency status.¹²⁵ According to one official, "[Cooperating local governments] help us basically craft the land use plan in a way that incorporates their feedback."¹²⁶ With cooperating status, local governments can engage more deeply. They are invited to review preliminary documents,

105. S. COMM. ON ENERGY & NATURAL RES., 95TH CONG., LEGISLATIVE HISTORY OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 vi (Comm. Print 1978).

106. 43 U.S.C. § 1701(a)(8).

107. *Id.* § 1701(a)(12).

108. *Id.* § 1712(a) (2012).

109. *Id.* § 1712(c)(1)–(8).

110. *Id.* § 1712(c)(2), (c)(7).

111. *Id.* § 1712(c).

112. *Id.* (emphasis added); see also 43 C.F.R. § 1610.3–1(a) (2014). State and local governments can also influence planning through the various Resource Advisory Councils ("RAC") of BLM, all of which provide advice on land management. There are 29 RACs in the West, each "consist[ing] of 12 to 15 members from diverse interests in local communities, including ranchers, environmental groups, tribes, State and local government officials, academics, and other public land users." *Resource Advisory Councils*, BUREAU OF LAND MGMT., http://www.blm.gov/wo/st/en/info/resource_advisory.html (last visited June 1, 2015).

113. 43 C.F.R. § 1610.3–2(a) to (c) (2014); BUREAU OF LAND MGMT., A DESK GUIDE TO COOPERATING AGENCY RELATIONSHIPS AND COORDINATION WITH INTER-GOVERNMENTAL PARTNERS 1–2 (2012), available at http://www.blm.gov/wo/st/en/info/nepa/cooperating_agencies.html [hereinafter BLM DESK GUIDE].

114. See *supra* Part I.B.

115. PUB. LANDS COUNCIL, A BEGINNER'S GUIDE TO COORDINATION 18 (2012), available at <http://www.publiclandscouncil.org/CMDOcs/PublicLandsCouncil/Coordination%20-%20CA%20status/PLC%20Coordination%20Handbook%209-26-12.pdf>.

116. *Id.* at 9–11.

117. 43 C.F.R. § 1610.3–2(d).

118. Telephone Interview with John Thompson, Planning & Envtl. Coordinator, Bureau of Land Mgmt., Mont. State Office (Aug. 21, 2013).

119. *Id.*

120. *Id.*

121. Telephone Interview with Brian Hopkins, *supra* note 24 ("The BLM state director makes the final decision.")

122. BUREAU OF LAND MGMT., LAND USE PLANNING MANUAL 1601, 1601.6C2 (2000) (emphasis added).

123. *Id.* at 1601.06B2, Glossary 1–2.

124. *Id.* at Glossary 2.

125. Telephone Interview with Joel Larson, *supra* note 76.

126. *Id.*

submit their own documentation and land use plans, participate in developing the scoping report, serve on teams that develop plan alternatives, and help determine meeting locations.¹²⁷ They can join conference calls and receive federal agency briefings.¹²⁸ One BLM official summed up the benefits of cooperating agency status as “hav[ing] more leverage” in the process.¹²⁹

Even when local governments do not elect cooperating status, BLM has a practice of briefing and including local officials in any event.¹³⁰ In one resource management plan process, for example, the planning coordinator did a “community assessment” before a notice of intent was issued to learn local government perspectives, understand local land use plans, and “get a sense of the relationship to public lands.”¹³¹ While some local governments elected formal coordinating status, others remained involved more informally.¹³² In the same planning process, the planning coordinator also used a parallel process for a non-governmental interest group, noting that the agency was “interested in the differences coming out of the [local government group and the non-governmental group].”¹³³

In conjunction with its regulatory regime, BLM has published *A Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners* as “a reference for . . . understanding the commitments, roles, and responsibilities of the BLM and cooperating agencies during land use planning and project development.”¹³⁴ As of May 2015, BLM was carrying out an internal review of its process for developing and updating its resource management plans.¹³⁵ This initiative, which is being called Planning 2.0, comes on the heels of an order from Interior Secretary Sally Jewell, directing the agency to expand its land use planning and mitigation processes.¹³⁶ As stated on the agency’s website:

Through this initiative we hope to improve our land use planning process so that we can more effectively plan across landscapes at multiple scales and be more responsive to environmental and social change. We hope that this approach will create a more dynamic, durable and efficient planning process that can better honor the valuable contributions made by the public; non-government organizations; and our partners from state[,] tribal[,] and local governments; as well as other federal agencies.¹³⁷

In this aim, BLM foresees revisions to its official planning regulations and its internal planning handbook, both

of which will trigger formal public review and comment periods.¹³⁸ The agency is currently seeking additional public comment on ways that it can achieve more “effective, efficient and durable” land use planning processes.¹³⁹

B. U.S. Forest Service

Comprehensive federal land use planning first began in earnest with the passage of the Rangeland Renewable Resources Planning Act of 1974,¹⁴⁰ which required the Secretary of Agriculture to create “land and resource management plans” for the nation’s forests.¹⁴¹ But because the Act omitted critical guidance about the contents and format of land and resource management plans, Congress two years later passed NFMA,¹⁴² which provided additional guidance and established greater procedural and substantive requirements.¹⁴³

The foundational and principle aim of the National Forest System is to “sustain the multiple use of its renewable resources in perpetuity while maintaining the long-term health and productivity of the land.”¹⁴⁴ NFMA thus requires that the Forest Service employ a “systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences” in the production of its land and resource management plans.¹⁴⁵ Procedurally, the Forest Supervisor thus commences planning with the assignment of an interdisciplinary team.¹⁴⁶ Internal agency regulations guide this team through specific steps, including the creation of guiding planning criteria.¹⁴⁷

After a series of planning rules became bogged down in the federal courts, the Forest Service has adopted its new 2012 National Forest System Land Management Planning Rule with hopes for better success.¹⁴⁸ Under this rule, much like BLM planning, Forest Service planning takes an “all lands” approach and must “engage the public—including Tribes and Alaska Native Corporations, other Federal agencies, State and *local governments*, individuals, and public and private organizations or entities—early and throughout the planning process.”¹⁴⁹ Also similar to BLM planning, albeit with much less specificity, NFMA mandates that the Forest

138. *Id.*

139. *Id.*

140. 16 U.S.C. §§ 1600–1610 (2012).

141. *Id.* § 1601.

142. *Id.* § 1600.

143. *Izaak Walton League of Am. v. Butz*, 522 F.2d 945, 954–55 (4th Cir. 1975).

144. 36 C.F.R. § 219.1(b) (2014).

145. 16 U.S.C. § 1604(b); *see also* 36 C.F.R. § 219.1(c) (“[C]ollaborative and science-based development, amendment, and revision of land management plans [will] promote the ecological integrity of national forests and grasslands and other administrative units of the [Forest Service].”).

146. 36 C.F.R. § 219.10(b) (2014).

147. *Id.* § 219.7(c) (2014). For a discussion of what constitutes a “significant” amendment, *see Sierra Club v. Cargill*, 11 F.3d 1545 (10th Cir. 1993).

148. 36 C.F.R. pt. 219, 77 Fed. Reg. 21,162 (2012). For a history of the new rule, and related documents, *see Forest Planning Rule*, U.S. FOREST SERVICE, <http://www.fs.usda.gov/planningrule> (last visited June 14, 2014).

149. 36 C.F.R. § 219.4(a)(1) (2014) (emphasis added). An “all-lands” approach means “collaboration, engaging the public early and often to build a common understanding of the roles, values and contributions of [National Forest System] lands within the broader landscape.” *Draft All-Lands Approach for the Proposed Forest Service Planning Rule*, U.S. FOREST SERVICE (n.d.), http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprd5182029.pdf.

127. Telephone Interview with John Thompson, *supra* note 118.

128. Telephone Interview with Anonymous Source (Oct. 21, 2013).

129. *Id.*

130. Telephone Interview with John Thompson, *supra* note 118.

131. Telephone Interview with Brian Hopkins, *supra* note 24.

132. *Id.*

133. *Id.*

134. BLM DESK GUIDE, *supra* note 113, at vii.

135. *Planning 2.0: Improving the Way We Plan Together*, BUREAU LAND MGMT., http://www.blm.gov/wo/st/en/prog/planning/planning_overview/planning_2_0.html (last updated Feb. 18, 2015).

136. *See* SEC’Y OF THE INTERIOR, SECRETARIAL ORDER NO. 3330, IMPROVING MITIGATION POLICIES AND PRACTICES OF THE DEPARTMENT OF THE INTERIOR (2013), *available at* <http://www.doi.gov/news/upload/Secretarial-Order-Mitigation.pdf>.

137. *Planning 2.0: Improving the Way We Plan Together*, *supra* note 135.

Service go beyond NEPA and “coordinate” with local governments on land use planning,¹⁵⁰ even if those governments are not cooperating agencies.

The Forest Service, too, defines the contours of federal-local collaboration on a case-by-case basis, with a great variety of approaches.¹⁵¹ For example, Forest Service planners went beyond NEPA requirements for the Flathead National Forest and started with a “notice of intent to engage the community writ large” to bolster collaboration before the formal NEPA notice was issued.¹⁵² For that forest’s planning, the agency used a neutral, third-party facilitator to run the collaboration process with the public, as well as an interagency working group that includes local governments.¹⁵³ The Forest Service additionally offered local governments the ability to be involved informally or through cooperating agency status.¹⁵⁴ For Shoshone National Forest planning, the agency met bi-monthly with local governments but also opened the meetings to the public so that other interested parties and groups could make comments.¹⁵⁵

Interestingly, federal planners note “philosophical differences” between BLM and the Forest Service that produce differences in how the agencies approach local governments.¹⁵⁶ One BLM official opined that BLM land ownership patterns may explain the difference in approaches, describing BLM as more proactive and inclusive, perhaps due to the way that BLM lands are interspersed with other private lands.¹⁵⁷ Comparing BLM lands to the more consolidated lands of the Forest Service, she observed: “The commingling of land ownership forces us to be more cooperative and collaborative with our communities These patterns really dictate how we interact with the public.”¹⁵⁸

The Forest Service recently adopted a series of Forest Service directives designed to implement its 2012 Planning Rule, which provide local governments with an additional set of explanatory materials for participating in the forest planning process.¹⁵⁹

C. U.S. Fish & Wildlife Service

In contrast with the multiple-use objectives that define BLM and Forest Service land use, the National Wildlife Refuge System, managed by the Fish & Wildlife Service, has a more singular mission to protect wildlife and habitat in specific regions across the country.¹⁶⁰ In working towards this goal, the Fish & Wildlife Service participates in multiple levels of

refuge planning,¹⁶¹ including long-range and comprehensive planning to restore and maintain the ecological integrity of each refuge.¹⁶² These planning processes occur under the National Wildlife Refuge System Improvement Act of 1997, with additional guidance from agency policy and service manuals.¹⁶³ In the words of one natural resource planner, “[T]he Fish & Wildlife Service is pretty new to the whole comprehensive planning [effort]. We have had step-down plans, but [until recently], not the comprehensive effort like this The later plans are really great and [we] are learning from each other.”¹⁶⁴

The agency’s *Manual on Land Use & Management* guides the development of “comprehensive conservation plans”¹⁶⁵ and subsequent “step-down management plans.”¹⁶⁶ Comprehensive conservation plans provide a broad framework and big picture outline of objectives and goals for each refuge, and step-down management plans then lay out specific details for implementing goals identified in the comprehensive plans.¹⁶⁷ The Manual describes how the plans work together and highlights the importance of considering other nonagency plans that affect the landscape in which the refuge is located.¹⁶⁸ In many ways, refuge planning mirrors the nested approach of local government comprehensive plans that are implemented through more specific subplans, such as neighborhood plans, transportation plans, and park plans.¹⁶⁹

The first phase of the refuge planning process is to compile the team that will draft and implement the plan.¹⁷⁰ The Refuge System is divided into eight regions¹⁷¹ and the Regional Chief appoints the planning team leader for each refuge.¹⁷² The planning team consists of the team leader, the refuge manager, any key staff members, and any appropriate support staff or specialists from regional and field offices.¹⁷³ Agency planning teams must comply with all requirements under NEPA,¹⁷⁴ including all notice and participation requirements and the simultaneous drafting of either an EA or an EIS.¹⁷⁵ As with BLM and the Forest Service, refuge planning must provide local governments the opportunity to seek cooperating agency status under NEPA.¹⁷⁶

After the refuge planning team is assembled, it goes through an eight-step planning process modeled after NEPA which includes preplanning, initial public notice and scop-

150. 36 C.F.R. § 219.4(a); 16 U.S.C. § 1604(a).

151. 36 C.F.R. § 219.4(a).

152. Telephone Interview with Joe Krueger, Interim Forest Plan Revision Team Leader, Flathead Nat’l Forest (Jan. 24, 2014).

153. *Id.*

154. *Id.*

155. Telephone Interview with Carrie Christman, Forest Planner, Shoshone Nat’l Forest (Apr. 9, 2014).

156. Telephone Interview with Bryann Amme, *supra* note 76.

157. *Id.*

158. *Id.*

159. See generally *2012 Planning Rule Final Directives*, U.S. FOREST SERVICE, <http://www.fs.usda.gov/detail/planningrule/home/?cid=stelprd3828310> (last visited Feb. 14, 2015).

160. See Fish and Wildlife Act, 16 U.S.C. §§ 742 et seq. (2012).

161. See *602 FW 1—Refuge Planning Overview*, U.S. FISH & WILDLIFE SERVICE (June 21, 2000), <http://www.fws.gov/policy/602fw1.html>.

162. *602 FW 3—Comprehensive Conservation Planning Process*, U.S. FISH & WILDLIFE SERVICE (June 21, 2000), <http://www.fws.gov/policy/602fw3.html>.

163. See generally 16 U.S.C. § 668dd(7)(a)(2)(iv) (2012).

164. Telephone Interview with Laura King, *supra* note 21.

165. *602 FW 3—Comprehensive Conservation Planning Process*, *supra* note 162.

166. *602 FW 1—Refuge Planning Overview*, *supra* note 161.

167. *Id.*

168. *Id.*

169. E.g., *GROWING SMART GUIDEBOOK*, *supra* note 36, at 7-175 (discussing a variety of sub-plans that implement a comprehensive plan).

170. *602 FW 3—Comprehensive Conservation Planning Process*, *supra* note 162.

171. *Comprehensive Conservation Plans (CCPs)*, U.S. FISH & WILDLIFE SERVICE, <http://www.fws.gov/refuges/planning/ComprehensiveConservationPlans.html> (last updated Jan. 29, 2014).

172. *602 FW 3—Comprehensive Conservation Planning Process*, *supra* note 162.

173. *Id.*

174. *602 FW 1—Refuge Planning Overview*, *supra* note 161.

175. *Id.*

176. 40 C.F.R. §§ 1501.5(b), (d), 1501.6 (2014).

ing, identification of goals and significant issues, development of alternatives, drafting the plan and related NEPA documents, adopting and implementing the final plan, and reviewing and revising the plan as necessary.¹⁷⁷ A comprehensive conservation plan must be revised and renewed at least every fifteen years.¹⁷⁸

Interviews with refuge planners revealed mixed levels of success in involving local governments in refuge planning. One planner reported that the agency's predominant focus is at the state level "first and foremost," with biologists in particular.¹⁷⁹ She noted that "[a]s far as local governments and counties, they are typically not at the table for [comprehensive conservation plans]."¹⁸⁰ At another refuge, the project leader noted that the 1997 Act "doesn't provide much guidance on collaboration, and just requires NEPA compliance."¹⁸¹ But for other refuge plans, agency planners augment NEPA protocols by using mailing lists, press releases, newsletters, and workshops that summarize the upcoming planning process.¹⁸²

The Acting Division Chief for Refuge Planning in the Mountain-Prairie Region of the Fish & Wildlife Service summarized the highly individualized approach that the agency takes with local government collaboration:

Each plan is unique, and the plan, interests, and resources that are at stake in any given project largely dictate the level of involvement from constituents. Collaboration with, and inclusion of, local governments on the city and county level is not required, but happens often in practice. Engagement of local communities and governments occurs first through our internal scoping process. This is a case-by-case basis, depending on the project, the refuge, and to what extent portions of the plan may affect local counties, cities, etc. Planners and commissioners are invited to participate in the planning process, and sometimes to join the planning team.

The planning process is a long and labor-intensive process. If the agency wishes to participate on the planning team, we developed a [m]emorandum of [u]nderstanding . . . which describes the roles and responsibilities of each agency. Participation on the planning team requires significant time and resources. Sometimes this commitment is problematic for agencies so there are different levels of involvement. Being on the planning team is the highest level of involvement. When people are unable to dedicate the time required to participate on the planning team, they can still be included in the planning process. We have experienced instances where city/county planners or state agency personnel do not have time to be on the team, but still want to be updated on

our progress and review our documents, by participating in meetings in a limited capacity, and by other means.¹⁸³

In addition to the planning processes mandated by law, the Fish & Wildlife Service is incorporating innovative approaches to landscape-level planning in response to climate change and other emerging natural resource management challenges.¹⁸⁴ In 2010, the U.S. Department of the Interior launched the Landscape Conservation Cooperative Network to provide landscape-level scientific information¹⁸⁵ and facilitate collaboration with other federal, state, tribal, and local governments in developing landscape-level conservation strategies.¹⁸⁶ The vision is that refuge systems will work in partnership with area cooperatives during the drafting and implementation of refuge plans, resulting in a more holistic and efficient conservation strategy that considers the entire ecosystem and landscape where the refuge exists.¹⁸⁷ One California refuge planner described the cooperative as "a work in progress" with great future potential: "I think it will be a really useful thing eventually [With scarce agency resources], I think the role cooperatives play will be crucial . . . [and] hopefully make things more efficient and provide a database for data and a great communication tool between many groups with . . . different expertise and experience[s]."¹⁸⁸

D. U.S. National Park Service

The National Park Service's mission is to manage and conserve the scenery, natural and historic objects, and wildlife within the national park system for the enjoyment of future generations.¹⁸⁹ The agency participates in many different types of planning efforts¹⁹⁰ and is required by statute to develop and implement "general management plans" for each park.¹⁹¹ These comprehensive park plans outline the area's resources to be preserved, land use intensities (e.g., visitor circulation and transportation modes), processes for managing visitor carrying capacities, and any potential park boundary modifications.¹⁹²

To supplement its broad statutory planning mandates, the National Park Service has Management Planning Policies that further detail all park planning processes.¹⁹³ Planning begins with the development of a foundation statement that captures the "park purpose, significance, fundamental

177. 602 FW 3—*Comprehensive Conservation Planning Process*, *supra* note 162; U.S. FISH & WILDLIFE SERV., 602 FW 3 EXHIBIT 1: THE COMPREHENSIVE CONSERVATION PROCESS & NEPA COMPLIANCE (June 21, 2000), *available at* <http://www.fws.gov/policy/e1602fw1.pdf>.

178. 602 FW 3—*Comprehensive Conservation Planning Process*, *supra* note 162; 16 U.S.C. § 668dd(e)(1)(A)(iv) (2012).

179. Telephone Interview with Laura King, *supra* note 21.

180. *Id.*

181. Telephone Interview with Richard (Rick) Potts, *supra* note 95.

182. *Id.*; Telephone Interview with Laura King, *supra* note 21.

183. Telephone Interview with Antoinette Griffin, Acting Div. Chief, Div. of Refuge Planning, U.S. Fish & Wildlife Serv. (Feb. 14, 2014).

184. SEC'Y OF THE INTERIOR, SECRETARIAL ORDER No. 3289 (2009), *available at* http://elips.doi.gov/elips/sec_orders/html_orders/3289.htm.

185. *About the Landscape Conservation Cooperatives Network*, LANDSCAPE CONSERVATION COOPERATIVES, <http://lccnetwork.org/About> (last visited Apr. 25, 2014).

186. SEC'Y OF THE INTERIOR, *supra* note 184, at § (3)(c).

187. U.S. FISH & WILDLIFE SERV., FINAL REPORT: A LANDSCAPE-SCALE APPROACH TO REFUGE SYSTEM PLANNING (2013), *available at* <http://www.fws.gov/refuges/vision/pdfs/PlanningGuideRev10.pdf>.

188. Telephone Interview with Anonymous Source, *supra* note 6.

189. 16 U.S.C. § 1 (2012).

190. *See* NAT'L PARK SERV., MANAGEMENT POLICIES 2, 2.2 (2006), *available at* <http://www.nps.gov/policy/mp2006.pdf> [hereinafter NPS MANAGEMENT POLICIES].

191. 16 U.S.C. § 1a-7(b) (2012).

192. *Id.* § 1a-7(b)(1)-(4).

193. *See* NPS MANAGEMENT POLICIES, *supra* note 190, at 2.

resources and values and primary interpretive themes.”¹⁹⁴ The park’s general management plan then builds upon this foundation statement¹⁹⁵ by defining the desired natural and cultural resource conditions within the park, addressing park visitor needs, identifying the kinds and levels of activities appropriate for maintaining the desired conditions, and setting standards for meeting park goals and conditions.¹⁹⁶ Mirroring the step-down plans of the Fish & Wildlife Service, the National Park Service implements its foundational general management plans through more specific subplans, such as program management plans, short-term strategic plans, project-specific implementation plans, and annual performance plans for each fiscal year.¹⁹⁷

Park planning teams are comprised of park managers and technical experts that work directly with the park superintendent, regional directors, and park staff.¹⁹⁸ The superintendent and regional director are ultimately responsible for plans, and the regional director has sole authority to approve final plans.¹⁹⁹ Larger parks within the system have planners on staff that lead the planning efforts; smaller parks with less resources utilize the agency’s Denver Service Center planning division.²⁰⁰

The process used for both general management plans and implementation plans is typically done in conjunction with drafting NEPA documents.²⁰¹ As with planning in other agencies, park planning (including notice and public engagement requirements), the analysis of alternatives, and preparation of environmental review documents are also subject to NEPA.²⁰² In addition to the above-mentioned Management Planning Policies, the NPS Director’s Order 12 and accompanying Handbook 12 also provide guidance for collaboration during planning processes²⁰³ and encourage a level of engagement and cooperative regional planning that exceeds NEPA requirements whenever possible.²⁰⁴ Further, all park plans under review are accessible online to the public for comment.²⁰⁵

As with the other agencies surveyed, park planners gave mixed responses to the question of local government involvement in agency planning. One park planner initially indicated that “we have no specific guidance on inclusion of state and local government in comprehensive park planning,” and

was initially uncertain whether NEPA “speaks to having local governments as cooperating agencies,” believing it may not.²⁰⁶ That planner nonetheless has a strong informal park practice of reaching out to local governments.²⁰⁷ A planner at another park noted that, “we coordinate [with local governments] all the time” and that “cooperative planning stems from NEPA.”²⁰⁸ In that park, they take multiple outreach steps before moving into the formal NEPA process, including press releases in local papers, newsletters, internet notices, and public meetings.²⁰⁹

E. Wilderness

Before concluding our summary of federal land management agency planning processes, we briefly note that federal lands designated as wilderness can fall within the jurisdiction of different agencies, each of which has its own special wilderness planning rules and policies.²¹⁰ In a magazine article published in 1930, Robert Marshall, who would later become Chief of Forestry in the Bureau Indian Affairs and the Head of Recreation Management for the Forest Service, expressed his concerns about the exploitation of our nation’s wild lands.²¹¹

Over the next three decades, the Forest Service used administrative remedies, with varying levels of success, to protect the inherent values advocated for by the nation’s original environmental visionaries.²¹² However, many felt that without affirmative congressional action, large-scale preservation of public forest lands was doomed because the agency had no statutory authority to prohibit mining, logging, and dam building in its wild areas.²¹³ After a decade of heated legislative debate, the Wilderness Act was passed in September 1964, solidifying for the first time in American history a

194. *Id.* at 2.2.

195. *Id.*

196. *Id.*

197. *Id.*; see also U.S. FISH & WILDLIFE SERV., *supra* note 187, at 18–19.

198. NPS MANAGEMENT POLICIES, *supra* note 190, at 2.3.1.3.

199. *Id.*

200. Denver Service Center, U.S. NAT’L PARK SERVICE, <http://www.nps.gov/dsc/> (last visited Apr. 25, 2014). The Denver Service Center is the central office for park planning, design, and construction management for parks nationwide, providing resources and services related to all types of park plans. *Id.*

201. NPS MANAGEMENT POLICIES, *supra* note 190, at 2.3; U.S. NAT’L PARK SERV., DIRECTORS ORDER-12 HANDBOOK 4.1, 4.4(D) (2001), available at http://www.nature.nps.gov/protectingrestoring/DO12site/01_intro/01_intro.htm#.

202. NPS MANAGEMENT POLICIES, *supra* note 190, at 2.3; National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321–4347 (2012).

203. NPS MANAGEMENT POLICIES, *supra* note 190, at 2.3.1.5; U.S. NAT’L PARK SERV., *supra* note 201.

204. NPS MANAGEMENT POLICIES, *supra* note 190, at 2.3.1.8.

205. See *Planning, Environment & Public Comment (PEPC)*, U.S. NAT’L PARK SERVICE, <http://parkplanning.nps.gov/> (last visited Apr. 25, 2014).

206. Telephone Interview with Anonymous Source (Oct. 29, 2013). That planner subsequently corrected the above statement to read: “We have no specific guidance that focuses on inclusion of state and local governments, nor guidance on best practices; however the NPS Management Policies speak to engaging with park neighbors and other government agencies as well as participating in cooperative regional planning efforts. At times [that planner] and colleagues have requested local governments to be cooperating agencies in accordance with NEPA 1508.5.”

207. *Id.*

208. Telephone Interview with Eleanor Clark, *supra* note 22; see also Ruffin Prevost, *Long-Term Comprehensive Plan Will Guide Development of Yellowstone Lake Area*, YELLOWSTONE GATE (Feb. 22, 2012), <http://www.yellowstonegate.com/2012/02/longterm-comprehensive-plan-will-guide-development-of-yellowstone-lake-area/>.

209. See Prevost, *supra* note 208.

210. For an excellent compilation of those rules, along with sample wilderness management plans by agency, see *Wilderness Management Planning Toolbox*, WILDERNESS.NET, <http://www.wilderness.net/planning> (last visited June 15, 2014).

211. Robert Marshall, *The Problem of the Wilderness*, 30 SCI. MONTHLY 141, 142–47 (1930).

212. Peter A. Appel, *Wilderness and the Courts*, 29 STAN. ENVTL. L.J. 62, 71–73 (2010).

213. General Mining Act of 1872, ch. 152, 17 Stat. 91 (codified as amended at 30 U.S.C. §§ 22–24, 26–30, 33–35, 37, 39–43, 47 (2012)) (allowing mining claims on federal lands, including national forests); Federal Power Act of 1920, ch. 285, 41 Stat. 1,063, (codified as amended at 16 U.S.C. §§ 792–819, 820–23 (2012)) (authorizing dam construction on federal lands, including national forests).

unified national policy of preserving wild landscapes in their unaltered state.²¹⁴

The four primary federal land management agencies discussed above are responsible for planning lands placed within the National Wilderness Preservation System. While each agency upholds its own mission, all four agencies must also adhere to the additional requirements of the Wilderness Act, which center upon the preservation of wilderness character. Of the four agencies, the National Park Service “manages the greatest amount of wilderness—approximately 41%.”²¹⁵ The Forest Service “manages the greatest number of wilderness areas.” A quick description of each agency’s approach to wilderness planning is as follows:

BLM. Pursuant to its own Wilderness Inventory Handbook, those areas identified as supporting the Wilderness Act’s principles would be identified as “wilderness study areas.”²¹⁶ FLPMA requires BLM to use elevated planning standards to ensure the protection of wilderness study areas so as not to foreclose the possibility of a subsequent wilderness designation.²¹⁷ For designated wilderness areas, BLM creates “wilderness management plans,” and the agency’s Manual 8561 details its wilderness planning process.²¹⁸ In general terms, the wilderness planning guidance mirrors the public involvement and agency cooperation provisions seen in the agency’s guidance for resource management plans.²¹⁹

Forest Service. The Forest Service develops special “wilderness plans” that are folded into the broader forest planning process and done in compliance with NEPA.²²⁰ The agency guidance documents instruct: “Wilderness management direction for each wilderness must be stated in the forest plan as management area prescriptions with associated standards and guidelines.”²²¹

Fish & Wildlife Service. For both congressionally designated and proposed wilderness, along with some recommended wilderness, the Fish & Wildlife Service develops “wilderness stewardship plans” that are similar to its step-

down plans.²²² The agency also addresses wilderness more generally within its comprehensive conservation plans.²²³

National Park Service. The National Park Service also uses the term “wilderness management plan” to describe the plans it creates for wilderness areas under its jurisdiction.²²⁴ Agency planning policies allow zoning and other land use classifications of wilderness areas so long as the classifications “will not diminish or reduce the maximum protection to be afforded lands with wilderness values.”²²⁵ Plans must identify “desired future conditions, as well as establish indicators, standards, conditions, and thresholds beyond which management actions will be taken to reduce human impacts on wilderness resources.”²²⁶

* * *

As the above summaries suggest, land use planning within each federal agency contains its own unique processes and nomenclature. While NEPA lends a degree of similarity to these otherwise disparate processes, the on-the-ground reality is that agency planners vary in their understanding of NEPA and agency planning protocols and hold a multitude of views about whether and how to include local governments. In the next and final Part, we explore how the first-hand experiences of federal and local officials can inform and improve future collaborations in planning across shared landscapes.

III. Recommendations for Local-Federal Collaboration

In this final Part, we move from the legal universe of agency planning statutes, regulations, and policies to the practicalities of planning on the ground. Our research is based on interviews with federal and local officials involved in planning, and we focused our questions on what fosters strong federal-local collaboration and what does not. Our interview methodology, which was far from scientific, involved solicitations to federal and local officials in western states that had recently completed, or were in the process of developing, a federal land use plan, as reflected by notices of intent in the Federal Register. Some participants were more forthcoming and interested in being interviewed than others, so our results are necessarily focused on those individuals willing to share their experiences. Despite our nonscientific methods, we believe there is wisdom in the information we did obtain. We have organized our findings around common themes that contain recommendations for federal agencies, for local governments, and for both government levels.

214. 16 U.S.C. § 1131(c) (2012). Although wilderness preservation ideology was encapsulated in the new law, implementing it through inventoried analysis and subsequent designation has proven challenging as political conflict and federal litigation have endured since the law’s inception. See Julie Cart, *Salazar Backpedals: Politics Stalls Wilderness Designation, Again*, L.A. TIMES (June 1, 2011), <http://latimesblogs.latimes.com/greenspace/2011/06/politics-places-wilderness-designation-placed-in-limbo-.html>; John D. Leshy, *Contemporary Politics of Wilderness Preservation*, 25 J. LAND RESOURCES & ENVTL. L. 1, 5 (2005).

215. *Management*, U.S. NAT’L PARK SERVICE, <http://wilderness.nps.gov/tb2.cfm> (last visited June 15, 2014).

216. See U.S. DEP’T OF THE INTERIOR, BUREAU OF LAND MGMT., WILDERNESS INVENTORY HANDBOOK 1, 16 (1978), available at <http://www.slideshare.net/NevadaWildFriends/wilderness-inventory-handbook>.

217. 43 U.S.C. § 1782(c) (2012).

218. DEP’T OF THE INTERIOR, BUREAU OF LAND MGMT., MANUAL 8561, WILDERNESS MANAGEMENT PLANS (1984), available at http://www.wilderness.net/toolboxes/documents/planning/BLM_8561_WMP_entire.pdf.

219. See generally discussion *supra* Part II.A.

220. U.S. FOREST SERV., WILDERNESS PLANNING: FOREST SERVICE POLICY AND GUIDELINES, POLICY 2322 (n.d.), available at http://www.wilderness.net/toolboxes/documents/planning/FS-Wilderness%20Planning_Regs_Policy.pdf.

221. *Id.* at 2322.03.

222. 610 FW 3—*Wilderness Stewardship Planning*, U.S. FISH & WILDLIFE SERVICE, <http://www.fws.gov/policy/610fw3.html> (last visited Jan. 14, 2015). For a discussion of step-down plans, see discussion *supra* Part II.C.

223. *Id.*

224. See generally NPS MANAGEMENT POLICIES, *supra* note 190.

225. *Id.* at 6.3.4.1.

226. *Id.* at 6.3.4.2.

A. Recommendations for Federal Agencies

Conversations with local government officials involved in federal land use planning reflect four principal messages for federal planners. First, federal planning is complex. The more agencies can do to standardize federal planning into a uniform, cross-agency process, the easier it will be for local governments to collaborate. Second, agency planning jargon can be off-putting and difficult to understand. Translating that language into locally meaningful terminology can make a difference. Third, collaboration must be genuine and not perfunctory to truly be successful in the long term, and it must surpass NEPA's minimum requirements to ensure robust stakeholder participation. Finally, planning areas that follow arbitrary agency boundaries could be more thoughtfully drawn to encompass shared natural resource areas.

I. Standardize Planning Processes Among Agencies

From the perspective of a local government official, all federal employees work for the "federal government," and it can thus be perplexing when one federal agency planning process differs radically from a subsequent planning process. As one federal planner astutely observed, prior processes create expectations about how future processes will work.²²⁷ In one Montana county, where commissioners had a prior positive experience as a cooperating agency with BLM, they were surprised to be told by a Fish & Wildlife Service refuge manager that they "weren't eligible" for cooperating agency status on a comprehensive conservation plan and that he "could deny them if [he] wanted."²²⁸ One commissioner noted: "But we knew based on our work with the BLM that we are eligible for cooperating agency status . . ."²²⁹ In another Montana county that is working with both the Forest Service and BLM on sage grouse planning, a commissioner observed with frustration that "there is a significant difference between BLM and USFS."²³⁰ Even within one agency, there can be disconcerting variations in the way different planning processes are run. One Colorado county commissioner compared his negative experience of working with BLM on oil shale planning to his positive experience of working with different BLM staff on a resource management plan.²³¹

To be sure, agency planning cannot march lockstep due to differences in agency missions and unique variations in the features of each plan area. But even factoring in a degree of flexibility to tailor collaboration to planning areas, our interviews suggest that agencies can do more to study and build upon the prior history of agency collaboration with a

particular local government. Further, to the extent the four land management agencies can standardize their planning processes and language across agencies, local governments can even better navigate federal planning as a whole.

2. Build Bridges Between Federal and Local Planning Processes

Although both local and federal stakeholders use the phrase "land use planning," it means something different to each. For example, when a local government talks about population trends, it is talking about humans,²³² whereas the Fish & Wildlife Service means wildlife species when using the word "population."²³³ Interviews with local officials shed light on how agency jargon can be confusing at best and alienating at worst. One pernicious word is "nonsignificant," which is a legal term to describe issues that need not be addressed during NEPA environmental review.²³⁴ To a layperson, however, "nonsignificant" means unimportant.²³⁵ So when the Fish & Wildlife Service classified several county concerns as nonsignificant in a recent comprehensive conservation plan,²³⁶ the local response was unsurprising:

One of the regional planners who worked on the project made a comment at our last meeting that the counties' comments did not include anything substantive and that the planning team couldn't use them. Basically, she said our comments were worthless. What was even more frustrating about that was that we put hours and hours into our comments. We reviewed the entire CCP book, which was hefty, and we were very active in the elements and issues within the plan, and in the end they told us that they couldn't use basically all of our comments.²³⁷

Another county commissioner involved in the same planning process remarked that "[c]omments had to be made on forms provided by the [Fish & Wildlife Service], which I had difficulty downloading, and [the agency] apparently didn't take comments written in letter form,"²³⁸ which is a more familiar form for public comments at the local government level.²³⁹

232. See, e.g., NEB. REV. STAT. § 17-101 (2012) ("The population of a city of the second class shall consist of the people residing within . . ."); MO. ANN. STAT. § 394.020 (West 2012) (counting population in terms of "inhabitants"); 65 ILL. COMP. STAT. 5/7-1-13(g) (2012) (counting population in terms of humans).

233. See 16 U.S.C. § 1532(16) (2012).

234. See, e.g., Memorandum from A. Alan Hill, Chairman, Council on Envtl. Quality to Heads of Fed. Agencies on Guidance Regarding NEPA Regulations (1983) ("The scoping process should identify the public and agency concerns; clearly define the environmental issues and alternatives to be examined in the EIS including the elimination of nonsignificant issues."), available at http://www.fws.gov/r9esnepa/NEPA_HANDBOOK2.pdf (emphasis added).

235. *Nonsignificant*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/nonsignificant> (last visited Mar. 11, 2015).

236. See U.S. FISH & WILDLIFE SERV., COMPREHENSIVE CONSERVATION PLAN FOR CHARLES M. RUSSELL NATIONAL WILDLIFE REFUGE, MONTANA 17-19 (2012), available at http://www.fws.gov/mountain-prairie/planning/ccp/mt/cmr_ulb/cmr_ulb.html (listing issues not addressed as "not significant").

237. Telephone Interview with Leslie Robinson, *supra* note 228.

238. Telephone Interview with Connie Eissingner, McCone Cnty. Comm'r (Jan. 24, 2014).

239. *Id.*

227. Telephone Interview with Brian Hopkins, *supra* note 24 ("Our first major engagement was the Roan Plateau. Everybody kind of now expects that cooperation and coordination.")

228. Telephone Interview with Lesley Robinson, Phillips Cnty. Comm'r (Mar. 11, 2014).

229. *Id.*

230. Telephone Interview with Dave Schultz, Madison Cnty. Comm'r (Jan. 17, 2014).

231. Telephone Interview with Tom Jankovsky, Garfield Cnty. Comm'r (Apr. 2, 2014).

By contrast, a chief park planner worked to provide an interface between the Yellowstone Park lake development plan and the local community by using local planning terminology: “Comprehensive plans include design standards, zoning and other elements that haven’t always been a part of park planning within developed areas in Yellowstone.”²⁴⁰

In addition to creating a common planning language, federal agencies can create shared planning processes. As noted in Part I, federal agency planning shares many concepts in common with local land use planning, including use of inventories, goals and objectives, mandatory elements, fixed planning windows, public processes, and periodic review and updating.²⁴¹ And because local governments often lack resources, expertise, and time to adequately plan on their own,²⁴² federal agencies can consider ways to synchronize their planning to augment local planning efforts and avoid duplication of meetings, studies, and other efforts relating to shared resources.

3. Provide Early, Genuine Involvement and Include All Stakeholders

Interviews with local officials make clear that they can tell the difference between genuine and artificial inclusion in federal planning processes. Federal planners who view themselves as successful collaborators emphasize that local involvement should occur as early as possible and extend beyond local government to other local stakeholders with a vested interest in planning issues. Further, if federal agency representatives are not being inclusive of local governments, parties are entitled to go higher up in the agency to request involvement.²⁴³

In the words of one seasoned refuge planner, “[t]he goal [of planning] should be [to] involve as many people as possible who are willing to spend the time and share their expertise, and to work on a team toward a common goal. This is how the best planning is done and how teams make really strong, relevant long-term comprehensive plans.”²⁴⁴ For example, the model used in the Roan Plateau Resource Management Plan was one of early community assessment, stakeholder training, and informal involvement of players beyond cooperating local governments, including other local governments and non-governmental interest groups.²⁴⁵ This process was cited by both BLM and local officials as a more successful planning approach: “The BLM was very inclusive throughout the entire process in developing alternatives and getting feedback from each jurisdiction They did a really good

job keeping everyone engaged and they were open to comments and suggestions.”²⁴⁶

A county commissioner from another county involved in the process noted, more colorfully:

Most of the time, it is just crap with these plans, but this one, the regional plan, I really respect the [BLM] office and what they accomplished. What was the difference? We were working with staff at the local level. On the greater sage grouse EIS, it was just authoritarian “shove down your throat.” And the Oil Shale EIS came out of Washington, [D.C.], just a slam dunk, no listening to local concerns. But here [on the Roan Plateau Resource Management Plan] they included us, they were the most responsive, they took the local concerns into consideration wherever they could.²⁴⁷

One Fish & Wildlife Service project leader who recently concluded a “highly complex, highly contentious” planning process without litigation highlighted the important values of meaningful inclusion, listening, and conversation:

[A]s far as arriving at the very best solutions, nothing beats the collaborative process that involves sitting at a table with all concerned stakeholders and *really* listening to what concerns them (which is sometimes different than what they are saying) so that everyone can feel like they have a say. It is not something you can do by posting a notice or holding public hearings [under NEPA]—this is NOT enough. The compromise came from thousands of conversations between all sorts of different people about an array of concerns and topics.²⁴⁸

In his particular planning process, he credits the involvement of a community working group that continues to exist and meet every other month.²⁴⁹ The group rotates around six area counties and includes “any and all stakeholders—county commissioners, businesses, hunters, [non-governmental organizations], recreators, etc.”²⁵⁰ The value of the group is that “it helps eliminate many conflicts before they spiral out of control.”²⁵¹

In contrast, under an earlier Fish & Wildlife Service project leader that subsequently left, stakeholders felt alienated when only two county commissioners were allowed to attend working meetings, even though there are six counties adjacent to the planning area.²⁵² “Mostly, the counties whose representatives were not included in the work meetings just had to rely on information from the other representatives The meetings that we all were invited to were pretty much informational. They told us what they

240. Prevost, *supra* note 208 (quoting Alicia Murphy).

241. See generally GROWING SMART GUIDEBOOK, *supra* note 36.

242. Telephone Interview with Sky Murphy, *supra* note 24; Telephone Interview with Anonymous Source, *supra* note 6. Nonetheless, many local governments report having hired scientists, consultants, or additional staff to attend meetings and report back. *E.g.*, Telephone Interview with Anonymous Source, *supra* note 128; Telephone Interview with Dave Schultz, *supra* note 230.

243. Telephone Interview with Bryann Amme, *supra* note 76.

244. Telephone Interview with Antoinette Griffin, *supra* note 183.

245. Telephone Interview with Brian Hopkins, *supra* note 24.

246. Telephone Interview with Bob Narracci, Eagle Cnty. Planning Dir. (Apr. 1, 2014); see also Telephone Interview with Brian Hopkins, *supra* note 24.

247. Telephone Interview with Tom Jankovsky, *supra* note 231.

248. Telephone Interview with Richard (Rick) Potts, *supra* note 95.

249. *Id.*

250. *Id.*

251. *Id.*

252. Telephone Interview with Connie Eissinger, *supra* note 238; see also Telephone Interview with Lesley Robinson, *supra* note 228 (“Originally all of the County Commissioners from the six adjoining counties wanted to have cooperating agency status and we had to bargain with the refuge manager, who wanted to deny all of us the status, to let us at least send [a few] representatives.”).

were going to do and did not take our input.”²⁵³ The current refuge manager “has been willing to work with us and to be a better neighbor, but the prior administration during the comprehensive conservation plan development was not.”²⁵⁴

When there are good working relationships with the local government, there is also an opportunity for greater local understanding of the demands under which federal officials operate. In Madison County, Montana, where local officials have developed friendships with their federal counterparts, one county commissioner acknowledged:

It has to be incredibly hard to do the [federal planning] work with their budgets being cut The planning process is so complicated, trying to meet all the objectives of NEPA There are a lot of people in the BLM and USFS that are really good and really good at what they do, but they have lost their energy because every time they do [their work] someone appeals.²⁵⁵

In contrast, some perceive the Forest Service as not working with local interest groups on the North Carolina National Forests.²⁵⁶ “The supervisor has been very reluctant to give us any credence . . . or acknowledgement. The Forest Service is really not excited about us, nor do they want to take advantage of us.”²⁵⁷ There, the Wilderness Society started its own roundtable to “run in parallel to the forest plan to create dialogue around issues of historical conflict.”²⁵⁸ The roundtable includes diverse interests, including historically adverse groups, as well as groups not invited into the planning process. As the outreach coordinator explained, “[w]e realized . . . we needed a table to invite interested stakeholders to We are trying to get something so big that the [Forest Service] can’t ignore it.”²⁵⁹

4. Create Planning Areas That Mirror Resource Areas

When federal agency planning areas are designed without consideration of resource area boundaries or local government boundaries, the planning process can lose its effectiveness. As a prime example, both BLM and the Forest Service are engaging in sage grouse planning, but each agency is using a separate planning process.²⁶⁰ Further, BLM has divided its planning into multiple areas, which do not correlate with either state or local boundaries or the grouse habitat range.²⁶¹ Local officials in Montana express “frustrat[ion]

about the fragmentation of planning” related to the sage grouse, and note that they have even had to hire consultants to attend planning sessions in other plan areas that share the same habitat range.²⁶²

In contrast, on the Roan Plateau Resource Management Plan, there were multiple county stakeholders with differing local interests. In one county, oil and gas development is a primary economic driver, and in another county tourism is significant. BLM was able to shift its use designations to mirror county boundaries, opening up oil and gas leasing in some areas while closing leasing in critical watershed areas.²⁶³

B. Recommendations for Local Governments

Our interviews also yielded some important messages for local government officials. Foremost, they must become well educated about federal planning to take full advantage of the process. They must also participate as credible experts who do not make unrealistic demands or engage in political grandstanding. Additionally, local governments can reciprocate and build additional influence by including federal agencies in local planning processes.

I. Become Credible Experts and Fully Engage in Federal Planning

The prevailing view among federal planners is that many local government officials lack knowledge about the role they can play in federal planning and do not “avail[] themselves of the important opportunities and potential benefits” offered by participating in planning.²⁶⁴ To become more educated about federal land use planning, local governments can tap into a variety of sources. In 2012, for example, the Public Lands Council produced *A Beginner’s Guide to Cooperating Agency Status*²⁶⁵ and *A Beginner’s Guide to Coordination*²⁶⁶ that walk local governments through the process for working with BLM and the Forest Service. Local governments can also request cooperating agency workshops with BLM planners.²⁶⁷ Others have retained private consultants and lawyers to help with training and advice during a cooperative planning process.²⁶⁸

Federal officials highlight the leverage that counties gain as cooperating agencies. In the words of one planner: “How critical is having the counties in a formal cooperating role? It is huge.”²⁶⁹ Where local governments have declined coop-

253. Telephone Interview with Connie Eissinger, *supra* note 238.

254. *Id.*

255. Telephone Interview with Dave Schultz, *supra* note 230.

256. Telephone Interview with Jill Gottesman, S. Appalachian Outreach Coordinator, The Wilderness Soc’y (Apr. 7, 2014).

257. *Id.*

258. *Id.*

259. *Id.*

260. *Compare Sage-Grouse and Sagebrush Conservation*, BUREAU LAND MGMT., <http://www.blm.gov/wo/st/en/prog/more/sagegrouse.html> (last visited June 4, 2014), *with Sage-Grouse*, U.S. FISH & WILDLIFE SERVICE, http://www.fs.fed.us/research/wildlife-fish/themes/sage_grouse.php (last visited June 4, 2014).

261. *Compare BLM USFS GRSG Planning Strategy Sub-region/EIS Boundaries*, BUREAU LAND MGMT., http://www.blm.gov/wo/st/en/prog/more/sagegrouse/documents_and_resources/blm_usfs_grsg_planning.html (last visited June 4,

2014), *with Greater Sage-Grouse Priority Areas for Conservation (PACS)*, U.S. FISH & WILDLIFE SERVICE, http://www.fws.gov/mountain-prairie/species/birds/sagegrouse/03252013_COT_Map.jpg (last visited June 4, 2014).

262. Telephone Interview with Dave Schultz, *supra* note 230.

263. Telephone Interview with Brian Hopkins, *supra* note 24.

264. PUB. LANDS COUNCIL, *supra* note 25, at 2.

265. *Id.*

266. PUB. LANDS COUNCIL, *supra* note 115.

267. Telephone Interview with John Thompson, *supra* note 118.

268. Telephone Interview with Scott Albrecht, Cnty. Adm’r for Beaver Cnty. (June 11, 2014); Telephone Interview with Lesley Robinson, *supra* note 228.

269. Telephone Interview with Gina Ginouves, Planning & Envtl. Coordinator, Bureau of Land Mgmt. Cedar City Field Office (Apr. 9, 2014).

erating agency status, planners have noted: “We think the process would have really benefitted from them being a cooperating agency.”²⁷⁰

Local officials who have stepped up to the plate and participated in federal planning speak consistently of the importance of doing so. According to one, “Cooperating agency status really made a difference.”²⁷¹ Another stated: “As a cooperating agency we have an open relationship that we continue to talk about with those federal partners. We always hear about things before they make the newspaper.”²⁷² Yet a third elaborated:

I think it was worth the time that we spent on the cooperating agency status It has been a good process. I have been involved and notified [The BLM staff] were good about listening to Beaver County’s thoughts and concerns. At times I felt they were bothered [and thought] I was bogging down the process, but they never told me to be quiet or limit my correspondence.²⁷³

Aside from being an educated participant, local officials’ credibility makes a difference in the local-federal collaborative relationship. On occasion, local governments appear to overreach by demanding federal actions that may be inconsistent with federal law. This can result in a “show-down” or planning impasse because federal agencies must ultimately implement federal mandates. In Utah’s Cedar Creek Resource Management Plan, for example, the counties passed an ordinance outright banning wilderness designations, and other ordinances regulating wild horses and road access, despite federal jurisdiction over those topics.²⁷⁴ There, the federal planner noted:

The counties have been actively trying to influence the outcome of the plan by passing targeted ordinances . . . [There is] a lot of political posturing. They have some hard lines, as do we. We are doing our best to find out what we can do in terms of local policy inside [our] constraints.²⁷⁵

On the flip side, even when there is legitimate county involvement, counties do not always feel like the plans are changed to address their comments.²⁷⁶ One disconnect may be the way their comments are framed. On the Kootenai Forest Plan, county engagement was perceived as “really broad” and “not very nuanced,” with blanket requests for no more wilderness and more logging.²⁷⁷ Federal planners felt there “was not a lot [they] could do with that information.”²⁷⁸

The county commission was also perceived as “skewed” because they had a political perspective of wanting timber

harvests on the entire forest.²⁷⁹ The same planner lamented the “disheartening” fact that several cooperators ended up objecting to the plan because of the vast gulfs between the local and federal objectives.²⁸⁰ Similarly, during development of the Shoshone National Forest Plan, one federal planner described the “gaming” of the process by a county that participated as a cooperating agency and also hired a separate lobbyist to work on behalf of the extractive industry.²⁸¹ “It made the cooperating relationship difficult because they were trying to game it from both sides.”²⁸²

A Beginner’s Guide to Coordination provides the following salient advice:

Unfortunately, some local governments have taken the BLM consistency requirement to mean that by simply handing the BLM their land use plan, the BLM will be forced to comply with it. Not only is this incorrect, it undermines the ongoing negotiation and information sharing process that is at the core of coordination. Experienced coordinators recognize that the BLM has no obligation to adhere to any local plan or policy that is inconsistent with federal laws and regulations. For coordination to work, agencies and local governments need to mutually ascertain each other’s needs and limitations. Instead of throwing a plan at the BLM and expecting them to conform, local governments should work with the BLM on creating mutually acceptable outcomes while keeping the consistency requirement as a backdrop.²⁸³

2. Include Federal Lands and Federal Agencies in Local Land Use Planning

Although local governments lack authority to regulate federal lands, it behooves them to set forth a cohesive vision for natural resource areas that span local and federal jurisdiction. And in states where planning is optional, local governments with a history of recalcitrance toward planning must either engage or risk being caught flatfooted when federal planning comes to their community. As described in Part II, federal land management agencies, to varying degrees, must fulfill mandates to “coordinate” their planning with local land use plans.²⁸⁴ As one agency planner observed: “There is a definite distinction that local governments are starting to understand. Local plans are really important, we are starting to understand, in driving [federal] planning outcomes.”²⁸⁵ This coordination mandate is strongest for BLM, and planners in that agency explain that, “[t]o the extent possible, when there is substantive [local] planning, we have a goal to really conform to that planning.”²⁸⁶

Regarding the Roan Plateau Resource Management Plan, for example, the agency plan was influenced by county plans related to oil and gas development, recreation and open space,

270. Telephone Interview with Sky Murphy, *supra* note 24.

271. Telephone Interview with Bob Narracci, *supra* note 246.

272. Telephone Interview with Dave Schultz, *supra* note 230.

273. Telephone Interview with Scott Albrecht, *supra* note 268.

274. Telephone Interview with Gina Ginouves, *supra* note 269.

275. *Id.*

276. For example, counties are objecting to Kootenai Forest Plan based upon their belief that their comments were not addressed. Telephone Interview with Ellen Franent, Planner, U.S. Forest Serv. (Feb. 5, 2014).

277. *Id.*

278. *Id.*

279. *Id.*

280. *Id.*

281. Telephone Interview with Carrie Christman, *supra* note 155.

282. *Id.*

283. PUB. LANDS COUNCIL, *supra* note 115, at 10.

284. SEC’y OF THE INTERIOR, *supra* note 184, at § (3)(c).

285. Telephone Interview with Anonymous Source, *supra* note 128.

286. Telephone Interview with Brian Hopkins, *supra* note 24.

trails, rural zoning, viewshed, and watershed protection.²⁸⁷ With its Garfield County lands, BLM updated its final EIS to “sync with” new county rules relating to drinking water intake protection so that proposed development does not impair water quality.²⁸⁸ Similarly, BLM matched its “recreation management areas” with the trail system plans of Eagle and Gypsum, Colorado.²⁸⁹ Federal planners also noted how local government trail and recreation plans influenced BLM trail locations.²⁹⁰ Conversely, when BLM designated certain areas of critical environmental concern, the counties “really made adjustments” to how they developed river access areas to avoid those federally designated areas.²⁹¹ In particular, one county planner stated that he would now use the BLM’s resource management plan to inform decisions about where to locate activities on lands within county jurisdiction.²⁹²

With respect to the Clear Creek Management Area Resource Management Plan in California, the BLM planner indicated that agency planning was influenced by the conservation, resource protection, and open space goals in the county’s general plan.²⁹³ There, the agency also removed one of its preferred alternatives (considering disposal of some public lands around Hernandez Reservoir) in response to the local plan goal of preserving wildlife habitat in the area.²⁹⁴

Unfortunately, as noted in Part I, local government planning has historically omitted any consideration of federal lands due to the fact that they lack jurisdiction to regulate those lands.²⁹⁵ This is reflected in the experiences of other counties involved in the Roan Plateau Resource Management Plan, including one where a planner noted that “our comprehensive plans really did not apply to the federal lands [because] . . . [w]e can’t zone on federal lands.”²⁹⁶ Similarly, on the North Carolina Forest Plan, one participant observed an “enormous disconnect” between county planners and federal agencies, along with the mentality that “planning stops at the Forest Service boundary.”²⁹⁷ In one county that has 70% public land, but no county planner, the county administrator observed: “I am trying to emphasize to the commissioners that it proves to be more effective if we have a well thought out land use plan.”²⁹⁸

Beyond including federal lands within local comprehensive plans, some local governments have initiated long-term relationships with local agency planners. One county has spearheaded quarterly interagency “roundtable” meetings that involve all state and federal agencies with lands in the county.²⁹⁹ The local planner often presents local planning developments at these meetings, and federal agency representatives raise upcoming federal projects of interest to the

county.³⁰⁰ One county commissioner observed: “This allows us to put an issue on the table and have a follow-up conversation before that action ever becomes a reality.”³⁰¹

C. Recommendations for Both Governments

I. Have a Succession Plan for Turnover During the Planning Process

Federal planning efforts can take an extraordinary amount of time, which has both positive and negative implications. The Roan Plateau Resource Management Plan, for example, has been ongoing since 2006 and has included fourteen meetings.³⁰² As one county official observed, the process is “incredibly long and drawn out . . . it is a huge area with so many cooperating agencies . . . and then there would be these six-month hiatuses between meetings so it was really hard to keep your mind wrapped around it.”³⁰³ Regarding the Idaho Panhandle and Kootenai Forest Plan, the planning process extended over twelve years and five different forest planning rules,³⁰⁴ and the senior planner there concluded: “Our process has gone on so long that we are off the path.”³⁰⁵

On the positive side, a long planning window can allow local governments to get up to speed and even adopt their own plans that can influence the federal plan. During the Roan Plateau Resource Management Plan process, for example, several counties adopted drinking water protection plans before the final EIS, and BLM then modified the planning documents to include new drinking water intake protections.³⁰⁶ Additionally, land use planning and multi-stakeholder dispute resolution are processes that, by their very nature, can benefit from longer time periods due to the need for study and negotiation.³⁰⁷

On the negative side, however, participants can lose engagement and even drop out due to turnover among elected local officials and planning staff at both the federal and local level.³⁰⁸ For this reason, it behooves stakeholders to have “understudies” or multiple designees participating in case participants drop out mid-process. A local official in Madison County, Montana, observed that there is a “regu-

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.*

291. Telephone Interview with Bob Narracci, *supra* note 246.

292. *Id.*

293. Telephone Interview with Sky Murphy, *supra* note 24.

294. *Id.*

295. See discussion *supra* Part I.A.

296. Telephone Interview with Bob Narracci, *supra* note 246.

297. Telephone Interview with Jill Gottesman, *supra* note 256.

298. Telephone Interview with Scott Albrecht, *supra* note 268.

299. Telephone Interview with Dave Schultz, *supra* note 230.

300. *Id.*

301. *Id.*

302. Telephone Interview with Brian Hopkins, *supra* note 24.

303. Telephone Interview with Bob Narracci, *supra* note 246.

304. Telephone Interview with Ellen Franent, *supra* note 276.

305. *Id.*

306. Telephone Interview with Brian Hopkins, *supra* note 24.

307. See BUREAU OF LAND MGMT., U.S. DEP’T OF THE INTERIOR, LAND USE PLANNING HANDBOOK H-1601-1 Appx. A 2 (2005) (“Although the initial stages of developing an open and inclusive process are time consuming, the potential returns from relationship building, cost savings, and durability of decisions more than compensate for this effort.”).

308. See Telephone Interview with Sky Murphy, *supra* note 24 (noting turnover of both planning staff and government officials on the Clear Creek Management Area Resource Management Plan); see also Letter from Thomas Tidwell, Chief, U.S. Forest Serv., to Tom Vilsack, Sec’y, U.S. Dep’t of Agric. (Mar. 13, 2015) (on file with author) (creating a Turnover Working Group). This letter states: “[W]e have concluded that in order for the 2012 Planning Rule to be successful, there is a very pressing need to improve transitions between outgoing personnel and incoming personnel who will assume the responsibility for working directly with these partners and publics.” *Id.*

lar transition of supervisors out of the USFS Dillon Office,” which is a “drawback” to collaborating with that agency.³⁰⁹ A Forest Service planner similarly identified local government turnover and “collaboration fatigue” as two major obstacles in the planning process.³¹⁰ Stakeholders involved in planning have told him that “there is so much public meeting, and then nothing comes from it . . . you spend a year on meetings, then someone, who may not necessarily have been involved in all the meetings, sues and nothing comes to fruition.”³¹¹

With respect to the Kootenai Forest Plan, for example, the current local government officials were “not the ones doing the work” earlier in the planning process, and the federal planner believes the current officials “are not as vocal or as involved.”³¹² Regarding the North Carolina Forest Plan, an interest group representative observed that there is “a revolving door,” with a planner departing and a new forest supervisor.³¹³ She noted: “The process is very slow . . . It is very hard to keep people engaged. Really, in the first place, to show them that their efforts matter.”³¹⁴

One BLM official, describing a particularly contentious resource management plan, noted how a change in local leadership negatively affected the planning process for the Clear Creek Management Area:

It was a very controversial and difficult planning process, given the local conflicts in the community [particularly over closing roads used for recreational access] . . . There was some planning staff turnover. Some new people came on board that were not really able to take the reins . . . The board of supervisors also changed . . . [and] the supervisor that cooperated with BLM was shown the door. In 2008 [under the original supervisor], the county closed the road [that was under ongoing dispute]. But in 2010, [after the supervisor changed], they opened the road; they [no longer] wanted to cooperate with BLM.³¹⁵

In contrast, on the Charles M. Russell Wildlife Refuge, the original project leader was viewed as uncollaborative.³¹⁶ There, a change in leadership improved the local-federal relationship, but local officials remain pessimistic because of ongoing turnover:

When [the new refuge manager] came in near the end of the planning process, things did get better. He was wonderful and really cares about cooperation and collaboration. He is a good manager with tons of experience and I have had great experiences working with him after the fact. But in some respects, he came on board too late to make a meaningful difference with the plan. And now he is leaving, so who

knows what type of working relationship adjacent counties will have with the next manager.³¹⁷

Because lengthy planning processes and staffing changes are likely to remain an ongoing reality in federal agency planning, both levels of government benefit from developing succession plans for key players to ensure institutional memory and sustained commitment in the planning process from start to finish.

2. Maintain Relationships Over the Long Term

A consistent theme in local-federal relations, and one that bears repeating at the conclusion of this Article, is that long-term relationships between local and federal officials make the largest difference in planning outcomes. With successful plans, “[m]any of those relationships are established already prior to the planning process.”³¹⁸ One county official notes: “It has been productive to *build a relationship* between our local [BLM] office and our county . . . that has been beneficial and productive.”³¹⁹

With respect to the Cedar City Resource Management Plan, for example, the BLM planner emphasized that “[n]ice people live around here . . . We have really developed relationships. We live in a community and no one is trying to ruffle feathers . . . We have a good office, and we will do our best to work with [the local politicians].”³²⁰ Local officials involved in the Roan Plateau Resource Management Plan noted how much better the process was, in comparison to prior BLM planning experiences, due to the involvement of local federal planners rather than agency officials in Washington, D.C.³²¹ Similarly, local officials in Montana note a distinction between Forest Service and BLM planning, favoring the BLM approach of managing planning “at a lower level.”³²² One county commissioner remarked: “We know who the state [BLM] director is. I always know who the area manager is. We have always had a good open discussion . . . We have become not only working partners but also friends. It is easier to communicate with difficult issues.”³²³

These long-term relationships transcend and endure beyond a time-limited cooperating agency designation. On the Flathead National Forest, for example, federal officials schedule quarterly meetings with counties to keep informed and deal with turnover issues.³²⁴ On the Kootenai National Forest, there are weekly county meetings that include both government officials and working group members.³²⁵ Another federal planner, with the Fish & Wildlife Service, notes the importance of regular meetings with locals: “This way we maintain relationships rather than calling on local govern-

309. Telephone Interview with Dave Schultz, *supra* note 230.

310. Telephone Interview with Joe Krueger, *supra* note 152.

311. *Id.*

312. Telephone Interview with Ellen Frenant, *supra* note 276.

313. Telephone Interview with Jill Gottesman, *supra* note 256.

314. *Id.*

315. Telephone Interview with Dave Schultz, *supra* note 230.

316. Telephone Interview with Lesley Robinson, *supra* note 228.

317. *Id.*

318. Telephone Interview with Anonymous Source, *supra* note 6.

319. Telephone Interview with Scott Albrecht, *supra* note 268.

320. Telephone Interview with Gina Ginouves, *supra* note 269.

321. Telephone Interview with Tom Jankovsky, *supra* note 231; Telephone Interview with Bob Narracci, *supra* note 246.

322. Telephone Interview with Dave Schultz, *supra* note 230.

323. *Id.*

324. Telephone Interview with Joe Krueger, *supra* note 152.

325. Telephone Interview with Ellen Frenant, *supra* note 276.

ments when we need something from them or when we have a problem.”³²⁶

Importantly, “[c]ommunication [in both directions] happens largely as a result of the individuals on staff facilitating those relationships.”³²⁷ In a final, and cautionary, statement on point, one county commissioner from Phillips County, Montana, reminds us:

It really depends on who the refuge manager and planning team are at the time the planning process is commenced The original refuge manager . . . was not easy to work with and seemed as if he really didn’t want us involved at all. The current refuge manager took over near the end of the creation of the [comprehensive conservation plan] and he was great to work with and continues to be great But that was the tone that started this planning process. Needless to say we didn’t get off on the right foot. In the end, I was not really sure if anything we put on the table was actually taken into consideration in the final plan. We felt like an inconvenience, like something they had to do but didn’t really want to. It was a 90-mile drive for me to participate in these meetings on issues that I really cared about, and after most meetings I left thinking to myself, “Why am I doing this?” and feeling like it was a waste of time because nobody was listening to us anyway.³²⁸

IV. Conclusion

Local and federal land use planning have evolved from very different historical roots. While they share many common concepts and processes, they continue to operate in largely disconnected worlds. Today, there is an increased awareness of the linkages between federal and local land use planning, and limited examples of emerging collaboration, but there is also significant room for improvement before we see truly integrated and large landscape planning in the West. Local governments have some “cause for rebellion” because federal agencies employ highly variable planning processes and use technocratic language that means very little to local communities. Agency planners vary in their outlook toward local governments, with some lacking a full understanding of the laws applicable to local government collaboration. Federal agencies, too, raise legitimate concerns about local officials’ inadequate understanding of federal planning law and the occasional misuse of that law to issue unreasonable political demands. Moreover, both governments grapple with challenging financial times and staff turnover. Remarkably, within this complex and nuanced planning process, there are federal and local officials rising above the law’s minimum requirements to build exemplary models of long term local-federal partnerships. It is within these success stories that we can draw lessons for the future of local-federal planning across common landscapes in the West.

326. Telephone Interview with Richard (Rick) Potts, *supra* note 95.

327. *Id.*

328. Telephone Interview with Lesley Robinson, *supra* note 228.