

# BUDD-FALEN LAW OFFICES

L.L.C.

ATTORNEYS FOR THE WEST

300 EAST 18<sup>TH</sup> STREET • POST OFFICE BOX 346

CHEYENNE, WYOMING 82003-0346

TELEPHONE: 307/632-5105

TELEFAX: 307/637-3891

WWW.BUDDFALEN.COM

**KAREN BUDD-FALEN**<sup>3</sup>

**FRANKLIN J. FALEN**<sup>2</sup>

**BRANDON L. JENSEN**<sup>1</sup>

<sup>1</sup> ALSO LICENSED IN CO

<sup>2</sup> ALSO LICENSED IN NE, SD & ND


<sup>3</sup> ALSO LICENSED IN NM & ID

<sup>4</sup> ALSO LICENSED IN MT

**ANDREW K. TAYLOR**  
**BETHANY A. GROSS**<sup>4</sup>

## MEMORANDUM

**TO: INTERESTED PARTIES**

**FROM: KAREN BUDD-FALEN**   
**BUDD-FALEN LAW OFFICES, LLC**

**DATE: MARCH 21, 2017**

**RE: PRESS RELEASE/OPINION EDITORIAL**

### IS YOUR LOCAL GOVERNMENT PREPARED?

President Trump and Interior Secretary Zinke have made promises about moving federal agency decision making back to the local level, putting Americans back to work and ensuring that the public lands are managed for “multiple use.” While that sounds wonderful, making those promises means more than a directive from Washington D.C., it means that your local governments have to take the lead in dealing with the federal agencies. Local decision making is not just for counties with federal lands, but federal decisions can impact the use of private property as well.

There are three major ways that a local government can influence federal agency decisions; the type of process used by a local government will depend on the type of decision to be made and the time constraints of the local government. One type of local participation is not “better” or “worse” than another type, again, it depends on the type of decision to be influenced and the preference of the local government.

So, again, I would pose the question, is your local government prepared for local decision making? The following should help:

#### I. CONSISTENCY REVIEW

The National Environmental Policy Act (NEPA) and the Federal Lands Policy and Management Act (FLPMA) mandate that federal agency actions be as consistent as possible with local land use policies or plans (LUP) and that the federal government must attempt

to reconcile its federal decisions with the local LUP. Those provisions are key in implementing the President's promises, but there is a catch. In order to require this "consistency review," a local government has to have a written local LUP, otherwise there is nothing for the federal agencies to be consistent with.

In my view, first, a local government should start with a review of the federal actions that the local government thinks will happen within the area. For example, are there threatened or endangered species or species of concern that will impact your constituents' private property; is the BLM or Forest Service revising its land use plans or implementing their land use plans; was a local area included within a National Monument meaning that a management plan will have to be prepared; are there any special designation lands that have been proposed like wild and scenic rivers, wilderness or conservation areas; or are there other federal decisions that may impact the private property of your constituents and/or the public lands?

Second, the local government should determine its processes for dealing with the federal agencies. When do you want to update the federal agencies regarding the local government's activities and when does the local government want updates from the federal agencies? How do you propose transmitting the local LUP to the federal agencies and offices? What is the local government's view of "early consultation?" How does the local government want "coordination" to occur? These processes should be carefully articulated in the local LUP.

Third, the local LUP should discuss the "custom and culture" of the citizens, the history of the area, and the environmental features important to the local government. This information can come from historical accounts, personal stories, and environmental descriptions such as state wildlife habitat maps, National Resources Conservation Service (NRCS) soil descriptions, forage surveys, and other data. I do not believe that a local government has to gather new data or participate in new studies, but it is important to compile existing data from as many sources as possible to support your policies.

Fourth, your local LUP should include economic data and analysis. This should be more than just gathering employment statistics, rather, the economic data included in the local LUP should support the local governments' policies. For example, if agriculture is important to the local economy, the local LUP should describe the economic detriment of a federal decision that would reduce Animal Unit Month (AUMs) on public land or restrict grazing on private land. Most land grant universities have good statistical data that can assist you with this analysis. You should also include information like circulating dollars, job numbers for the various economic segments, etc.

Finally, once the data is gathered, the local LUP should include the policies that the federal agencies should use for consistency review purposes. I believe that these policies are always stronger and provide a good basis from which the local government can work, if they are

based on the data described above regarding custom and culture, economic stability and environmental protection. I do not believe a simple “wish list” from the local government is a strong basis for protecting your constituents. Additionally, in making decisions in compliance with NEPA, the federal government must use the “best data and information available.” The best available information about the local effects of a federal decision on the local custom, culture, economy and environment should come from the local government itself.

Note that your local LUP has to be compliance with federal statutes and regulations with the “full force and effect of law.” However most federal statutes are very broadly written and allow for the survival of the local citizens, businesses and economies; the local government just has to assert those requirements.

## **II. COORDINATION**

FLPMA and the National Forest Management Act (NFMA) also require “coordination.” Coordination is a process; not a result. Additionally, while your local government should “coordinate” with the federal agencies to protect their constituents and influence federal decisions, there is no statute dictating the specifics of the coordination process. Because the elements or steps of coordination are not statutorily defined, local governments should use their local LUP to define what coordination means and how it should work.

## **III. COOPERATING AGENCY STATUS**

NEPA also allows local governments to participate in agency decision making process as “cooperating agencies.” An applicant for cooperating agency status must both (1) be a locally elected body such as a conservation district board of supervisors or a county commission; and (2) possess “special expertise.” A local government’s special expertise is defined as the authority granted to a local governing body by state statute. Being a cooperating agency allows the local government to participate in the “identification team” with a federal agency. It is just another tool that a local government should consider when dealing with federal agencies.

## **IV. FINAL THOUGHTS**

Local governments can have a major impact on federal agency decisions if they are prepared and willing to take on the challenge. There are over 1000 counties in the U.S. with a population less than 10,000 citizens. Each one of these rural counties should have a voice in federal decisions that impact it. Is your county prepared?

-END-