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Tony Tooke
Director
Ecosystem Management Coordination
United States Forest Service
1400 Independence Avenue, SW
Washington, DC 20250-1104
(Sent by land mail, fax, and electronically)

Chief Thomas L. Tidwell
Chief of the United States Forest Service
Mail Stop 1144
1400 Independence Avenue, SW
Washington, DC 20250
(Sent by land mail, fax, and electronically)

And

[INSERT NAME OF ADDRESSEE FOR COMMENTS]

Dear Chief Tidwell and Director Tooke:

This is a statement, report, analysis and comment that Sean Curtis and I have prepared regarding our recommendation that the proposed Section 219.4 of the 2011 Planning Rules proposal be replaced with the language of the existing, applicable Section 219.7 of the 1982 Planning Rules.

We propose that the following specific changes be made to Section 219.4 of the Proposed Rules:

Either replace the whole of Proposed Section 219.4 with Sections 219.6 (public participation) and Sections 219.7 (coordination with State, Indian Tribal, and local governments);

Or, Divide proposed Section 219.4 into two parts, the first setting forth the public participation language of the Section and the second setting forth the language of current Section 219.7 setting forth the protocol for coordination.

Either change would reflect the Congressional mandate that sets local government in a status separate from and more intimately involved than the general public. It is a Congressionally mandated separation that makes sense. Local governments represent the interests of all citizens of their jurisdictions, not just specific interest.

Local governmental officials have the responsibility for maintaining economic stability and the social cohesiveness of their communities. They are responsible for, and have the authority to exercise, protection of the police powers reserved by the Tenth Amendment, the protection of public safety, health and welfare.

If they fail to protect the stability of their jurisdictions, the Forests will suffer as they have near the communities that have died because of loss of the timber business. The Forest Service will suffer from a public credibility standpoint, at a time when the Congress is listening to citizens again.

As you know from our prior talks, I have been working with local governments to implement the "coordination" communication and negotiation process connecting federal agencies with local governments for over two decades. My efforts began with Owyhee County, Idaho, and from a rocky beginning the County and Bureau of Land Management have developed a mutually beneficial dialogue which is continual.

Using the same process, the County has established a successful dialogue status with the Fish and Wildlife Service, the Idaho Department of Environmental Quality (acting for EPA) and other agencies. The Forest Service has no land management responsibilities in the County. Major land use conflicts have been resolved, and the coordination process laid the base for the Owyhee Initiative, as I explained during the Andrus Conference which you, Chief Tidwell, attended.

Sean Curtis began working with Modoc County in California shortly after I began the effort with Owyhee County. Modoc faced problems with the BLM and the Forest Service. He, Carolyn Carey, June Roberts and a courageous Board of Supervisors led by Nancy Huffman, established a coordination protocol which continues today. Sean continues to assist Modoc County in successful communication with the Forest Service, BLM, and Fish and Wildlife.

Sean and I have seen the coordination process as defined by Congress in the Federal Land Policy Management Act and mandated for the Forest Service by the National Forest Management Act work. The Secretary of Agriculture's protocol set forth in the currently applicable Section 219.7 parallels the Congressional definition and has worked in a mutually beneficial manner in every local government where Forest Service personnel have followed the law.

We are engaged in a serious effort to persuade you to resist the temptation to change the Secretary's definition in Section 219.7 which mirrors the Congressional mandate. We have seen

the 219.7 protocol work. We have also seen the "cooperating agency" status encouraged by the proposed Section 219.4 fail the citizens of local governments. That status benefits only the Service, paid planners, and local government officials who do not believe that they have the authority to stand firm for their citizens who deserve real, meaningful representation at the table with federal agencies.

This report, analysis and comment is a two fold effort. It constitutes Sean and my personal position regarding the effectiveness of the currently applicable Section 219.7 and the interest of many counties and units of local government who seek meaningful representation at the table with your personnel.

I respect the belief in collaboration that you two have, and the fact that you have shown that belief in the national and regional meetings that you have provided. But, the units of local government that have signed on to this report were not specifically represented in those meetings. No local government association can represent the interests of the citizens of specific local governments.

The National Association of Counties does not represent the citizens of the counties that have signed on to this report and analysis. No State Association of Cities or Counties represent the citizens of the local governments that have signed on this report and analysis. Such associations represent the counties and cities who are members, but they do not represent the local citizens. Congress recognizes that fact, thus has specifically qualified local governments for special recognition and representation with the Forest Service and other federal agencies.

The second impact of this report and analysis is that many units of local government have shown interest in signing on to this report as their local plan and policy for the protocol to be followed in the coordination process mandated for your Service by Congress. They will expect that coordination be implemented in accord with their local plan and policy adopted by endorsing replacement of Section 219.4 of the Proposed Rules by Section 219.7 of the 1982 Planning Rules.

It is from that dual standpoint that we submit this report, analysis, comment and statement of local plans and policies as to the protocol for coordination between local governments and the Forest Service.

I. PERSONAL ANALYSIS, REPORT AND COMMENT AS TO SECTION 219.4 OF THE 2011 PROPOSED FOREST SERVICE PLANNING RULES SUBMITTED BY SEAN CURTIS AND FRED KELLY GRANT:

Sean Curtis is a Natural Resource Analyst who is assisting local governments to implement the coordination process with all federal agencies. His work with Modoc County historically has already been discussed; his work with that County continues today. He is knowledgeable regarding management of natural resources as well as the mutually beneficial coordination process. His knowledge and experience with the actual management of land uses and natural

resources makes him especially effective in implementing coordination not just from a protocol standpoint, but from a management standpoint.

Fred Kelly Grant initiated the first coordination process with the BLM which has continued without interruption for two decades in Owyhee County, Idaho.

Together, based on their personal experiences, they submit this report, analysis and comment requesting that the proposed Section 219.4 be replaced with Section 219.7 of the 1982 Planning Rules for the coordination process, and by Section 219.6 of the 1982 Planning Rules for public participation.

In the alternative, they request and suggest that the Proposed Section 219.4 be separated into two parts: the first containing public participation as set forth in the proposal (removing the governments of States, the Tribes and local entities of government from the public participation language), and the second as to coordination containing all provisions of Section 219.7 of the 1982 Planning Rules.

We urge reconsideration of the text of Section 219.4 of the Proposed 2011 Planning Rules as to coordination. The Section alters dramatically the elements of mutual participation that make up the Congressional requirement that the Forest Service "coordinate" with local governments. We urge that Section 219.7 of the 1982 Planning Rules be substituted for the proposed Section 219.4 as to coordination. Section 219.7 complies with the Congressional mandate of coordination and definition of coordination.

II. LOCAL PLAN AND POLICY REGARDING THE COORDINATION PROCESS SUBMITTED BY SIGNATORY COUNTIES AND LOCAL GOVERNMENTS:

Many counties and local governments have signed on to our report, analysis and comment. The signatory counties and local governments submit this report as their "coordination protocol", their local plan and policy as to the protocol by which coordination is implemented, not as a mere comment such as those submitted by Curtis, Grant and other members of the general public.

III. THE PROPOSED RULES HAVE NOT BEEN DEVELOPED IN COMPLIANCE WITH THE 1982 PLANNING RULES BECAUSE THEY HAVE NOT BEEN DEVELOPED IN COORDINATION WITH THE LOCAL GOVERNMENTS THAT HAVE SIGNED THIS REPORT AND ANALYSIS.

The Secretary of Agriculture served Notice that the 2011 Proposed Planning Rules would be prepared in accordance with the 1982 Planning Rules. Section 219.7 of those 1982 Rules requires that the Forest Service "coordinate" development of the Rules with local governments. That Section must be followed in the final review and adoption of Planning Rules, but it has not been followed to this point---at least as to the local governments signatory to this report and analysis.

Section 219.7 should have been followed even in the development of the draft Rules, but it was not. Chapter 4 of the Proposed Rules lists hundreds of organizations and individuals who were consulted and involved in the development of the Rules. But, the coordination with individual and specific local governments required by Congress was not implemented.

The specific elements of coordination set forth in Section 219.7 have not been followed with the signatory counties and entities of local government. So, to this point, the Service has failed to comply with the Congressional mandate of coordination and failed to comply with regulatory direction from the Secretary of Agriculture.

Unless the Service remedies its non-compliance by adequately coordinating with the signator counties and local governments with regard to the proposed Planning Rules, they will no doubt suffer the same judicial fate as the prior two sets of proposals that have been rejected for non-compliance with the law.

The counties and local governments signatory to this analysis submit the document as their local policy as to how coordination should be implemented. They submit that Section 219.7 of the 1982 Planning Rules should be substituted for Section 219.4 of the 2011 Proposals. In so doing, they represent to the Chief and to the Secretary that the provisions of Section 219.7 constitute their local plan and policy for implementing coordination. By submitting the language of Section 219.7, they expect that the Service will coordinate with each of them in attempting to resolve the conflict between their 219.7 policy and the proposed Section 219.4.

IV. SECTION 219.4 OF THE PROPOSED 2011 PLANNING RULES SHOULD BE REPLACED BY THE EXACT LANGUAGE OF SECTION 219.7 OF THE EXISTING AND APPLICABLE 1982 FOREST SERVICE PLANNING RULES.

In Section 219.7 of the 1982 Planning Rules, the Secretary of Agriculture carefully set forth all the elements of coordination required by Congress in the only Congressional definition of "coordination" or "coordinate" enacted into natural resource management law.

Section 219.7 of the 1982 Planning Rules closely parallels the Congressional definition of "coordination" and "coordinate" contained in the Federal Land Policy Management Act. FLPMA was enacted one day prior to enactment of the National Forest Management Act which requires the Forest Service to engage in "coordination" with local governments. Until Congress changes that definition, it is the definition that has the force of law.

Counties and other entities of local government throughout the west have utilized the coordination communication process with the Forest Service to the mutual benefit of local officials and Forest Service personnel. Where Forest Service personnel have followed the Secretary's process, management has progressed well without expensive, wasteful litigation.

Where Forest Service personnel have followed the Rules, the Service has benefitted from having a clear roadmap to successful communication and resolution of conflicts. Section 219.7 very clearly identifies when and how coordination takes place in the planning process. It clearly identifies who is responsible for developing the coordination process, the manner in which the planning documents should display and discuss local government plans and policies, and how the Forest Service should review local plans and policies to find inconsistencies or conflicts with federal plans and assist in resolving such conflicts.

It identifies one major element of coordination as defined by Congress: the need to meet with local officials and communicate with them regarding issues and resolution of conflicts. That element of meeting, of face to face discussions, is sadly missing from the proposed Section 219.4. Whether to meet government to government is left by the Section's language totally to the discretion of the local "responsible officer". Congress never sublimated coordination to the discretion of a local line officer.

The section is the very core of coordination. It sets in place the protocol through which local governments and the Service can find mutually beneficial resolution of conflicts. The Council on Environmental Quality, charged with oversight and control of NEPA planning processes, requires that NEPA processes be put in place "as early as possible" in the planning effort so that conflicts can be identified and resolved early, prior to issuance of a final document that must be challenged through litigation—administrative or judicial. Section 219.7 provides the means for the Service to comply with CEQ's regulations. If it is left in place, and the Service's personnel follow it, there will never be question as to whether the Service has complied with the law as set forth by NEPA and CEQ.

Those counties and entities of local government that have engaged the Forest Service in coordination have proven that the process works to the advantage of both parties. Modoc County in California, Glen Lake Irrigation District in Montana, Custer County in Idaho, and Fremont County in Wyoming, among others, have utilized the 219.7 process to engage the Service in discussions that have so far negated the need for litigation.

Wherever Forest Service personnel are willing to comply with the Congressional mandate and definition of coordination with local government, Section 219.7 presents a clear path to compliance. The proposed Section 219.4 **DOES NOT. THE PROPOSED SECTION 219.4 DOES NOT PROVIDE A PROCESS THAT COMPLIES WITH THE CONGRESSIONAL MANDATE OF COORDINATION.**

Make no mistake, as we demonstrate hereinafter, Congress has ordered that the Forest Service coordinate, in the true sense of that word, with local government. Section 219.7 of the 1982 Rules sets forth the definition of coordination that Congress has provided by statute. The proposed Section 219.4 DOES NOT. If the proposed Section 219.4 is adopted, the signatory counties and entities of local government will still insist on coordination as defined by Congress, not as set forth in 219.4. We will prevail, and the Service personnel will have no clear protocol in their own rules to follow.

We urge that the Secretary leave in place the provisions of Section 219.7 of the 1982 Planning Rules related to coordination with local governments.

The signatory counties and local governments insist that Section 219.7 of the 1982 Planning Rules, which constitutes their local plan and policy for coordination be substituted for Section 219.4 of the Proposed 2011 Planning Rules.

V. PROPOSED LANGUAGE TO REPLACE SECTION 219.4 OF THE PROPOSED 2011 RULES:

Section 219.7, which should replace proposed Section 219.4, as to coordination with local governments, provides as follows:

Sec. 219.7 Coordination with other public planning efforts.

(a) The responsible line officer shall coordinate regional and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes.

(b) The responsible line officer shall give notice of the preparation of a land and resource management plan, along with a general schedule of anticipated planning actions, to the official or agency so designated by the affected State (including the Commonwealth of Puerto Rico). The same notice shall be mailed to all Tribal or Alaska Native leaders whose tribal lands or treaty rights are expected to be impacted and to the heads of units of government for the counties involved. These notices shall be issued simultaneously with the publication of the notice of intent to prepare an environmental impact statement required by NEPA procedures (40 CFR 1501.7).

(c) The responsible line officer shall review the planning and land use policies of other Federal agencies, State and local governments, and Indian tribes. The results of this review shall be displayed in the environmental impact statement for the plan (40 CFR 1502.16(c), 1506.2). The review shall include–

(1) Consideration of the objectives of other Federal, State and local governments, and Indians tribes, as expressed in their plans and policies;

(2) An assessment of the interrelated impacts of these plans and policies;

(3) A determination of how each Forest Service plan should deal with the impacts identified; and,

(4) Where conflicts with Forest Service planning are identified, consideration of alternatives for their resolution.

(d) In developing land and resource management plans, the responsible line officer shall meet with the designated State official (or designee) and representatives of other Federal agencies, local governments, and Indian tribal governments at the beginning of the planning process to develop procedures for coordination. As a minimum, such conferences shall also be held after public issues and management concerns have been identified and prior to recommending the preferred alternative. Such conferences may be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced.

(e) In developing the forest plan, the responsible line officer shall seek input from other Federal, State and local governments, and universities to help resolve management concerns in the planning process and to identify areas where additional research is needed. This input should be included in the discussion of the research needs of the designated forest planning area.

(f) A program of monitoring and evaluation shall be conducted that includes consideration of the effects of National Forest management on land, resources, and communities adjacent to or near the National Forest being planned and the effects upon National Forest management of activities on nearby lands managed by other Federal or other government agencies or under the jurisdiction of local governments.

[47 FR 43037, Sept. 30, 1982, as amended at 48 FR 29122, June 24, 1983]

Section 219.7 was issued by the Secretary of Agriculture as compliance with Section 219.1 that set forth the principles to guide Forest Service planning. Those principles included the following:

(9) Coordination with the land and resource planning efforts of other Federal agencies, State and local governments, and Indian tribes;

(10) Use of a systematic, interdisciplinary approach to ensure coordination and integration of planning activities for multiple-use management

VI. THE LANGUAGE OF SECTION 219.7 OF THE 1982 PLANNING RULES COMPLIES WITH THE CONGRESSIONAL MANDATE TO COORDINATION AND WITH THE CONGRESSIONAL DEFINITION OF COORDINATION.

A. The Provisions of the Forest and Rangeland Renewable Resources Act, the Federal Land Policy Management Act and the National Forest Management Act, and the Legislative History of Said Acts Makes It Patently Clear That Congress Defined "Coordination" In Terms That Require a Process Such as That Set Forth in Section 219.7 of the 1982 Planning Rules.

The language of Section 219.7 was intended to, and did, implement the mandate by Congress that Forest planning be performed in "coordination" with local governments. The legislative history of the various Forest Management Acts, beginning with the Multiple Use Sustained Yield Act of 1960 demonstrates that Congress intends that "coordination" be a principle by which Forest planning is conducted----not "cooperation", not "collaboration", but "coordination.

1. The Legislative History Shows Intent of Congress

The Multiple Use Sustained Yield Act of 1960 was enacted June 12, 1960. It was enacted to be "supplemental" to the Organic Act of 1897 (16 U.S.C. 475) by which the National Forests were established.

One of the "supplements" to the Organic Act was the requirement stated in Section 3 of the Multiple Use Sustained Yield Act that the Secretary could "cooperate", not "coordinate", but "cooperate" with local governments. The actual language of Section 3 is as follows:

"In the effectuation of this Act, the Secretary of Agriculture is authorized to cooperate with interested State and local governmental agencies and others in the development and management of the National Forests." (16 U.S.C. 530)

The Multiple Use Sustained Yield Act of 1960 remained the law until the Forest and Rangeland Renewable Resources Act was enacted on August 17, 1974. Section 6 of the new Act made a substantial and significant change to the "cooperation" language of the Multiple Use Act. In Section 6 for the first time Congress directed the Secretary of Agriculture to engage in " coordination".

As pointed out hereinafter, the term "coordination" had first been introduced to natural resource and land use by the terms of the National Environmental Policy Act (NEPA) passed in 1970. Congress then applied the same term and concept to the Forest Service four years later in the Forest and Rangeland Renewable Resources Act.

The provisions of Section 6 (16 U.S.C. 1604) stated:

"(a) As a part of the program provided for by Section 4 of this Act, the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies."

Congress thus changed the Secretary's duty to "cooperate" with local governments to a duty of seeking "coordinated" planning with local governments.

The fact that the change from "cooperate" to "coordination" occurred in 1974 becomes very significant, given the action by the Congress in that year in developing in earnest the

Federal Land Policy Management Act as the organic act for management of the western rangelands by the Bureau of Land Management.

Passage of the Forest and Rangeland Renewable Resources Act occurred during a flurry of Congressional action resulting from an increased public awareness of environmental concerns as well as the Report issued by the Public Land Review Commission established by Congress. Environmental concerns had led the Nixon administration to spearhead passage of the National Environmental Policy Act of 1970 (NEPA).

In passing NEPA, Congress emphasized the importance of involving local government in federal land and resource planning. In 42 U.S.C. 4331 (a) Congress made it clear that national policy called for "cooperation" with local governments by using "all practicable means" to "improve and coordinate" federal plans. Use of the term "coordinate" here was the first time that Congress had introduced the commonly used term relating to land use, natural resource use and environmental protection.

Congressional use of the terms "cooperation" and "coordinate" in the same section of NEPA makes it clear that it intended to distinguish between the two. The dictionary definitions of the two terms emphasize the unique characteristics of "coordinate" as implying a basis of equality in participating in the process.

After "coordinate" made its entry into law in NEPA in 1970, Congress changed "cooperate" to "coordinate" in the 1974 Forest and Rangeland Renewable Resources Act. Pretty clearly, it knew what it was doing.

In the year following passage of the Forest and Rangeland Renewable Resources Act, as Congress considered the rangelands organic act, FLPMA, Senator Packwood of Oregon introduced the requirement that the federal agency "coordinate" with local government. The Forest and Rangeland Renewable Resources Act had not defined the term "coordinate", so Congress remedied that by including the Packwood definition in FLPMA.

The Packwood language, which is today 43 U.S.C. 1712, included the obligation of the Secretary of Agriculture to "coordinate" Forest plans with the planning and management programs of the Indian Tribes. It then proceeded to define the term "coordinate" for the first time. Packwood's provision, which today is 43 U.S.C. 1712, defined the term as follows:

"The Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. Land use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses.

(b) Coordination of plans for National Forest System lands with Indian land use planning and management programs for purposes of development and revision

In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs.

(c) Criteria for development and revision
In the development and revision of land use plans, the Secretary shall—

(1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;
(2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;
(3) give priority to the designation and protection of areas of critical environmental concern;
(4) rely, to the extent it is available, on the inventory of the public lands, their resources, and other values;
(5) consider present and potential uses of the public lands;
(6) consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;
(7) weigh long-term benefits to the public against short-term benefits;
(8) provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and
(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended [16 U.S.C. 460l–4 et seq.], and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs.

In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act. "

At least the Bureau of Land Management opposed enactment of the "coordination" requirement and definition on the grounds that it would make their job of management more difficult. Obviously Congress believed that if coordination with local government made the management job more difficult, so be it. The coordination requirement and definition became law.

FLPMA, with the coordination requirement and definition in place was enacted on October 21, 1976.

On the very next day, October 22, 1976, the National Forest Management Act (NFMA) was passed as legislation amending the Forest and Rangeland Renewable Resources Act. The NFMA
left intact the requirement that the Secretary of Agriculture "develop, maintain, and, as appropriate, revise land and resource management plans. . .coordinated with the land and resource management planning processes of State and local governments and other federal agencies."

As already noted, the coordination requirement is contained in 16 U.S.C. 1604. The National Forest Management Act amended Section 1604, with amendments replacing language that immediately followed the coordination requirement. Leaving the coordination requirement intact, and beginning the amendments immediately following the requirement makes it obvious to anyone that Congress intended to continue the requirement of coordination.

It would be totally disingenuous to contend that when Congress defined "coordination" in a land and natural resource statute on October 21, 1976, it did not intend that same definition to apply in a land and natural resource statute enacted the very next day---on October 22, 1976.

This legislative history makes obvious why the Courts have ruled hundreds of times that statutes which are "in para materia" must be read consistently. The most noted expert on statutory construction, Professor Sutherland stated in his "Statutory Construction" that statutes are "in para materia" when they relate to "the same class of persons or things, or have the same purpose and object." He points out that the courts have clearly held that such statutes must "be construed together". Section 5202, "Statutory Construction".

FLPMA and NFMA are patently such statutes. They both deal with protective and productive management of the nation's public lands: the rangelands and the National Forests. They were both passed at a time when Congressional attention was focused on newly created management principles to govern multiple uses of the nation's lands in a manner that protects a sound environment. All aspects of the environmental concerns displayed in FLPMA were and are present in NFMA.

It would be ludicrous to think that Congress did not intend the definition of "coordination" contained in FLPMA passed on October 21 to apply to the use of "coordination" in NFMA passed on October 22. To believe that Congress defined "coordination" on October 21, then used the term on October 22 but intended a different, unstated, meaning, would not only

be ludicrous, it would violate historically and traditionally established "canons of statutory interpretation".

Courts in all states, and in the federal districts, have held that statutes must be interpreted in a way that "avoids an absurd result the Legislature did not intend." Bruce v. Gregory, 65 Cal. 2d 666, 673 (1967). It would certainly be "absurd" to argue that Congress intended two different definitions for the term "coordination" in statutes enacted one day apart.

The Secretary of Agriculture made it patently clear that he so understood the Congressional intent when he defined "coordination" in Section 219.7 of the 1982 Planning Rules. This was the first and only definition of "coordination" styled by the Secretary after enactment of FLPMA and NFMA. The definition set forth hereinabove closely follows the Congressional definition of "coordination" contained in FLPMA.

VII. RATIONALE AS TO WHY PROPOSED SECTION 219.4 DOES NOT COMPLY WITH THE CONGRESSIONAL MANDATE AND THE MEANING OF COORDINATION AS OPPOSED TO PARTICIPATION OR COOPERATION.

Section 219.4 is entitled "REQUIREMENTS FOR PUBLIC PARTICIPATION", and the rule completely minimizes the meaningful coordinated involvement of local governmental officials in a government to government setting with the Forest Service. The rule reduces local government involvement to that of the general public. This approach does not comply with the statutes passed by Congress.

Note that in the 1982 Rules, the Secretary of Agriculture complied with the Congressional mandate by providing for "Public Participation" in Section 219.6 and "Coordination" in Section 219.7.

The comments explaining the proposed section relates that the Service has used the CEQ "Collaboration Handbook" as a base for the rule. That handbook is not law. The Congressional mandate of coordination is law and should be the base for the proposed rule. The proposal manages to diminish the role of local government to that of simply one organization among public organizations. It is a status that defies the will of Congress and defies the simple dictionary definition of "coordination."

The rule defines the "public" as including "local governments". So, all the signatory counties and local governments to this report are reduced by the proposal to the same level as "individuals" and "private organizations". Thus, the proposal gives the same standing to the non-governmental organizations that actively oppose logging, recreation, access, and every other use of the Forests that contributes to the economic stability of local government as it does to the impacted local government.

Every individual and organization that opposes the use of motorized vehicles and all off-road vehicles will have the same standing as the local government. Every organization that seeks shut-down of forest roads will have the same standing as the local government. Every

organization that seeks to prevent all logging will have the same standing as the local government. Every individual and organization that opposes the concept that a hunter should be able to retrieve his game will have the same standing as the local government.

None of those organizations have the obligation to protect the economic stability of the communities adjacent to the Forests as do the local governments. None of those organizations have the obligation to pay the costs of search and rescue as do the local governments. None of those organizations have to suffer the impact of fire damage, loss of jobs, and loss of revenue from users of the Forests as do the local governments. But they will have the same standing in the planning effort as do the local governments.

The proposal is not in compliance with the Congressional mandates that local governments be accorded the coordinate role compatible with their responsibilities to care for and fund the public health, safety, and welfare.

Subpart (a) of the proposal allows the "responsible official" of the Service to use "collaborative processes" regarding local governments and all other members of the public only when he or she determines it "feasible and appropriate". So, whether to even involve local governments in "collaboration" is solely within the discretion of the official. Congress gives no such discretion to the Service; coordination with local governments is mandatory, not discretionary.

Subpart (a) also allows the "responsible official" to take into account "cost, time and staffing" in deciding whether to invoke "collaboration". This further provides the official with an easy excuse to refuse to even "collaborate". When he or she determines that it is too costly, takes too much time, or involves too much staff time to "collaborate", local governments will have no recourse. Congress gives no such discretion to the Service; coordination with local governments is mandatory, not discretionary. Congress recognized long ago that conflict resolution through coordination will in the long run SAVE COST, TIME AND STAFFING.

Subpart (a) allows the "responsible official" to resort to use "contemporary tools, such as the internet" to engage local governments in "collaboration". Such discretion strips away totally the capability of local governments to engage the Service in the meaningful way mandated by Congress. A local governing body cannot meet the public and open meeting laws of any of the 50 states by engaging in "internet coordination." Use of the internet is not the government to government coordination mandated by Congress.

Subpart (a)(1) allows the "responsible official" the "discretion to determine the scope, methods, forum, and timing of" any opportunity for local government to participate in planning. He or she can determine that local governments can participate only by internet, or only in the Forest Service office, which will prevent any participation by the full governing body. He or she can determine that only one member of a Board of commissioners or supervisors, or only the mayor, or only one member of a city council, can participate, thus again depriving the governing body from participation. Congressional mandate of coordination with "local governments" does not contemplate the Service being able to limit participation to one member of a governing body.

Subparts (a)(2)(3)and (4) provide that the "responsible official" shall "ENCOURAGE" participation by individuals, youth, low-income populations, minority populations, and private landowners. Local governments are not included in the categories of the "public" that are privileged to be ENCOURAGED TO PARTICIPATE. Again, this provision diminishes Service commitment to meaningfully engage local governments in planning as Congress requires.

In fact, subpart (a)(8) provides that the "responsible official" must only "provide opportunities" for local governments to participate in planning—while he or she is to "encourage" other elements of the public to participate, he or she must only "provide opportunities" for local government participation. The Congressional mandate of coordination is not satisfied even in the slightest way by this soft, downplayed role afforded to local governments.

The only thing that the "responsible official" can encourage for local governments is to seek permission for "cooperating agency status in the NEPA process for a plan development, amendment, or revision." The "cooperating agency status" is not even incorporated in any statute passed by Congress. It is a category first suggested in a federal interagency memorandum, and then included in a regulation issued by the Council on Environmental Quality. It is a regulatory category applicable only to and limited to the NEPA process.

As a "cooperating agency" the governing body does not meet government to government with the Forest Service as agent of the United States government. The governing body simply gets to select someone to participate as a member of a planning team, with no governmental authority forming a base for the member. Congress did not mandate "cooperating agency status"; it mandated coordination for local governments, and the entire subpart (a) is non-compliant with that mandate.

Subpart (b) provides for "coordination" with local governments only to the extent that the "responsible official" deems "practicable and appropriate". In other words, when the "responsible official" wants to coordinate. The proposal is so far out of compliance with the Congressional mandate that it constitutes an administrative attempt to evade the law. Such evasion simply cannot be allowed to succeed. If the proposal stands as written, it must be challenged in a federal court.

Even if the "responsible official" graciously decides to "coordinate" with local government, all he or she has to do is review local plans or policies and report his or her review in the environmental impact statement for the plan. There is no requirement, as in the 1982 Planning Rules, for the official to even meet with the local government. There is no requirement that he or she discuss the review with the local government. All that is needed to comply with the "coordination" provision is to: read the "objectives of. . .[the] local governments as expressed in their plans and policies", "consider . . . the compatibility and interrelated impacts" of the plans and policies, consider the "opportunities for the plan to address the impacts", consider the "opportunities to resolve or reduce conflicts", and report his or her considerations in the EIS.

Nothing in the subpart even requires that the "responsible official" meet with the local governing body and discuss the review or considerations. To the contrary, the 1982 Rules

require that the official to "meet with" local government officials "at the beginning of the planning process to develop procedures for coordination." (Section 219.7 (d)) The Rule further provides:

"At a minimum, such conferences shall also be held after public issues and management concerns have been identified and prior to recommending the preferred alternative. Such conferences may be held in conjunction with other public participation activities, if the opportunity for government officials to participate in the planning process is not thereby reduced."

The 1982 Rule also requires the Service official to "seek input from . . .local governments . . .to help resolve management concerns in the planning process and identify areas where additional research is needed. This input should be included in the discussion of the research needs of the designated forest planning area."

All the elements of coordination included in the 1982 Rules by the Secretary of Agriculture who was trying to comply with the Congressional mandate have been eliminated in the proposal. A Forest Service official can comply with the coordination requirement in the proposal without ever meeting with or discussing any issue with the local governing body. That is not compliance with the National Forest Management Act that requires coordination as defined by Congress.

VIII. THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA HAS MADE IT CLEAR THAT CONGRESS HAS MANDATED COORDINATION, NOT COOPERATION.

In September, 2009, United States District Judge Marilyn Hall Patel, presiding in the Northern District of California, held in California Resources Agency v. United States Department of Agriculture, that the National Forest Management Act required the Forest Service to "coordinate" with the State of California. The Court's decision cited 16 U.S.C. 1604, the same section that requires coordination also for local governments.

The Court stated:

"Congress plainly recognized and endorsed the respective states' interests in the management of national forests by enacting the provision of the NFMA requiring the Forest Service to coordinate forest planning with state resource management processes. See 16 USC Section 1604(a). In light of this statutory recognition, it would be odd indeed to hold that California has no concrete interest in activities in the national forests. California has a concrete interest in the management of national forests within its borders."

The Court's statement and reasoning applies equally to local governments which are included in 16 USC Section 1604 (a).

IX. CONCLUSION

For the reasons stated in this report and analysis, we respectfully request and suggest that the proposed Section 219.4 of the 2011 Proposed Planning Rules be replaced as follows:

Either replace it with Sections 219.6 (public participation) and 219.7 (coordination with governments, local and otherwise) of the currently valid and applicable 1982 Planning Rules; or

Separate proposed 219.4 into two parts: the first dealing with public participation as it does (but excluding local government from its terms), the second dealing with coordination in the language of Section 219.7 of the 1982 Planning Rules.

We believe that the Congressional mandate and definition of "coordination" requires the change. Even the common, simple definition of the term "coordinate" or "coordination" requires the change. Even if you do not accept the fact that the FLPMA definition of coordination will be sustained if we must seek judicial enforcement, you have to live with the dictionary definition of the terms. You have to realize that when Congress uses the terms "coordination" and "coordinate" in the same statutes in which it also uses the terms "cooperate" and "cooperation" it knows the difference. We hope that it will not take litigation to point that out.

We will be glad to discuss any of these concepts with you or your designees should you or they decide to do so.

Cordially,

Fred Kelly Grant

Sean Curtis

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SUZANNE ALLEN DE SANCHEZ
Clerk of the Board

El Dorado County endorses the attached Personal Analysis, Report and Comment as to Section 219.4 of the 2011 Proposed Forest Service Planning Rules Submitted by Fred Kelly Grant and Sean Curtis and the Comment Letter Submitted by Fred Kelly Grant LTD and Sean Curtis dated February 23, 2011, and submits it as the rational for this adoption of Section 219.7 of the 1982 Planning Rules of the Forest Service as the County plan and policy for the protocol by which Coordination between the County and the United States Forest Service shall be implemented.

Adopted and endorsed this _____ day of March, 2011.

_____ _____

Raymond J. Nutting, Chairman
Board of Supervisors

Date

Attest:
Suzanne Allen de Sanchez
Clerk of the Board of Supervisors

By:_____
Deputy Clerk