USDA United States Department of Agriculture

Understanding Your Opportunities for Participating in the Forest Service Planning Process

A Guide for State, Local, and Tribal Governments

Prepared by the Federal Advisory Committee on Implementation of the 2012 Land Management Planning Rule
Washington Office 2016

Forest Service Version 1.0 June 2016

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

The following photos are used with permission of the photographer:

Pg 11 – Petrus Barcus (public meeting)
Pg 14 – Petrus Barcus (public meeting)
Pg 20 – USDA Forest Service image (stream monitoring)
All other images from istockphoto.com

Foreword

In 2012, the Forest Service, an agency within the U.S. Department of Agriculture, updated its land management planning requirements for the first time in 30 years with a new "Planning Rule." A key facet of this new rule is that it emphasizes the Forest Service's responsibility to engage with the public and to work more closely with State, local, and tribal governments when national forest managers amend or revise their land management plans.

Because of the importance of sustainably managing the National Forest System with the help of the public and other stakeholders, the Chief of the Forest Service and the U.S. Secretary of Agriculture established a Federal Advisory Committee. Made up of citizens representing diverse interests, the intent of the committee is to help the Forest Service achieve a more collaborative approach to land management planning as the agency implements the new Planning Rule.

While working with the Forest Service, the committee recognized that the new rule represents a big change in how the Forest Service conducts land management planning and felt strongly that a guide was essential to help State, local, and tribal governments effectively navigate and get involved in the planning process. This is that guide. We hope you find it useful.

Susan Jane Brown and Rodney Stokes, Committee Co-Chairs

The National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule

This committee was established under the authority of the U.S. Secretary of Agriculture in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended.[1] The following members were appointed by the U.S. Secretary of Agriculture:

Mike Anderson	The Wilderness Society
William Barquin	Kootenai Tribe of Idaho
Susan Jane Brown	Blue Mountain Forest Partners
Robert Cope	Lemhi County Commissioner, ID (Ret.)
William Covington*	Northern Arizona University
Adam Cramer	Outdoor Alliance
Daniel Dessecker	Ruffed Grouse Society
Russ Ehnes	National Off-Highway Vehicle Conservation Council
Steve Kandell*	Trout Unlimited
James Magagna	Wyoming Stock Growers Association
Joan May	San Miguel County Commissioner, CO
Pamela Motley*	West Range Reclamation, LLC
Peter Nelson	Defenders of Wildlife
Martin Nie	University of Montana
Candice Price	Urban American Outdoors
Vickie Roberts	Shelton Roberts Properties
Greg Schaefer	Arch Coal, Inc. (Ret.)
Angela Sondenaa	Nez Perce Tribe
Rodney Stokes	Michigan Governor's Office (Ret.)
Christopher Topik	The Nature Conservancy
Thomas Troxel	Intermountain Forest Association
Lorenzo Valdez	Rio Arriba County
Ray Vaughan	Noted Author and Raconteur
Lindsay Warness	Boise Cascade Company

*First term members (June 2012-2014)

[1] See Public Law 92–463, appendix 2

This guide is dedicated to Lorenzo Valdez, who served on the Planning Rule Federal Advisory Committee representing the interests of traditional people and their access to federally managed land until his death on May 3, 2015.

Over the course of his life and career, Valdez accumulated experiences that were of great value to the committee, generally, and to shaping the Government Guide, in particular. He served as County Manager in Rio Arriba County in New Mexico and was a rancher, farmer, community activist, and family man. In his more than 3 years of service on the committee, Valdez emerged as a leader among leaders.

Valdez brought both his heart and mind to the table. He was a bridge builder among the various perspectives represented; a philosopher that understood the intersection between social, cultural, economic, and ecological dimensions from lived experience; and an advocate for traditional people. Valdez constantly reminded us that our job was to ask the right questions. Throughout his time with the committee, Valdez became more than an esteemed colleague: he was a friend and mentor to many. We dedicate the guide to Lorenzo Valdez, without whom the vision for this guide would never have come to fruition.

Contents

Purpose of this Guide ***7***

What Defines a State, Local, or Tribal Government? 8

Participating in the Planning Process ***10***

Overview of the Land Management Planning Process 10

Roles and Responsibilities of Participating Governments 11

Understanding the Roles and Responsibilities of the Forest Service 12

Methods of Engagement 14

Opportunities To Resolve Conflicts Prior to a Final Decision 19

Continuing Participation After the Plan Is Approved ***20***

Implementation of the Plan 20

Monitoring and Adaptive Management 20

Conclusion ***22***

Appendix: Sample Intergovernmental Memorandum of Understanding ***23***

Purpose of This Guide

In 2012, the U.S Department of Agriculture issued a new Planning Rule that guides the development, revision and amendment of land management plans for the forests and grasslands in the National Forest System. The 2012 Planning Rule places a new focus on coordination, cooperation, and collaboration between governmental interests and the Forest Service, an agency within the U.S. Department of Agriculture, as they work together to fulfill their respective missions. The purpose of this guide is to help State, local, and tribal governments better understand their opportunities for being effectively involved in the Forest Service's land management planning process. The guide covers topics such as the roles and responsibilities of participating governments, desired levels and methods of engagement, assessing the resources needed to participate effectively, and continuing participation in ongoing monitoring and adaptive management once a plan has been adopted.

The collaborative role of each State, local, and tribal government (and its agencies) in the planning process is unique. The opportunity for their involvement throughout the planning process is both required by the Planning Rule and essential to the successful development and implementation of land management plans. Intergovernmental participation, when carried out properly and with mutual respect for the rights and responsibilities of each government, can result in more robust land management plans that meet the needs of those governments. Such participation allows governments to more effectively coordinate the best use of limited resources, staffs, and budgets, as they work cooperatively to manage forest resources on lands across multiple jurisdictions.

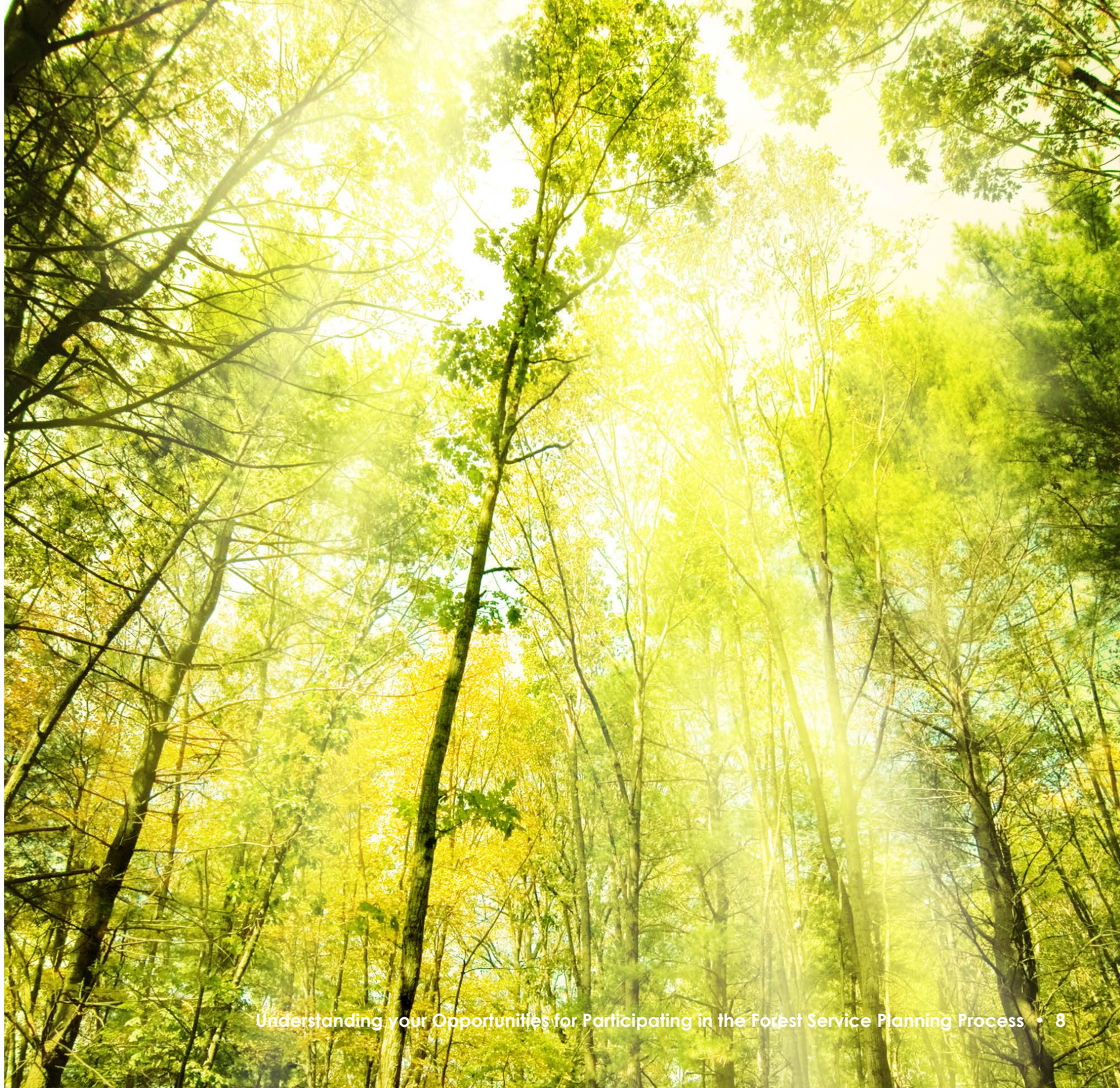
This guide is designed to describe other methods of intergoernmental engagement that tribal governments may find useful in addition to government-to-government consultation.

Note: This guide addresses matters generally applicable to State, local, and tribal governments, and is not intended to supersede or supplant government-to-government consultation and coordination with federally recognized Indian tribes and Alaska Native Corporations required by Executive Order 13175 and Public Law 108-199, 118 Stat. 452, as amended by Public Law 108-447, 118 Stat. 3267 and FLPMA, at 43 USC 1712 (b), and United States Department of Agriculture and Forest Service policies. Use of the term "tribe," "tribes," or "tribal" is intended to include federally recognized Indian tribes and Alaska Native Corporations. Federally recognized Indian tribes and Alaska Native Corporations are listed by the Bureau of Indian Affairs at http://www.bia.gov/WhoWeAre/BIA/OIS/TribalGovernmentServices/TribalDirectory/

What Defines a State, Local, or Tribal Government?

The Planning Rule specifies that the Forest Service encourage participation by Federal agencies, State and local governments, and federally recognized Indian tribes or Alaska Native Corporations, but it does not describe what defines these entities. Therefore, entities seeking to be considered as a State, local, or tribal government should first look at whether they are recognized as such by applicable laws. Tribal entities are determined by Federal and tribal law, and State agencies and local governments are determined by State law. See the examples of some unique government entities discussed on the next page.

To be most effective, State, local, and tribal governments should be prepared to clearly describe to Forest Service planning teams how their public mission or responsibilities are affected by or affect the management of National Forest System lands. Governments interested in participating will have a greater impact on the planning process by demonstrating their intent to contribute to planning efforts in an informed and engaged way. How much a government entity will need to be involved will vary by the type of engagement it is seeking as discussed in the next section.



Examples of Unique Government Entities

New Mexico Land Grants

A special form of local government in New Mexico is the community land grant-*mercedes*. If they are organized under New Mexico's land grant laws, community land grant-*mercedes* in New Mexico are political subdivisions of the State. Twenty-four community land grant-*mercedes* are official units of government within the State of New Mexico, while eight other community land grant-*mercedes* are not. Each State-recognized community land grant-*mercedes* has an elected board of directors that holds authority over planning, zoning, and other activities, including regulating land management activities consistent with State laws.

Some of the New Mexico land grant-*mercedes* have land use plans. For example, the San Joaquin De Chama Land Grant Management Plan includes management direction for riparian areas, camping, mining, grazing, cultural resources, as well as other uses and resources. Forest Service managers should give serious consideration to these land use plans, like other local government land use plans, during forest planning.

The New Mexico Land Grant Council is an agency of the State government administratively attached to the New Mexico Department of Finance and Administration. It was founded in 2009 by statute and provides support to the 24 State-recognized land grants-*mercedes* in New Mexico. The council also serves as a liaison between these land grant-*mercedes* and other State agencies and the Federal Government. The New Mexico Land Grant Council and the Forest Service have developed a Memorandum of Understanding, along with a Master Stewardship Agreement, that is intended to pave the way to better cooperation and communication between the Forest Service and the land grant community.

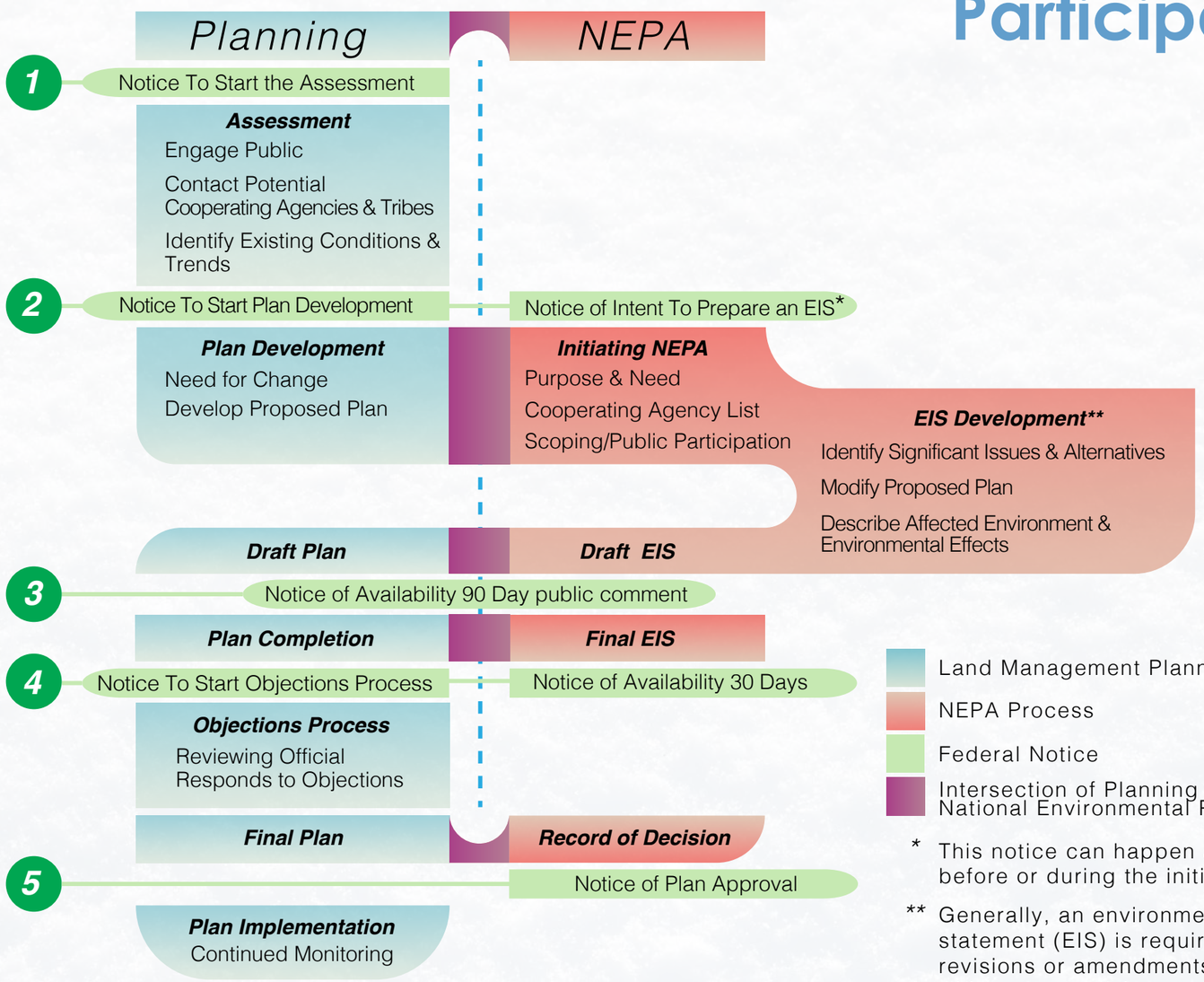
Historic Preservation

Preservation efforts can result in unique regional organizations through congressional designation of National Heritage Areas. For example, the Northern Rio Grande National Heritage Area is a federally designated National Heritage Area in New Mexico. This national heritage area includes an area of the upper Rio Grande valley that has been inhabited by the Puebloan peoples since pre-Columbian times. Eight pueblos are included in the heritage area: the Nambé, Ohkay Owingeh, Picuris, Pojoaque, San Ildefonso, Santa Clara, Taos and Tesuque pueblos, as well as Jicarilla Apache reservation. Geographically, the National Heritage Area consists of three counties —Rio Arriba, Taos, and Santa Fe.

The National Historic Preservation Act contains language about the need for participation of local government agencies with Federal agencies in land use planning, as well as in other plans that conserve cultural traditions and historic properties and support economies. This law is consistent with the intent of the Planning Rule and serves as a source of information, funding, and collaboration in land management planning, especially regarding the Planning Rule's requirement to consider social, cultural, and economic elements in planning. The act encourages the study and conservation of custom, culture, and traditions within the context of natural resource landscapes and encourages participation with local governments, tribal, and other "public" entities to consider these elements in implementing land management plans.

Participating in the Planning Process

Overview of the Land Management Planning Process



Land Management Planning Process

NEPA Process

Federal Notice

Intersection of Planning and the National Environmental Policy Act (NEPA)

* This notice can happen at any time before or during the initiation of NEPA

** Generally, an environmental impact statement (EIS) is required for plan revisions or amendments. However, with some amendments, only an environmental assment (EA) will be necessary. EAs have different (shorter) timelines.

The planning process consists of three major phases: assessment, plan development, and monitoring. The 2012 Planning Rule emphasizes public involvement through every step of the planning process and specifies working with State, local, and tribal governments. This graphic shows an overview of the planning process.

During the **assessment**, the Forest Service will identify and evaluate existing economic, social, and ecological conditions in and around the national forest undergoing plan revision. **Plan development** uses the information from the assessment together with input from the public and other entities gathered through comments, collaboration, and other consultation to revise a forest plan. Once the plan is approved, it will guide project-level decisions, like how and where to harvest timber. During implementation of the plan, **monitoring** of conditions on the ground helps determine whether the plan is actually achieving its intended desired conditions and objectives. Monitoring information helps managers determine whether they need to propose amending or revising the plan.

Roles and Responsibilities of Participating Governments

Intergovernmental participation should occur throughout the land management planning process and continue during monitoring and adaptive management. Engagement in each phase is important.

Examples of engagement include when State, local, and tribal governments have the opportunity to provide all the information they believe to be relevant to inform planning or the context for planning in the assessment phase. The Planning Rule requires that responsible officials identify and consider relevant existing governmental information, such as State forest assessments and strategies, State wildlife data, relevant land management plans, local knowledge, etc. Engaging early to provide such information can help to build a cooperative relationship and ensure the agency, too, has early access to key information. However, each State, local, or tribal government must determine its individual need for and level of participation.

While the Forest Service cannot delegate its ultimate decisionmaking authority, a goal of intergovernmental participation should be to identify opportunities to contribute to mutual objectives, resolve or reduce conflicts, and achieve mutually agreeable outcomes with State, local, and tribal governments. Examples of such outcomes could include more coordinated management of issues that cross jurisdictional boundaries, such as fire and habitat management; implementation of desired conditions and objectives that reflect joint goals with State, local, and tribal governments; and recreation management that provides opportunities important to forest communities and other stakeholders. Other mutually supported outcomes could involve water management, emergency management services, and travel management planning, all of which can provide important social, cultural, and economic opportunities for affected communities.

To effectively engage with the Forest Service in the development or amendment of a land management plan requires communication, collaboration, coordination, and cooperation. These are further defined and explored below. The key to success for State, local, and tribal governments is the willingness to make an investment of time to build and cultivate relationships and to do their homework. Having a seat at the table is only one part of the participation equation. Being willing to attend meetings, read planning documents, and develop an understanding of the planning and environmental analysis process is what gets results. The bottom line for engaging in the land management planning process is that it really is an investment in time and resources that can spread over decades. Such an investment can help ensure mutually supported interests while acknowledging and maintaining the customs and culture of the local area. The resource needs will vary significantly according to the type of participation selected. Governments should consider principles and practices critical to successful participation at all levels. These include:

- a philosophy that planning is a collaborative partnership with the Forest Service;
- designation of one or more individuals as liaison(s) to the Forest Service planning team;
- a commitment to constructive participation in all meetings applicable to the role of governmental entities;
- a commitment to continuing involvement in implementation, monitoring, and adaptive management; and
- a commitment to serving as connections between citizens and the Forest Service.

Understanding the Roles and Responsibilities of the Forest Service

To effectively participate in national forest planning, governments will require lead time to arrange for budgets and staffing. Therefore, to optimize the collaborative potential of these intergovernmental relationships, the Forest Service should communicate with interested governments prior to the start of the planning process.

The 2012 Planning Rule places a strong emphasis on providing opportunities for meaningful participation early and throughout the planning process and directs outreach to "Tribes and Alaska Native Corporations, other Federal agencies, State and local governments, individuals, and public and private organizations or entities" (36 CFR 219(4)(a)(1)). This is an "open door" invitation to participate. The purpose is to foster greater recognition and discussion of issues that have cross-boundary effects, look for common objectives and solutions, and find opportunities to integrate management across landscapes.

Both the obligation and the opportunity for the Forest Service to engage State, local, and tribal governments in the planning process are emphasized in the 2012 Planning Rule:

> *In providing opportunities for engagement, the responsible official shall encourage participation by:*
>
> ***
>
> *(iv) Federal agencies, States, counties, and local governments, including State fish and wildlife agencies, State foresters and other relevant State agencies. Where appropriate, the responsible official shall encourage States, counties, and other local governments to seek cooperating agency status in the NEPA [National Environmental Policy Act] process for development, amendment, or revision of a plan. The responsible official may participate in planning efforts of States, counties, local governments, and other Federal agencies, where practicable and appropriate (36 CFR 219.4 (a)(1)(iv) and (v))*
>
> *(v) Interested or affected federally recognized Indian Tribes or Alaska Native Corporations. Where appropriate, the responsible official shall encourage federally recognized Tribes to seek cooperating agency status in the NEPA process for development, amendment, or revision of a plan. The responsible official may participate in planning efforts of federally recognized Indian Tribes and Alaska Native Corporations, where practicable and appropriate (36 CFR 219.4 (b)(1)).*

Furthermore, the rule requires coordination with related planning efforts:

> The responsible official shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian tribes, Alaska Native Corporations, other Federal agencies, and State and local governments (36 CFR 219.4(b)(1)).

In addition, the rule requires land managers to review the relevant planning and land use policies of other government entities and consider the relationship of those policies to the unit and the planning process:

> For plan development or revision, the responsible official shall review the planning and land use policies of [these entities], where relevant to the plan area. The results of this review shall be displayed in the environmental impact statement (EIS) for the plan (40 CFR 1502.16(c), 1506.2). The review shall include consideration of:
>
> (i) The objectives of [these entities], as expressed in their plans and policies;
>
> (ii) The compatibility and interrelated impacts of these plans and policies;
>
> (iii) Opportunities for the plan to address the impacts identified or contribute to joint objectives; and
>
> (iv) Opportunities to resolve or reduce conflicts, within the context of developing the plan's desired conditions or objectives (36 CFR 219.4 (b)(2)).

Importantly, the rule makes clear that each entity retains its own jurisdictional and decisionmaking authority:

> Nothing in this section should be read to indicate that the responsible official will seek to direct or control management of lands outside of the plan area, nor will the responsible official conform management to meet non-Forest Service objectives or policies (36 CFR 219.4(b)).

Forest Service efforts to engage State, local, and tribal governments in land management planning are intended to contribute to developing a final plan that is integrated across landscapes and has the kind of broad support that is essential to successfully implementing that plan.

While successful intergovernmental participation is heavily influenced by the local issues and relationships that have evolved before the start of the planning process, the Forest Service has a responsibility to ensure it provides opportunities for a level of engagement appropriate to the local issues and relationships. Good Forest Service practices that can enhance relationships with governmental entities include:

- understanding the various types of intergovernmental engagement as outlined in this guide, being prepared to fully explain these to representatives of State, local, and tribal governments, and assisting them in determining the role most appropriate to their interests and resources;
- engaging State, local, and tribal representatives well in advance of formally initiating the planning process;
- encouraging that agreed-upon engagement processes be formalized in a Memorandum of Understanding to avoid later confusion and misunderstandings;
- designating one or more individuals on the planning team to be the primary contact for participating governmental entities;
- engaging participating entities regarding good communication strategies for how to best relate to their constituencies; and
- whenever possible, attending meetings when participating entities request Forest Service presence.

Methods of Engagement

State, local, and tribal involvement can occur in several ways, and governments can select one or all of these methods. There is no one way of engaging; each entity must determine what types and levels of engagement are most effective for each situation. Active communication is a critical component of each of these methods and is fundamental to success. Active communication is needed before, during, and after the planning process is complete. Governments can engage in the development of the Forest Service's public participation plan at the outset of the planning process to ensure their part in the process.

There are four key methods of engagement governments can choose to be involved with Forest Service land management planning:

1—Collaboration

Collaboration is essentially people with diverse interests and ideas working together to achieve shared goals. State, local, and tribal governments can play an important role in identifying opportunities for public collaborative processes and participating in such processes. For example, collaborative groups created or facilitated by State, local, or tribal governments can play an important and constructive role promoting public participation in forest planning. State, local, and tribal government participation in collaborative efforts initiated by others can also provide important opportunities to contribute to a broader understanding of the roles and contributions of a national forest as well as possible solutions to existing challenges.

What Is the Required Level of Commitment for Successful Participation? Government entities can be leaders in arranging and fostering collaborative community involvement and can seek to develop input that represents broad community consensus. These efforts can begin well in advance of the initiation of planning and can continue beyond the plan approval to assist with plan implementation, monitoring, and adaptive management. Government's role should be to facilitate these efforts in the interest of increased public support, understanding, and mutually beneficial outcomes.

Collaboration in North Idaho

The Kootenai Valley Resource Initiative (KVRI) is a community-based collaborative effort in northern Idaho's Kootenai River Basin. The mission of KVRI is to improve coordination of local, State, Federal and tribal programs to restore and maintain social, cultural, economic, and natural resources. KVRI coordinates the efforts of a number of subcommittees, working with the appropriate group to accomplish the task at hand. The Kootenai Tribe was instrumental in working with local governing bodies to form the KVRI to restore and enhance the resources of the Kootenai Valley and is optimistic about the possibilities this collaboration can achieve. The Tribe believes that cooperation among all groups with a stake in the region is the only way to ensure the sound and prosperous future of the Kootenai Basin.

For more information see http://www.kootenai.org/kvri.html

2—Cooperation

State, local, and tribal governments often have cooperative arrangements with the Forest Service to accomplish work as a partnership. Governments should build upon or expand existing cooperative relationships with the Forest Service. The Forest Service and cooperating governments should each have a single primary point of contact designated to work together during the planning process.

A Memorandum of Understanding or similar mechanism is an effective way to define the roles and responsibilities that foster cooperative relationships related to planning, including sharing capacity. For example, the Forest Service should consider adding State, local, or tribal representatives to interdisciplinary (ID) teams. As another example, the Forest Service and State, local, or tribal government could share a resource expert or outreach staff position like a wildlife biologist or a tribal liaison to support an ID team. State and tribal fish and wildlife agencies might also agree with the Forest Service on how to effectively work together to collect and share data. Such efforts can help ensure a solid data set for monitoring, avoid redundancies, and maximize limited resources.

What Is the Required Level of Commitment for Successful Participation?

Cooperation defines a relationship of ongoing communication and respect that should be built between governments and the Forest Service. It requires an ongoing commitment that should be marked by periodic joint meetings. The planning process is an opportunity to establish this spirit of cooperation if such a relationship does not already exist.

3—Coordination

Coordination of Forest Service land management planning with the related planning efforts of State and local governments is mandated by the National Forest Management Act. Coordination with tribal governments is mandated by the Federal Land Policy and Management Act[2] and is defined in the planning directives.[3] Coordination helps ensure that landscape management has consistency across ecosystems and jurisdictions to achieve mutual goals, where possible.

The Planning Rule emphasizes coordination by requiring that the Forest Service review and consider State, local, or tribal land use plans and policies during the planning process and assess the interrelated impacts of these plans when developing proposed plans. Although the Forest Service is not mandated to comply with these other plans, it must consider and review them during the planning process.

What Is the Required Level of Commitment for Successful Participation?

Successful coordination will depend on each party taking the time to understand each other's management objectives and working to find and include mutually beneficial and coordinated direction in final plans. For upcoming or ongoing planning efforts, State, local, and tribal governments should be sure to inform the Forest Service and seek mutual dialogue and engagement early in the process. Where State, local, or tribal governments have already adopted relevant land use plans or planning processes and polices, active engagement with the Forest Service can ensure that those plans and policies are known, understood, and effectively considered during the Forest Service planning process. In both cases, early and active engagement to share information and objectives is necessary for success. While State, local, and tribal governments lack jurisdiction over Federal lands within their areas, these lands are often included in broad local concepts of socioeconomic well-being, safety, and culture.

2 From the National Forest Management Act (NFMA), "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," [16 USC 1604(a)]. From the Federal Land Policy and Management Act (FLPMA), "[I]n the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forests 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" [43 USC 1712(b)].

3 The FACA Committee, in its recommendations to the Forest Service regaring the Planning Directives, defines coordination as "Processes mandated by the NFMA (16 USC 1604(a)) and the FLPMA (43 USC 1712(b)) that require the Forest Service to work closely with state and local governments and Indian tribes on national forest planning and to give major consideration to potential impacts of national forest plans on state and local plans and land use planning and management programs of and for Indian tribes."

4—Cooperating Agency Status

Cooperating agency status is made available to State, local, and tribal governments (as well as other Federal agencies) under the National Environmental Policy Act (NEPA).[4] Thus, it applies only to that portion of the planning process that occurs during the environmental analysis process (also referred to as the NEPA process).

The Planning Rule directs the responsible Forest Service official to encourage governmental entities to request cooperating agency status where appropriate.[5] The Planning Handbook further directs that this request should, under most circumstances, be granted by the Forest Service when the cooperator has "special expertise" or "jurisdiction by law" and can be expected to meet the cooperating agency requirements outlined in the regulations.[6]

Occasional denials of cooperating agency status have been based on Forest Service determination that the applicant either did not meet the criteria for being a governmental entity or lacked "special expertise" or "jurisdiction by law." In that event, the entity that has been denied may have a right of appeal. Examples of "special expertise" or "jurisdiction by law" may include expertise in fire prevention and management, recreation management, or State fish and wildlife management jurisdiction.

The directives also encourage the Forest Service and the cooperating agency to develop a formal Memorandum of Understanding outlining the terms of the cooperation (see example in the appendix). Cooperating agency status should include an opportunity for involvement on interdisciplinary planning teams and access to NEPA analysis documents before a final decision is issued.

What Is the Required Level of Commitment for Successful Participation?

As indicated above, cooperating agency status for State, local, and tribal governments does not become effective until initiation of public participation (often referred to as "scoping") under the NEPA process. The assessment phase of planning, when the agency collects information on social, cultural, economic, and ecological conditions in and around the national forest, will have been completed at this point. For this reason, governments are strongly encouraged not to wait for cooperating agency status to begin their engagement in forest plan revision. Because the granting of cooperating agency status is recognition of "special expertise" or "jurisdiction by law," governments should carefully assess what expertise they can bring to the NEPA process as well as the capability of their designated representative(s) to deliver that expertise. These designated individuals can become an integral part of the NEPA interdisciplinary team at this point. They should be able to commit the necessary time toward the process as outlined by the team leadership. The expectations and commitments of both parties should be stated in the Memorandum of Understanding.

4 40 CFR 1508.5.
5 36 CFR 219.4 (a)(1); see also Forest Service Handbook (FSH) 1909.12, Chapter 10, section 44.2.
6 Id., see also 40 CFR 1501.6(b).

Examples of Cooperation and Coordination

Wyoming Coalition of Local Governments

Four counties and five conservation districts in western Wyoming formed the Coalition of Local Governments in 2004 to pool resources and coordinate comments on the revisions for BLM and National Forest land use plans. In addition, the local governments requested cooperating agency status for all major projects in the region. While the focus has been to protect local land use plans and interests, the Coalition has shaped the economic debate by introducing a more regional economic focus and has shaped the environmental debate by identifying and addressing issues that may be of concern. The Coalition members routinely seek information from the industries important in Wyoming, including agriculture and energy.

Above all, the Coalition efforts have served to inform agency officials of local government concerns and challenges which, in turn, will maximize the potential over the years that new Federal initiatives will be adjusted to reflect local government plans.

The California Biodiversity Council

The California Biodiversity Council was formed in 1991 to improve coordination and cooperation between the various resource management and environmental protection organizations at Federal, State, and local levels. Its purpose is to discuss, coordinate, and assist in developing strategies and complementary policies for conserving biodiversity. Members exchange information, resolve conflicts, and promote development of regional conservation practices. The Council has 42 members, including 20 State agencies, 12 Federal agencies, and 10 local governments. The Council meets two to three times a year on issues relating to natural resource conservation in California.

For more information see http://biodiversity.ca.gov/

Opportunities To Resolve Conflicts Prior to a Final Decision

Before adoption of the 2012 Planning Rule, final land management plans were subject to an administrative appeals process. Today, plans processed under the 2012 Planning Rule, are governed by the "predecisional administrative review process," also known as the "objection process." The intent of the objection process is to allow the public and governmental entities the opportunity to review final plans and documents, and to work with the Forest Service to resolve any outstanding conflicts before a plan is approved. The Forest Service believes that considering public concerns before a decision is made aligns with the collaborative approach to public land management and results in better, more informed decisions.

The steps of the objection process are generally as follows:

- Following public notice by the Forest Service that the plan, environmental impact statement, and draft record of decision are available, there is a formal time period, normally 60 days, for the filing of an objection. Generally, only a party who has submitted substantive formal comments on the plan is eligible to file an objection. The objection must relate to matters addressed in the comment. An exception to the requirement for a prior substantive formal comment is when the objection concerns an issue that arose after the opportunities for formal comment.
- Within 10 days of the close of an objection filing period, the responsible official must post a list of all objections and provide information as to how an "interested person" can participate in the objection resolution process. An interested person may not want to object but may want to be involved in resolution of the conflict. An interested person must have previously submitted substantive formal comments on the proposed plan.
- The Planning Rule directives outline special provisions applicable to governmental entities in the objection process. The Forest Service must directly notify tribal governments and cooperating agencies of objections that have been filed and provide them the opportunity to participate in the objection process as interested parties. State and local governments that are not cooperating agencies but who participated in the planning process are to be informed of objections and provided the opportunity to file for interested person status.

Continuing Participation After the Plan Is Approved

Implementation of the Plan

Once revision of a land management plan is complete, the Forest Service will begin managing the national forest or grassland consistent with the direction contained in the new plan. All projects, such as timber sales, motorized trail development, or wildlife habitat improvement, must be consistent with direction in the revised plan. The Forest Service will continue to work with the public, other stakeholders, and government partners to develop these projects.

Monitoring and Adaptive Management

During the life of the plan, the Forest Service and its partners must work together to **monitor** the effectiveness of the revised plan. The plan monitoring program must include monitoring questions and indicators about ecological, social, cultural, and economic impacts of plan implementation. Monitoring provides feedback by testing assumptions, tracking relevant conditions over time, and measuring management effectiveness. This information helps managers determine whether to propose one or more changes to the plan through amendment or revision. The process of monitoring, evaluating, and adjusting, referred to as adaptive management, is central to the Forest Service's ability to respond to changing conditions over time.

The Forest Service is required to develop two types of monitoring programs associated with the revised plan:

- **Plan Monitoring Program:** The plan monitoring program is designed to test whether assumptions made during planning were accurate and to track progress towards meeting the desired conditions set out in the revised plan. Information from the plan monitoring program informs the Forest Service and the public as to whether changes to the plan are necessary.
- **Broad-Scale Monitoring Strategy:** The Forest Service is required to design and implement a broad-scale monitoring strategy to support plan monitoring. This monitoring program will be developed by the Regional Forester with input from the Forest Supervisors. It is designed to ask and answer socioeconomic and ecological questions in the plan monitoring programs that are best answered at a larger geographic scale (for example, whether and how climate change is affecting water availability across an ecosystem such as the Great Basin).

These monitoring programs do not lead to decisions about management actions; they inform the Forest Service and the public about how the land management plan is performing. Every 2 years, the Forest Service must use monitoring data to compile a monitoring evaluation report, which must indicate whether a change to the plan, management activities, the monitoring program, or a new assessment is warranted. If a change to the plan is appropriate based on monitoring results, the Forest Service will begin the process to amend or revise the plan. While assessments are not required for amendments, the Forest Service may do an assessment if more information is needed. In either case, the public must be provided the opportunity to be involved in any process to amend or revise the plan.

The Forest Service is required to do quite a bit of monitoring to determine whether the revised forest plan is meeting expectations, and monitoring can be expensive, time-consuming, and labor-intensive. The Forest Service expects that it will need to rely on the help of its partners to collect data for each of its monitoring programs. The Forest Service may also use existing data sources such as national and regional inventory, monitoring, and research programs that include the efforts of State, local, or tribal governments. During the planning process, State, local, and tribal governments should consider opportunities for mutually beneficial multi-party monitoring. Such partnerships can increase overall capacity available for complex monitoring tasks and help design creative monitoring strategies that meet the goals of many participants.

Conclusion

Being a part of the Forest Service's land management planning process provides great opportunities for State, local, and tribal governments to work together with the Forest Service on shared land management goals as well as individual government needs. It is the goal of all government entities to be effective, efficient, and to provide for their citizens. Early and informed involvement by State, local, and tribal government entities will foster cooperation, trust, and respectful relationships for years to come.

Appendix: Sample Intergovernmental Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING BETWEEN BOARD OF COMMISSIONERS OF SAN MIGUEL COUNTY,COLORADO AND UNITED STATES DEPARTMENT OF AGRICULTUREFOREST SERVICE UNCOMPAHGRE NATIONAL FOREST

This MEMORANDUM OF UNDERSTANDING is hereby made and entered into by and between the San Miguel County Board of Commissioners, hereinafter referred to as the "County," and the United States Department of Agriculture, Forest Service, Uncompahgre National Forest, hereinafter referred to as "Forest Service." Collectively, the County and the Forest Service may be referred to as the Parties or Cooperators.

PURPOSE:

The purpose of this Memorandum of Understanding is to establish a mechanism for consultation in land use actions and to determine appropriate involvement by each party in the development, implementation, and revisions of respective land use plans.

STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The Parties recognize that policy, land use, or development decisions by one party affect similar decisions by the other. The Parties agree to coordinate their respective planning and decisionmaking activities in a manner consistent with the respective responsibilities and authorities assigned to each.

BOTH PARTIES SHALL:

1. Cooperate in land use decisionmaking, including consultation in land use decisions and in preparation of land use plans, including any amendment to or revision to such plans.
2. Inform each other as far in advance as possible of anticipated plans and proposed activities that might affect either party. In no case shall such information be provided less than 30 days prior to the adoption of such plans or the taking place of such activities. Furthermore, each party will consult with the other before issuing any announcements on proposed changes in land use policies or plans. Non-response by either party after 30 days from receipt of notification regarding a particular issue shall indicate lack of desire to comment on that issue.

A. FOREST SERVICE SHALL:

1. Provide for meaningful involvement of County officials in the development and implementation of land use plans, programs, regulations, and decisions for National Forest System lands and consider those views in the decision process. Participation will include involvement in issue identification, development of planning criteria, analysis of preliminary recommendations and conflicts during the process, and the environmental documentation process.
2. To the extent possible and consistent with the laws governing the administration of the National Forest System lands, coordinate the land use inventory, planning, and implementation activities of National Forest System lands with the land use planning and implementation programs of the County. The Forest Service shall assure that consideration is given to County land use plans that are consistent with the purposes, policies, and programs of Federal law and regulations applicable to National Forest System lands and management.
3. Provide an opportunity to participate in the review and/or development of the requisite environmental analysis for proposals submitted to the Forest Service that would affect land use or development in San Miguel County. Those types of applications the County may be asked to review include, but are not limited to, those examples in **Appendix A**, labeled **Forest Service Documents Reviewed by the County**, enclosed herewith.
4. Stipulate in land use authorizations, by reference to applicable regulations, compliance with State and local standards for public health and safety, and State and local laws except that such laws apply only to the extent they do not impermissibly conflict with the achievement of a congressionally approved use of National Forest System lands.

5. Make available to the County, upon request, resource and land use information where not prohibited by applicable federal statutes, rules and regulations. The County agrees for the purpose of the Colorado Public Records Act, C.R.S. 24-72-204 (3)(a), to recognize the confidentiality of any documents provided upon request.
6. Make personnel available to assist the County in mutually beneficial data gathering and land use planning when determined by the District Ranger to be practical, recognizing financial and personnel constraints.
7. At the time of Administrative Segregation of Forest Service land being considered for conveyance or exchange within San Miguel County, notify the Board of County Commissioners of such Segregation, and accept and seriously consider comment from the Board of County Commissioners on possible Forest Service action.

E. COUNTY SHALL:

1. Provide for meaningful involvement for Forest Service officials in developing comprehensive plans (Master Plans), zoning, and revisions thereto, for lands in San Miguel County. The Forest Service involvement will include review and comment on planning and zoning proposals, development of best management practices, and involvement in revisions.
2. To the extent possible and consistent with the laws governing the administration of the private land within San Miguel County, coordinate the land use inventory, planning, and implementation activities of such lands with the land use planning and implementation programs of the Forest Service. The County shall assure that consideration is given to National Forest System land use plans that are germane in the development of land use plans for private lands within San Miguel County. The Forest Service will assist in resolving inconsistencies between land use plans of the National Forest and the County.
3. Provide an opportunity to participate in the review and/or development of the requisite environmental analysis for proposals submitted to the County that would affect land use or development on National Forest System lands. Those types of applications the Forest Service may be asked to review include, but are not limited to, those examples in **Appendix B**, labeled **County Documents Reviewed by the Forest Service**, enclosed herewith.
4. Make available to the Forest Service, upon request, social, economic, land and resource information in the County's possession.
5. Make County expertise or personnel available for data-gathering, environmental studies, and land use planning which would be mutually beneficial when determined by the County to be practical, recognizing financial and personnel constraints.
6. Unless agreed to the contrary, the County shall not rezone any land described in D7 above, during the period between notification and actual conveyance.

F. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES TO:

1. FREEDOM OF INFORMATION ACT (FOIA). Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).
2. PARTICIPATION IN SIMILAR ACTIVITIES. This instrument in no way restricts the Forest Service or the Cooperator(s) from participating in similar activities with other public or private agencies, organizations, and individuals.
3. COMMENCEMENT/EXPIRATION/TERMINATION. This MOU takes effect upon the signature of the Forest Service and the County and shall remain in effect for five (5) years from the date of execution. This MOU may be extended or amended upon written request of either the Forest Service or the County and the subsequent written concurrence of the other Party. Either the Forest Service or the County may terminate this MOU with a 60-day written notice to the other Party.
4. SUPERSEDED AUTHORIZATION. This agreement supersedes and replaces the previous Memorandum of Understanding dated April 7, 1994 between the Uncompahgre National Forest and the Board of Commissioners of San Miguel County, Colorado.
5. RESPONSIBILITIES OF PARTIES. The Forest Service and the County and their respective agencies and office will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.

6. PRINCIPAL CONTACTS. The principal contacts for this instrument are:

Forest Service Project Contact

JUDY SCHUTZA
District Ranger

Norwood Ranger District
P.O. Box 388
Norwood, CO 81423

Phone: 970-327-4261
FAX: 970-327-4854
E-Mail: jschutza@fs.fed.us

Forest Service Project Contact

CHARLES S. RICHMOND
Forest Supervisor

Grand Mesa, Uncompahgre and
Gunnison National Forests
2250 U.S. Highway 50
Delta, CO 81416

Phone: 970-874-6600
FAX: 970-874-6698
E-Mail: csrichmond@fs.fed.us

San Miguel County Board of Commissioners

Board Chairperson

P.O. Box 1170
Telluride, CO 81435

Phone: 970-728-3844
FAX: 970-728-3718
E-Mail: bocc@sanmiguelcounty.org

SECONDARY CONTACTS:

Forest Service:

Dee A. Closson
Lands Staff Office

Norwood Ranger District
P.O. Box 388
Norwood, CO 81423

Phone: 970-327-4261
FAX: 970-327-4854
E-Mail: daclosson@fs.fed.us

San Miguel County Board of Commissioners

Nina Kothe
Assistant to the Board

P.O. Box 1170
Telluride, CO 81435

Phone: 970-728-3844
FAX: 970-728-3718
E-Mail: ninak@sanmiguelcounty.org

7. NON-FUND OBLIGATING DOCUMENT. Nothing in this MOU shall obligate either the Forest Service or the County to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the Forest Service and the County will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

8. ESTABLISHMENT OF RESPONSIBILITY. This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

9. AUTHORIZED REPRESENTATIVES. By signature below, the cooperator certifies that the individuals listed in the document as representatives of the cooperator are authorized to act in their respective areas for matters related to this agreement.

THE PARTIES HERETO have executed this instrument.

SAN MIGUEL COUNTY BOARD OF COMMISSIONERS

_____

Board Chairperson DATE

USDA FOREST SERVICE

_____

JUDY SCHUTZA DATE
District Ranger

USDA FOREST SERVICE

_____

CHARLES S. RICHMOND DATE
Forest Supervisor

The authority and format of this instrument has been reviewed and approved for signature.

_____

MERNA FEHLMANN DATE

FS Agreements Coordinator

Appendixes:

Appendix A: Forest Service Documents Reviewed by the County
Appendix B: County Documents Reviewed by the Forest Service

Appendix A

Forest Service Documents Reviewed by the County

San Miguel County will be afforded an opportunity to review and comment on the following types of applications or proposals that may be filed with the Forest Service and which may impact private land within San Miguel County, including, but not limited to:

1. Sales, exchanges, leases, or other conveyances of lands, and any changes in designation of parcels for disposal to private ownership on the Norwood Ranger District Land Adjustment Map.
2. Withdrawals and revocations.
3. Rights-of-way for roads, power lines, pipelines, telephone lines and other projects.
4. Forest planning information, resource information and resource management plans.
5. Environmental assessments and environmental impact statements.
6. Forest Service designations of special use area, i.e., community gravel pits, communications site complex(s).
7. Oil, gas, and mineral exploration, development and production.
8. Mineral exploration and reclamation plans.
9. Mined land reclamation plans.
10. Sand and gravel contract applications.
11. Proposed timber sales and timber management plans affecting County roads and bridges.
12. Water diversion projects.
13. Recreation plans.
14. Revisions of grazing allotment management plans.
15. Special Use Permits which may affect private lands in the unincorporated areas of the County.

Appendix B

County Documents Reviewed by the Forest Service

The Forest Service will be afforded an opportunity to review and comment on the following types of applications or proposals that may be filed with San Miguel County and which may impact public lands, including, but not limited to:

1. Residential subdivisions, mobile home parks, and commercial or industrial development within 1 mile of Forest Service land.
2. Roads, power lines, pipelines, telephone lines, and similar rights-of-ways.
3. Solid waste disposal sites and sewage treatment sites within 1 mile of Forest Service lands.
4. Sand and gravel permits within 1 mile of Forest Service lands.
5. Building permits where access to the site crosses Forest Service lands. (*For situations where a new road or driveway connects to a Forest Service road or crosses Forest Service lands*.)
6. Special Use Permits which may affect Forest Service lands.
7. Zoning regulations, amendments, and changes.
8. Subdivision regulations, amendments, and changes.
9. County reviews regarding Areas and Activities Designated as Matters of State interest (1041 Regulations).
10. County Road Designations and Standards, regulations, amendments, and changes.
11. Pesticide spraying areas (pesticide use proposal required 30 days prior).
12. Dust prevention plans.
13. Plowing snow—Forest Service Developed routes.
14. Multi-use trails plans.
15. Actions affecting existing or potential access to Forest Service land.