

EXECUTIVE ORDER

RESTORING THE RULE OF LAW AND FEDERALISM BY ENSURING COORDINATION WITH STATE AND LOCAL GOVERNMENTS

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.*

(a) It is in the national interest to ensure that Federal departments and agencies work closely with the States and their local governments prior to making decisions and taking actions because they may have significant local and regional impacts on land and resource uses as well as State and local land use planning efforts. Local governments, in particular, are important units of government charged with planning authority and the responsibility to protect the health, safety and general welfare of the citizens. Effective and meaningful coordination between Federal agencies and the States and their local governments is essential to maintain the proper balance between the Federal government and the States, as envisioned by the Framers of our Constitution.

(b) Meaningful coordination with State and local governments is especially important when Federal departments and agencies make decisions that involve federally owned land. The Federal government owns about 640 million acres of land, or about 28 percent of the land in the United States. Four agencies administer 609 million acres of this land: the Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), and National Park Service (NPS) in the Department of the Interior (DOI), and the Forest Service in the Department of Agriculture. Most of these lands are in the West and Alaska. Over 61.2 percent of Alaska is federally owned, as is about 47 percent of the 11 coterminous western States. Moreover, Federal agencies often regulate aspects of land and resource uses occurring on non-Federal land. Consequently, the Federal government has tremendous impacts on State and local governments and their citizens. To minimize conflicts and support economic growth, Federal agencies should closely coordinate their land use planning and other regulatory actions with the States and their local governments.

(c) Various Federal laws and agency regulations require that Federal departments and agencies coordinate with State and local governments for the purpose of ensuring that the issues and concerns of State and local governments are addressed and that their land use planning and management activities are harmonized with the planning, and management activities of Federal agencies. This Executive Order is intended to reinforce those obligations and to ensure that Federal departments and agencies recognize the important rights and interests of State and local

governments under our Federal system of government and engage in effective and meaningful government-to-government coordination with them.

Section 2. *Government-to-Government Coordination Principles*

(a) State and local governments are elected representatives of the public and are authorized to carry out specific planning and governing responsibilities as expressed in their plans, policies and programs. Government-to-government coordination shall serve as the process to harmonize Federal, State and local plans, policies and programs.

(b) In accordance with State law, local governments often must exercise their duties through an open public process that includes public meetings and participation of the governing board. In these situations, Federal agencies are required to engage in meaningful coordination with local governments through their public meeting process. All information that may be relevant to coordinating the objectives, plans, policies and programs of Federal and local governments shall be disclosed and discussed through a public meeting process, unless doing so is precluded by law.

(c) Coordination with State and local governments is expected to be a continuing process. When new planning efforts or policy changes are being considered, the Federal agency shall contact State and local governments to ensure the concerns of State and local governments are identified early and are addressed as part of the decision-making process to avoid potential conflicts.

(d) Prior to public comment on a plan, policy or program being developed or modified by a Federal agency, the Federal agency shall provide State and local governments with a written review document and shall incorporate into the Federal agency's public document any determination by a State or local government as to whether the proposed Federal action will be consistent with the State and local objectives, plans, policies and programs.

(e) Prior to issuing a final decision on a plan, policy or program being developed or modified by a Federal agency, the Federal agency shall provide State and local governments with a written document that describes the efforts that have been made to coordinate, identifies any issues or conflicts with State and local plans, policies and programs, and explains how those issues and concerns have been resolved in the final decision. Federal agencies shall make all reasonable efforts to achieve consistency between Federal, State and local objectives, plans, policies and programs and to address and resolve issues and concerns raised by State and local governments, unless precluded by Federal law.

Section 3. *Coordination on Actions Pertaining to Federal Land Planning and Management.*

(a) The Secretary of the Interior and the heads of DOI agencies that are responsible for managing Federal land, as well as the Secretary of Agriculture and the Chief of the Forest Service with respect to National Forest System land, shall coordinate their land use inventory, planning, and management activities of or for such lands with the land use planning and management plans, policies, and programs of States and local governments within which the lands are located, unless contrary to Federal law.

(b) The Secretary of the Interior and the heads of DOI agencies that are responsible for managing Federal land, as well as the Secretary of Agriculture and Chief of the Forest Service with respect to National Forest System land, shall keep apprised of the land and resource use plans, policies, and programs of State and local governments and fully consider those plans, policies, and programs of State and local governments that are relevant to the development and implementation of their own land and resource use plans, policies, and programs, in accordance with section 2 of this Order.

(c) In all cases, the plans, policies, and programs of DOI agencies and those of the Forest Service that concern the management or use of Federal land shall be consistent with relevant State and local land and resource use plans, policies, and programs unless a Federal law specifically requires otherwise.

(d) In the event of a conflict or inconsistency between a plan, policy, or program of a DOI agency or those of the Forest Service that concerns the management or use of Federal land or resources and a plan, policy, or program of a State or local government, the Federal agency shall resolve such conflict or inconsistency through government-to-government coordination with the affected State or local government in accordance with section 2 of this Order, with the goal of eliminating such conflict or inconsistency and recognizing the rights and interests of the State or local government to plan for and manage land and resources within its jurisdiction.

Section 4. *Coordination on Major Federal Actions Under NEPA.*

(a) The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321–4370e, and the rules of the Council on Environmental Quality (CEQ) implementing NEPA, 40 C.F.R. §§ 1500–1508, require Federal agencies to consider State and local governments’ position on proposed Federal actions and to identify and avoid conflicts with State and local government objectives, plans, policies, and controls for the area concerned.

(b) To facilitate coordination with State and local governments during the NEPA process, Federal agencies, when considering an action that might be considered a major Federal action within the meaning of NEPA, shall do the following:

i. Provide written notification to each State and local government within the area affected by the proposed Federal action, along with a schedule of anticipated events, and invite each of them to coordinate on the proposed Federal action, at the beginning of the NEPA process in accordance with section 2.

ii. The Federal agency shall review the land and resource use objectives, plans, policies, and programs of State and local governments. The results of this review shall be disclosed and discussed in the draft and final environmental analysis. The review shall include:

(A) Consideration of the objectives of State and local governments, as expressed in their plans, policies, and programs;

(B) An assessment of the interrelated impacts of these plans, policies, and programs, including any conflicts;

(C) A determination of how the proposed Federal action should be modified to address the impacts identified; and,

(D) Where conflicts are identified, consideration of alternatives for their resolution.

iii. Facilitate and document all in-person meetings or other forms of communication, with State and local governments on the proposed Federal action, including, where necessary, open meetings that allow the full participation of the governing boards or commissions in the coordination process, as required by State law.

iv. Document all relevant issues, concerns, or requests for additional information communicated by a State or local government during coordination, including any conflicts or inconsistencies between the proposed Federal action and any land and resource use plans, policies, and programs of a State or local government.

v. Prepare a written report that discusses how the issues and concerns were addressed during the coordination process, including an explanation of how any conflicts or inconsistencies with any land and resource use plans, policies, and programs of a State or local government were resolved prior to finalizing the proposed Federal action.

vi. Provide follow-up communication with any State or local government explaining how substantive issues and concerns, including any conflicts or inconsistencies with any land and resource use plans, policies, and programs of a State or local government, were resolved prior to finalizing the proposed Federal action.

vii. Include in the Federal agency's record of decision or equivalent NEPA document a discussion of all relevant issues and concerns communicated by a State or local government during the coordination process and how those issues and concerns were addressed prior to the final decision, including a discussion of how any conflicts or inconsistencies with a land and resource use plan, policy, or program of a State or local government were resolved.

(c) To ensure that the coordination process is properly completed, each Federal agency shall appoint an official who is responsible for ensuring that meaningful and effective government-to-government coordination is completed in advance of the Federal agency's completion of the NEPA process and the final agency decision.

Section 5. Definitions. For the purposes of this order:

“State” or “States” refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

“Local government” or “local governments” refer to the duly organized and legally recognized units of local government and other political subdivisions established by a State, such

as counties and special districts, whose powers and duties are germane to the proposed Federal action.

“Plans, policies, and programs” means the whole or a part of a statute, law, rule, regulation, ordinance, policy, plan, resolution, or other document of a State or local government that has been adopted by the entity’s governing body, is currently in effect, and sets forth the entity’s official position.

“Agency” or “agencies” means any authority of the United States that is an “agency” under 44 U.S.C. § 3502(1), other than those agencies considered to be independent regulatory agencies under 44 U.S.C. § 3502(5).

“Coordinate” and “coordination” refer to government-to-government oral and written communications between the authorized representatives of a Federal agency and the elected officials of a State or local government or their duly authorized representatives that are intended, in good faith, to identify, consider and resolve issues and concerns of a State or local government about a proposed Federal action, including conflicts with plans, policies, and programs of a State or local government. Coordination means the responsibilities of each government entity are equal, not subordinate, and therefore must be harmonized for effective governance. “Coordinate” and “coordination” do not include participation in the NEPA process as a cooperating agency or the submission of comments to a Federal agency during a public comment period.

Section 6. General Provisions.

(a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.