

Cooperative Federal Land Use Planning
February 6, 2026
Walter E. Congdon
406-925-1351
darlene@calamity.com

Our Custom, Culture, Heritage, and History 42 USC Section 4331 NEPA P1

Why local matters! 16USC Section 2003 (6)
Soil and Water Resources Conservation Act P2

It is national policy to work with local governments to accomplish protection and improvement of our basic resources. This is the basis from the 1930's-CCC-WPA

1. Who are we? See MCA 76-1-601 and 76-1601{3}b ix

What do we do? A blank check! MCA 76-1-601{3} vii and MCA 76-1-601(5)

What do we use? See MCA 76-1-1-601 {3-c} vi

What do we want to preserve, protect, prevent, propose or promote?

See MCA 76-1-605 {2} x P3

2. Our growth policy statute-land use plan-provides guidance for a right to farm ordinance, a fire protection plan, a water quality plan, a weed plan, a housing plan or a recreation plan, zoning, subdivision reviews or other plans or other regulation plans. It is not regulatory in itself. See MCA 76-1-605(2) (a) P4

3. NEPA and SWCA are the documents that created the concept. NFMA, FLPMA, and others contain references to the concept of government unit to government unit discussions. Also see MCA 76-1-601 {3} g l, and MCA 76-1-601 {5} and MCA 76-1-601 {4} P5

4. This opportunity is limited to government-to-government discussions because government plans and policies are documents created and reviewed during and after a public process. See MCA 76-1-602, 603 and 604. NGO's and private entities

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- cannot cooperate as their plans are not public creations that have public input and public review. P6
5. Make a statement about what we want or need and this includes recreation, public land use, and issues like APR and grazing allotments or permits. A right to farm ordinance is an example. P7
 6. The question becomes how we work with other jurisdictions and progress with them. See MCA 76-1-601 (3) g, attached Federal Workshop Guidelines, and MCA 76-1-110, 76-1-111 and 76-1-605. P8
 7. A bigger issue is how agencies process planning matters. We incorporated Due Process: The Elements of Fair Play in our plans as a guidepost for us and other government units. P9
 8. MEPA does not have the same provisions as NEPA. It was left out. The Federal government issued directives. See 2002 Directive. P10
 9. Coordinate, Collaborate, or Cooperate. They sound the same and feel warm and fuzzy. The legal obligations associated with each are very different. USFS and BLM have similar but not identical standards. This applies to other agencies as well. P11
 10. The government units include counties, cities, states, tribes, federal agencies, and government districts, such as fire districts, conservation districts, grazing districts, or water quality districts. See MCA 7-13-4501 P12
 11. Some basics-define who plays. A memo accomplishes this. P13

12. Tell them you have a plan. This commences consistency review. Their plan needs to address issues and inconsistencies with our plan. Keep updated in the process and on the issues. P14
13. Our expertise and experience provide us the mechanism to be incorporated in the process. Multiple state and local agencies may all participate at one time. P15
14. Some examples:
- a. Columbia Basin Plan-4 tribes, 5 states, 6 US agencies, one county. Memo attached. P16
 - b. Carter County-BLM Plan to sequester Carbon. Questions about roads, grazing, weeds, monitoring and other impact exists. Cooperator status is on appeal. The next chapter will be soon. P17
 - c. The process is administratively appealable and that has occurred. Example with BLM sage hen plan appealed by 27 Montana counties and overturned for a redo based on the administrative process. P17
15. Some questions were,
- a. Is a growth policy a land use plan? Montana defines itself. P18
 - b. Is a resource use plan a legitimate land use plan? P18
 - c. Is a resource plan a land use plan or growth policy? See MCA 76-1-103 (4) and MCA 76-1-607. P18

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16. FOIA 4D provides scoping meetings, written information, and team discussions

about federal plans are closed meetings and cannot be discussed publicly. Scoping is a critical part of this process. Concurrently Montana Law says we have a right to observe our government. To resolve this problem, we have chosen a course providing no elected official or county, city, or district can participate in the scoping review, because that allows us to participate without breaking the federal law and without violating the state statute or state constitution. It is sometimes difficult for elected officials to understand this issue. See P10, page 4 and 5.

17. Cooperation in the process gives local government and agencies more credit during

subsequent litigation and agencies benefit because the process was more public in that the comprehensive land plan or growth policy was a publicly reviewed document with public input, and that document helped guide the federal plan that may be litigated after its adoption or after a ROD-record of decision is issued. See Gallatin Conservation V Forest Service- Antelope Basin Decision. Beaverhead and Madison County intervened because they were cooperator and Judge Malloy upheld the Forest Service Decision on a Summary Judgement.

18. The last page attached indicates the scope of the related issues.

P19

In closing, we can play!" 😊

42 U.S.C. Section 4331



"It is the continuing responsibility of the federal government to use all practicable important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice."

Thus, by definition, the National Environmental Policy Act requires federal agencies to consider the impact of their actions on the custom of the people as shown by their beliefs, social forms, and "material traits". It is reasonable to read this provision of the National Environmental Policy Act as requiring that federal agencies consider the impact of their actions on rural resource-dependent counties. Beaverhead County is such a county. For generations, families have depended upon the "material traits" of ranching, farming, mining, timber production, wood products, hunting, fishing, outdoor recreation, and other resource-based lines of work for their economic livelihoods.



SOIL AND WATER RESOURCES CONSERVATION ACT**16 U.S.C. Section 2003(b)**

"Recognizing that the arrangements under which the federal government cooperates through conservation districts with other local units of government and land users have effectively aided in the protection and improvement of the nation's basic resources, it is declared to be the policy of the United States that these arrangements and similar cooperative arrangements should be utilized to the fullest extent practicable"

16 U.S.C. Section 2008

"In the implementation of the Act, the Secretary [of Agriculture] shall utilize information and data available from other federal, state and local governments."

RURAL ENVIRONMENTAL CONSERVATION ACT**16 U.S.C. Section 1508**

"The Secretary [of Agriculture] shall, in addition to appropriate coordination with other interested federal, state, and local agencies, utilize the services of local, county, and state soil conservation committees."

RESOURCE CONSERVATION ACT OF 1981**16 U.S.C. Section 3411 (5)**

Congress finds solutions to "chronic erosion-related problems should be designed to address the local social, economic, environmental, and other conditions unique to the area involved to ensure that the goals and policies of the federal government are effectively integrated with the concerns of the local community ..."

Montana Code Annotated 2023

TITLE 76. LAND RESOURCES AND USE

CHAPTER 1. PLANNING BOARDS

Part 6. Growth Policy

Growth Policy -- Contents

76-1-601. Growth policy -- contents. (1) A growth policy may cover all or part of the jurisdictional area.

(2) The extent to which a growth policy addresses the elements listed in subsection (3) is at the full discretion of the governing body.

(3) A growth policy must include:

(a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:

(i) land uses;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) public facilities;

(vii) natural resources;

(viii) sand and gravel resources; and

(ix) other characteristics and features proposed by the planning board and adopted by the governing bodies;

(c) projected trends for the life of the growth policy for each of the following elements:

(i) land use;

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(vi) natural resources; and

(vii) other elements proposed by the planning board and adopted by the governing bodies;

(d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (3)(a);

(e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;

(f) an implementation strategy that includes:

(i) a timetable for implementing the growth policy;

(ii) a list of conditions that will lead to a revision of the growth policy; and

(iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;

(g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:

(i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the county in which the city or town is located on matters related to the growth policy;

(ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and towns located within the county's boundaries on matters related to the growth policy;

(h) a statement explaining how the governing bodies will:

(i) define the criteria in **76-3-608(3)(a)**; and

(ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in **76-3-608(3)(a)**;

(i) a statement explaining how public hearings regarding proposed subdivisions will be conducted; and

(j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or not there is a need to:

(i) delineate the wildland-urban interface; and

(ii) adopt regulations requiring:

(A) defensible space around structures;

(B) adequate ingress and egress to and from structures and developments to facilitate fire suppression activities; and

(C) adequate water supply for fire protection.

(4) A growth policy may:

(a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.

(b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;

(c) establish an infrastructure plan that, at a minimum, includes:

(i) projections, in maps and text, of the jurisdiction's growth in population and number of residential, commercial, and industrial units over the next 20 years;

(ii) for a city, a determination regarding if and how much of the city's growth is likely to take place outside of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate infrastructure planning with the county or counties where growth is likely to take place;

(iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities that project growth outside of city boundaries and into the county's jurisdictional area over the next 20 years;

(iv) for cities, a land use map showing where projected growth will be guided and at what densities within city boundaries;

(v) for cities and counties, a land use map that designates infrastructure planning areas adjacent to cities showing where projected growth will be guided and at what densities;

(vi) using maps and text, a description of existing and future public facilities necessary to efficiently serve projected development and densities within infrastructure planning areas, including, whenever feasible, extending interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other municipal public facilities throughout the infrastructure planning area. For the purposes of this subsection (4)(c)(vi), public facilities include but are not limited to drinking water treatment and distribution facilities, sewer systems, wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, public access areas, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency services;

(vii) a description of proposed land use management techniques and incentives that will be adopted to promote development within cities and in an infrastructure planning area, including land use management techniques and incentives that address issues of housing affordability;

(viii) a description of how and where projected development inside municipal boundaries for cities and inside designated joint infrastructure planning areas for cities and counties could adversely impact:

(A) threatened or endangered wildlife and critical wildlife habitat and corridors;

(B) water available to agricultural water users and facilities;

(C) the ability of public facilities, including schools, to safely and efficiently service current residents and future growth;

(D) a local government's ability to provide adequate local services, including but not limited to emergency, fire, and police protection;

(E) the safety of people and property due to threats to public health and safety, including but not limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards;

(F) natural resources, including but not limited to forest lands, mineral resources, sand and gravel resources, streams, rivers, lakes, wetlands, and ground water; and

(G) agricultural lands and agricultural production; and

(ix) a description of measures, including land use management techniques and incentives, that will be adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

(d) include any elements required by a federal land management agency in order for the governing body to establish coordination or cooperating agency status as provided in **76-1-607**.

(5) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter.

History: Ap. p. Sec. 31, Ch. 246, L. 1957; amd. Sec. 12, Ch. 247, L. 1963; amd. Sec. 1, Ch. 156, L. 1973; Sec. 11-3831, R.C.M. 1947; Ap. p. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973; Sec. 11-3803, R.C.M. 1947; R.C.M. 1947, 11-3803(part), 11-3831; amd. Sec. 8, Ch. 582, L. 1999; amd. Sec. 4, Ch. 599, L. 2003; amd. Sec. 1, Ch. 443, L. 2007; amd. Sec. 2, Ch. 455, L. 2007; amd. Sec. 2, Ch. 446, L. 2009; amd. Sec. 2, Ch. 65, L. 2013.



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TITLE 76. LAND RESOURCES AND USE

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(d) include any elements required by a federal land management agency in order for the governing body to establish coordination or cooperating agency status as provided in **76-1-607**.

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History: Ap. p. Sec. 31, Ch. 246, L. 1957; amd. Sec. 12, Ch. 247, L. 1963; amd. Sec. 1, Ch. 156, L. 1973; Sec. 11-3831, R.C.M. 1947; Ap. p. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973; Sec. 11-3803, R.C.M. 1947; R.C.M. 1947, 11-3803(part), 11-3831; amd. Sec. 8, Ch. 582, L. 1999; amd. Sec. 4, Ch. 599, L. 2003; amd. Sec. 1, Ch. 443, L. 2007; amd. Sec. 2, Ch. 455, L. 2007; amd. Sec. 2, Ch. 446, L. 2009; amd. Sec. 2, Ch. 65, L. 2013.

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TITLE 76. LAND RESOURCES AND USE CHAPTER 1. PLANNING BOARDS

Part 6. Growth Policy

Use Of Adopted Growth Policy

76-1-605. Use of adopted growth policy. (1) Subject to subsection (2), after adoption of a growth policy, the governing body within the area covered by the growth policy pursuant to **76-1-601** must be guided by and give consideration to the general policy and pattern of development set out in the growth policy in the:

(a) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

(b) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities; and

(c) adoption of zoning ordinances or resolutions.

(2) (a) A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law.

(b) A governing body may not withhold, deny, or impose conditions on any land use approval or other authority to act based solely on compliance with a growth policy adopted pursuant to this chapter.

History: En. Sec. 40, Ch. 246, L. 1957; amd. Sec. 15, Ch. 247, L. 1963; R.C.M. 1947, 11-3840(part); amd. Sec. 12, Ch. 582, L. 1999; amd. Sec. 1, Ch. 527, L. 2001; amd. Sec. 7, Ch. 599, L. 2003.

42 U.S.C. Section 4331

"It is the continuing responsibility of the federal government to use all practicable important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice."

Thus, by definition, the National Environmental Policy Act requires federal agencies to consider the impact of their actions on the custom of the people as shown by their beliefs, social forms, and "material traits". It is reasonable to read this provision of the National Environmental Policy Act as requiring that federal agencies consider the impact of their actions on rural resource-dependent counties. Beaverhead County is such a county. For generations, families have depended upon the "material traits" of ranching, farming, mining, timber production, wood products, hunting, fishing, outdoor recreation, and other resource-based lines of work for their economic livelihoods.

42 U.S.C. Section 4332 (2)(c)

All federal agencies shall prepare an environmental impact statement (EIS) or an environmental assessment (EA), (i.e. a NEPA document) for "every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment."

42 U.S.C. Section 4332 (c)(iii)

Such EIS or EA shall include, among other things, alternatives to the proposed action.

42 U.S.C. Section 4332 (c) Copies of comments by State or local governments must accompany the EIS or EA throughout the review process.

40 C.F.R. Section 1502.16(c)

Each NEPA document shall include a discussion of possible conflicts between the proposed federal action and local land use plans.

40 C.F.R. Section 1506.2 (b)

Federal agencies shall "cooperate to the fullest extent possible" to reduce duplication with state and local requirements. Cooperation shall include:

(1) Joint planning

(2) Joint environmental research

(3) Joint hearings

(4) Joint environmental assessments

40 C.F.R. Section 1506.2 (d)

Environmental impact statements must discuss any "inconsistency of a proposed plan with any approved state or local plan and laws (whether or not federally sanctioned)." Where inconsistencies exist, the EIS should describe the extent to which the agency would reconcile the proposed action to the plan or law.

40 C.F.R. Section 1508.20(e)

Mitigation includes (a) avoiding the impact altogether, (b) limiting the degree of the impact, (c) repairing, rehabilitating or restoring the affected environment, (d) reducing the impact by preservation opportunities, or (e) compensating for the impact by replacing or providing substitute resources or environments.

Douglas County v. Lujan 810 F. Supp. 1470 (1992)

A local government, because of a concern for its environment, wildlife, socio-economic impacts, and tax base, has standing to sue federal agencies and seek relief for violations of NEPA.

SOIL AND WATER RESOURCES CONSERVATION ACT

16 U.S.C. Section 2003(b)

“Recognizing that the arrangements under which the federal government cooperates through conservation districts with other local units of government and land users have effectively aided in the protection and improvement of the nation’s basic resources, it is declared to be the policy of the United States that these arrangements and similar cooperative arrangements should be utilized to the fullest extent practicable”

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MCA Contents / TITLE 76 / CHAPTER 1 / Part 1 / 76-1-110 Cooperation ...

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TITLE 76. LAND RESOURCES AND USE

CHAPTER 1. PLANNING BOARDS

Part 1. General Provisions

Cooperation With Planning Board By State And Local Governments

76-1-110. Cooperation with planning board by state and local governments. Whenever the board undertakes the preparation of a growth policy, the departments and officials of state, city, county, and separate taxing units operating within lands under the jurisdiction of the board shall make available, upon the request of the board, information, documents, and plans that have been prepared or, upon the request of the board, shall provide any information that relates to the board's activity.

History: En. Sec. 29, Ch. 246, L. 1957; R.C.M. 1947, 11-3829; amd. Sec. 7, Ch. 582, L. 1999.

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Montana Code Annotated 2023

TITLE 76. LAND RESOURCES AND USE

CHAPTER 1. PLANNING BOARDS

Part 1. General Provisions

Representation Of County Or Additional Cities Or Towns On Existing Boards

76-1-111. Representation of county or additional cities or towns on existing boards. (1) Any city, county, or town or any combination of cities, counties, or towns wishing to be represented upon an existing planning board may, by agreement of the governing body or bodies then represented on the board, obtain representation on the board and share in the membership duties and costs of the board upon a basis agreeable to the governing body or bodies creating the board.

(2) The membership, as well as the jurisdictional area of any board, may be increased to provide for representation and planning of any additional cities, counties, or towns seeking representation.

(3) Any city, county, or town that becomes represented upon an existing planning board pursuant to this section may appropriate funds for expenses necessary to cover the costs of representation. Subject to **15-10-420**, the governing bodies of any represented city, county, or town may levy on all property that is added to the jurisdictional area of an existing board by representation a tax for planning board purposes under procedures set forth in Title 7, chapter 6, part 40.

History: En. Sec. 15, Ch. 246, L. 1957; amd. Sec. 6, Ch. 273, L. 1971; R.C.M. 1947, 11-3815; amd. Sec. 137, Ch. 584, L. 1999; amd. Sec. 189, Ch. 574, L. 2001.

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- (j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or not there is a need to:
- (i) delineate the wildland-urban interface; and
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- (4) A growth policy may:
- (a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.
 - (b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;
 - (c) establish an infrastructure plan that, at a minimum, includes:
 - (i) projections, in maps and text, of the jurisdiction's growth in population and number of residential, commercial, and industrial units over the next 20 years;
 - (ii) for a city, a determination regarding if and how much of the city's growth is likely to take place outside of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate infrastructure planning with the county or counties where growth is likely to take place;
 - (iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities that project growth outside of city boundaries and into the county's jurisdictional area over the next 20 years;

(iv) for cities, a land use map showing where projected growth will be guided and at what densities within city boundaries;

(v) for cities and counties, a land use map that designates infrastructure planning areas adjacent to cities showing where projected growth will be guided and at what densities;

(vi) using maps and text, a description of existing and future public facilities necessary to efficiently serve projected development and densities within infrastructure planning areas, including, whenever feasible, extending interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other municipal public facilities throughout the infrastructure planning area. For the purposes of this subsection (4)(c) (vi), public facilities include but are not limited to drinking water treatment and distribution facilities, sewer systems, wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, public access areas, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency services;

(vii) a description of proposed land use management techniques and incentives that will be adopted to promote development within cities and in an infrastructure planning area, including land use management techniques and incentives that address issues of housing affordability;

(viii) a description of how and where projected development inside municipal boundaries for cities and inside designated joint infrastructure planning areas for cities and counties could adversely impact:

(A) threatened or endangered wildlife and critical wildlife habitat and corridors;

(B) water available to agricultural water users and facilities;

(C) the ability of public facilities, including schools, to safely and efficiently service current residents and future growth;

(D) a local government's ability to provide adequate local services, including but not limited to emergency, fire, and police protection;

(E) the safety of people and property due to threats to public health and safety, including but not limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards;

(F) natural resources, including but not limited to forest lands, mineral resources, sand and gravel resources, streams, rivers, lakes, wetlands, and ground water; and

(G) agricultural lands and agricultural production; and

(ix) a description of measures, including land use management techniques and incentives, that will be adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

(d) include any elements required by a federal land management agency in order for the governing body to establish coordination or cooperating agency status as provided in 76-1-607.

(5) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter.

History: Ap. p. Sec. 31, Ch. 246, L. 1957; amd. Sec. 12, Ch. 247, L. 1963; amd. Sec. 1, Ch. 156, L. 1973; Sec. 11-3831, R.C.M. 1947; Ap. p. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973; Sec. 11-3803, R.C.M. 1947; R.C.M. 1947, 11-3803(part), 11-3831; amd. Sec. 8, Ch. 582, L. 1999; amd. Sec. 4, Ch. 599, L. 2003; amd. Sec. 1, Ch. 443, L. 2007; amd. Sec. 2, Ch. 455, L. 2007; amd. Sec. 2, Ch. 446, L. 2009; amd. Sec. 2, Ch. 65, L. 2013.