PROTECTING COMMUNITY STABILITY - LIST OF CITATIONS

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NATIONAL ENVIRONMENTAL POLICY ACT ("NEPA")

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. § 4332(C) (2009).

Such EIS or EA shall include, among other things, alternatives to the proposed action. 42 U.S.C. § 4332(C)(iii) (2009).

Each EIS or EA shall also contain a "no action" alternative which describes the status quo. Natural Resources Defense Council v. Hodel, 624 F.Supp. 1045, 1054 (D. Nev. 1985).

Culture is defined as the customary beliefs, social forms and material traits of a group; an integrated pattern of human behavior passed to succeeding generations. *Webster's New Collegiate Dictionary*, 277 (1975).

A custom is a usage or practice of the people, which, by common adoption and acquiescence, and by long and unvarying habit, has become compulsory and has acquired the force of law with respect to the place or subject-matter to which it relates. *Bouvier's Law Dictionary,* 417 (1st ed. 1867).

Copies of comments by State or local governments must accompany the EIS or EA throughout the review process. 42 U.S.C. § 4332(C) (2009).

Federal agencies shall "consult [] early with appropriate state and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable." 40 C.F.R. § 1501.2(d)(2) (2009).

Local governments shall be invited to participate in the scoping process. 40 C.F.R. § 1501.7(a)(1) (2009).

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

(1) Joint planning processes
(2) Joint environmental research and studies
(3) Joint public hearings(except where otherwise provided by statute)
(4) Joint environmental assessments.

40 C.F.R. § 1506.2(b) (2009).

Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

40 C.F.R. § 1506.2(c) (2009).

Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement. 40 C.F.R. § 1501.5(b) (2009).

Any Federal agency, or any State or local agency or a private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agency that a lead agency be designated. 40 C.F.R. § 1501.5(d) (2009).

A State or local agency of similar qualifications [one who has special expertise]. . . may by agreement with the lead agency become a cooperating agency. 40 C.F.R. § 1508.5 (2009).

To better integrate EIS into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law. 40 C.F.R. § 1506.2(d); 40 C.F.R. § 1506.2 (2009).

Environmental impact statements must discuss any "inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the [EIS] should describe the extent to which the agency would reconcile its proposed action with the plan or law." 40 C.F.R. § 1506.2(d) (2009).

Appropriate mitigation measures must be included in the EIS. 40 C.F.R. § 1502.14(f) (2009). Mitigation includes (a) avoiding the impact altogether by not taking a certain action or parts of an action, (b) minimizing impacts by limiting the degree or magnitude of an action and its implementation, (c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment, (d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, and (e) compensating for the impact by replacing or providing substitute resources or environments. 40 C.F.R. §1508.20 (2009).

Federal agencies shall circulate the entire draft and final EIS, or if the EIS is unusually long, a summary of the EIS, to State and local agencies authorized to develop and enforce environmental standards. 40 C.F.R. § 1502.19(a) (2009).

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. Catron County Bd. of Comm'rs v. U.S.F.W.S., 75 F.3d 1429 (10th Cir. 1996).

INTERGOVERNMENTAL COOPERATION ACT ("ICA")

The Intergovernmental Cooperation Act, 31 U.S.C. §§ 6501-6506 and companion Executive Order 12372, require all federal agencies to consider local viewpoints during the planning stages of any federal project. 31 U.S.C. § 6506(c) (2009).

The obligation of federal agencies to consider local government concerns is a legally enforceable right. City of Waltham v. U.S. Postal Service, 786 F.Supp. 105, 142 (D. Mass.1992) affd. 11 F.3d 235, 245 (1st Cir. 1993).

Injunctive relief is available in those cases in which federal agencies fail to comply with the ICA. City of Rochester v. U.S. Postal Service, 786 F.Supp. 105, 142 (D. Mass. 1992) affd. 541 F.2d 967, 978 (2d Cir. 1976).

The consideration of local government plans and policies must occur on the record. Federal agencies have an affirmative duty to develop a list of factors which support or explain an agency's decision to act in disharmony with local land use plans. Village of Palatine v. U.S. Postal Service, 742 F. Supp. 1377, 1397 (N.D. Ill. 1990).

FOREST SERVICE LAND USE PLANNING

NATIONAL FOREST MANAGEMENT ACT ("NFMA")

[T]he 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 U.S.C. § 1604(a) (2009).

The Forest Service is obligated to consider and provide for "the stabilization of communities" in its decision making processes. 36 C.F.R. § 221.3(a)(3) (2009) See also S. Rept. No. 105.22; 30 Cong. Rec. 984 (1897); *The Use Book* at 17.

"Community stability" is defined as a combination of local custom, culture and economic preservation. As described by the Forest Service:

History and Objects of Forest Reserves

Forest reserves are for the purpose of preserving a perpetual supply of timber for home industries, preventing destruction of the forest cover which regulates the flow of streams, and protecting local residents from unfair competition in the use of the range . . . .

We know that the welfare of every community is dependent upon a cheap and plentiful supply of timber; that a forest cover is the most effective means of maintaining a regular streamflow for irrigation and other useful purposes, and the permanence of the livestock industry depends upon the conservative use of the range.

The Use Book.

In carrying out monitoring under a land management plan, the responsible official may jointly monitor the planning area with State or local government agencies or members of the public. 36 C.F.R. § 219.6(b)(3) (2009).

"The responsible official must use a collaborative and participatory approach to land management planning . . . by engaging the skills and interests of . . . State or local governments, or other interested or affected communities, groups, or persons." 36 C.F.R. § 219.9 (2009). "The responsible official must provide opportunities for the coordination of Forest Service planning efforts . . . with those of other resource management agencies. The responsible official also must meet with and provide early opportunities for other government agencies to be involved, to collaborate, and to participate in planning for NFS lands. The

responsible official should seek assistance, where appropriate, from other State and local governments . . . to help address management issues or opportunities." 36 C.F.R. § 219.9(a)(2) (2009).

Before the Forest Service approves a plan, plan amendment, or plan revision, the responsible official must give any individual or organization that submitted written comments during the planning process thirty calendar days for pre-decisional review and the opportunity to object. 36 C.F.R. § 219.13(a) (2009).

BUREAU OF LAND MANAGEMENT LAND USE PLANNING

FEDERAL LAND POLICY AND MANAGEMENT ACT ("FLPMA")

The Bureau of Land Management ("BLM") must follow the consistency and coordination requirements in FLPMA "when the Secretary is making decisions directly affecting the actual management of the public lands," whether formally characterized as "resource management plan" activity of not. Uintah County, Utah v. Norton, Civ. No. 2:00-CV-0482J (Memorandum Opinion, September 21, 2001) citing State of Utah v. Babbitt, 137 F. 3d 1193, 1208 (10th Cir. 1998).

The BLM is obligated to coordinate its planning processes with local government land use plans, provide the state and local governments with meaningful involvement in the development of resource management plans, and, if possible, develop resource management plans in collaboration with cooperating agencies. 43 C.F.R. §§ 1610.3-1(a)(3), (4), (5) (2009).

In providing guidance to BLM personnel, the BLM State Director shall assure such guidance is as "[e]nsure that it is as consistent as possible with existing officially adopted and approved resource related plans, policies or programs of other Federal agencies, State agencies, Indian tribes and local governments that may be affected. . . ." 43 C.F.R. § 1610.3-1(d)(1) (2009).

The BLM is obligated to take all practical measures to resolve conflicts between federal and local government land use plans. Additionally, the BLM must identify areas where the proposed plan is inconsistent with local land use policies, plans or programs and provide reasons why inconsistencies exist and cannot be remedied. 43 C.F.R. §§ 1610.3-1(d)(2),(3) (2009).

When developing or revising a resource management plan, or amending a resource management plan through an environmental impact statement, the BLM will invite state and local governments to participate as cooperating agencies. The BLM "will consider any requests of other . . . state and local governments . . . for cooperating agency status." 43 C.F.R. § 1610.3-1(b) (2009).

The BLM "shall provide other Federal agencies, State and local governments, and Indian tribes opportunity for review, advice, and suggestion on issues and topics which may affect or influence other agency or other government programs. To facilitate coordination with State governments, State Directors should seek the policy advice of the Governor(s) on the timing, scope and coordination of plan components; definition of planning areas; scheduling of public involvement activities; and the multiple use opportunities and constraints on public lands." 43 C.F.R. § 1610.3-1(c) (2009).

"A notice of intent to prepare, amend, or revise a resource management plan shall be submitted, consistent with State procedures for coordination of Federal activities, for circulation among State agencies. This notice shall also be submitted to Federal agencies, the heads of county boards, other local government units and Tribal Chairmen or Alaska Native Leaders that have requested such notices or that the responsible line manager has reason to believe would be concerned with the plan or amendment. These notices shall be issued simultaneously with the public notices required under § 1610.2(b) of this title." 43 C.F.R. § 1610.3-1(e) (2009).

"Federal agencies, State and local governments and Indian tribes shall have the time period prescribed under § 1610.2 of this title for review and comment on resource management plan proposals. Should they notify the Field Manager, in writing, of what they believe to be specific inconsistencies between the Bureau of Land Management resource management plan and their officially approved and adopted resources related plans, the resource management plan documentation shall show how those inconsistencies were addressed and, if possible, resolved." 43 C.F.R. § 1610.3-1(f) (2009).

The BLM plan must be consistent with officially approved and adopted local land use plans, as long as such local plans are consistent with federal law and regulations. 43 C.F.R. § 1610.3-2(a) (2009).

In the absence of officially approved or adopted local land use plans, the BLM plan must, to the maximum extent practical, be consistent with officially approved and adopted state and local resource related policies and programs, as long as such local policies and programs are consistent with federal law and regulations. 43 C.F.R. § 1610.3-2(b) (2009).

Prior to BLM resource management plan or management framework plan approval, the BLM shall submit a list of known inconsistencies between the BLM plans and local plans to the governor. 43 C.F.R. § 1610.3-2(e) (2009).

The BLM has no duty to make its plan consistent with a local government plan, if the BLM is not notified by the local government, in writing, of any apparent inconsistencies. 43 C.F.R. § 1610.3-2(c) (2009).

FEDERAL DATA QUALITY ACT ("FDQA")

The FDQA directs the Office of Management and Budget ("OMB") to issue government-wide guidelines that "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility and integrity of information (including statistical information) disseminated by Federal agencies." Sec. 552(a) Pub. Law. 106-554; HR 5658; 114 Stat. 2763 (2000).

The OMB guidelines apply to all federal agencies and require that information disseminated by the Federal government will meet basic informational quality standards. 66 Fed. Reg. 49718 (Sept. 28, 2001); see also 67 Fed. Reg. 8452 (Feb. 22, 2002).

This "standard of quality" essentially requires that data used and published by all Federal agencies meet four elements. These elements include:

(a) quality
(b) utility (i.e. referring to the usefulness of the data for its intended purpose)
(c) objectivity (i.e. the data must be accurate, reliable, and unbiased)
(d) integrity

66 Fed. Reg. at 49718.

In addition to following the OMB guidelines, all federal agencies were also to issue data quality guidelines by October 1, 2002. 67 Fed. Reg. 8452.

In 2004, the OMB issued a memorandum requiring that, after June 15, 2005, influential scientific information representing the views of the department or agency cannot be disseminated by the federal government until it has been peer reviewed by qualified specialists. OMB, Final Information Quality Bulletin for Peer Review (Dec. 16, 2004), available at http://www.whitehouse.gov/omb/memoranda/fy2005/m05-03.pdf.

COURT CASES UPHOLDING LOCAL LAND USE PLANNING

State land use planning is allowed on federal lands as long as such land use planning does not include zoning. Federal agencies cannot claim "Constitutional Supremacy" if the agency can comply with both federal law and the local land use plan. California Coastal Commission v. Granite Rock Co., 480 U.S. 572 (1987), see also Wyoming v. U.S., 279 F.3d 1214, 1226 (10th Cir. 2002).

"When considering pre-emption, [the U.S. Supreme Court] starts with the assumption that the State's historic powers are not superseded by federal law

unless that is the clear and manifest purpose of Congress." Wisconsin Public Intervenor v. Mortier, 501 U.S. 597, 605 (1991), see also Unigard Insurance Co. v. City of Lodi, Ca., WL33454809 at 3 (E.D. Cal. March 5, 1999).

REVISED STATUTE 2477 ("R.S. 2477)

Revised Statute 2477 provides that "the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted." The Act of July 26, 1866, ch. 262, § 8, 14 STAT. 251, 253 (1866) (formerly codified at 43 U.S.C. § 932).

The grant is self–executing; an R.S. 2477 right–of–way comes into existence "automatically" when the requisite elements are met. See Sierra Club v. Hodel, 848 F.2d 1068, 1083-84 (10th Cir. 1988), overruled on other grounds, Village of Los Ranchos de Albuquerque v. Marsh, 956 F.2d 970, 973 (10th Cir. 1992); Shultz v. Department of Army, 10 F.3d 649, 655 (9th Cir. 1993), opinion withdrawn and superseded on rehearing, 96 F.3d 1222 (9th Cir. 1996); Standage Ventures, Inc. v. State of Arizona, 499 F.2d 248, 250 (9th Cir. 1974).

One hundred and ten years after its enactment, R.S. 2477 was repealed with the passage of the Federal Land Policy and Management Act of 1976 ("FLPMA"), 43 U.S.C. § 1701 *et seq.* See 43 U.S.C. § 932, repealed by Pub. L. No. 94–579, § 706(a), 90 STAT. 2743, 2793 (1976). However, FLPMA explicitly preserved any rights–of—way that existed before October 21, 1976, the date of FLPMA's enactment. See 43 U.S.C. § 1769(a) (2009).

FREEDOM OF INFORMATION ACT ("FOIA")

Under the FOIA, "each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person." 5 U.S.C. § 552(a)(3)(A) (2009).

ENDANGERED SPECIES ACT

"[N]ot less than ninety days before the effective date of the regulation," the U.S. Fish and Wildlife Service ("FWS") is required to give actual notice to local governments of its intent to propose a species for listing or change or propose critical habitat. 16 U.S.C. § 1533(b)(5)(A)(ii) (2009).

The FWS must directly respond to the "State agency" comments. 16 U.S.C. § 1533(i) (2009). Under the ESA, a "State agency" is a division, board, or other governmental entity that is responsible for the management and conservation of fish, plant or wildlife resources with a State. 50 C.F.R. § 424.02(1) (2009).

Other federal agencies must also consider local government and public comments regarding the management of threatened or endangered species. 16 U.S.C. § 1533(f)(5) (2009).

The listing of a species as threatened or endangered by the FWS is to be based on the "best scientific and commercial data available." 16 U.S.C. § 1533(b)(1)(A) (2009).

The FWS shall list species only after taking into account efforts of State or political subdivisions to protect the species. 16 U.S.C. § 1533(b)(1)(A) (2009).

Critical habitat designations must take economic impacts into account. Areas may be excluded as critical habitat based upon economic impacts unless the failure to designate the area as critical habitat would result in extinction of the species. 16 U.S.C. § 1533(b)(2) (2009).

The FWS is required to complete full NEPA documentation when designating critical habitat. Commission of Catron County v. U.S.F.W.S., 75 F.3d 1429 (10th Cir. 1996). But see Douglas County v. Babbitt, 48 F.3d 1495, 1507 (9th Cir. 1995) (holding that NEPA does not apply to ESA critical habitat designations).

NEPA also applies to the issuance of an incidental take permit. Ramsey v. Kantor, 96 F.3d 434, 444 (9th Cir. 1996).

"The Secretary shall develop and implement [recovery] plans for the . . . survival of endangered species . . . unless he finds that such a plan will not promote the conservation of the species." 16 U.S.C. § 1533(f)(1) (2009).

According to the ESA section 7 consultation regulations, an applicant "refers to any person . . . who requires formal approval or authorization from a Federal agency as a prerequisite to conducting agency action." 50 C.F.R. § 402.02 (2009). "Although early consultation is conducted between the Service [FWS] and the Federal agency, the prospective applicant should be involved throughout the consultation process." 50 C.F.R. § 402.11(a) (2009). The Biological Assessment or Biological Evaluation ("BA"), i.e., the document created by the federal agency containing the proposed action, may be prepared by a non-Federal representative. 50 C.F.R. §§ 402.08; 402.12(a) to (c) (2009).

The Sensitive Species Program was created on January 6, 1989 by the FWS and is implemented by all federal agencies. These federal agencies are to give "special consideration" to those plant and animal species that the FWS is considering for listing but lacks the scientific data to list. 54 Fed. Reg. 554 (January 6, 1989).

WILD AND SCENIC RIVERS ACT

It is Congressional policy to protect "historic, cultural or other similar values . . ." in free-flowing rivers or segments thereof. 16 U.S.C. § 1271 (2009).

Wild and scenic river designations on federal lands cannot affect valid existing rights. 16 U.S.C. § 1279(b) (2009).

"The Secretary of the Interior, the Secretary of Agriculture, or the head of any other Federal agency, shall assist, advise and cooperate with States or their political subdivisions . . . to plan, protect, and manage river resources. Such assistance, advice, and cooperation may be through written agreements or otherwise." 16 U.S.C. § 1282(b)(1) (2009).

Under the Wild and Scenic Rivers Act, "any taking by the United States of a water right which is vested under either State or Federal law . . . shall entitle the owner thereof to just compensation." 16 U.S.C. § 1284(b) (2009).

The study of any river for designation under the Act "shall be pursued in as close cooperation with appropriate agencies of the affected State and its political subdivisions as possible, [and] shall be carried on jointly, if request for such joint study is made by the State . . . ." 16 U.S.C. § 1276(c) (2009).

"The Federal agency charged with the administration of any component of the national wild and scenic rivers system may enter into written cooperative agreements with . . . the appropriate official of a political subdivision of a State for State or local governmental participation in the administration of the component." 16 U.S.C. § 1281(e) (2009).

Wild and scenic river designations cannot affect valid existing leases, permits, contracts or other rights. 16 U.S.C. § 1283(b) (2009).

The federal government is precluded from condemning or taking private land adjacent to a wild or scenic river so long as the local zoning ordinances protect the value of the land. 16 U.S.C. § 1277(c) (2009).

CLEAN AIR ACT [1]

> [T]he prevention and control of air pollution "at its source is the primary responsibility of States and local governments . . . ." 42 U.S.C. § 7401(a)(3) (2009).
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> "[F]ederal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution." 42 U.S.C. § 7401(a)(4) (2009) (emphasis added).
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> The federal government "shall encourage cooperative activities by the States and local governments . . . ." 42 U.S.C. § 7402(a) (2009).
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> Each State "shall provide a satisfactory process of consultation with general purpose local governments . . . ." 42 U.S.C. § 7421 (2009).

CLEAN WATER ACT

> "Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources." 33 U.S.C. § 1251(g) (2009).
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> The Environmental Protection Agency "shall, after careful investigation, and in cooperation with other Federal agencies, State water pollution control agencies, interstate agencies, and the municipalities and industries involved, prepare or develop comprehensive programs for preventing" water pollution. 33 U.S.C. § 1252(a) (2009).

SOIL and WATER RESOURCES CONSERVATION ACT

> "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 policy of the United States that these arrangements and similar cooperative arrangements should be utilized to the fullest extent practicable. . . ." 16 U.S.C. § 2003(b) (2009).

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[1] Citations for the Clean Water Act, The Clean Air Act, The Soil and Water Resources Conservation Act, The Rural Environmental Conservation Act, the Resource Conservation Act and Presidential Executive Order 12866 entitled Regulatory Planning and Review were provided by Robert G. Boggess, Attorney, 316 Denny Building, P.O. Box 1644, Walla Walla, Washington 99362, (509) 529-0733.

"In the implementation of this [Act], the Secretary [of Agriculture] shall utilize information and data available from other Federal, State, and local governments . . ." 16 U.S.C. § 2008 (2009).

PRESIDENTIAL EXECUTIVE ORDER 12866 - REGULATORY PLANNING AND REVIEW (as amended by E.O. 13258 and E.O. 13422)
58 Fed. Reg. 51,735 (1993) see also 76 Fed. Reg. 3821 (2011)

"The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today." Introduction.

"Wherever feasible, agencies shall seek views of appropriate State, local and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local and tribal regulatory governmental functions." Section 1(b)(9).

"State, local and tribal governments are specifically encouraged to assist in the identification of regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification or be otherwise inconsistent with the public interest." Section 5(b) (emphasis added).

"In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local and tribal officials) . . . Each agency also is directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rule making." Section 6(a)(1).

PRESIDENTIAL EXECUTIVE ORDER 13132 - FEDERALISM
64 Fed. Reg. 43,255 (1999)

> "The national government should be deferential to the States when taking action that affects the policymaking discretion of the States and should act only with the greatest caution where State or local governments have identified uncertainties regarding the constitutional or statutory authority of the national government." Section 2(i).
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> "Agencies shall closely examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and shall carefully assess the necessity for such action. To the extent practicable, State and local officials shall be consulted before any such action is implemented." Section 3(a).
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> "National action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance. Where there are significant uncertainties as to whether national action is authorized or appropriate, agencies shall consult with appropriate State and local officials to determine whether Federal objectives can be attained by other means." Section 3(b).
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> The federal government shall grant state and local governments the maximum administrative discretion possible with regard to Federal statutes and regulations administered by the States. Section 3(c).
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> When "determining whether the establish uniform national standards, [the federal government shall] consult with appropriate State and local officials as to the need for national standards and any alternatives that would limit the scope of national standards or otherwise preserve State prerogatives and authority . . . [W]here national standards are required by Federal statutes, [the federal government shall] consult with appropriate State and local officials in developing those standards." Sections 3(d)(3), (4).
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> Agencies shall avoid interpreting statutes so as to unnecessarily preempt State law, and any regulation preempting State law shall be confined to the minimum level necessary to achieve the purposes of the statute under which it is promulgated. Section 4(a) to (c).

If there is a possibility that State law may conflict with Federally protected interests, the agency with regulatory responsibility shall consult with local officials in an effort to avoid such conflict. Section 4(d). "When an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected

State and local officials notice and an opportunity for appropriate participation in the proceedings." Section 4(e).

"Each agency shall have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." Section 6(a). Except in some enumerated circumstances, and to "the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, and that is not required by statute." Section 6(b).

Each agency shall, to the extent practicable and permitted by law, consider any application by a State for a waiver of statutory or regulatory requirements in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the State or local level in cases in which the proposed waiver is consistent with applicable Federal policy objectives and is otherwise appropriate. Section 7(b).

PRESIDENTIAL EXECUTIVE ORDER 12630 - GOVERNMENTAL ACTIONS AND INTERFERENCE WITH CONSTITUTIONALLY PROTECTED PROPERTY RIGHTS
62 Fed. Reg. 48,445 (1988)

"The Fifth Amendment of the United States Constitution provides that private property shall not be taken for public use without just compensation . . . . Recent Supreme Court decisions, however, in reaffirming the fundamental protection of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions that have an impact on constitutionally protected property rights, have also reaffirmed that governmental actions that do not formally invoke the condemnation power, including regulations, may result in a taking for which just compensation is required." Section 1(a).

"The purpose of this Order is to assist Federal departments and agencies in undertaking such reviews and in proposing, planning, and implementing actions with due regard for the constitutional protections afforded by the Fifth Amendment and to reduce the risk of undue or inadvertent burdens on the public fisc resulting from lawful governmental action." Section 1(c).

"The Just Compensation Clause [of the Fifth Amendment] is self-actuating, requiring that compensation be paid whenever governmental action results in a taking of private property regardless of whether the underlying authority for the action contemplated a taking or authorized the payment of compensation. Accordingly, governmental actions that may have significant impact on the use of value or private property should be scrutinized to avoid undue or unplanned burdens on the public fisc." Section 3(e).

NATIONAL HISTORIC PRESERVATION ACT ("NHPA")

Under the NHPA, there are provisions for local government and public involvement. Under the Act, at 16 U.S.C. §470a(c) (2009), local governments are authorized to certify State historic preservation programs and receive a portion of the grant money allotted for the implementation of historic preservation plans. As participants of historic preservation plans, local governments should "provide adequate public participation in the local historic preservation program." 16 U.S.C. §470a(c)(1)(D) (2009). Local governments can also nominate sites within its jurisdiction to be added to the National register and be allotted monies for the management of those sites. 16 U.S.C. §470a(c)(3) (2009).

ARCHAEOLOGICAL RESOURCE PROTECTION ACT ("ARPA")

Under the ARPA, "information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission...may not be made available to the public...unless the Federal land manager concerned determines that such disclosure would (1) further the purpose of this...Act, and (2) not create a risk of harm to such resources or to this site at which resources are located." 16 U.S.C. §470hh(a) (2009).