

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE BOX ELDER COUNTY COMMISSION ASSERTING LEGAL STANDING AND FORMALLY REQUESTING COORDINATION WITH ALL FEDERAL AND STATE AGENCIES MAINTAINING JURISDICTION OVER LANDS AND/OR RESOURCES LOCATED WITHIN BOX ELDER COUNTY.**

WHEREAS, Box Elder County is a legal subdivision of the State of Utah, and its governing body is composed of a three (3) member elected Board of County Commissioners, which serves as its chief governing authority; and

WHEREAS, Box Elder County has a population of \_\_\_\_\_ people, and there are approximately \_\_\_\_\_ businesses in the county, the unemployment rate is \_\_\_\_% and the per capita income of the county's residents is \$ \_\_\_\_\_ (which is roughly \_\_\_\_\_ of the statewide average); and

WHEREAS, the State and Federal government own approximately Fifty percent (50%) of the land within Box Elder County and manage those lands for parks, recreation and forest services purposes; and

WHEREAS, Box Elder County is a Mecca for mining, hunting, fishing, bird watching, four wheeling, camping and other recreational activities; and

WHEREAS, the Box Elder County Commission is charged with supervising and protecting the tax base of the county and establishing comprehensive land use plans (including, but not limited to Box Elder County's General Plan) outlining present and future authorized uses for all lands and resources situated within the county; and

WHEREAS, Box Elder County is engaged in the land use planning process for future land uses to serve the welfare of all the residents of Box Elder County; and

WHEREAS, the residents of Box Elder County have historically earned their livelihood from activities reliant upon natural resources on land and waters which

produce natural resources and those activities are critical to the economy of Box Elder County; and

WHEREAS, the economic base and stability of Box Elder County is significantly dependant upon commercial and business activities operated upon federally and state owned, managed, and/or regulated lands that include, but are not limited to recreation, tourism, farming, mining, livestock grazing, and other commercial pursuits; and

WHEREAS, as State and Federal management policies and practices have practically eliminated the county's economic foundations in livestock grazing, tourism and other commercial activities, the county is attempting to create an economically sustainable future for its residents in the area of recreation and tourism; and

WHEREAS, Box Elder County has adopted the Box Elder County General Plan that contains land use, safety and open space elements intended to specify plans and measures for managing the production of resources, for outdoor recreation and for public safety; and

WHEREAS, the Box Elder County General Plan recognizes that "several County-based industries including agriculture, mining, tourism and recreation depend on public lands and the accompanying resources for continued economic growth and stability" and that "[d]ecisions made by public land managers directly impact these and other County interests"; and

WHEREAS, the Box Elder County General Plan further states that "[i]t is the County's position that local concerns and interests should be acknowledged and addressed by public land management agencies prior to decisions being made and plans implemented"; and

WHEREAS, the Box Elder County General Plan further provides that "[p]ublic land management, planning and decision making processes of which the County would like to be notified and informed include, but are not limited to the following: resource management plans, forest management plans, environmental assessments, environmental impact statements, timber sales, mineral resource filings and extraction plans, land sales and leases, and wildlife habitat plans"; and

WHEREAS, the Box Elder County General Plan further provides that the "County expects federal agencies to acknowledge . . . [the County's] . . . input as required by the Federal Land Policy and Management Act (FLPMA), the National Forest Service Management Act (NFMA), the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA)"; and

WHEREAS, the Utah Constitution has recognized Box Elder County's authority to exercise its local, police and welfare powers, and the Utah legislature has recognized and mandated the exercise of certain of those powers in specific statutes; and

WHEREAS, the Utah State legislature has mandated in Section §17-27a-401 of the Utah Code that each county shall prepare a comprehensive plan, which in turn suggests that the county planning should be coordinated with the federal and state program activities, and that county local plans and programs should be coordinated with plans and programs of other agencies; and

WHEREAS, Box Elder County desires to assure that federal and state agencies shall inform the Box Elder County Commission of all pending or proposed actions affecting local communities and residents within Box Elder County and coordinate with the Box Elder County Commission in the planning and implementation of those actions; and

WHEREAS, the National Environmental Policy Act (NEPA), is intended to ensure that Federal agencies actively participate as cooperating agencies in other agencies' NEPA processes, and the CEQ regulations addressing cooperating agencies status (40 C.F.R. §§ 1501.6 and 1508.5) implement the NEPA mandate that Federal agencies responsible for preparing NEPA analyses and documentation do so "in cooperation with State and local governments" and other agencies with jurisdiction by law or special expertise (42 U.S.C. §§4331(a) and 4332(2)); and

WHEREAS, Title 36 of the Code of Federal Regulations sets out the administration of the Forest Transportation System and the Transportation Plan set out at 36 C.F.R. §212.53 requires the responsible official to "coordinate with appropriate . . . county, and other local government entities when designating National Forest System roads . . .", and 36 C.F.R. §212.6(a) provides that National Forest System Roads shall grant appropriate access across National Forest and other lands for ingress and egress to assure effective utilization of lands administered by the Forest Service and intermingled and adjacent private and public lands, and for the use and development of the resources upon which communities within or adjacent to the National Forests are dependent, and subsection (c) provides that "roads and trails shall be permitted for all proper and lawful purposes subject to compliance with rules and regulations governing the lands and the roads or trails to be used"; and

WHEREAS, coordination of planning and management actions is mandated by federal laws governing land management including the Federal Land Policy and Management Act, 43 U.S.C. §1701 and 43 U.S.C. §1712, regarding the coordinate status

of a county engaging the land use planning process, and requires that the “Secretary of the Interior [Secretary] shall . . . coordinate the land use inventory, planning, and management activities . . . with the land use planning, and management programs of other federal departments and agencies and of the state and local governments within which the lands are located”; and

WHEREAS, the coordination requirements of §1712 provide for special involvement by government officials who are engaged in the land use planning process; and

WHEREAS, §1712 sets forth the nature of the coordination required with planning efforts by government officials and subsection (f) of §1712 sets forth an additional requirement that the Secretary “shall allow an opportunity for public involvement” (including local government without limiting the coordination requirement of §1712 allowing land or resource management or regulatory agencies to simply lump local government in with special interest groups of citizens or members of the public in general); and

WHEREAS, §1712 also provides that the “Secretary shall . . . assist in resolving, to the extent practical, inconsistencies between federal and non-federal government plans” and gives preference to those counties which are engaging in the planning process over the general public, special interest groups of citizens and even counties not engaging in a land use planning program; and

WHEREAS, the requirement that the Secretary “coordinate” land use inventory, planning and management activities with local governments, requires the assisting in resolving inconsistencies to mean that the resolution process takes place during the planning cycle instead of at the end of the planning cycle when the draft federal plan or proposed action is released for public review; and

WHEREAS, §1712 further requires that the “Secretary shall . . . provide for meaningful public involvement of state and local government officials . . . in the development of land use programs, land use regulations, and land use decisions for public lands”, and when read in light of the “coordinate” requirement of §1712, reasonably contemplates “meaningful involvement” as referring to on-going consultations and involvement throughout the planning cycle, not merely at the end of the planning cycle; and

WHEREAS, §1712 further provides that the Secretary must assure that the federal agency’s land use plan be “consistent with state and local plans” to the maximum extent possible under federal law and the purposes of Federal Land Policy and Management Act

and distinguishes local government officials from members of the general public or special interest groups of citizens; and

WHEREAS, the Environmental Protection Agency, charged with the administration and implementation of the National Environmental Policy Act (NEPA), has issued regulations which require that federal agencies consider the economic impact of their actions and plans on local government such as Box Elder County; and

WHEREAS, NEPA requires federal agencies to consider the impact of their actions on the customs of the people as shown by their beliefs, social forms and “material traits”, it reasonably follows that NEPA requires federal agencies to consider the impact of their actions on the rural, land and resource-oriented residents of Box Elder County who depend on the “material traits” including recreation, tourism, timber harvesting, mining, livestock grazing, and other commercial pursuits for their economic livelihoods; and

WHEREAS, NEPA requires federal agencies to consider the impact of their actions on the customs, beliefs, and social forms, as well as the “material traits” of the people; and

WHEREAS, it is reasonable to interpret NEPA as requiring federal agencies to consider the impacts of their actions on those traditional and historical and economic practices, including commercial and business activities, which are performed or operated on federally and state managed lands (including but not limited to recreation, tourism, timber harvesting, mining, livestock grazing, and other commercial pursuits); and

WHEREAS, 42 U.S.C. §4331 places upon federal agencies the “continuing responsibility . . . to use all practicable means, consistent with other considerations of national policy to . . . preserve important historic, culture, and natural aspects of our national heritage; and

WHEREAS, Webster’s New Collegiate Dictionary (at 277, 1975) defines “culture” as “customary beliefs, social forms, and material traits of a group; the integrated pattern of human behavior passed to succeeding generations”; and

WHEREAS, 16 U.S.C. §1604, the National Forest Management Act, requires the Forest Service to coordinate its planning processes with local government units such as Box Elder County; and

WHEREAS, federal agencies implementing the Endangered Species Act, the Clean Water Act, the Clean Air Act, and the Outdoor Recreation Coordination Act (16

U.S.C. §4601-1(c) and (d)) are required by Congress to consider local plans and to coordinate and cooperate directly with plans of local government such as Box Elder County; and

WHEREAS, this resolution is a policy that shall be interpreted to be consistent with the Box Elder County General Plan and is a policy to assist in more effectively implementing the Box Elder County General Plan.

**NOW THEREFORE, BE IT RESOLVED** by the County Legislative Body of Box Elder County, State of Utah, with \_\_\_\_ members present and \_\_\_\_ members voting in favor thereof, as follows:

**SECTION 1: Assertion of Legal Standing and Request for Coordination Status.** That Box Elder County does hereby assert legal standing and formally requests coordination status with all federal and state agencies maintaining jurisdiction over lands and/or resources located within Box Elder County.

**SECTION 2: Transmittal to Offices, Agencies and Elected Representatives.** That the Clerk of Box Elder County shall cause a copy of this Resolution to be transmitted to local, regional, state, and/or national offices of all federal and state agencies maintaining jurisdiction of lands and/or resources located within Box Elder County and to all federal and state elected representatives serving Box Elder County.

**ADOPTED AND APPROVED** in regular session of the Box Elder County Commission this \_\_\_\_ day of \_\_\_\_\_, 2010

\_\_\_\_\_  
Rich Van Dyke, Chairman  
Box Elder County Commission

ATTEST:

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Luann Adams, Recorder/Clerk