

MEMORANDUM OF UNDERSTANDING
BETWEEN
BOARD OF COMMISSIONERS OF MESA COUNTY, COLORADO,
AND
US FISH AND WILDLIFE SERVICE

A. Introduction

1. The U.S. Fish and Wildlife Service (Service) and the Mesa County Board of Commissioners (Mesa County) have responsibilities for developing and implementing land use management plans and authorizing land use actions under their respective jurisdictions.
2. The Service has regulations, and procedures for implementing the Endangered Species Act, Fish and Wildlife Coordination Act, Migratory Bird Treaty Act, and Bald and Golden Eagle Protection Act.
3. Mesa County has a Master Plan and land use control regulations to guide the development of private lands in Mesa County.
4. The parties recognize that policy, land use, or development decisions by one party affect similar decisions by the other. The parties further recognize the need to involve the property owners and residents of an area in land use planning processes.
5. Although the Service and the State of Colorado already coordinate the planning and management of resources within the state, these discussions do not detail the consideration of consultation with county and municipal governments. It is therefore in the best interest of the Service and Mesa County to work together to establish an effective mechanism for meaningful involvement in the land use planning and management process.

B. Purpose

The purpose of this Memorandum of Understanding (MOU) is to:

1. Establish a mechanism for coordination in land use actions;
2. Determine appropriate involvement by each party in the development, implementation, and revision of respective management plans and conservation of fish and wildlife resources; and
3. Coordinate the management of habitat for federally listed species and unlisted species of concern within Mesa County, Colorado.

C. Objectives

In recognition of the preceding conditions, the parties agree to:

1. Coordinate their respective planning and decision-making activities in a manner consistent with the responsibilities and authorities assigned to each.
2. Work together to achieve maximum benefits from available resources, to reduce duplication of effort, and to attain better overall coordination of land and ecosystem

management throughout Mesa County.

3. Explore the Habitat Conservation Plan, Candidate Conservation Agreements with Assurances, and Safe Harbor Agreement processes for applicability in Mesa County.

D. Authority- Fish and Wildlife

The Service has the authority to enter into this MOU by the following provisions:

1. Bald and Golden Eagle Protection Act of 1940 (16 U.S.C. 668-668d);
2. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.);
3. Fish and Wildlife Coordination Act of 1958 (16 U.S.C.661-666; Fish and Wildlife Act of 1956, as amended, 16 U.S.C. 670(a)-670(o);
4. Migratory Bird Treaty Act of 1918 (16 U.S.C. 703-712).

Based on the issue being discussed, other Acts may apply as well.

E. Authority - Mesa County

Mesa County has the authority to enter into this MOU by the following provisions:

1. Article XIV, Section 18 of the Colorado State Constitution and legislation pursuant thereto;
2. Intergovernmental Relationships: C.R.S. 29-1-201, et. seq.;
3. The Local Government Land Use Enabling Act, C.R.S. 29-20-105, et. seq.;
4. County Powers and Functions, C.R.S. 30-11-101 et seq.;
5. County Planning, C.R.S. 30-28-101 et seq.

F. Responsibility

Now, therefore, it is agreed that:

1. Both parties will:
 - a) Cooperate in land use decision-making, including coordination in land use decisions and in preparation of land use plans, including any amendment to or revision of such plans.
 - b) Inform each other as far in advance as possible of proposed plans and actions that might affect either party. In no case shall such information be provided less than 21 days prior to the adoption of such plans or the taking place of such activities. Furthermore, each party will confer to the extent appropriate under applicable statutes and regulations with the other before issuing any announcements on proposed changes in land use policies or plans. Non-response by either party after 21 days from receipt of notification regarding a particular issue shall indicate a lack of desire to comment on that issue.
 - c) Cooperate in the development and implementation of any planning efforts (listed in attached appendices and exhibits), including, but not limited to: Habitat Conservation Plans (HCP), Candidate Conservation Agreements with Assurances

(CCAA), or Safe Harbor Agreements (SHA) which may be pursued in the future as time and staffing allow.

d) Establish semi-annual meetings whereby project coordination can take place. The meeting schedule can be adjusted as appropriate by either agency. A project list will be put together by each agency and reviewed at meetings.

e) Maintain a current inventory or list of existing contracts and agreements between both parties as Appendix A to this memorandum, attached hereto and incorporated herein.

f) Maintain a current list of future projects of mutual interest and concern to both parties as Appendix B to this MOU, attached hereto and incorporated herein.

2. The Service will:

a) Provide for meaningful involvement of County officials in the development and implementation of any HCPs, CCAAs, or SHAs and consider those views in the decision process.

b) Provide an opportunity to (1) review and comment during appropriate comment periods on applications submitted to the Service that would affect land use or development in Mesa County, and (2) participate in the review and/or development of the requisite environmental analysis for such applications. Those types of applications Mesa County may be asked to review include but are not limited to those examples in Exhibit A, attached hereto and incorporated herein.

c) Stipulate land use authorizations by reference compliance with any applicable provisions of all Federal, State, County, and municipal laws, ordinances, or regulations that are relevant to the area.

d) Make available to the County, upon request, information where not prohibited by applicable Federal statutes, rules, and regulations. The County agrees not to disclose pursuant to the Colorado Public Records Act, C.R.S. 24- 72-204(3) (a), any documents provided upon request that are deemed confidential pursuant to C.R.S. 24-72-204(3)(a)(IV).

e) Make available to the County, upon request, digital spatial data owned and generated by the Service (i.e., not generated by another entity). All data provided must include supporting documentation (metadata) with the following information: data source, data steward, description of the data, source vintage, source scale, reliability, and attributing scheme. Under the terms of this memorandum only non-sensitive, non-confidential verified automated resource data will be shared. It will be the responsibility of the County to request updates to the data. "No Warranty is made by the Service for use of the data for purposes not intended by the Service."

f) Make personnel reasonably available to assist the County in mutually beneficial data gathering and planning when determined by the USFWS to be practical, recognizing financial and personnel constraints.

g) At least 100 days prior to conveyance or exchange of lands managed by the U.S. Fish and Wildlife located within the county, notify the Board of County Commissioners of such conveyance

h) Updated species lists for Mesa County are maintained on the following website: [IPaC: Home \(fws.gov\)](http://IPaC: Home (fws.gov)).

3. The County will:

a) Provide meaningful involvement for Service officials in developing comprehensive plans (Master Plans), zoning, and revisions thereto, for lands in Mesa County. The focus of that involvement will be in those actions that may affect Service-managed lands or habitat containing federally listed species or species identified by the Service to be of special concern as defined in paragraph F.2.h of this agreement. The Service involvement will include review and comment on planning and zoning proposals as listed in Exhibit B (attached hereto and included herein).

b) To the extent possible and consistent with the laws governing the administration of the private land within Mesa County, coordinate the land use inventory, planning, and implementation activities of such lands with the land use planning and implementation programs of the Service. Mesa County will assure that consideration is given to HCPs, CCAAs, and SHAs that may be pursued in the future should time and staffing allow, that are germane in the development of land use plans for private lands within Mesa County.

c) Provide the Service an opportunity to (1) review and comment on applications submitted to the County that would affect federally listed species or species proposed for listing or candidates for listing by the Service (as published in the Federal Register}, and (2)As time and staffing allow, participate in the review and/or development of environmental analyses (HCPs, CCAAs, or SHAs for example), should applications or agreements for such be pursued in the future. The types of applications the Service may be asked to review include but are not limited to examples in Exhibit 8, attached hereto and incorporated herein.

d) Make available to the Service, upon request, social, economic, land, and resource information in Mesa County's possession and otherwise publicly available pursuant to the Colorado Public Records Act, Section 24-72-201, et seq. and/or other statutory authorization.

e) Provide Mesa County expertise or personnel reasonably available for data gathering, environmental studies, and land use planning which would be mutually beneficial when determined by Mesa County to be practical, recognizing financial and personnel constraints.

f) Unless agreed to the contrary, Mesa County shall not consider rezoning any land described in item 2.g. above, which is subject to actual, good faith, negotiations during the period between notification and actual conveyance.

g) Make available to the Wildlife Service, upon request, digital spatial data. All data provided must include supporting documentation (metadata) with the following information: data source, data steward, description of the data, source vintage, source scale, reliability, and attributing scheme. Under the terms of this MOU only non-sensitive, non-confidential verified automated resource data will be shared. It will be the responsibility of the Service to request updates to the data.

G. Administration

1. The following representatives have the authority to speak for their respective

agencies for the purposes of this MOU and regarding actions taken under this MOU:

Colorado Field Office, Western Team Supervisor
445 West Gunnison Avenue, Suite 240
Grand Junction, Colorado 81501-5711

Mesa County Board of Commissioners
544 Rood Avenue
Grand Junction, CO 81501

2. In general, the representatives, their designees, or appropriate staff will contact one another, as necessary, subject to this memorandum and any supplemental memorandums on at least an annual basis to update this MOU.
3. Nothing in this MOU will be construed as limiting or affecting in any way the authority or legal responsibility of Mesa County or the Service, or as binding either Mesa County or the Service to perform beyond the respective authority of each, or as requiring either party to assume or expend any sum in excess of appropriations available.
4. Amendments or supplements to this memorandum may be proposed by either party and shall become effective upon written approval of both parties of such amendments or supplements.
5. This MOU shall become effective when signed by the parties hereto. This MOU of Understanding may be formally terminated by either party following 30 days' notice in writing to the other party of the intention to do so.
6. As each of the signatories is governed by applicable laws and regulations, each and every provision of this MOU is subject to the laws of the United States, the regulations of the Secretary of Interior, and the laws of the State of Colorado.
7. This instrument in no way restricts the Service or Mesa County from participating in similar activities with other public or private agencies, organizations, and individuals.
8. This instrument is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement, the contribution of funds, or the transfer of anything of value between the parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures including those from government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for noncompetitive award to the cooperator of any contract or other memorandum. Any contract or agreement for training or other services must fully comply with all applicable requirements.
9. The term of this MOU shall be five (5) years from the effective date of execution unless earlier terminated by either party.

IN WITNESS WHEREOF, the parties herein have caused this document to be executed, the Service Designee and Mesa County, Colorado, as of the date of the latest signature shown below:

Nathan Darnall
Western Colorado Supervisor,
Colorado ES Field Office
US Fish and Wildlife Service

Date

Chair, Board of County Commissioners
Mesa County, Colorado

Date

Attest:

Mesa County Clerk

Exhibit A

Mesa County will be afforded no less than a 30 day opportunity to review and comment during appropriate comment periods on the following types of applications or proposals that may be filed with the Service and which may impact private land within Mesa County, including but not limited to:

1. Sales, exchanges, leases, or other conveyances of lands and any changes in the designation of parcels for exchange into or out of private ownership owned and/or managed by the Service.
2. Environmental assessments and environmental impact statements.
3. Proposed listing of species or critical habitat under the ESA.
4. Cooperative management agreements on land use.

Exhibit B

The Service will be afforded an opportunity to review and comment on the following types of applications that may be filed with Mesa County and projects conducted by the County which may impact federally listed species as published in 50 Code of Federal Regulations, Part 17, species of concern*, and lands or easements managed by the Service as provided in annually, including but not limited to:

1. Residential subdivisions, mobile home parks and commercial or industrial development
2. Roads, powerlines, pipelines
3. Solid waste disposal sites and sewage treatment sites
4. Sand and gravel Conditional Use Permits
5. Zoning regulations, amendments and changes
6. Subdivision regulations, amendments and changes
7. County reviews regarding areas and activities designated as matters of State interest (1041 regulations)
8. Pesticide spraying and weed control programs
9. Dust prevention plans
10. Multi-use trail plans
11. Transportation plans (major road circulation plans)
12. Actions affecting existing or potential access to Service managed lands

***Species of concern definition:** those species listed as Colorado State Endangered, State Threatened, State Sensitive, or State Candidate, as well as species proposed for listing or candidates for listing by the Service (as published in the Federal Register) or considered Bureau of Land Management or US Forest Service Sensitive species.

Appendix A
Current Inventory of Existing Contracts/Agreements
Between the Service and Mesa County

1. Easements with Mesa County acquired, and administrative jurisdiction transferred to the Service through the Colorado River Recovery Program, as recorded in Mesa County Land Records

12.9 acres; Parcel No. HRP- (MIT) -C -58 (P); Book 2756 Page 547-552

20.1 acres; Parcel No. HRP- (MIT) -C -SC (P); Book 2756 Page 553-558

Appendix B
Future/Potential Projects of Mutual Interest
Between the Service and Mesa County

1. Habitat Conservation Plans
2. Candidate Conservation Agreements with Assurances
3. Safe Harbor Agreements
4. Interstate 70 and 29 Road Interchange
5. Wetland Mitigation Banks