United States Department of the Interior

BUREAU OF LAND MANAGEMENT
UNCOMPAHGRE FIELD OFFICE
2465 South Townsend
Montrose, CO 81401
www.blm.gov/co/st/en/fo/ufo.html

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Tuesday, March 30, 2013

Gunnison County Commissioners
Local Government Designee David Baumgarten
200 E. Virginia, Ste. #104
Gunnison, CO 81230

Dear Local Government Designee David Baumgarten:

The Bureau of Land Management (BLM), Uncompahgre Field Office, has initiated the preparation of an Environmental Impact Statement (EIS) for the Bull Mountain Unit Master Development Plan (MDP). The Notice of Intent was published in the Federal Register on April 3, 2013 (https://federalregister.gov/a/2013-07751). A general description of the proposed action is described in the Notice of Intent. An earlier Environmental Assessment had been prepared that led to the decision to prepare an EIS. The previous EA can be reviewed at the Uncompahgre Field Offices NEPA website (http://www.blm.gov/co/st/en/BLM_Information/nepa/ufo.html#09-05). We have recently selected a third party contractor to help us prepare the EIS and are beginning to work on the project.

In the spirit of government to government consultation and cooperation, Uncompahgre Field Office (UFO) is inviting the Gunnison County Commissioners to become a Cooperating Agency for the duration of the EIS process. The Council on Environmental Quality's regulations implementing the National Environmental Policy Act (NEPA) allow federal agencies (as lead agencies) to invite tribal, state, and local governments, as well as other federal agencies, to serve as Cooperating Agencies in the preparation of environmental impact statements. Cooperating Agency status provides the opportunity for us to work together and to enhance the BLM's planning efforts.

Local and tribal governments, other agencies, and the public have participation opportunities such as attending public meetings, and reviewing and commenting on EIS documents. Being a Cooperating Agency provides the opportunity for interested agencies to take on additional roles and responsibilities beyond basic participation opportunities. Cooperating Agencies do have obligations to contribute staff to the EIS team, assist with analysis for which they have particular expertise or jurisdiction, and fund their own participation.

In general, you will be expected to provide a person to attend meetings to accomplish the tasks, as well as to accommodate other time involvement. There will also be a time requirement to review documents. I anticipate about six Cooperating Agency meetings over the course of the project. Our current projection is to complete the EIS in the fall of 2014.

To help you in your decision to accept or deny this invitation, please consult the enclosed draft template for a Memorandum of Understanding (MOU), as well as specific information about Cooperating Agency relationships at the following website: http://www.blm.gov/wo/st/en/info/nepa/cooperating_agencies.html.

If you choose to become a Cooperating Agency, you will work closely with BLM and other agencies throughout the EIS process. While Cooperating Agency status does not eliminate your rights to protest or appeal the EIS Record of Decision, my expectation is that you would have had sufficient opportunity to work with BLM and others so that a protest or appeal would not be necessary.

If the Gunnison County Commissioners is interested in becoming a Cooperating Agency please notify Jerry Jones, of my staff, by May 17, 2013 at the address on the letterhead or *j2jones@blm.gov*. We will need to sign a memorandum of understanding (MOU) that describes the roles and responsibilities of the BLM and the Gunnison County Commissioners. Enclosed is a sample draft MOU that has been developed. Jerry will need a point of contact to finalize the MOU and the name of the person who will represent the Gunnison County Commissioners for the EIS process.

We request that agencies declining to accept Cooperating Agency status also respond to this invitation. Should you choose not to become a Cooperating Agency, be assured that we will still provide the Gunnison County Commissioners with ample opportunity to participate in the EIS process.

Jerry will be on vacation through May 15, 2013. In the interim, if you have questions regarding cooperating agency status or want more information concerning opportunities available for your agency to participate in the land use planning process, do not hesitate to call Bruce Krickbaum at (970) 240-5384. Jerry will follow up with you on any details when he returns.

Thank you for your interest in the planning process and administration of your public lands. We look forward to working with the Gunnison County Commissioners as we proceed with this EIS effort.

Sincerely,

Barbara L Sharrow

Barbara L. Sharrow
Field Office Manager

Enclosure
1 – Draft MOU template

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
BUREAU OF LAND MANAGEMENT
UNCOMPAHGRE FIELD OFFICE
AND THE
<COOPERATING AGENCY[IES]>

I. INTRODUCTION

The Bureau of Land Management (BLM), Uncompahgre Field Office, is preparing an Environmental Impact Statement (EIS). The BLM anticipates that the EIS process will take approximately one and a half years to complete.

This Memorandum of Understanding (MOU) establishes a cooperating agency relationship between the Bureau of Land Management's Uncompahgre Field Office ("BLM") and <insert name of Cooperator[s]> ("Cooperator[s]") for the purpose of preparing the Bull Mountain Unit Master Development Plan (MDP) EIS. The BLM is the lead federal agency for development of the Bull Mountain Unit MDP EIS. The BLM acknowledges that the Cooperator[s] has[ve] <Insert one: [jurisdiction by law] [special expertise] [jurisdiction by law and special expertise]> applicable to the EIS effort, as defined at 40 CFR 1508.15 and 1508.26. This MOU describes responsibilities and procedures agreed to by the <insert cooperator[s]> as [a][Cooperating Agency[ies] and the BLM ("the Parties").

The cooperating agency relationship established through this MOU shall be governed by all applicable statutes, regulations, and policies, including the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (in particular, 40 CFR 1501.6 and 1508.5), the BLM's planning regulations (in particular, 43 CFR 1601.0-5, 1610.3-1, and 1610.4), and the Department of the Interior Manual (516 DM 2.5).

[TO BE USED IF COOPERATING AGENCY IS A TRIBAL GOVERNMENT] The BLM shall engage in government-to-government consultation with affected Indian tribe(s) during all phases of the planning process, in accordance with applicable federal statutes, regulations, and other authorities, including the National Historic Preservation Act, the American Indian Religious Freedom Act, Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and Executive Order 13007 (Indian Sacred Sites). The cooperating agency relationship established here supplements and is subordinate to the government-to-government relationship between [insert name of tribal government(s)] and the BLM.

Cooperating Agency status provides an opportunity for the BLM and the Cooperating Agency[ies] to work together to enhance the BLM's EIS efforts.

This Memorandum of Understanding (MOU) sets forth roles and responsibilities for the Parties for the purposes of collaborative preparation of the EIS.

II. PURPOSE

In carrying forth its responsibilities and mandates under the National Environmental Policy Act and Council of Environmental Quality regulations at 40 Code of Federal Regulations (CFR), Part 1500 and the Federal Land Policy and Management Act (as amended) CFR Part 1600, the BLM recognizes a compelling need to ensure that the interests of the Cooperating Agencies are accounted for, and that they are meaningfully engaged in the EIS.

As such, the <cooperators> has requested, and the BLM has agreed to grant, Cooperating Agency Status pursuant to 40CFR 1501.6, 1501.2, and 1501.8. Under the regulations, the BLM recognizes that the <Insert cooperator[s]> is [are] [a] Cooperating Agency[ies] in this process and is [are] recognized to have <Insert one: [jurisdiction by law] [special expertise] [jurisdiction by law and special expertise]> as it relates to various aspects of the EIS effort.

III. AGENCY DESIGNATIONS

Appendix A specifies Agency Representatives. Each participating entity will designate one primary representative to attend meetings and to act as a point of contact to ensure coordination and exchange information between the Cooperating Agencies and the BLM during the EIS process. An entity may change its representative at any time by providing written notice to the other party. Cooperating Agencies may also involve "in-house" specialists in discussions, when a specific topic warrants such expertise.

IV. AUTHORITIES FOR AGREEMENT

Authority for the BLM and the Cooperating Agencies to participate in this agreement is provided by the National Environmental Policy Act, 42 USC 4321 et seq. and 40 CFR 1501.6 – Cooperating Agencies, 1506.2 – Elimination of Duplication with State and Local Procedures, and 1508.5 – Cooperating Agency (CA).

Additional authority comes from the Federal Land Policy Management Act, 43 USC 1712 et seq., which mandates coordination of BLM planning and management efforts with the programs of state and local governments which may be affected by those planning actions.

The authorities of <insert cooperator[s]> to enter into this MOU include, but are not limited to:

<Insert authority>.

[TO BE USED IF COOPERATING AGENCY IS A TRIBAL GOVERNMENT] The authorities of <insert tribe[s]> to enter this MOU include but are not limited to:
<Insert treaty if relevant>
<Insert authority as appropriate>

V. ROLES AND RESPONSIBILITIES

A. RESPONSIBILITIES OF THE BUREAU OF LAND MANAGEMENT, UFO

The BLM UFO is responsible for the following:

i. To retain, as lead agency, final responsibility for the content of all NEPA documents, which include the Draft EIS, the Final EIS, and the Record Of Decision (ROD). The BLM's responsibilities include determining the purpose of and need for the EIS, selecting alternatives for analysis, identifying effects of the proposed alternatives, selecting the preferred alternative, and determining appropriate mitigation measures. In meeting these responsibilities, the BLM will follow all applicable statutory and regulatory requirements.

ii. To provide the Parties with meaningful opportunities for participation, including involvement in:

- identifying issues and concerns of relevance to the EIS effort,
- identifying or providing data that is suitable, available and relevant to the EIS effort,
- reviewing and commenting on draft sections of the EIS for which the Cooperating Agency[ies] provided input due to their jurisdiction by law and/or special expertise.

iii. To consider and incorporate information and comments provided by the Cooperating Agency[ies] into EIS documents to the extent possible and where appropriate.

B. RESPONSIBILITIES OF THE COOPERATING AGENCY[IES]

Cooperating Agencies in this process are recognized to have jurisdiction by law and/or special expertise as it relates to various aspects of the EIS effort and as such, is responsible for the following:

i. Along with other involved Cooperating Agencies, to participate in the EIS process to the fullest extent possible.

ii. To assist the BLM with the identification of issues and concerns to be addressed through the EIS effort.

iii. To provide information, comments, and technical expertise to the BLM regarding those elements of the EIS, and the data and analyses supporting them, in which it has [they have] jurisdiction or special expertise or for which the BLM requests its [their] assistance. This information may include but is not limited to the following:

- approved programs, plans and policies potentially affected by the EIS,
- information regarding project area resources and current and proposed uses and management actions,
- socio-economic data such as demographics, activities and values.

iv. To review and provide comments during specified review periods on preliminary baseline and other technical reports for which the agency has contributed data or other pertinent information.

v. To review and provide comments during specified review periods concerning the following sections of the preliminary Draft EIS:

- preliminary range of alternatives to be considered in detail,
- relevant portions of the "Affected Environment" section (including the socio-economic portion),
- relevant portions of the "Environmental Consequences" section,
- relevant portions of the "Consultation and Coordination" section, including information on consistency reviews.

vi. To provide the BLM with a consolidated comprehensive review of the Draft EIS during public review periods.

vii. To assist the BLM with analyzing and reviewing public comments and data, and with the development of the Final EIS.

C. RESPONSIBILITIES OF THE PARTIES

It is mutually agreed that:
i. The Parties agree to participate in this EIS process in good faith and make all reasonable efforts to resolve disagreements.

ii. The Parties agree to comply with the EIS schedule which includes dates for EIS milestones and timeframes for Cooperator's [s'] reviews and submissions.

VI. FUNDING

Each entity agrees to fund its own expenses associated with this EIS process.

VII. IMPLEMENTATION, AMENDMENT AND TERMINATION

This agreement becomes effective upon signature by all parties, and may be subsequently amended through written agreement of all signatories. The parties agree to jointly develop a framework for information exchange and feedback within 60 days of the signing of this agreement.

The <insert cooperator[s]> or the BLM may terminate this agreement by providing written notice of termination to the other party. If not terminated sooner, this agreement will end when the Notice of Availability for the Final EIS is published in the Federal Register.

Nothing in this agreement will abridge or amend the authorities and responsibilities of the<insert cooperator[s]> or the BLM or any other party on any matter under their respective jurisdictions.

Nothing in this agreement may be construed to require either the<insert cooperator[s]> or the BLM to obligate or pay funds or in any other way take action in violation of the Anti-Deficiency Act (31 USC 1341) or any State or County law or ordinance.

VIII. SOVEREIGN IMMUNITY

Neither signatory waives their sovereign immunity by entering into this Memorandum of Understanding. Each fully retains all immunities and defenses provided by law with respect to any actions based on or occurring as a result of this agreement.

Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any Party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the Parties to perform beyond its respective authority.

IX. PROPRIETARY AND CONFIDENTIAL INFORMATION

The Cooperator[s] acknowledge[s] that all supporting materials and draft documents may become part of the administrative record and may be subject to the requirements of the Freedom of Information Act (FOIA) and other federal statutes.

Data provided pursuant to this MOU may contain proprietary or pre-decisional BLM information or information provided by another Cooperator or by the project applicant. To the extent permissible under law, any recipient of proprietary or pre-decisional information agrees not to disclose this information to the public, individuals or other entities not a Cooperating Agency on this EIS project. To the extent permissible by law, any recipient of this information agrees not to transmit or otherwise divulge this information without approval from the BLM. Any breach of this provision may result in termination of this MOU.

Requests for information will be made through the points of contact identified in Appendix A, Agency Representatives. Any confidentiality requirements shall survive termination of the MOU.

X. ADMINISTRATION OF THE MOU

This MOU becomes effective upon signature by the authorized officials of the BLM and at least one Cooperator.

This MOU may be amended through written agreement of all signatories.

If not terminated earlier, this MOU will end when the Notice of Availability for the Final EIS is published in the Federal Register. Any Party may end its participation in this MOU by providing written notice to all other Parties.

XI. SIGNATURES

The parties hereto have executed this Memorandum of Understanding as of the dates shown below.

BUREAU OF LAND MANAGEMENT

_____ _____

Barbara L. Sharrow, Field Manager Date
Uncompahgre Field Office, BLM

<insert Cooperating Agency>

_____ _____

<insert name and title> Date

APPENDIX A – AGENCY REPRESENTATIVES

To ensure coordination between the Cooperator[s] and the BLM during the EIS process, each Party may change its representative at will by providing written notice to the other Party[ies].

REPRESENTING: **<insert Cooperator>**

<insert name, title, contact information>

REPRESENTING: **BUREAU OF LAND MANAGEMENT**
UNCOMPAHGRE FIELD OFFICE

Jerry Jones
EIS Project Coordinator
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