

# PACTS Complex Projects Task Force

Wednesday, April 13, 2022

## MEETING NOTES

### Attendance

- Attendees: Jeremiah Bartlett, Darryl Belz, Jim Bennett, Erin Courtney, Eamonn Dundon, Tom Milligan, Christian MilNeil
- GPCOG staff: Chris Chop, Aubrey Miller, Harold Spetla
- Other: Steve Bodge, MaineDOT
- Absent: Jessa Berna

### 1. Public Comment

- There was no public comment.

### 2. Remaining Issues

- There are four issues for the group to discuss: requiring design work before PACTS funding, bonus points for additional local match, construction funding limits, and the Project Cap Policy.
- There was no public comment on this item.
- First issue: Should PACTS require that municipalities complete some design work—either Preliminary Design Report (PDR), which is about 50-65% design, or Horizontal/Vertical Alignment Complete (HVAC), which is about 25% design—before applying for PACTS funding? The goals would be to ensure PACTS has better information about scope and cost, and to ensure that projects are ready to go when they apply for PACTS funding. Staff's suggestion is not to require PDR. Most municipalities in our region would not be able to do that without consultant assistance. However, beginning with the 2023 call for projects, staff suggests requiring HVAC. That would be funded by the project sponsors/municipalities, but staff also suggests counting the funds spent on HVAC toward the municipality's local match, if the project is selected for PACTS funding. However, staff suggests not providing assurance of future funding before HVAC, since that defeats the purpose of ensuring PACTS has more complete information before committing to a project.
- I agree with not requiring PDR. Regarding HVAC, perhaps "preliminary HVAC" would work. In some instances, you may not be able to complete HVAC without a full right-of-way (ROW) survey. If you could get a preliminary horizontal and vertical alignment and submit that for review, that might be a good compromise. [Tom]

- I agree with Tom. A preliminary HVAC should give you any horizontal or vertical changes that are planned, a look at what the impacts of the project might be from either a fill or a cut standpoint, and any ROW needs you might have. It should give you enough information to take the next step forward. Preliminary HVAC is actually a great term here. It will be turned in, but not yet reviewed. [Steve Bodge]
- Do you see cost escalation between preliminary and final HVAC? [Eamonn]
- No, we see increases when projects linger for years. [Steve Bodge]
- I think this is a good proposal. I would only comment that if a proposal indicates the project may have ROW impacts, PACTS should consider that a significant financial risk and should budget accordingly. [Christian]
- I agree with Christian and Tom. It will be good to identify red flags. It's similar to the enhanced project scoping process. [Darryl]
- It will help make sure everyone is on board with the project, both locally and at PACTS. [Tom]
- The challenge we've had with enhanced project scoping is that it is not super well-defined. Darryl, do you think preliminary HVAC, as practiced by MaineDOT, is a little better defined, so we can set appropriate expectations for project sponsors? [Chris]
- Yes, and it will allow municipalities to know how much funding they will have to contribute to the project and can start preparing. [Darryl]
- Show of hands in favor of PACTS requiring that municipalities complete preliminary HVAC before applying for PACTS funding?
  - 7 of 7 members present raised their hands in favor.
- Second issue: Should PACTS award bonus points to municipalities that provide more than the minimum 25% local match? Staff suggest a few options:
  - Do not award bonus points.
  - Award ½ point for each additional 1%. This would make a 45% local match worth 10 bonus points.
  - Award 1 point for each additional 5%. This would make a 45% local match worth 4 bonus points.
  - With any option that awards bonus points, staff suggests requiring the municipality to provide at least the same local match on any additional funding that might be provided in the future.
- I am very much in favor of this one. It's similar to the way the State of Maine divvies up low-income housing tax credits, in a similar environment with constrained funding and more need than can ever be met with the funding available. [Eamonn]

- We would need to clarify what investments would qualify as local match. Also, projects generally cost the same regardless of location, but the ability to raise money varies significantly by location. To level the playing field for the smaller communities, I think there should be a two-tier system for evaluating local match contributions—the percentage of the project cost and the impact on the mill rate. [Jim]
- Local municipalities don't want to raise taxes to pay for projects, the state doesn't want to raise gas taxes, and PACTS has limited funding. I don't think a two-tier system for rural vs. urban makes sense on an equity basis. On a per capita basis, the residents of Portland, for example, are generally poorer than the residents of Arundel, for example, and there are fewer people in Arundel to benefit from a project. Also, funding doesn't have to come from raising the mill rate, because transportation projects are technically economic development projects and should support higher land values and new development. We should be looking for more public-private partnerships. [Christian]
- Fundamentally, under state law, you have three revenue sources—property tax, revenue sharing, excise tax. Different communities have different mixtures of residential and business taxes. In a community that's 80% residential, 80% of dollars come from residential taxpayers. Without a two-tiered system, we will direct investments to communities that have the greatest ability to increase the tax rate. [Jim]
- Details aside for now, show of hands in favor of awarding some additional points?
  - 6 (Jeremiah, Jim, Erin, Eamonn, Tom, Christian) of 7 members present raised their hands in favor.
- Regarding the two-tiered system, I want to be careful not to get too complicated. [Aubrey]
- It would be a basic formula, determined after doing a quick analysis of the valuations of the PACTS communities. [Jim]
- Although it's a little different, when the PACTS Policy Board was discussing UPWP (Unified Planning Work Program) local match requirements, staff did propose a valuation scenario, and it didn't receive any support from the Board. I worry the same outcome could be possible here. That doesn't mean we can't look into it. I want to go with the will of the group on this, whether staff should go down that path. It does require some additional work, and does add a layer of complexity not only in the preparation but also the execution of the policy. [Chris]
- Our property tax system already favors rural and suburban communities. Places like Portland and Biddeford pay tremendously for things, like transportation infrastructure and other services, which serve the region. [Christian]
- Perhaps we can start small and revisit in future years. A few points are not going to hugely shift investments to communities with the ability to pay. [Eamonn]
- Let's take a show of hands on starting with a small amount of bonus points, and then we will take a separate show of hands on the two-tier system. [Aubrey]

- Show of hands in favor of awarding ½ point for each additional 5% of local match?
  - 4 of 7 members present raised their hands in favor, but with hesitation.
- I don't know if such low numbers would be enough incentive. [Erin]
- Show of hands in favor of awarding 1 point for each additional 5% of local match?
  - 6 (Jeremiah, Jim, Erin, Eamonn, Tom, Christian) of 7 members present raised their hands in favor.
- (Sensing limited support from the group, Jim declined to have staff take a show of hands on the two-tiered system idea.)
- Third issue: Should PACTS limit the amount of estimated construction funding it will commit to a single project or in a single allocation cycle? Staff suggests not setting a limit, to ensure PACTS is able to fund significant regional projects if appropriate and can adapt to any future financial circumstances. Staff also suggests making it clear that PACTS may take cost, and existing funding commitments, into consideration when allocating funding.
- (There were no comments from the task force.)
- Show of hands in favor of the staff suggestion?
  - 6 of 6 members present raised their hands in favor. (Erin had to step away from the meeting briefly.)
- Fourth issue: Should PACTS keep, eliminate, or change the Project Cap Policy? Staff developed a list of suggestions:
  - PACTS will not fund any scope that is added to projects by municipalities.
  - Upon annual (or biennial) allocation of funds for complex projects, PACTS will first allocate funds to the Holding WIN as needed to maintain a balance of \$500,000, which is just above the minimum required balance.
  - When construction bids come in,
    - if bids come in under available funds, excess funds must be returned to the Holding WIN and cannot be used to increase/alter scope.
    - if bids come in above available funds, a municipality may request up to 20% of construction costs, pending sufficient funding in the Holding WIN. The request must be received at least two weeks before a PACTS governing board meeting. As bids need to be approved within 30 or 45 days of receipt, PACTS may schedule additional governing board meetings as necessary, but no more than one additional time per month, to make decisions regarding construction overages of up to an additional 20% of construction costs. The governing board may consider the history of the project—timeliness, previous funding added, etc.—when deciding whether to provide additional funding. The governing board may require that municipalities cut/revise scope before requesting additional

funds. The governing board may require detailed information about why the project is overbudget. Additional funds are not guaranteed. Municipalities are ultimately responsible for cost overruns, as stated in the Three-Party Agreement. In addition, any additional funds will have a higher minimum local match requirement of 50%.

- I like the idea of using the Holding WIN as the contingency fund, because (1) it's already in the budget, and (2) it's a cap because there's only \$500,000 available in a given year. I also like that when a municipality does come back to PACTS, there is more accountability—details, scope reductions, larger local match I would still like to reduce the project cap to zero, but this is a good compromise. [Christian]
- To clarify, MaineDOT requires a minimum Holding WIN balance of \$300,000, and the additional \$200,000 to reach a \$500,000 balance, or \$500,000 to reach a \$800,000 balance, would be a cushion. [Darryl, Aubrey, Chris]
- I am supportive of the recommendations as drafted, but have two concerns: (1) the nature of using the Holding WIN will be first-come, first-served, and (2) in the 1990s, PACTS had a rule that you could take PACTS money from a project and use it for a different project, but then the original project would be ineligible for PACTS funds. [Jim]
- I agree with Jim that we should use a competitive process for Holding WIN funds rather than first-come, first-served. [Christian]
- Unfortunately, a competitive process is not feasible, since there is limited time (generally 30 days) to respond to bids, and not all projects go out to bid at the same time. [Aubrey]
- Since one of our challenges is getting projects done on time, maybe first-come, first-served will incentivize getting bid packages ready. [Christian]
- My concern is that prices are rising faster than DOT can estimate them. If a bid comes in really high, you can decide not to construct the project, but then you are still responsible for the cost of the PDR. Maybe in that case there should be forgiveness of PDR money. I understand the need for the caps, but that's where they don't really work. [Tom]
- I guess the onus of inflationary escalation needs to fall on one side or another. And if PACTS has no power over the amount of funding it receives, it makes sense for the onus to fall on the municipal side, where, theoretically, there is the ability to raise more revenue. The onus has to fall on someone. It can be shared, and the Holding WIN is a way to get there. It's just not feasible that projects can always turn to PACTS for that money. [Eamonn]
- It is a balance, and the issue has been discussed multiple times over the past 10-15 years. If there was a perfect solution, we would have found it by now. The hope is that this set of suggestions is our best balance. I will add that in 2019, inflation was beyond expectations, and PACTS allocated the full annual allocation to existing projects. That didn't fit under the cap policy. That was a special case. We won't be able to predict all special cases, but maybe this set of suggestions is our best bet for balancing. [Aubrey]

- We just had a bridge project with a \$19M estimate came in at \$39M. Nobody can estimate that. Without knowing how your group operates, I think your only chance to get even close to protecting your Holding WIN is to try to make as many projects as possible whole before you bid them. We are absolutely in a guessing mode at this point. [Steve Bodge]
- Show of hands in favor of the staff suggestion as written?
  - 7 of 7 members present raised their hands in favor.
- Is the cushion \$500,000 or \$200,000? [Erin]
- How is the Holding WIN funded on an annual basis? Do we need \$300,000 at all times? [Christian]
- Funds are added to the Holding WIN when projects come in under budget or are cancelled. We don't otherwise intentionally add funds. [Aubrey]
- We have allowed MPOs to go below the minimum with caveat that they have to replenish it when time comes. The PACTS Holding WIN currently has \$89,000. Also note that the Holding WIN includes just state and federal dollars, no local dollars. [Darryl]
- (Jeremiah had to leave the meeting.)
- If we take money off the top of the annual allocation for the Holding WIN, there is less money for other projects. I just want to make sure that's what we're talking about. [Tom]
- Yes, that's right. [Aubrey]
- I think the recommendation should be that there needs to be adequate funding in the Holding WIN, and the Policy Board needs to choose that amount each year based on the conditions. [Jim]
- Let's take a show of hands on the three options we've discussed:
  - \$500,000 in the Holding WIN each year
    - 1 (Christian) of 6 members present raised their hand in favor.
  - \$800,000 in the Holding WIN each year
    - 0 of 6 members present raised their hands in favor.
  - Amount in the Holding WIN determined by the Policy Board each year
    - 5 of 6 members present raised their hands in favor.
- I can endorse that option as well. [Christian]

### 3. Draft Recommendations on Issues Discussed Previously

- Staff wrote up, as shown in Attachment C, the draft recommendations this group developed during its first four meetings. They are grouped into categories—application requirements, local

match requirements, project selection process, constructing funding commitment, and cost overruns. In the last category, "Miscellaneous," is the recommendation from the first or second meeting that PACTS consider increasing the percentage of funding that goes toward complex projects. Again, this recommendation is outside the group's scope, but that staff can pass along to the Policy Board.

- There were no members of the public present to comment on this item.
- I am comfortable with these recommendations, and I have two additional recommendations. [Jim]
- (There was no comment on the draft recommendations as written.)
- My first recommendation is that this entire policy be formally reviewed within 2-3 years to ensure it's achieving what we want it to achieve. [Jim]
- I fully support a review, but suggest we push it out to 5 or 6 years because it will take a few years to understand the trends. [Eamonn]
- I think it's a good idea, and I also suggest it would be good to have data about how many projects are going over budget and how long they are taking. [Christian]
- I agree with 3-4 years, and if it's working, we can extend it to 5. [Tom]
- It sounds like we're close. In the interest of moving things along, would folks consider 4 as a happy medium? [Chris]
- Show of hands in favor of recommending that the entire policy be formally reviewed in 4 years?
  - 6 of 6 members present raised their hands in favor.
- My second recommendation is to figure out how to have somebody objectively come in and look at our process and see what we could do to deliver projects faster. [Jim]
- I agree. I looked at agenda packets from 2010-2012 and projects are taking a long time. Another theme I saw was projects getting proposed with a low estimate, being awarded funding, going through design, seeing the cost estimate increase drastically, going back into design, going back to PACTS for more money. We also need to hold design consultants accountable for giving realistic designs and estimates at the outset. [Christian]
- What I envision is a conversation with the parties (municipality, MaineDOT, PACTS) with the sole purpose of determining how to be more efficient in delivering projects. There would be no assignment of fault. [Jim]
- Our team is taking a more active interest in ensuring projects move along. In the past, PACTS involvement stopped after the funding decision was made. I think our participation, hopefully as an independent and objective voice, will help. And I'm open to other suggestions. [Chris]
- If it's down to hiring a consultant, maybe with MPO experience, it could be money well spent, considering how much we waste on project delays. I need to leave, but I endorse the recommendation to the Policy Board. [Christian]

- Honest conversations without a consultant may lead to better results. [Steve Bodge]
- Without prescribing the methodology, I'd like the group to recommend that the parties take a look at how they can become more effective in the delivery of projects. [Jim]
- Show of hands in favor of Jim's recommendation?
  - 5 (Darryl, Jim, Erin, Eamonn, Tom) of 5 members present raised their hands in favor, and Christian had indicated his support before leaving.