

MaineDOT’s Draft Cooperative Planning Proposal: Background and Initial Input

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Background and Introduction

PACTS, the state’s largest Metropolitan Planning Organization (MPO), and the Maine Department of Transportation (MaineDOT) serve important roles in maintaining and improving our region’s transportation system. Each entity has joint responsibilities for meeting federal and state requirements, conducting long-range plans, and selecting and advancing transportation projects that align with those plans. In 2012, PACTS became a [Transportation Management Area \(TMA\)](#), which provided additional responsibilities, however, PACTS and MaineDOT did not sufficiently evaluate and adjust our cooperative processes to reflect this significant change in MPO designation.

As a result, PACTS’ role in selecting FHWA-funded projects remained limited to a \$5.8 million-per-year allocation (budget) from MaineDOT, an amount which was held static for 12+ years despite increased federal funding, particularly through authorization bills like the Infrastructure Investment and Jobs Act (IIJA) / Bipartisan Infrastructure Bill (BIL). PACTS’ budget is minimal compared to MaineDOT’s budget for our region and PACTS’ and MaineDOT’s respective investment decision-making processes are often siloed despite requirements for a comprehensive, cooperative, and continuing process.

Recognizing the challenges of advancing regional goals and priorities through a relatively small allocation, PACTS committee and board members have continuously expressed a desire to think more holistically about our region’s transportation system, helping ensure that our transportation investments advance our regional goals and project priorities and maximize benefits for the public.

MaineDOT, too, has acknowledged the challenges of the current system and recently outlined a new Cooperative Planning Proposal, centering on six (6) initiatives, which will potentially serve as a foundational element for the memorandum of understanding (MOU) between MaineDOT and the state’s MPOs. GPCOG staff understand that the proposal is still in draft form and appreciate

the opportunity to work closely with the Department to further develop the proposal, suggest improvements, and grow our partnership along the way.

The proposal, when fully developed, will likely change the relationship between the MPOs and MaineDOT. The new system promises many advantages, but like any large culture shift in a complex existing system, it also raises many questions about how things will change, and what things will look like once the MOU is fully implemented.

GPCOG staff reviewed the initial proposal (provided by MaineDOT in [this slide deck](#)) and developed a preliminary analysis which asks many of those questions and begins to identify proposed changes and solutions. Further, staff have been working with the PACTS Officers on an approach that seeks additional clarification, fosters coordination with MaineDOT, and affords opportunity for input from PACTS. Staff anticipate seeking feedback from PACTS committees/boards in late 2023. Following the PACTS meetings, staff will continue to inform PACTS members and will present a final MOU draft for adoption at a future date. Additionally, PACTS members, partners, and the public are welcome to provide written feedback at transportation@gpcog.org.

Cooperative Planning Proposal Summary

Here is a summary of MaineDOT's proposal as staff understand it, with a focus on the potential impacts to PACTS' role.

1. The proposal recognizes that the current system does not adequately meet all the needs nor position the region for funding opportunities in the MPO areas. MaineDOT's stated intent is to create a system that is more nimble and able to take advantage of special funding opportunities (e.g., earmarks, discretionary grants).
2. The proposal eliminates FHWA capital funding allocations to the MPOs (and, by extension, the MPO's capital funding programs) in exchange for the promise of a new framework that emphasizes MPOs having greater influence in "scoping and [MaineDOT] Work Plan development". MaineDOT indicated that they will work with the MPOs to develop the specific provisions as part of the MOU process.
3. The federal and state capital funding specifically *available* for MPO-sponsored projects would decrease from \$11.3M/year available to the state's four MPOs to \$3M/year in new Urban Partnership Initiative (UPI – Initiative #3) funding for which the MPOs would compete. The proposal also develops a new state-administered paving program for highway corridor priority 3 & 4 (Initiative #4); however, MaineDOT's proposal does not specific funding available for this program.¹

PACTS-administered funding would decrease from \$5.8M/year to some portion of the \$3M/year in competitive UPI funding (Initiative #3) and some portion of the state's proposed paving program for highway corridor priority 3 & 4 (Initiative #4).

¹ Based on the new Urban Partnership Initiative (UPI) funding of \$3M/year. At this time, MaineDOT had not provided funding expectations for the new Paving Highway Corridor Priority 3 & 4 Program (Initiative #4).

Table 1: MPO-sponsored Funding (Existing and Proposed)

| | Existing | Proposed | Reduction |
|--|----------|------------------------------|-------------------|
| PACTS-administered | \$5.8M | \$0.0 (min.) - \$3.0M (max.) | (\$2.8M - \$5.8M) |
| Administered by the four MPOs (total) | \$11.3M | \$3.0M max. | (\$8.3M-\$11.3M) |

For context, the proposed UPI program represents less than 3% of the total transportation funding that was invested in MPO areas in 2022 and less than 0.6% of Maine’s annual apportionment of federal and state transportation funding.^{2 3}

- The proposal emphasizes planning and scoping for transformative projects (Initiative #1) and corridor planning (Initiative #2). MaineDOT expects to further clarify how these initiatives will be funded and how they will shape investment decisions and catalyze additional investment in the state’s urban areas.

Initial Recommendations

In reviewing MaineDOT’s proposal, staff identified needed clarifications to help ensure that the MPOs, particularly those serving Transportation Management Areas (TMAs), fulfil their federally-designated role of providing a regional approach to planning and investing. These *initial* recommendations are detailed below.

| Recommendation | Rationale |
|--|---|
| <p>Project Selection</p> <p>The MOU should clearly define the roles and responsibilities of the MPOs and MaineDOT in prioritizing and selecting projects to be included in the TIP and MaineDOT’s workplan. The MOU should recognize the unique project selection responsibilities of MPOs that serve Transportation Management Areas.</p> <p>The MOU should provide total anticipated funding levels in the urban areas so that the MPOs can effectively prioritize all projects and ensure fiscally constrained TIPs.</p> <p>The MOU should emphasize the critical link between the metropolitan transportation plan (<i>Connect 2045</i>, in PACTS’ case) and the TIP.</p> | <p>Federal regulations (§ 450.326, § 450.332) direct MPOs to develop a fiscally constrained TIP and ensure that the projects are prioritized and in alignment with the investment priorities in the current metropolitan transportation plan (e.g. <i>Connect 2045</i>).</p> <p>For MPOs serving TMAs, federal regulations require that the MPO, in coordination with the state, shall select all 23 U.S.C. and 49 U.S.C. Chapter 53 funded projects (excluding projects on the NHS, which are selected by the state in coordination with the MPO).</p> |

² MPO/MaineDOT Cooperative Planning Presentation, September 12, 2023.

³ MaineDOT Funding. The 0.6% is based on *only* the Highway Fund and Federal Formula funding. <https://www.maine.gov/mdot/about/docs/funding/fy22-23/22-23%20Sources%20detail.pdf>. For itemized federal-aid highway funding programs and levels, visit: https://www.fhwa.dot.gov/legisregs/directives/notices/n4510870/n4510870_t1.cfm

| Recommendation | Rationale |
|--|---|
| <p>Suballocated Funding</p> <p>The MOU should acknowledge the role of MPOs serving a TMA in administering suballocated capital funding for applicable federal formula programs (currently STBG, TA, CRP).</p> <p>At a minimum, the suballocated funding framework should be broadened to include CMAQ.⁴</p> <p>PACTS retains its suballocated funding responsibilities, capital funding should be indexed to the federal funding levels for applicable programs. This will ensure that MPO allocations change (increase or decrease) as federal funding changes.</p> <p>If an agreement is reached that PACTS relinquishes its suballocated funding responsibilities, specific provisions would need to be developed to ensure PACTS is partnering with MaineDOT in the selection of federally funded transportation projects.</p> <p>If PACTS retains its suballocated funding responsibilities, capital funding should be indexed to the federal funding levels for applicable programs. This will ensure that MPO allocations change (increase or decrease) as federal funding changes.</p> | <p>FHWA affirms that MPOs serving TMAs are responsible for project selection decisions for suballocated funding.</p> <p>The PACTS region remains a maintenance area for transportation air quality, necessitating strategies and investments that reduce emissions and improve air quality. CMAQ is a critical investment program for MPOs across the country who strive to improve air quality through congestion mitigation and investments in alternative transportation.</p> <p>USDOT provides detailed guidance for the CMAQ program.</p> <ul style="list-style-type: none"> - MPOs, State DOTs, and transit agencies should develop CMAQ project selection processes in accordance with the metropolitan and/or statewide planning process. - The CMAQ project selection process should be transparent, in writing, and publicly available. - The process should identify the agencies involved in rating projects and identify the committee or group responsible for making the final recommendation to the MPO board or other approving body”⁵ <p>Federal formula funding levels traditionally increase by 2% per year with periodic surges because of (re)authorization, as was the case with IIJA/BIL.</p> |

⁴ STBG – Surface Transportation Block Grant; TA – Transportation Alternatives; CRP – Carbon Reduction Program; CMAQ – Congestion Mitigation and Air Quality Program

⁵ *Publication of Final Guidance on the Congestion Mitigation and Air Quality Improvement (CMAQ) Program*. Federal Register, FHWA. <https://www.govinfo.gov/content/pkg/FR-2008-10-20/html/E8-24704.htm>

| Recommendation | Rationale |
|---|--|
| <p>Flexible Funding Opportunities</p> <p>The MOU should specify opportunities for flexible funding for transit and highway improvements.</p> | <p>Federal law (23 U.S.C. § 104(f); 49 U.S.C. § 5334(i)(1)) allows Federal-Aid Highway Program funding made available for public transportation projects to be flexed (or transferred) to be administered by FTA for public transportation projects. Specific FHWA formula funding programs that can be “flexed” include: National Highway Performance Program (NHPP, Surface Transportation Block Grant (STBG), and Congestion Mitigation and Air Quality (CMAQ) program.</p> |
| <p>Policy Alignment</p> <p>The MOU should articulate how MPO and State policies (e.g., Complete Streets, Vision Zero, Climate Action Plans) apply to project selection and transportation investments.</p> | <p>In addition to long-range transportation plans, the State and MPO have several overarching policies, which are designed to advance different transportation priorities. Examples include: <i>Maine Won’t Wait</i>, MaineDOT and PACTS Complete Streets policies, PACTS Vision Zero Action Plan.</p> |
| <p>Planning to Implementation</p> <p>The MOU should clearly identify the progression from planning to implementation for Initiative #1 (transformative projects) and Initiative #2 (corridor planning). The MOU should set clear expectations for how these efforts are scoped, funded, and managed.</p> | <p>Federal partners emphasize the need for coordinated planning and programming.</p> |

Conclusion

Staff appreciate MaineDOT’s draft proposal and welcome a more coordinated approach to transportation planning and programming investments. We look forward to an enhanced partnership with MaineDOT, and to working together to develop a Memorandum of Understanding that reflects PACTS’ federal responsibilities and the mutual desire to work together more effectively and collaboratively.

To help facilitate PACTS’ adoption and implementation of an MOU, staff suggest developing a process to help:

- Clarify terms and procedures
- Define expected outcomes
- Identify metrics for tracking the successful implementation of the MOU
- Understand how the MOU will evolve over time and adapt to changing circumstances

Staff will work with PACTS members, MaineDOT, and our federal partners to better understand the details of MaineDOT’s proposal and ensure that its implementation in our region maximizes benefits and avoids any misunderstandings or unintended results.

Appendix A offers some initial questions developed by staff and Appendix B highlights some of the prominent federal regulations that pertain to MPO planning and programming.

Appendix A: Initial Questions

There are several elements of MaineDOT's proposal that could benefit from additional clarification. The list below documents some of those key questions that, when answered, will help clarify roles and responsibilities, ensuring a cooperative and coordinated transportation decision-making process.

1. The proposal states that MPOs are "well suited for determining regional priorities." Broadly, how will the MPOs' LRTPs (e.g., *Connect 2045*) influence the development of the MaineDOT Work Plan, TIP/STIP, and guide discretionary grant pursuits?
2. MPOs serving TMAs are required to have a fiscally constrained list of projects in their long-range transportation plans as "*federal partners want to see a strong link between the fiscally constrained plan and those projects that ultimately receive federal funding*" (*Connect 2045*).

After "setting aside" forecasted bridge & pavement preservation needs/revenues, *Connect 2045's* "fiscally constrained plan" assumes ~\$49 million/year (2022 dollars) in available federal/state funding for transformative capital projects.⁶ How will that projected annual funding and prioritized projects align with PACTS' investment priorities for the TIP/STIP? This alignment is critical given provisions from *Connect 2045*: "*future TIPs and projects therein should align with Connect 2045 or its successor*".

3. What happens if federal formula funding continues to grow? Will the MPO-directed funding (e.g., in the new "Urban Partnership Initiative") remain flat? While MaineDOT's verbal assurance ("*funding will likely rise if the MPOs demonstrate the need*") is encouraging, the reality could be very different depending on MaineDOT leadership at any given point in time.
4. Will the new Urban Partnership Initiative (Initiative #3) be subject to MaineDOT's traditional "PDR-first" policy where the project is funded and delivered in two stages – one for preliminary design report (PDR) and a second for construction?
5. How will the new UPI program afford opportunities for all member communities, understanding that smaller communities may not have the capacity to deliver the projects?
6. How will the MPOs provide input on project selection and prioritization for federal-aid funding programs that have not traditionally been coordinated with the MPOs? Examples (along with anticipated FY24 apportionments) include:
 - a. National Highway Performance Program (NHPP) – \$135.3M. *Under BIL/IIJA, 50% of funding can be transferred to other programs, including HSIP, STBG, Carbon Reduction, CMAQ, PROTECT (all below).*
 - b. Surface Transportation Block Grant (STBG) – \$65.8M

⁶ Funding assumptions were based on estimates from MaineDOT (September 2022).

- i. Reserved for Transportation Alternatives set aside – \$5.7M
 - ii. Reserved for Recreational Trails set aside – \$1.4M
 - c. Highway Safety Improvement Program (HSIP) - \$14.1M
 - d. Congestion Mitigation Air Quality (CMAQ) – \$11.4M
 - e. Transportation Alternatives (TA) – \$4.2M
 - f. PROTECT formula program – \$6.7M
 - g. Carbon Reduction Program – \$5.9M
7. Does MaineDOT expect UPWP funds to be used for planning and scoping transformative projects (Initiative #1)? Will planning funds and their eligibilities be sufficient to ensure the projects are “grant ready” by MaineDOT’s standards, noting that planning funds cannot be used for preliminary design?
8. Paving projects in urban areas are expensive, sometimes resulting in those projects being deprioritized by MaineDOT.⁷ Under the proposal (Initiative #4), how can the MPOs be assured that those projects will be advanced and not removed from a list simply because they are more expensive than their suburban or rural counterparts?
9. Under the proposal (Initiative #2), what happens once an MPO completes a corridor plan? How do the MPOs know that the plan won’t just “sit on a shelf” only to become stale and outdated and require more analysis in a few years? PACTS has invested hundreds of thousands of dollars in corridor studies in the past, only for those studies to require updates and reexamination under new MaineDOT leadership/staff.
10. Will the MPOs, particularly those smaller MPOs, have sufficient funding and capacity to complete the suggested corridor plans?
11. The proposal seems to emphasize the pursuit of special funding and discretionary grant programs. How will MaineDOT assure that MPO priority projects are advanced for discretionary grant programs even as there are changes in Maine’s leadership and legislature? What happens if special funding (e.g., earmarks) and federal discretionary programs are scaled back or eliminated?
12. What happens if/when Maine adopts a more sustainable funding system that is no longer reliant on the fuel excise tax? How will investments in urban areas change under MaineDOT’s proposal?

⁷ As acknowledged by MaineDOT staff at the September 12, 2023 quarterly meeting. Simply put, urban paving projects are more costly on a per-mile basis than projects in other suburban or rural areas.

Appendix B: Federal Requirements and Guidance

Prominent federal regulations and provisions that the proposal and MOU should consider include:

- § 450.314 – Metropolitan planning agreements.
 - (a) *“The MPO, the State(s), and the providers of public transportation shall cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process.”*
- § 450.326 – Development and content of the transportation improvement program (TIP).
 - (a) *“The MPO, in cooperation with the State(s) and any affected public transportation operator(s), shall develop a TIP for the metropolitan planning area. The TIP shall reflect the investment priorities established in the current metropolitan transportation plan”*
 - (m) *“...legislative provisions that require the MPO, in cooperation with the State and the public transportation operator, to develop a prioritized and financially constrained TIP...”*
- § 450.332 Project selection from the TIP.
 - *“In areas designated as **TMA**s, the MPO shall select all 23 U.S.C. and 49 U.S.C. Chapter 53 funded projects (excluding projects on the NHS and Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program) in consultation with the State and public transportation operator(s) from the approved TIP and in accordance with the priorities in the approved TIP. The State shall select projects on the NHS in cooperation with the MPO, from the approved TIP.”*
- 23 U.S. Code § 134 (k), selection of projects
 - (A) *“In general — all Federally funded projects carried out within the boundaries of a metropolitan planning area **servicing a transportation management area** under this title (excluding projects carried out on the National Highway System) or under chapter 53 of title 49 shall be selected for implementation from the approved TIP by the metropolitan planning organization designated for the area in consultation with the State and any affected public transportation operator.*
 - (B) *National highway system projects.— Projects carried out within the boundaries of a metropolitan planning area servicing a transportation management area on the National Highway System shall be selected for implementation from the approved TIP by the State in cooperation with the metropolitan planning organization designated for the area.*
- 23 U.S. Code § 133 - Surface transportation block grant program (STBG)
 - *“A metropolitan planning organization for an area described in subsection (d)(1)(A)(i) [below] shall select projects under the competitive process described in subparagraph (B) in consultation with the relevant State.”*
 - (d)(1)(A)(i): *“in urbanized areas of the State with an urbanized area population of over 200,000”*
- Congestion Mitigation and Air Quality (CMAQ) Guidance, Federal Register (FHWA)
 - *“MPOs, State DOTs, and transit agencies should develop CMAQ project selection processes in accordance with the metropolitan and/or statewide planning process....The CMAQ project selection process should be transparent, in writing, and*

publicly available. The process should identify the agencies involved in rating proposed projects, clarify how projects are rated, and name the committee or group responsible for making the final recommendation to the MPO board or other approving body”⁸

- Flexible funding for transit and highway improvements. Federal law (23 U.S.C. § 104(f); 49 U.S.C. § 5334(i)(1)) allows Federal-Aid Highway Program funding made available for public transportation projects to be flexed (or transferred) to be administered by FTA for public transportation projects. Specific FHWA formula funding programs that can be “flexed” include:
 - National Highway Performance Program (NHPP)
 - Surface Transportation Block Grant (STBG)
 - Congestion Mitigation and Air Quality (CMAQ) program.

⁸ *Publication of Final Guidance on the Congestion Mitigation and Air Quality Improvement (CMAQ) Program.* Federal Register, FHWA. <https://www.govinfo.gov/content/pkg/FR-2008-10-20/html/E8-24704.htm>