

Roads and Highways Advisory Board Meeting

April 26, 2019 – 1:00 PM – 4:00PM

Via Teleconference

Anchorage: 4111 Aviation Road, Planning Conference Room

Fairbanks: 2301 Peger Road, Director's Conference Room

Juneau: 3132 Channel Drive, 3rd Floor Room 300

Call in Number: 907-463-1208

Board Members: John Baker, Scott Eickholt, Donna Gardino, Daniel Hall, Anton Johansen, Howard Thies

1. Call to Order
2. Board Roll Call to Establish Quorum
 - a. Welcome and Introduction of other participants
3. Phone Roll Call and Introduction of Those Present
4. Approval of Agenda
5. Approval of Minutes
6. Public Comments (3 minutes per speaker)
7. Chair's Remarks
8. Roads and Highways Advisory Board in Statute
9. Project Bidding Delays and the Ability of the Department to Spend the Program Dollars
10. State of Alaska Owned Material Sites
11. Traffic Control Program
12. Reinstate the Alaska Exemption
13. Board Comments
14. Next Meeting – TBD (teleconference)
15. Adjourn



ALASKA DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES

#9 State Owned material Sites:

- **Why are these sites under control of DNR?**

Alaska Constitution establishes DNR responsibility to manage public domain lands. Alaska Statute establishes DNR's authority and responsibility to manage material sites.

DOT&PF and DNR are coordinating at the executive level to resolve and streamline multiple issues regarding State of Alaska owned material sites.

- **How are State owned material sites being managed with regard to inventory reserves?**

DNR currently manages with respect to the public's best interest. DNR considers DOT&PF, local municipalities, Alyeska Pipeline Service Company, private developers, and others the same or similar regarding material extraction for the public's interest.

Part of the DOT&PF and DNR coordination effort includes programmatic consideration of how preserving inventory for the public's transportation system, which is managed by DOT&PF, are dedicated to (reserved for) DOT&PF's current and future construction and maintenance activities.

- **How are Material Sites being managed with regard to Storm water Permitting and MSGP Reporting?**

- Multi-Sector General Permit (MSGP) for DOT&PF furnished Material Sources;
There are a handful of state owned material sites currently or previously used by DOT&PF, which DOT&PF has determined require MSGP coverage. DOT&PF is typically not the only operator within these material sites. According to the permit conditions, the owner is the primary operator responsible for permit compliance, including the SWPPP and MSGP reporting. DOT&PF may contractually transfer certain SWPPP, inspection, and reporting responsibilities to the Contractor but DOT&PF retains permit responsibility as one of the operators. Because of the difficulty in controlling actions of multiple operators (some of which will not under contract with DOT&PF), DOT&PF generally tries to avoid state owned sites that require coverage under the MSGP.

- Multi-Sector General Permit (MSGP) for Contractor furnished or other Commercial Material Sources;

The Contractor or commercial operator is the Operator for these sites and is responsible for MSGP compliance, including the SWPPP and MSGP reporting.

- Construction General Permit (CGP), for DOT&PF furnished Material Sources;
DOT&PF and the Contractor are co-operators, and begin and end permit coverage with their own separate NOI and NOT. Both are responsible for the SWPPP,

SWPPP administration, and any necessary BMPs, but DOT&PF contractually assigns most of DOT&PF's operator responsibilities to the Contractor. Regardless of any duties or responsibilities DOT&PF transfers to the Contractor, DOT&PF remains an operator under the permit definition and is not insulated from or relieved of sharing responsibility for any non-compliance with the requirements on the CGP.

- Construction General Permit (CGP), for Contractor furnished Material Sources; DOT&PF is not an operator and the Contractor furnished Material Source is not included within the project zone. The Contractor must begin and end permit coverage with their own NOI and NOT. The Contractor is responsible for the SWPPP, SWPPP administration, and any necessary BMPs. DOT&PF may indirectly contribute to the expense of CGP permitting and compliance, but only by subsidiary costs included in payment for work within the project zone.

#10 Traffic Control (Flagger) Program:

- **ATSSA and IMSA are the only programs DOT&PF recognizes to certify Flaggers.** 23 CFR and the MUTCD do not require "certification", but they do require training for flaggers, and the training has been periodically refreshed. Certification is the mechanism DOT&PF and others use to establish enforceable contract provisions for ensuring the training has been satisfactorily completed.

DOT&PF's requirement for (only) ATSSA or IMSA certification for flaggers has been in place since 1998. ATSSA and IMSA were selected because both are nationally accepted as satisfying federal requirements for flagger training. In addition to classroom, DOT&PF also allows online training/certification through ATSSA. IMSA does not have an online option.

Several other states use ATSSA, university based programs, Evergreen Safety Council, and other private administered programs.

DOT&PF's primary contact with our industry partners (AGC Alaska) has not asserted these two options are unreasonably restrictive.

Alaska can consider other certification options, provided each could demonstrate their program satisfies federal training requirements for flaggers. Because of the costs to evaluate and verify one or more other options, DOT&PF would rely on third parties to initiate the consideration by submitting their individual program, defending how it satisfies federal requirements, and requesting acceptance for inclusion as another alternative certification. Any change would require Alaska Division FHWA approval of the training program, and approval of the changes in standard contract language in order to include one or more other certifications. Coordination with industry, evaluation and securing FHWA approval means a change is not guaranteed and would not be immediate.

- **Only a few Alaska CESCL Instructors DOT&PF Authorizes?**

Alaska Certified Erosion and Sediment Control Lead (AKCESCL) is a training and certification program overseen by the Alaska Storm Water Steering Committee (ASWSC). ASWSC is a collaboration of government agencies and Contractor associations established to provide standardized training in Alaska, for the purpose of satisfying and enhancing compliance with the requirements of the Alaska Department of Environmental Conservation Construction General Permit for storm water discharges.

DOT&PF does not authorize AKCESCL instructors but is participating agency in ASWSC. In coordination with 7 other agencies, DOT&PF plays an equal role in ASWSC's the vetting and approval of authorized AKCESL instructors.

There are currently 7 Master Instructors (train the trainers), and 2 Instructors. Two of the Master Instructors are DOT&PF employees. One of the Instructors is a DOT&PF employee.

The current AKCESL training calendar (April and May, only) posted on the <http://akcescl.com/> website includes:

- April: 9 two-day classes and 5 refresher classes,
- May: 6 two-day classes and 4 refresher classes

#12 Reinstate the Alaska Exemption

Prior to MAP-21, Alaska had an exemption in which the population sub-allocations to STP (now called STBG-Surface Transportation Block Grant) did not apply and all funds were available for use anywhere in the state. With MAP-21, approximately half of funds are available for use anywhere in the state and the remaining funds are distributed per their relative share of population over 200,000; between 5,000 and 200,000; and under 5,000. In addition to the exemption being removed, the amount of funding for STP was reduced in favor of more funding for the NHS class of highways.

STBG has a lot of needs to fulfill (as does the NHS), and it is likely inadequate to these many demands. Our STIP is oversubscribed; currently the STP program has 5-7 years' worth of projects waiting for funding and the NHPP has 11-13 years' worth. In addition to serving larger metropolitan areas like Fairbanks and Anchorage, STP funds must also be utilized for all public roads above Minor Collector, it is the only funding class usable on the thousands of miles of the Alaska Highway System, which are state highways not on the NHS system. Alaska's tribes have also become more vocal in asserting their need for transportation funding too.

Fortunately for the two MPO's, the current population sub-allocations provide something of a 'safety net' because the AHS and the tribe's needs are primarily in the less than 5,000 bracket. Reinstating the 100% STP flex and giving more flexibility will create more tension between urban, rural and tribal needs, and without sideboards provided in law, the pot may actually get smaller for those who wish it to become bigger.

The real problem is the program needs are much larger than the available funds - the STIP is oversubscribed. Our needs and the cost of projects is growing faster than the funding. This has been a problem for years and it is caused by a variety of things. One of the challenges we will be working on at HQ and the Regions is getting that growth under control.

The **Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users** ([Pub.L. 109–59](#); SAFETEA-LU) was a funding and authorization bill that governed United States federal surface transportation spending. It was signed into law by President George W. Bush on August 10, 2005, and expired on September 30, 2009, although it remained in effect under continuing resolutions until the passage of the **MAP-21**, the Moving Ahead for Progress in the **21st Century** Act (P.L. 112-141), was signed into law by President Obama on July 6, 2012. Under MAP-21, the Alaska and Hawaii MPO formula exemption was removed which directly impacts the surface transportation funding to smaller MPOs within a state. This continued under the FAST Act (Fixing Americas Surface Transportation Act), which was signed into law on December 5, 2015 and expires on September 30, 2020.

We recommend encouraging the Congressional Delegation to reinstate this exemption in the next highway bill authorization, expected upon the expiration of the current authorization, in 2020.

Specifically, we are referring to 23 USC 133 (d) (3), **and under SAFETEA-LU**, it read as follows:

(3) DIVISION BETWEEN URBANIZED AREAS OF OVER 200,000 POPULATION AND OTHER AREAS.—

(A) GENERAL RULE.—*Except as provided in subparagraph (C), 62.5 percent of the remaining 90 percent of the funds apportioned to a State under section 104(b)(3) for a fiscal year shall be obligated under this section— (i) in urbanized areas of the State with an urbanized area population of over 200,000, and (ii) in other areas of the State, in proportion to their relative share of the State's population. The remaining 37.5 percent may be obligated in any area of the State. Funds attributed to an urbanized area under clause (i) may be obligated in the metropolitan area established under section 134 which encompasses the urbanized area.*

(B) SPECIAL RULE FOR AREAS OF LESS THAN 5,000 POPULATION.—*Of the amounts required to be obligated under subparagraph (A)(ii), the State shall obligate in areas of the State (other than urban areas with a population greater than 5,000) an amount which is not less than 110 percent of the amount of funds apportioned to the State for the Federal-aid secondary system for fiscal year 1991.*

(C) NONCONTIGUOUS STATES EXEMPTION.—*Subparagraph (A) shall not apply to Hawaii and Alaska.*

(D) DISTRIBUTION BETWEEN URBANIZED AREAS OF OVER 200,000 POPULATION.—*The amount of funds which a State is required to obligate under subparagraph (A)(i) shall be obligated in urbanized areas described in subparagraph (A)(i) based on the relative population of such areas; except that the State may obligate such funds based on other factors if the State and the relevant metropolitan planning organizations jointly apply to the Secretary for the permission to do so and the Secretary grants the request.*

Under **MAP-21** and subsequently, the **FAST Act**, the same section currently reads:

(d) ALLOCATIONS OF APPORTIONED FUNDS TO AREAS BASED ON POPULATION.—

- (1) CALCULATION.**— Of the funds apportioned to a State under section 104(b)(2)—
(A) 50 percent for a fiscal year shall be obligated under this section, in proportion to their relative shares of the population of the State—
(i) in urbanized areas of the State with an urbanized area population of over 200,000;
(ii) in areas of the State other than urban areas with a population greater than 5,000; and
(iii) in other areas of the State; and
(B) 50 percent may be obligated in any area of the State.

(2) METROPOLITAN AREAS.—

Funds attributed to an urbanized area under paragraph (1)(A)(i) may be obligated in the metropolitan area established under section 134 that encompasses the urbanized area.

The result of the elimination of the Alaska exemption means that the state has less flexibility in funding the areas of the state between 5,000 and 200,000 where much of the surface transportation issues are present as these areas are tied to the contiguous roadway network and the largest metropolitan area. With the likelihood of an additional MPO being designated in Alaska after the 2020 census, it is critical that all three metropolitan areas receive sufficient funding to plan and operate the transportation network. Reinstatement of the Alaska exemption would accomplish this and allow the state to conduct consultation with the Metropolitan Planning Organizations to develop an equitable funding scenario.