

PACTS Complex Projects Task Force

Friday, March 18, 2022

10:00 – 11:30 a.m.

Meeting Agenda

Webinar Link: <https://us02web.zoom.us/j/85859340198>

Phone: 646-558-8656—Webinar ID: 858 5934 0198

This meeting is being recorded and will be made available at gpcog.org/AgendaCenter.

1. Public Comment 5 minutes

Members of the public are welcome to provide up to three minutes of public comment on items not on this agenda. For items on this agenda, additional opportunity for public comment will be provided after the item's staff report, before task force discussion begins.

2. PACTS Complex Projects Task Force Survey (Attachment B) 85 minutes

Review and discuss the survey results. Based on the results, recommend, as needed, revisions to the policies related to the selection and funding of complex projects.

Upcoming Meetings

- PACTS Policy Board—Thursday, March 24, 11:00 a.m.–1:00 p.m.
- PACTS Regional Transportation Advisory Committee—Tuesday, April 5, 9:00–11:00 a.m.
- PACTS Executive Board—Tuesday, April 26, 9:00 –10:30 a.m.
- PACTS Regional Transportation Advisory Committee—Tuesday, May 3, 9:00–11:00 a.m.

Board and committee members, the public, and other stakeholders are encouraged to subscribe to the PACTS calendar at gpcog.org/Calendar.

PACTS Complex Projects Task Force

Friday, March 4, 2022

MEETING NOTES

Attendance

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

1. Public Comment

- Bill Shane, Town of Cumberland: I would hope to see an explanation for taking collector paving funding for complex projects. Complex projects are important, but many PACTS communities only get PACTS funding through the collector paving program because their complex projects don't score well. We are all competing for the same money, and I hope to find some common ground.
- Tom Milligan: I thought maybe making more money available for MPI (PACTS Municipal Partnership Initiative) as opposed to collector paving was an option.
- Bill: That idea might have traction. There seems to be more collaboration between regions for MPI than for collector paving. I'm not sure if the recommendation is going to the Policy Board this month, but I would like to see more collaborative discussion.
- Aubrey Miller: When the idea to move money from collector paving to complex projects came up, staff said that while it was outside the scope of this task force, we could pass it along with the group's official recommendations. I do not expect the Policy Board would take action on it, since we recently reconsidered the funding arrangement both during the development of the funding framework and in the collector paving working group. PACTS may reconsider it again as part of a larger big picture funding discussion during the development of Connect 2045, but I don't expect the Policy Board would take action before that.
- Angela Blanchette, Town of Scarborough: I agree with a lot of what Bill said, and my question was about what the actual recommendation would be and when it would be going to the Policy Board.
- Aubrey: This group has more work to do before finalizing its recommendations, but then the funding recommendation would be passed along with the group's other recommendations.

- Jim Bennett: I brought up the idea as something to have a conversation around. I assume that when we complete our work, we'll take everything as a whole and see if the individual pieces still fit into the recipe. It's too early to think it's a solid recommendation or not. But it is easier for me to get communities to take care of paving than to get big money to take care of big, complex projects that are seen to be more for the region than the community.

2. PACTS Complex Projects Task Force Survey

- There was no public comment on this item.

Application Requirements

- 1. Staff Suggestion: Require three-party written agreement on **applicable design standards** before applying for PACTS funding, *pending consultation between GPCOG staff and MaineDOT staff regarding the logistics.* (Q1)
 - Aubrey asked for a show of hands from those in favor of the staff suggestion. All 7 task force members present raised their hands.
- 2. Staff Suggestion: Require three-party written agreement on **project readiness** before applying for PACTS funding. (Q2)
 - Aubrey asked for a show of hands from those in favor of the staff suggestion. All 7 task force members present raised their hands.
- 3. Staff Suggestion: Regarding a **financial plan**, add language (25% local match for PDR and construction, cost overruns are responsibility of municipality, etc.) from the existing three-party agreement, which must be signed before project development begins, to the application for PACTS funding, requiring applicants to affirm their understanding of, and agreement with, the language in the three-party agreement, when applying for PACTS funding. Also, require a description of the possibilities for phased implementation, as well any plans to pursue discretionary funding in the application. (Q9-10)
 - Haven't municipalities already spent money to get to this point? [Jim]
 - Funds for planning, but not federal funds. This suggestion doesn't change the funding commitments; it makes sure those commitments are clear earlier in the process. [Aubrey, Chris]
 - It's not a situation where you need a formal vote and a commitment of dollars and to know where those dollars are coming from? It's just recognizing what the commitment is? [Jim]
 - It's not identifying a source of dollars, but if you're get PACTS money, you're committed to the local match. [Aubrey]
 - Do you still have the chance to change if the elected officials change? No council can bind a future council. [Jim]
 - The way it's written, it wouldn't be a hard commitment at the time of application, but it's in everyone's interest that there is a lot of support from local elected officials and that those

expectations have been set up locally. It's up to the municipality how they want to handle the process, but this sets expectations ahead of time. [Chris]

- The sense is that it is a hard commitment at that point to move forward, which is different from where we are now. How cost overruns, etc., come out affects if I can endorse this change. [Jim]
- Even right now, before PACTS can approve funding, the local council does need to formally endorse the project. [Aubrey]
- My understanding is this really isn't a change in policy at all. It's just being more transparent about the commitment at the application phase. I think that's a great idea. For the bike/ped bridge project, it was hard for me to articulate this to my council, so having something already written would be helpful. [Jessa]
- I agree with Jessa. It might be helpful to be clearer about what we're talking about when the three-party agreement is signed. Those agreements are for construction, but we're talking about PDR. [Christian]
- The agreement happens at PDR and is then modified for construction. [Aubrey]
- I agree this isn't much of a policy change. I would prefer we go further. I would like to see a plan for municipalities to think about, if there are overruns, how will you cover them? Will you come back to PACTS, or do you have a plan for local match? This is good but doesn't go far enough. [Christian]
- The three-party agreement says that municipalities are entirely responsible for cost overruns, which seems in conflict with the Project Cap Policy. [Eamonn]
- The municipality is ultimately responsible if PACTS doesn't have or doesn't approve additional funding. [Aubrey]
- My concern is committing to something that a community is going to be 100% responsible for when they're not 100% in control of what's going on. [Jim]
- Aubrey asked for a show of hands on the staff suggestion as it is. Five members raised their hands. Two members expressed concerns—Jim said he can't agree to this without knowing the implications on the other end. Tom said there needs to be some mechanism for covering cost overruns.
- Tom's point sounds related to the Project Cap Policy. To be clear, as of right now, this language is something everyone must sign off on anyway. This just moves the language up to the application phase to make sure everyone knows what they're getting into before they apply. With five hands, we will move on for now. [Aubrey]
- For a simple project without significant engineering, the development costs are relatively small, and a municipality can bail before construction. But if it's a really complex project, engineering costs are high and that's a considerable burden. There needs to be a mechanism to cover that without a formal commitment up front. [Tom]

- I hear municipalities concerned about inflation-related increases and on the other side I hear concerns about scope creep and efficient use of funds. I hear those points. We'll move on for now. We'll talk more about the Project Cap Policy later. [Aubrey]

Local Match

— 4. Staff Suggestion: Maintain the 25% **local match requirement** for both PDR and construction. (Q11-12)

- Makes sense, but I am only comfortable with it if we take a look at a percentage of PDR that has to be complete before applying. [Eamonn]
- It's a fine policy to keep, but we've also talked about trying to incentivize projects with greater local match, where we're getting more for our buck with more local resources or developer resources. It's a good measure of a project's value. [Christian]
- Bonus points are a separate topic—#13 on page 42. [Chris]
- As I think about all of this, simpler projects will get funded because there's more certainty. The individual who writes the check is not in control of the process; mostly MaineDOT is in control. Do we need to think about different rules for different complexities of projects? I'm just planting a seed for people to start thinking about, are we creating a policy that will lean us toward simple projects and not deal with complexity issues? [Jim]
- I agree that MaineDOT is a major source of the risk in these projects. I do think that's a component that needs to be addressed. [Christian]
- Aubrey asked for a show of hands, noting Eamonn's and Christian's concerns. Six members raised their hands. The seventh, Tom, said he's okay with the staff suggestion, but said it does need to be examined in more detail as costs of projects go up.

Project Selection

— 5. Staff Suggestion: Request a description of **cost avoidance** in the application, without requesting dollar values or assigning points, and use the description as another data point for decision makers to consider, along with project scores. (Q16-17)

- My biggest concern is how cost avoidance was discussed last time. Saying, "if we build *this*, we won't have to do *that*" isn't really avoiding costs if you would never have done *that* anyway. I recommend measuring cost avoidance relative to the status quo, not the hypothetical. [Christian]
- I like the staff suggestion as is. I'm concerned about Christian's literal interpretation. Thinking about the bike/ped bridge—maintenance costs will be added, but it will reduce costs on the network around it, which is important and needs to be captured. [Jessa]
- User costs can be quantified and would be appropriate. [Christian]
- I am good with this recommendation. It's going to be up to the scorers to determine what cost avoidance is. [Jim]

- Generally, I like Christian's idea to put more teeth in. I am concerned about adding a lot of things that don't get scored. [Eamonn]
 - Making it specific would also help policy makers at the local level. [Christian]
 - Aubrey asked for a show of hands, noting the points that have already been made. All 7 members present raised their hands in favor of the staff suggestion.
- **6. Staff Suggestion:** Have GPCOG staff begin performing a **cost per point evaluation** at the time of PDR allocation, construction allocation, and any overage requests, for information purposes. Once PACTS has data points available to better assess the effectiveness of the metric for our region, we can revisit the idea of using cost per point to evaluate projects. (Q18-19)
- Would the analysis be retroactive? Running it for a couple of cycles might be helpful. [Eamonn]
 - If we go down this road, it's going to drive funding to simpler, small, more defined projects, and more complex projects will not be addressed. [Jim]
 - It's a useful point of information that comes into effect if there's a funding shortfall. The Boston MPO plots them on an x-y axis. There was a similar chart about CARES Act funding in the RTAC (Regional Transportation Advisory Committee) meeting packet.¹ [Christian]
 - I would rather put money into a project that has a great outcome that meets the goals of what we're trying to do. That should be the first screening, before we get into cost being a decision maker. It's way easier to build a sidewalk in a rural area than in an urban area, but if we use cost per point, a rural sidewalk is more likely to get built. [Jim]
 - Those projects won't score as well. The criteria favor projects that serve more people. And scoring still happens first. This just helps put scores into a financial context. This group is talking about the financial limitations of what PACTS can fund. [Christian]
 - There's no way to say cost per point doesn't become the main way to deal with limited funding. [Jim]
 - My concern is that if someone wants to keep costs down and therefore get more points, unless there are criteria for determining cost that everyone uses, I have a concern. [Tom]
 - I am always in favor of more data, but I have hesitations. Looking at survey question #19, it's about evaluating after PDR, and I feel particularly nervous about that. If PACTS is going to fund PDR, there should be some level of certainty that construction will happen. I want to make sure that's not what you're talking about. Also, rural projects are considerably cheaper, and I think there is a bias toward giving them not a proportionately lower score than urban projects, in an attempt to distribute funds. But I would love to see the numbers. [Jessa]
 - I am okay with the information being collected, but I am not comfortable with it being used to make decisions. I have concerns about simple projects getting funded more often. I also agree it

¹ https://www.gpcog.org/AgendaCenter/ViewFile/Agenda/_03012022-401. See Figure 3 on p. 76.

could be useful down the road in some fashion, but I'm not comfortable with it being used to give money at this point. [Erin]

- An interesting exercise would be PACTS looking at past projects. [Tom]
- I think we should recommend that staff evaluate how it would have impacted past projects before we go forward with the other ones. And not do it going forward until we get a sense about what it might achieve. [Jim]
- We heard that from Eamonn as well, but again, we have limited data on projects scored through the funding framework. [Aubrey]
- Aubrey asked for a show of hands, with the addition that this is applied retroactively. Six members raised their hands; Tom did not.

Construction Funding Commitment Limits

— **7. Staff Suggestion:** Add an option for applicants to indicate they **will not seek construction funding from PACTS**, but rather they will fund construction using other funding sources.² (Q22)

- I brought this up in response to the Portland situation last year, where Portland agreed to cap construction funding during a meeting. It would have been a helpful option up front. [Eamonn]
- To be clear, this means when we submit an application for PDR, we can promise we don't want construction money? Thinking about the Portland example, they probably wouldn't have checked the box up front. Portland made the decision at the last minute. But I see no harm in adding the option. [Jessa]
- Why would we even submit? Just to get into the process? [Tom]
- If you just want to request PDR funding. [Eamonn]
- Would this prevent you from applying for other federal sources, or just from PACTS? [Jessa]
- Just from PACTS. [Aubrey]
- I see the Project Cap Policy as one of the biggest financial risks. May we address that one out of order? Cap vs. contingency? In my view, the cap is one of the biggest sources of our shortfalls. I think the cap policy needs tighter guardrails. Promising 20% above and beyond doesn't prevent scope creep or keep municipalities accountable to stay within budget. It's a huge unfunded mandate we're putting on future PACTS boards. I think it should be lower, and we should budget for it. [Christian]
- With limited time left, perhaps we can start with that one next time. Let's take a show of hands on the forgoing construction funding item first. [Chris]

² Please note that staff revised this suggestion (compared to what was provided in the written packet for the March 4 meeting) verbally during the meeting on March 4. The written suggestion included here reflects what the task force discussed.

- All 7 members present raised their hands in favor of the staff suggestion.
- Cost overruns are absolutely what's driving the problem. I agree that's the biggest issue. [Jim]
- I would be interested if both staff and committee members had some time to think about if we need to think about different rules based on the complexity of projects. I'm still concerned we're heading to a place we're not going to like. But I would like staff to think through how that plays out and potentially have that discussion. [Jim]
- I agree with Jim. Once we're done with this, is there a way to see how PACTS projects would score using what we've changed? Maybe that would help people feel more comfortable? [Erin]
- Note that Aubrey included an example of the Boston MPO scoring matrix in a previous packet. [Christian]
- Scores would not have changed based on the discussion of this group. Decisions perhaps, but that would be hypothetical. It's a good point though. [Chris]
- I think that's where staff's expertise is going to be, to think through different projects, understanding all the changes and the types of projects. How is this going to change, if at all, the kinds of projects that are going to go forward? We don't submit projects we don't think are going to compete well. There are two levels of conversation we have—what do we need and how will it complete? That's where I think your expertise and your thoughts would help us. [Jim]
- I have a question and I'm not looking for an answer right now. We've talked about PDR without PACTS funding for construction. Maybe the thought is we're holding out for something bigger and better. Can a community work with GPCOG/PACTS to submit for such a grant, or do state DOTs act as gatekeepers to those funds? If we can't get at those funds without DOT, it begs another question. It would factor into Portland's decisions on applications. [Jeremiah]

Attachment B

PACTS Complex Projects Task Force (CPTF) Survey¹ Analysis

This document has three key sections.

- Parts A and B include the issues on which the survey showed task force members to be in agreement and/or for which staff felt it was appropriate to provide additional information and/or suggestions.
 - Part A includes the issues the task force discussed at the last meeting, on March 4.
 - Part B includes the issues the task force did not have time to discuss at the last meeting.
- Part C includes the issues on which the survey indicated more discussions is needed.

Part A: Points of Near-Agreement or Staff Insights/Suggestions the task force discussed on March 4

Application Requirements

1. Agreement on applicable design standards (**Q1**)

Staff Suggestion: A majority of CPTF members recommend requiring agreement—between the municipality/potential applicant, MaineDOT, and PACTS—on applicable design standards *before* applying for PACTS funding. Staff suggests requiring written agreement (the parties may meet if they deem it necessary to reach an agreement) on the applicable design standards and the design exemptions, **pending consultation between GPCOG staff and MaineDOT staff** regarding the logistics of exactly which standards (construction? traffic?) would be involved and the possibility of reaching agreement on such standards when the project is still in the concept phase.

March 4th Discussion:

- Show of hands: 7 of 7 (present) in favor
- Concerns: N/A

2. Agreement on project readiness (**Q2**)

Staff Suggestion: A majority of CPTF members recommend requiring agreement—between the municipality/potential applicant, MaineDOT, and PACTS—on project readiness *before* applying for PACTS funding. Staff suggests requiring written agreement on project readiness; the parties involved may meet if they deem it helpful or necessary to reach an agreement.

March 4th Discussion:

- Show of hands: 7 of 7 in favor
- Concerns: N/A

¹ To view the full survey results, see Attachment B in the March 4, 2022 PACTS Complex Projects Task Force meeting packet, available at https://www.gpcog.org/AgendaCenter/ViewFile/Agenda/_03042022-402.

Attachment B

3. Financial plan (Q9-10)

Staff Suggestion: The most recent call for complex projects application included the following questions:

- Please indicate if any additional municipalities/agencies are providing match funding.
- Provide a planning-level cost estimate, if available. You may provide additional detail if it is available.
- Please indicate how much funding you are requesting. (Please also note if you have obtained or are seeking funding from other sources.)

The three-party agreement that is signed by the municipality, MaineDOT, and PACTS after funding is awarded and before project development begins includes the following language:

- The local match requirement is 25% for the entire project, both PDR and construction.
- Cost overruns, regardless of cause, are entirely the responsibility of the municipality.
- Municipalities are required to cover 100% of the cost if they decide to cancel the project.
- Municipality's Share – 25% of eligible Project costs, plus 100% of the following:
 - Any costs deemed ineligible for federal and state participation
 - Any costs associated with additional work requested by the Municipality that is outside the Project scope of work.
 - All Project costs exceeding the Project Estimate
- If the Municipality withdraws its financial support for the Project leading MaineDOT to terminate the Project, the Municipality shall reimburse MaineDOT fully for any and all Project costs incurred

Staff suggests keeping the existing language in the application and adding the language from the three-party agreement in the application. Applicants would need to affirm their understanding of, and agreement with, the language in the three-party agreement.

Staff also suggests requiring a description of the possibilities for phased implementation, as well any plans to pursue discretionary funding.

March 4th Discussion:

- Show of hands: 5 of 7 in favor
- Concerns:
 - Cannot bind future councils to funding commitments.
 - Depends on decisions about how PACTS will handle cost overruns.
 - Doesn't go far enough. Municipalities should plan for how to handle cost overruns.
 - Municipalities are not in control of what happens.

Local Match

4. Local match requirement (Q11-12)

Staff Suggestion: A majority of CPTF members recommend maintaining the 25% local match requirement for PDR and for construction. Other members are split on whether to increase or

Attachment B

decrease the local match. Staff suggests maintaining the 25% local match requirement for PDR and for construction.

March 4th Discussion:

- Show of hands: 7 of 7 in favor, with the concerns noted below
- Concerns:
 - Only in favor if some design work is completed before applying for funds.
 - Would like to consider incentivizing projects with greater local match.
 - This may lead to simpler projects getting funded because there's more certainty.
 - Would want this to be examined in more detail as the costs of projects go up.
 - The municipalities write the checks, but MaineDOT is in control.

Project Selection

5. Cost avoidance (Q16-17)

Staff Suggestion: A majority of CPTF members recommend that cost avoidance be a factor when selecting projects, but many note that it is difficult to accurately measure. Staff suggests requesting a description of cost avoidance in the application, without requesting dollar values or assigning points, and using the description as another data point for decision makers to consider, along with project scores.

March 4th Discussion:

- Show of hands: 7 of 7 in favor
- Concerns:
 - Recommend measuring against the status quo, not the hypothetical.
 - Recommend letting scorers determine what cost avoidance is.
 - Concerned about adding more things that don't get scored.

6. Cost per point evaluation (Q18-19)

Staff Suggestion: CPTF members are split and undecided on whether to use a cost per point evaluation to score projects. Staff suggests having GPCOG staff begin performing a cost per point evaluation at the time of PDR allocation, construction allocation, and any overage requests, for information purposes. Once PACTS has data points available to better assess the effectiveness of the metric for our region, we can revisit the idea of using cost per point to evaluate projects.

March 4th Discussion:

- Show of hands: 6 of 7 in favor, with the addition that it be applied retroactively
- Concerns:
 - Retroactive analysis would be helpful.
 - This may drive funding to simpler, smaller, more defined projects, and more complex projects may not get addressed.
 - Make sure projects achieve goals first, before cost is factored in.
 - Concerned costs may be underestimated to improve a project's cost per point.
 - Okay with the information being collected, but not comfortable with it being used to make decisions.

Attachment B

Construction Funding Commitment Limits

7. Formalize forgoing construction funding from PACTS (Q22)

Staff Suggestion²: A majority of CPTF members recommend formalizing the option for a project sponsor to forgo construction funding from PACTS. Others suggest such action is redundant and unnecessary, as the option already exists in the three-party agreement. Staff suggests adding an option for applicants seeking PDR funding from PACTS to indicate they *will not* seek construction funding from PACTS, but rather they will fund construction using other funding sources.

March 4th Discussion:

- Show of hands: 7 of 7 in favor
- Concerns: N/A

² Please note that staff revised this suggestion (compared to what was provided in the written packet for the March 4 meeting) verbally during the meeting on March 4. The written suggestion included here reflects what the task force discussed.

Attachment B

Part B: Points of Near-Agreement or Staff Insights/Suggestions that the Task Force did not have time to discuss on March 4

Cost Overruns

8. Presentation of the amount and cause of cost overruns (**Q26-27**)

Staff Suggestion: A majority of CPTF members recommend that PACTS require project sponsors facing cost overruns to present to the PACTS governing body an explanation of the amount and cause (e.g., inflation or scope creep?) of the overruns. One member suggests it need not be a presentation, but that documenting makes sense. Given the increasing frequency of cost overruns and a dwindling Holding WIN, staff suggests requiring PACTS governing body approval of all requests for additional funding; the project sponsor would need to provide documentation of the amount and cause of the overrun *at least* two weeks prior to the governing board meeting.

9. Cost per point evaluation (**Q28-29**)

Staff Suggestion: See Staff Suggestion for cost per point evaluation under Project Selection above (#6).

10. PACTS governing body approval of scope changes that impact cost (**Q30**)

Staff Suggestion: Four (4) CPTF members were in favor of this idea, two (2) were opposed, and two (2) answered "I don't know / Other." Staff suggests requiring PACTS governing body approval of scope changes only if they (1) impact PACTS' cost or (2) impact the purpose and need of the project. The three-party agreement states that MaineDOT will consult with PACTS and the Municipality before implementing any adjustments to the Project scope, and PACTS and the Municipality will, likewise, notify MaineDOT of any proposed changes they wish to implement.

11. PDR completion deadline (**Q31-33**)

Staff Suggestion³: CPTF members were split on this issue, with four (4) "Yes" responses and four (4) "I don't know / Other" responses. GPCOG staff suggests that if PDR is not completed within two years of the signing of the three-party agreement, the municipality must present to the PACTS governing board an explanation of the delay. Delays are a source of cost increases due to inflation, but staff does not currently have a good understanding of what is delaying PDRs. Once delays are better understood, PACTS could consider implementing deadlines with funding consequences.

³ Please note that this suggestion differs from the written suggestion provided in the March 4 meeting packet.

Attachment B

Part C: Remaining Decisions

Application Requirements

12. Municipalities complete 25% Design or PDR (approximately 50% Design) before application **(Q3-8)**

Q3: Should PACTS require that a municipality/potential applicant complete 25% design before applying for funding from PACTS?

- 4 – Yes
- 2 – No
- 2 – I don't know / Other

Q6: Should PACTS require that a municipality/potential applicant complete PDR (approximately 50-65% design) before applying for funding from PACTS?

- 1 – Yes
- 4 – No
- 3 – I don't know / Other

Project Selection

13. Bonus points for additional local match **(Q13-15)**

Q13: Should PACTS award bonus points to a project that commits to more than the minimum local match?

- 3 – Yes
- 2 – No
- 3 – I don't know / Other

Construction Funding Commitment Limits

14. Limits on construction funding commitments **(Q20-21)**

Q20: Should PACTS limit the amount of construction funding it will commit to a single project and/or in a single allocation cycle?

- 5 – Yes
- 0 – No
- 3 – I don't know / Other

Cost Overruns

15. Project Cap Policy or “Contingency Fund” **(Q23-25)**

Q23: Should PACTS keep the Project Cap Policy, or shift to setting aside a percentage of its annual allocation for a “contingency fund” from which funds are allocated competitively?

- 3 – Keep the Project Cap Policy
- 1 – Switch to a “contingency fund”
- 4 – I don't know / Other