

4.0 TRANSPORTATION ISSUES

4.1 Transportation Funding

Maine's transportation infrastructure was built with a combination of public and private investments over the past 300 years. The system's maintenance and improvement still depends upon that partnership today. As we move forward into the next century, the MaineDOT faces challenges of maintaining the existing highway and bridge system, creating new opportunities in other modes, and improving the connectivity among all modes. This must be done without any guarantee of increased state or federal funding, beyond the current projections, over the next 20 years.

The principal sources of funds for public spending on transportation in Maine comes from the state's Dedicated Highway Fund, the federal government, the state's General Fund, and from the sale of Highway and General Fund bonds. Except for bonds, funds from these sources are derived from the proceeds of motor fuel taxes, motor vehicle registration and license fees and other transportation user fees.

At the state level it is expected that gains in the Highway Fund revenue resulting from increased vehicle-miles of travel will be offset by improvements in motor vehicle fuel efficiency and the use of alternative fuels. In an effort to continue long term capital planning for critically needed highway reconstruction projects statewide, the legislature passed a bill in 2002 to index the motor fuel tax. If supported during MaineDOT budget proposals, indexing provides for annual adjustments to gasoline and diesel-fuel taxes based on the change in the national Consumer Price Index (CPI).

4.1.1 Federal Funding Sources

Federal funds to support transportation capital improvements come from a number of federal programs administered by the U.S. Department of Transportation through its Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and Federal Railroad Administration. The federal funds returned to state come from various federal user fees or the federal general fund. Most user fee revenues are placed in modal trust funds. Congress must give permission for federal funds to be expended. Transportation authorization legislation is the mechanism by which this permission is granted. Authorization legislation establishes transportation policy and areas of emphasis for spending by creating and defining programs and authorizing funding. Authorization legislation covers multiple years since transportation projects require a long time from planning through construction. Most federal funds are distributed to state and local officials based on formulas. Funds to maintain the interstate system based on our share of the nation's interstate vehicle miles and interstate lane miles, while funds for urban planning are based on the state's share of the nation's urban population. Funds for improving our airports are based on the number of passengers, and transit funding is based in part on transit

ridership. These formula funds are called entitlements or apportionments. Other programs have no mandatory distribution formula, so distribution is based on competitive applications or another project selection process. These funds are called allocation. In general, as a condition of receiving federal funding, the state is required to provide matching dollars. The most common matching requirement is 20 percent, but it can be as low as 0 percent or as high as 50 percent. Annual appropriations legislation places yearly limits on the amount of the funds that can be spent. Other transportation programs, especially those that receive their money from the federal general fund, require the appropriations act to identify the amount of money that is available for the year. In addition, appropriation legislation usually provides the opportunity for a certain number of specific projects, or “earmarks” selected by Congress. The appropriations legislation also provides an opportunity for Congress to address changes in policy direction or funding priorities without waiting for the next authorization act.

Questions relating to the federal transportation programs, their eligibility, and application process should be directed to the Bureau of Planning’s Program Development Division (207) 624-3300.

4.1.1.1 Bridge Replacement and Rehabilitation Program

See Section 4.1.9

4.1.1.2 Recreational Trails Program

This Recreational Trails program uses a percentage of gasoline taxes paid on non-highway recreational use in off-highway vehicles from the Highway Trust Fund for trail development, improvement, and maintenance. Eligible projects may include: maintenance and restoration of existing recreational trails; development and rehabilitation of trail side and trailhead facilities and trail linkages for recreational trails; construction of new recreational trails; operation of educational programs to promote safety and environmental protection as those objectives relate to use of recreational trails. Agencies eligible to receive funding include municipalities, other qualified sub-divisions of state government, and qualified non-profit organizations under guidelines established by the Bureau of Parks and Lands in conjunction with the Maine Trails

Advisory Committee. Visit this website for more information:

<http://www.maine.gov/doc/parks/programs/community/trailsfund.html>

4.1.1.3 Scenic Byways Program

This program provides funding for the establish and preserve scenic highways.

Scenic Byways must be designated before they become eligible for funding to provide:

- * safety improvements to accommodate the traffic due to scenic designation;
- * facilities for pedestrians and bicyclists, rest areas, turnouts, overlooks, shoulder improvements, passing lanes, and interpretive facilities;
- * improvements to access for recreational purposes;

- * protection of historic, archeological, and cultural resources; and
- * development and provision of tourist information.

A 20 percent match is necessary to obtain federal funding. Federal guidelines for the program indicate that highways designated "scenic" under the existing Maine legislation would be eligible for funding. Municipalities wishing to take advantage of this program are advised to contact the Environmental Office at (207) 624-3100 for more information.

4.1.2 Other Federal Funds

The following Federal sources of funds, for transportation projects and activities, are some of the more prominent and do not comprise a comprehensive list.

4.1.2.1 Ferry Boat Discretionary Fund

This fund helps in the improvement of ferry facilities and the purchase of ferry boats. It may be used for capital improvements, construction only. The program disburses money nationwide, with no regional allocation. For more information contact the Office of Passenger Transportation at (207) 624-3250.

4.1.2.2 Public Lands Highway Discretionary Fund

This fund provides for the reconstruction, rehabilitation, and improvement of highways serving National Parks and Forests. For more information contact the Bureau of Planning at (207) 624-3300.

4.1.2.3 Federal Transit Administration

The Federal Transit Administration provides funds for the purchase of buses and operating subsidies for transit providers. This is not the sole source of funds for these purposes; STP funds, CMAQ funds, and money from social service programs can be used. For more information contact the Office of Passenger Transportation at (207) 624-3250.

4.1.2.4 Federal Railroad Administration

(This program is presently not funded, however it has been funded in past years and may receive funding in the future.)

4.1.2.5 Federal Aviation Administration

The Federal Aviation Administration makes funds available for the reconstruction, improvement, and rehabilitation of airport facilities. A 5 percent match is required to secure the funds. Generally 5 percent is provided by the local municipality and 2 1/2 percent by the State. The State funds are raised by bond issue. For more information contact the Office of Passenger Transportation at (207) 624-3250.

4.1.3 State Funds

State funds for operations and capital improvements come from two major sources: the Highway Fund and the General Fund. The **Highway Fund** receives dedicated income from fees and taxes relating to registration and use of vehicles on the public highways, including fuel taxes. The Highway Fund may only be used for highway and bridge improvements, State enforcement of traffic laws, maintenance, and Departmental overhead. Highway maintenance, other than on interstate highways, is ineligible for federal funding

The **General Fund** is used for funding other transportation activities that are ineligible for moneys from the Highway Fund. Its income is derived from income taxes and other State taxes and fees. In addition, Maine State Ferry Service revenue from user-fees provides partial funding for that service.

4.1.4 Local Funds

Local governments and other public or private bodies often provide the "local" match in securing federal funds for capital and operational projects. For example, Transportation Enhancement projects require a 20 percent local match. Municipalities also expend local money and Urban/Rural Initiative Program funds they receive from the MaineDOT, on the capital improvements of local roads and State Aid minor collector roads.

4.1.5 Bond Issues

Some large projects, such as new highway, bridge, rail or port improvements, have been funded by issuing bonds. The MaineDOT also uses bond issues to raise matching funds necessary to secure federal moneys for highway bridge projects. This option for raising funds for transportation projects first has to be approved by the legislature, and then by the voters in a Statewide referendum. The advantage of this type of funding is that it spreads large construction costs over the lifetime of the bond; however, it does incur additional costs, primarily interest. To reduce the percentage of MaineDOT's Highway Fund budget which goes to debt interest and principal payments, the Governor successfully proposed to the Legislature to halve MaineDOT's issuance of Highway Fund bonds during the 2000-2001 biennium, with the goal of continuing or accelerating this trend indefinitely. This action was possible due to an increase in the fuel tax, and the appropriation of surplus General Fund money for highways. The availability of the surplus General Fund money has also recently allowed Non-Highway capital projects to be financed with appropriations, rather than General Fund bond issues. This funding option is not generally available and cannot be relied upon indefinitely.

4.1.6 Railroad Assistance Program

This is an MaineDOT railroad crossing safety program that assists municipalities in clearing brush from the areas around a crossing on a local road, as required of the

municipality by Maine statute. The program only applies to crossings with passive warning systems (black & white “crossbucks”). The municipality is reimbursed for 50 percent of the cost of the work. Every 2 years, the railroads report to the MaineDOT which crossings need attention, and the MDOT then informs the municipalities where work is required. Municipalities wishing to address safety problems at railroad crossings (or any other rail safety issues) should contact the Office of Freight Transportation at (207) 624-3560.

4.1.7 Small Utility Loan Program - no longer funded

4.1.8 Island Barging Program

This program relates to the payment of barging and ferry fees for transporting highway construction and maintenance materials to the islands served by the Maine State Ferry Service. For more information, contact the Ferry Service at (207) 596-2243.

4.1.9 Local Bridge Program

All of Maine’s public bridges can now be found on the DOT website at the following address: <http://www.maine.gov/mdot/brmgmt/>

A “NEW” program has replaced the “OLD” Local Bridge Program in 2002.

Municipalities:

- Are relieved of capital and maintenance responsibility on most larger bridges.
- Have complete local control to decide how and when smaller spans on Town Ways are improved.
- Are assuming responsibility for smaller spans in better condition than the larger bridges for which the MaineDOT became responsible (Average Condition Rating of 5.66 vs. 4.97).
- Will continue to have access to MaineDOT technical advice for these smaller spans.
- Are free to improve these smaller spans, which can generally be replaced with culvert-type structures, and with streamlined project delivery methods not available to MaineDOT (such as using Town forces, local procurement methods, and solutions without a Professional Engineer’s seal for projects less than \$100,000).
- Will still be able to assist MaineDOT with setting priorities for larger Local Bridges.

MaineDOT

- Will focus its capital and maintenance efforts on larger bridges that need it.
- Will save State Highway Fund dollars by better leveraging Federal funds, since only bridges with a span of at least 20 feet are eligible for Federal funding.
- Will fulfill its responsibility for bridge safety by continuing to inspect all smaller spans and larger bridges every two years.

- Will deliver the larger bridge projects more quickly, without the cumbersome and time consuming process of calculating cost-shares, sending letters offering projects, receiving Town funding authorization, preparing Town billing, and processing Town payments.

In general, local bridges will benefit because more dollars will be put into “product” instead of process. In addition, they will receive increased attention since MaineDOT will be completely responsible for over ¾ of the need based on deck area plus 50% of the capital cost of the Low Use / Redundant Bridges.

Under the 2002 law, local bridges are divided between MaineDOT and towns by size, with MaineDOT responsible for all larger bridges and the towns responsible for smaller spans on town ways. The responsible party decides how and when improvements will be made. More specifically, the new program groups Local Bridges as follows:

1. “Bridges” on Town Ways and State Aid Highways are those with a span of at least 20 feet (excluding Low Use Redundant Bridges) The State has capital and maintenance responsibility for these bridges, relieving Towns and Counties of local cost-sharing.
2. “Minor Spans” on State Aid Highways have a span between 10 and 20 feet. The State has capital and maintenance responsibility for these structures, without local cost-sharing.
3. “Minor Spans” on Town Ways also have a span between 10 and 20 feet. Towns have capital and maintenance responsibility for these structures. MaineDOT continues to provide technical advice to Towns upon request
4. Low Use Redundant Bridges (LURB) on Town Ways (at least a 20 foot span) have an average daily traffic of less than 100, and/or an average daily traffic multiplied by detour length of less than 200. These bridges are considered a local issue, serving only a handful of residences and/or are very near to another bridge crossing. Capital responsibility is shared 50/50 between the State and the Town, and the Town has 100% maintenance responsibility. The Town’s capital cost share is capped at 1% of the Town’s valuation, with the State picking up the remainder.

4.1.10 Urban/Rural Initiative Program (URIP)

The Legislature repealed the former Local Road Assistance Program (LRAP) in 1999 and enacted the Urban - Rural Initiative Program (URIP). Under this program, which consists of both the Rural Road Initiative and the Urban Road Initiative, municipalities receive regularly scheduled payments from DOT for capital improvements to local roads and rural State Aid minor collector roads.

Rural Road Initiative funds are distributed at the rate of \$600 per year per lane mile for all rural state aid minor collector roads and all local roads located outside urban compact areas as defined in section 754, except that the rate is \$300 per year per lane mile for seasonal town ways. Since July 1, 2000 funds may be used only for capital improvements. “Capital improvements” means “any work on a road or bridge that has a life expectancy of 10 years or restores the load-carrying capacity”.

Urban Road Initiative funds are distributed at the rate of \$2,500 per year per lane mile for summer maintenance performed by the municipalities on state and state aid highways in compact areas. For each lane mile beyond the second lane on a highway with more than two lanes, municipalities also are reimbursed at the rate of \$1,250 per lane mile for summer maintenance in the compact area. In addition, Urban Road Initiative funds are distributed at the rate of \$1,700 per year per lane mile for winter maintenance performed by the municipalities on state highways in compact areas regardless of the number of lanes. These funds may be used only for maintenance and improvements of public roads.

Questions relating to this program should be directed to the Community Services Division at (207) 624-3270.

4.1.11 Small Harbor Improvement Program

The Small Harbor Improvement Program (SHIP) was funded in the FY 2004/2005 BTIP for \$850,000. With these funds, 20 municipal projects were funded and are currently being constructed. A minimum 25% local cash match was required from municipalities. This program provides funding for necessary public infrastructure projects along Maine's coast and tidal rivers. These improvements provide economic development, promote public access, and improve marine transportation at these locations. Such projects include the installation of floats, boat ramps, piers, rip rap, etc. For more information, contact Kevin Rousseau in the Office of Freight Transportation at (207) 624-3565.

4.1.12 Salt and Sand Storage Facilities

All public and private road salt and sand storage facilities are required by State law to be designed, constructed, and operated in a manner that will prevent contamination of surface and groundwater by road salt. In addition, the facility cannot be built over a significant sand and gravel aquifer and must be located at least 300 feet from the nearest existing well. Each town's site is categorized into 1 of 5 Priority levels. A complete review was made of sites and priority numbers were updated by Department of Environmental Protection (DEP) in October 1999. Any town contemplating moving their current site or establishing a new one must register it with DEP. Information can be found at www.maine.gov/dep/blwq/docstand/sandsalt/index.htm

If your town has a priority 1, 2 or 3 sites, the Department must provide technical review of your proposed facility to ensure that it is in compliance with legislation. MaineDOT will also share technical experience in the construction and operation of state facilities in order to assist in the planning and design of the local facility.

Contact the MaineDOT's Community Services Division at (207) 624-3270 about various facilities, types and sizes and their funding options. Contact the Department of Environmental Protection at the main office in Augusta at (207) 287-3901 about your town's building site or the enforcement of this law.

4.1.13 Community Gateways Program

The Community Gateways Program is a competitive MaineDOT Grant Competition designed to assist Maine communities to enhance transportation corridors and community landscapes. This program allows MaineDOT to encourage and support projects that apply innovative and effective efforts towards the creation and maintenance of Community Gateways Projects. More information is available by contacting the program or by visiting the website at: <http://www.maine.gov/mdot/community-programs/gateway.php>

The ultimate goal of the program is to encourage citizen volunteerism and community involvement concerning the development, implementation, and support for community enhancement programs.

In 2005, grants were available for \$500 up to \$10,000. The funds for this program are allocated in MaineDOT's Capital Work Program.

PROJECTS for Community Gateways funding could include:

Landscaping such as street trees, shrub massing, perennials, raised planters, fences, and planters to enhance a community, park, or important public space or to achieve an entry or traffic calming effect at significant entrances to a community or region.

Visual access or visual improvements and enhancement of significant cultural, historic, or natural resources adjacent to the transportation corridor to enhance and define the traveler's entrance into the community including public access improvements or interpretive signage..

Public space improvements including revitalization of parks, town plazas, fountains, bus stops, or intersections along transportation corridors.

Signage that announces arrival into a community or assists visitors in reaching local points of interest, or interpretive or historical signage. Examples include gateways signs, interpretive signs, and information kiosks.

Streetscape improvements including benches, trash receptacles, bollards, lighting, planters, kiosks, pedestrian walkways, crosswalks, or elements of public art.

For further information contact: Kent Cooper, MaineDOT Environmental Office, (207) 624-3085 or kent.cooper@maine.gov .

4.2 Alternative Purchasing Opportunities

4.2.1 State Volume Purchasing

The State of Maine purchases most of the products required to operate all branches of the State government. The products include everything from light bulbs to computers to traffic control devices. If the product is obtained through the bidding process, a State Law permits any "political subdivision" (towns, school districts, water districts, and sewer districts) to benefit from the State Purchasing Process. Vendors are asked to consider this provision and indicate on the bid form whether they will accept orders from such "political subdivisions" and at what price. In many cases, vendors will sell their products to municipalities at the same price or with certain conditions or minimums. If your municipality would like to take advantage of the possible significant savings available through this program, call the Division of Purchases at (207) 624-7340 and ask for the "Contracts Available to Municipalities" list, or check their web site at <http://www.maine.gov/purchases/agencyinfo/index.htm> Look under the "Commodities" or "Contracts Listing" links.

4.2.2 Surplus Auction

State surplus property, ranging from graders and dump-trucks to computers and furniture, is regularly available. The property is auctioned several times per year, and municipalities have the chance to offer a price on items before they go to bid. A range of

the smaller items, such as chairs, desks, and computers, is also available more frequently

at the surplus warehouse on the Leighton Road in Augusta. For more information, call the Surplus Property section, at (207) 287-2923 or check their website at: <http://www.maine.gov/bgs/centralserv/index.htm>

4.2.3 Cooperative Purchasing

The cooperative purchasing of equipment and materials as a means to help municipalities save money has been successful in many areas of the State. The principle behind cooperative purchasing is that the more materials or equipment a group of municipalities can purchase at one time, the less the unit price will be. Your Regional Planning Commission or Council of Governments can arrange cooperative purchases for any interested town. The anticipated needs of the participating communities are collected, compiled, and sent out to prospective suppliers of the equipment and materials. The supplier returns a bid based on the anticipated needs of the communities. In order to increase buying power, school districts and other institutions are invited to participate in the program. Generally, the lowest average bid price is chosen. Prices for individual municipalities may differ slightly because of location and delivery.

Paving and reclamation work, road salt, and fuel oil are the most common materials in cooperative purchases. However, public works utility vehicles, police cruisers, road striping services, road signs, and culverts are some of the more recent cooperative purchase efforts. A limitation to the cooperative purchase program is finding a group of communities that want to purchase items with the same specifications. For more information on cooperative purchasing, contact your Regional Planning Commission or Council of Governments.

4.2.4 Other Cost Saving Resources

Both your Regional Council/Planning Commission and the Maine Local Roads Center (see Section 3.11), can supply information on saving money through the use of MaineDOT approved alternative materials, in maintaining and repairing roadways.

4.3 Maintenance Responsibility and Liability Issues

4.3.1 Barriers

Title 23, Sections 3271, 3272, and 3273 state that any municipal officer who erects a barrier (wire, cable, chain link, lumber, gate, or other similar device) across a town way is required to mark the barrier in a manner that enables it to be visible to a person traveling on a town way toward the barrier on a snowmobile, all-terrain vehicle, motorcycle, or similar vehicle. The barriers must be marked so that they may be visible at a distance which is a reasonable stopping distance.

4.3.2 Banners

A banner may not be placed over any part of a state-road without obtaining approval from the MaineDOT. Contact your local Regional Manager at your local Regional Division.

4.3.3 Bridges

Title 23, Section 7218 defines the legal obligations for bridges built by any municipality over which a railroad passes. All of the requirements of this law are under the authority of MaineDOT. This authority includes making determinations of what repairs a particular bridge may require and apportionment of costs between the railroad and the municipality. Also, [see Section 3.2](#).

[Title 29, Sections 903 and 1753](#) divides the responsibilities of maintaining the safety of all other bridges under local control between MaineDOT and local governments. MaineDOT is required, under Section 903, to provide information to municipal and county governments on the advisability of posting any bridges under local control. MaineDOT has determined the weight bearing capacity of these bridges this information is found on DOT's public bridges website. In addition to this responsibility, Section 1753 requires municipal officials charged with repair and maintenance of any bridge to limit the combined weight of vehicles and loads, the number of vehicles permitted on a bridge, and the speed at which these vehicles can cross over the structure, to assure safety of life and property or to maintain the bridge. If local officials neglect to set these weight limits, MaineDOT may, but is not required to, establish weight limits. Establishment of weight limits must be completed by either MaineDOT or a Registered Professional Engineer retained to inspect and determine the safe capacity of any bridge. Section 1753 does not prevent local officials from setting weight limits in the event of an emergency.

Title 23, Section 7209 requires the railroad to maintain both railroad bridges over highways and at-grade crossings. A municipality may give written notice to a railroad that a bridge at a crossing is out of repair, unsafe and not convenient within the requirements of Section 3651; or that the crossing of a roadway or town-way by the railroad at grade is unsafe and not convenient as required by Section 3651. The municipality has three options: 1) the railroad may make the necessary repair within 10 days of notification of the safety deficiencies; 2) the municipality may bring suit against the railroad in Superior Court if the railroad fails to rectify the safety deficiencies; or 3) the town may, after the 10 day period, repair the facility at the expense of the railroad.

Title 23, Section 2701 states that road commissioners, under the direction of a majority of the selectmen, have the authority to repair all highways and bridges within their towns and employ all necessary personnel, equipment, and material to make repairs. If a majority of the selectmen determine that a condition exists on any town-road or way that creates a safety hazard for motorists, the selectmen may give a written directive to the road commissioner to take steps to eliminate the hazard within 24 hours.

4.3.4 Detours

Detours onto a state or state aid road require prior approval from MaineDOT. Once approved, the municipality must take responsibility for any damages to the roadway carrying the detoured traffic. Contact your Regional Manager at your Regional office.

4.3.5 Local Roads

Title 23, Section 3651 states that any legally established highway, town way, or street shall be opened and must be kept in repair so as to be safe and convenient for motor vehicles. If these conditions are not met, than the liable parties can be indicted, convicted, and fined.

Title 23, Section 3655, i.e., the "pothole statute," *states that persons who suffer bodily damage or damage to personal property resulting from "any defect or want of repair or sufficient railing in any highway, town way, causeway or bridge"* may bring a civil suit within one year from the date of receiving such injuries or property damage against the county or municipality that is obligated to maintain or repair the highway, town way, causeway, or bridge. In addition, a claim must be received within 180 days after the incident. The liability is dependent on whether the county commissioners, municipal officials, road commissioners, or any other authorized person received "24-hours actual notice" of the defect or want of repair. "Actual notice" can mean a telephone call, verbal notice, or a written letter to virtually any town official.

4.3.6 Sidewalks and Crosswalks

Title 23, Section 3658 states that no town is liable for damages to any person on foot because of snow or ice or the slippery condition of any sidewalk or crosswalk.

[See section 3.10](#) for more information on sidewalks and bike paths.

4.3.7 Waterways

Maine Revised Statutes Title 23, Section 3255 states that no municipality may cause a water course to be constructed by the side of a road which would disturb any house or other building or obstruct any business. Any person suffering damage due to this construction may have it changed under their direction and at the expense of the municipality. This particular statute may be relevant when a road construction or reconstruction project requires the relocation or re-direction of a waterway.

4.3.8 Public and Recreational Access to Water Crossings and Properties Adjacent to Water

In cooperation with the Department of Inland Fisheries and Wildlife, Department of Conservation, Department of Marine Resources, State Planning Office, Maine Historic Preservation Commission and the private organizations like the Coastal Conservation Association, Sportsman's Alliance of Maine, Trout Unlimited, Maine Snowmobile Association, and the Maine Municipal Association, the MaineDOT has begun an effort to identify MaineDOT bridge and highway projects that may provide additional safe public

and recreational access opportunities to the water. The identified projects will be reevaluated for access opportunities when each project is funded in a Capital Work Plan, and will be incorporated into the design process accordingly. Currently, only bridges have been reviewed for water access needs, but 2004-2009 6 Year Plan will identify access needs for both highways and bridges.

4.3.9 Fish Passage

MaineDOT has released the second edition of its Fish Passage Policy and Design Guide, available at: www.maine.gov/mdot/environmental-office-homepage/other_environmental.php. The Department also has a limited number of paper copies available. The manual, developed in coordination with a number of resource and regulatory agencies in Maine, sets forth:

- MaineDOT's policy on passing fish, including applicable regulations and measures to comply with those regulations;
- A process for MaineDOT projects that consistently screens and implements appropriate fish passage measures;
- A Design Guide for project managers, designers, and others involved in implementing MaineDOT's Fish Passage Policy

Municipalities may find particularly useful the regulatory information contained in the Policy section as well as the Design Guide section. MaineDOT will be providing training on fish passage to public works officials through the Maine Local Roads Center.

4.3.10 DigSafe

In each of the last several years, the law was changed and included a few new features relative to excavation methods, emergency excavations, and penalties. The "Underground Protection of Facilities Act," commonly known as the "Dig Safe" law, is found in 23 MRSA 3360-A. The

Maine Legislature modified the law to include enforcement and violation provisions to be part of the Public Utilities Commission (PUC). The purpose of this law is two-fold; to protect equipment operators and other people excavating in areas where underground facilities are located, and to protect the underground facilities.

In concept the law is simple. Its basic premise is that many excavations involve two players: the person doing the excavating (the "excavator"), and the person whose equipment is located underground (the "underground facility operator" or "utility"). An excavator must provide notice of any excavation to all underground utility companies in the excavation area, and wait three business days before commencing work. After receiving notice each utility must, within two business days, accurately mark the location of its underground facilities so that the excavator can safely proceed (these marks are usually called "locates"). Under the law, notice from excavators to most utility companies will typically be accomplished by a toll-free telephone call to a central Dig

Safe notification system (the "system") located in Burlington, Massachusetts. The law imposes penalties on excavators who fail to follow the notice procedures, and it imposes penalties on utilities who fail to mark their underground facilities after receiving notice.

The toll free number is 1-888-DIG-SAFE.

4.3.11 Maine Tort Claims Act

The Maine Tort Claims Act (Title 14, Sections 8101 through 8118) is a very important Act involving governmental responsibilities for transportation facilities. Section 8103 states that all

governmental entities will be immune from suit on any and all tort claims seeking recovery for damages, except as specifically provided by law. The general rule of the Maine Tort Claims Act is that immunity from lawsuits is the predominant protection for local governments and their employees. However, several exceptions to the general immunity provisions do exist. You should consult with the Maine Municipal Association, (800) 452-8786, or MDOT's Maine Local Roads Center, (207) 624-3270, for more information. These exceptions pertain to negligence in the ownership, maintenance, or use of vehicles, machines, or equipment; and activities involving road construction, street cleaning, or repair. In 1999, the maximum liability limit was increased from \$300,000 to \$400,000.

4.3.12 Compact Areas

The MaineDOT classifies roads as state highways, state-aid highways, and townways. In addition to its townways, a municipality is responsible for snow maintenance on state-aid roads. The laws do distinguish between "maintenance" and "snow maintenance." Maintenance refers to summer maintenance, upkeep of the roadway structure, and ditching and brush cutting. Snow maintenance refers to plowing, sanding, and erecting snow fences.

The municipality's maintenance obligation may depend on the population reported in the most recent census and on whether the state road runs through a compact section or area of town. A compact section (also known as a "built-up" section of town) is defined as follows:

"Compact" or "Built-up sections" means a section of the highway where structures are nearer than 200 feet apart for a distance of 1/4 of a mile, unless otherwise defined; reference MRSA 23 sub-section 754, revised July 1, 1999.

Urban Compact Municipalities are those in which the population according to the last United States Census;

Exceeds 7,500 inhabitants, or

Is less than 7,500 inhabitants but more than 2,499 inhabitants, and the worker to resident worker ratio is greater than 1.0 and when the municipality has not exercised the opt-out provision of this section.

Presently there are 43 Urban Compact Municipalities.

The Urban areas over 7,500 population are: Auburn, Augusta, Bangor, Bath, Biddeford, Brewer, Brunswick, Cape Elizabeth, Caribou, Falmouth, Gorham, Kennebunk, Kittery, Lewiston, Lisbon, Old Orchard Beach, Old Town, Orono, Portland, Presque Isle, Rockland, Saco, Sanford, Scarborough, Skowhegan, South Portland, Standish, Topsham, Waterville, Wells, Westbrook, Windham, Winslow, Yarmouth and York.

The Urban areas over 6,000 but less than 7,500 that did not have the opt-out option are: Belfast, Fairfield, Farmington, Freeport, Gardiner, Houlton, Millinocket, and Rumford.

For more information on compact areas, contact the Community Services Division at (207) 624-3270 or see their website.

For more information on maintenance liability, contact the Maine Municipal Association (800) 452-8786 or MaineDOT's Maine Local Roads Center at (207) 624-3270. For more information on maintenance responsibilities, ownership of roads, and right-of-way issues contact your local Regional Manager at your Regional Office.

4.4 Land Use Issues

Land use plays a key role in preserving the effectiveness of arterial roads and other transportation systems. Furthermore, an efficient transportation system is critical to the health of our local, state, and national economies. Arterial roadways are primary transportation corridors designed to carry passenger and commercial through-traffic between cities, towns, and interstate highways.

Strip development, or unplanned and unregulated development, occurs along many heavily-traveled arterial roads in Maine. Heavy commercial and residential development combined with many driveways and access points on an arterial road will greatly reduce traffic speeds and roadway efficiency. Unrestricted access to arterial roadways will ultimately lead to traffic congestion, reduced safety, and potential adverse economic impacts to the area.

Maine Law requires that anyone that desires access to a rural state or state-aid highway must first obtain a permit from the MaineDOT. MaineDOT has developed rules (sight lines, vertical alignment, driveway width, etc.) for the construction of the driveways/entrances within MaineDOT's right-of-way. In the spring of 2000, the law (23 MRSA § 704) was significantly enhanced to allow MaineDOT and compact communities to control the design, location and construction of entrances. Its purpose is to *“protect and promote the safety of the traveling public and maintain highway right-of-way drainage”*. For rural arterial roads, the MaineDOT also shall limit the number and spacing of access points to maintain existing posted speeds and ensure safe travel. Much more information can be found in **Section 4.4.4** or at www.maine.gov/mdot/permits/apply_dot_permits.php.

Below are additional methods municipalities can use to plan for sound transportation choices.

4.4.1 Comprehensive Plan

A comprehensive plan will help a community properly plan for orderly future growth. By guiding residential and commercial growth to a designated "growth area" and thus reducing sprawl, a town can minimize the demands placed on its public facilities (roads, sewer and water lines, etc). Commercial or residential development located in a rural area of town (away from the village center where public facilities may be in place) will sooner or later require expensive sewer and water line extensions and roadway upgrades to serve the development.

The comprehensive plan's goals, policies, and strategies can directly address land-use concerns (limit strip development on arterial roads, require cluster developments, require traffic impact studies, etc.). A comprehensive plan's capital investment plan can include recommendations that developers be required to pay for some or all of the transportation and other public improvement costs which become necessitated by their developments. The future land use map of a comprehensive plan can include recommended land use patterns that will direct future growth away from the community's arterials. A comprehensive plan is also the legal framework for a land use ordinance.

For more information on developing a comprehensive plan contact your Regional Planning Commission, Council of Governments, or the State Planning Office at (207) 287-8050.

4.4.2 Land Use Ordinance

A land use ordinance is a set of locally adopted regulations which prescribe the land uses that are allowed or prohibited in different designated districts or zones. A land use ordinance includes "performance standards" that spell out the preferred methods of development and a map showing different land use districts. A land use ordinance must be based on a comprehensive plan adopted by the municipality.

4.4.3 Growth Management Program

The State Planning Office (SPO) administers the Community Investment and Planning Program. The program provides grants to Maine communities (25 percent town/75 percent State match) that wish to develop local Comprehensive Plans and Land Use Ordinances that are consistent with the Ten State Goals established by the "Comprehensive Planning and Land Use Regulation Act." This legislation gives preference to those communities who prepare and adopt consistent Growth Management Programs (comprehensive plan and ordinances) when applying for State funding whether for community development, acquiring land for conservation; natural resources protection; and programs that are intended to accommodate or encourage additional

growth and development, improve, expand or construct public facilities, and assist in planning or managing specific economic and natural resource concerns.

For more information on developing a comprehensive plan and ordinances contact your Regional Planning Commission, Council of Governments, or the State Planning Office at (207) 287-8050.

4.4.4 Access Management

A municipality can create access management standards to protect the safety and capacity of the state and local roads. An Access Management Ordinance (either as a stand alone ordinance or part of a land use ordinance) should manage the number and design of access to roads. See [Section 3.3.6](#) for additional information.

MaineDOT has prepared a lot of information for local officials on what can be done at the local level to keep traffic flowing smoothly and safely on arterial highways serving their community. The information about access management and practical standards can be put into effect at the local level.

Access management standards are best implemented once the municipality has determined the following three items:

- * Land Use- Where development should be encouraged how it should be developed and where it should be limited is extremely important since land development patterns can have the most impact on traffic conditions;
- * Traffic Flow- The extent to which traffic on the roads in the community has increased in recent years and is likely to increase in the future; and
- * Plan's Relationship to Access Management- How the community's transportation and land use policies can be enhanced by sensible access management standards.

For more information on developing access management standards see the Bureau of Planning's website at www.maine.gov/mdot/planning-process-programs/plan-home.php or contact your Regional Planning Commission, Council of Governments.

4.4.5 Traffic Movement Permits (Site Location of Development Act)

Until the late 1990's, the DEP was responsible for issuing development permits under the "Site" law, including the traffic impact review. The law was changed in 1999 and the traffic review responsibility has been transferred to the MaineDOT.

Pursuant to 23 M.R.S.A. § 704 A, the Department has written and adopted rules pertaining to Traffic Movement Permits. This rule defines the standards by which a development, which generates more than 100 Passenger Car Equivalents (PCE's) during peak hour, must abide, to receive a Traffic Movement Permit. *(PCE equals the number of passenger cars or, in the case of non-passenger vehicles, the number of passenger cars*

that would be displaced by non-passenger car vehicles. One tractor-trailer combination is the equivalent of two passenger cars.) The developer must apply to the Region Traffic Engineer in the area with jurisdiction over the project. The developer then submits the application (with plans stamped by both a registered Professional Engineer and Registered Land Surveyor). After the application has been deemed complete, a scoping meeting is set up to determine the area expected to be impacted by the scope of the project. Depending on the amount of trips generated (100-200 PCE's or over 200 PCE's) a permit could be issued with no further requirements or the applicant may be required to conduct a traffic study as defined at the scoping meeting.

Who Needs to Apply?

Any project which generates 100 or more passenger car equivalents (PCE) trips during peak hour of traffic generation, must file a Traffic Movement Permit application with the Maine Department of Transportation. A permit is still required if the development is on a townway.

The level of mitigation at the five entrance/exit may be less, but a permit is still needed. Other mitigation may be necessary depending on the amount of traffic.

Determination of all passenger car equivalent trips for the purpose of establishing application requirements shall be calculated using the edition of the ITE Trip Generation Guide referenced on the MaineDOT Fact Sheet. (The MaineDOT Fact Sheets are an insert to the Traffic Movement Permit that contains the standard details and list of reference manuals the applicant must abide by). Assistance in determining the trip levels can be obtained by contacting a traffic engineer licensed to do engineering work in the State of Maine, the appropriate MaineDOT Regional Office or the Augusta Headquarters - Division of Traffic Engineering.

Municipalities may register with the Department to seek delegated review authority to issue Traffic Movement Permits. In such cases a Traffic Movement Permit would be required from the municipality that has been given delegated review authority. A municipality can be delegated the authority to issue permits if that municipality adopts ordinances consistent with MaineDOT Chapter 305 Rules. Once the ordinance is adopted, the municipality must contact the Department to request delegated authority. If the Department finds the municipality in compliance with Chapter 305, the Department will develop an agreement for Delegated Review Authority. These rules can be found on the MaineDOT website at: www.state.me.us/mdot/licenses.php

Please contact the Augusta Headquarters at 624-3620 to determine whether your municipality has been given delegated responsibility or wishes to apply for issuing the Traffic Movement Permit.

4.4.6 Land Use Capability Guidelines

MaineDOT's Air Transportation Division has developed the Land Use Capability Guidelines for airports as part of their Continuous Aviation System Planning Process. The purpose of this document is to assist municipalities, planners, decision-makers, and other interested parties to protect the long-term compatibility and viability of the State's airport system. The Guidelines discuss several land use planning concerns including noise, safety clear zones, and height limits. The document also contains several examples of airport zoning ordinances, noise easement ordinances, hold harmless agreements, and coordination agreements.

For more information contact the Office of Passenger Transportation at (207) 624-3250.

4.5 Permitting: How it Affects State & Municipal Transportation Infrastructure Planning

The Natural Resources Protection Act (NRPA) is the Maine State law that regulates disturbances in, over, or adjacent to wetlands, streams, and other water bodies. Both MaineDOT and municipalities must comply with the law.

Section 404 of the Clean Water Act is the federal law that regulates disturbances in, over, or adjacent to wetlands, streams, and other water bodies.

The Maine Department of Environmental Protection (MDEP) issues permits required by state wetlands laws while the United States Army Corp of Engineers (ACOE) issues permits for regulated wetlands under federal jurisdiction. It is important to contact these agencies regarding work being contemplated in or near a wetland or water-body since one or both agencies may have jurisdiction. The NRPA requires that a permit be obtained from the MDEP before undertaking activities in any protected natural resources. However, NRPA provides for certain

public works projects to proceed through a "permit-by-rule" process that is faster and involves less paperwork than the usual permit process. The activities allowed under the "permit-by-rule" process include, but is not limited to:

- General permits for state transportation facilities
- Disturbance of soil material adjacent to wetlands or waterbody
- Replacement of permanent structures
- Movement of rocks and vegetation
- Construction of stream crossings (utility lines, pipes and cables)
- Piers, wharves and pilings in coastal wetlands
- Public boat ramps
- Selected activities in coastal sand dunes

The permit-by-rule process requires the municipality to submit a notification form outlining the work to be performed to the MDEP.

There are also activities that **do not require a permit form to be filed**. These include but are not limited to:

- Certain water lines and utility cables.
- Maintenance and repair of a structure in, on, over or adjacent to a protected natural resource and maintenance and repair of a private crossing of a river, stream or brook if certain measures are taken:
- Emergency repair or normal maintenance and repair of the existing public works which affect any protected natural resource. An activity which is exempt under this subsection shall employ erosion control measures to prevent sedimentation of any surface water, shall not block fish passage in any water course and shall not result in any additional intrusion of the public works into the protected natural resource.

Contact MDEP at the main office in Augusta at (207) 287-2111, or any of the field offices in Portland, Bangor or Presque Isle. The ACOE Maine field office is located in Manchester, (207) 623- 8367.

4.6 Protecting Railroad Rights-of-Way

When the railroads obtained the right-of-way in order to lay tracks, the land for the right-of-way was acquired in one of two different ways:

1. "fee simple:" the outright purchase of a piece of land.
2. "easement:" the purchase of a piece of land for a particular use only, i.e., construction and operation of a railroad. When the use ceases, subject to conditions, the property reverts to the abutting land owner.

A particular railroad right-of-way can be a patchwork of the two types of acquisition. In practice railroads in the State of Maine have acted as if all acquisitions have been by fee simple. The right-of-way does not then automatically revert to the abutting land owners.

Recognizing the importance of preserving the potential embodied in an unused, unfragmented transportation corridor, such as a railroad right-of-way, the Intermodal Surface Transportation Efficiency Act (ISTEA) requires that preservation of unused railroad right-of-way be considered in statewide transportation planning. In addition to any railroad right-of-way preservation efforts by the MaineDOT, a municipality may participate by developing Transportation Enhancement projects that incorporate right-of-way preservation as part of their own objectives. The MaineDOT has already acquired 300 miles of railroad right-of-way in the State to preserve them intact.

To find out the status of particular sections, municipalities should contact the Office of Freight Transportation at (207) 624-3560

4.7 The Clean Air Act Amendments

The Clean Air Act Amendments of 1990 (CAAA) are some of the most far reaching pieces of legislation to come out of Washington. Any activity insofar as it contributes to air pollution may be regulated. The air quality in each area is monitored, and if the NAAQS are violated on two or more occasions in a three-year period, the area is designated "nonattainment." After that, air quality has to be monitored continuously, and if three years pass averaging less than one violation per year, the US Environmental Protection Agency may be petitioned to have the area's status upgraded.

There are standards for each of the major pollutants: Ozone, Carbon Monoxide, Small Particulate (PM-10), Sulfur Dioxide, and Lead. Of these, Maine has nonattainment areas for ozone and PM10 only.

At this time, Maine has two areas in nonattainment for Ozone (Area 1 includes portions of York, Cumberland, Sagadahoc and Androscoggin counties; Area 2 includes portions of Lincoln, Knox, Waldo and Hancock counties).

Maine's PM10 maintenance area is located in Presque Isle. This area consists of a very small part of the city where road sand was being ground into very fine particles by highway traffic. Since February 25, 1991, there has only been one monitored violation of the PM10 standard. The city changed their winter maintenance practices to eliminate the air quality problem.

Maine is currently in attainment for the recent PM2.5 air quality standards.

Each state is required to submit to the US Environmental Protection Agency a State Implementation Plan (SIP) describing what actions the state's air quality agency intends to ensure the attainment and maintenance of NAAQS in the state. In Maine, the Department of Environmental Protection's Bureau of Air Quality Control and the Department of Transportation are the agencies responsible for preparation of this plan. Because motor vehicles make a significant contribution to air pollution, especially in congested areas, it is required that planned changes in transportation infrastructure will neither worsen existing air quality nor hinder the State's ability to bring the non-attainment areas into attainment.

There are many transportation activities that are exempt from the constraints of the CAAA. Some examples are: safety-related improvements to highways; pedestrian and bicycle facilities; and purchase of transit vehicles. For a more extensive, detailed list of exempt transportation infrastructure, contact the Bureau of Planning, Plan & Program Development Division at (207) 624-3300.

4.7.1 What does CAAA Mean For Municipalities?

In municipalities located in areas designated as nonattainment for ozone, no transportation projects may be implemented that would increase emissions of Volatile Organic Compounds or Nitrogen Oxides; the two chemicals needed to form ozone. Once measures have been implemented to reduce emissions to secure attainment, then development and traffic must be continuously monitored and controlled to keep the area in attainment.

As a part of a comprehensive strategy to achieve and maintain a high standard of air quality in an area, and to avoid more stringent controls on transportation and development, a municipality may promote and/or propose transportation projects that produce net decreases in motor vehicle emissions. In areas that are designated nonattainment for ozone, these activities are candidates for funding under the Congestion Mitigation Air Quality program (CMAQ). See the section on funding in this guide for more information about the CMAQ program. In addition, the municipality may adopt land use strategies that would reduce the amount of motor vehicle use. For example, it could enact land use ordinances and plans that encourage travel on foot and by bicycle, and better integration of bus services into the community.

4.8 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) & INTEGRATED TRANSPORTATION DECISION-MAKING (ITD)

4.8.1 National Environmental Policy Act (NEPA)

The National Environmental Policy Act of 1969 (NEPA) sets a vision for how the federal government should work to incorporate protection and enhancement of the environment into its decisions and actions. It was enacted to ensure that information regarding the environmental impacts of any federally funded action is made available to public officials and citizens *before decisions are made and before actions are taken*.

Under NEPA, Congress directs federal agencies to integrate in their planning and decision-making processes social, economic, and environmental considerations. NEPA is a broad-reaching mandate for federal agencies to work together, with state, local and tribal governments, public and private organizations, and the public to achieve and balance national social, economic, and environmental goals while accomplishing their missions. The Council on

Environmental Quality (CEQ) regulations require federal agencies to designate major decision points likely to have significant effects on the human and natural environment and adopt procedures consistent with the NEPA process

4.8.2 Integrated Transportation Decision-making (ITD)

The Maine Department of Transportation has developed a framework for integrating environmental and transportation decision-making throughout the department. This framework interfaces planning, location, design, right-of-way, construction, maintenance, and environmental operations by fully integrating the decision-making processes of Maine's Sensible Transportation Policy Act (STPA), the National Environmental Policy Act (NEPA), and state and federal environmental permitting programs, especially the U.S. Army Corps of Engineers, New England, Highway Methodology. ITD benefits include community involvement and support, balanced and consistent decision-making, and collaborative consensus building, both internal to MaineDOT and externally.

The overall goals of MaineDOT's Integrated Transportation Decision-making process are to express well-defined environmental policies, protect and enhance the human and natural environment, and establish an environmentally conscious organization. With an institutionalized environmental ethic that directly influences daily decision-making, MaineDOT will, through stakeholder cooperation and participation, develop a balanced transportation system, and promote environmental accountability throughout its programs.