



ROAD SERVICE AREA TASK FORCE



Final Report to the
Matanuska-Susitna Borough Assembly

December 20, 2022

Road Service Area Task Force Report to the Matanuska-Susitna Borough Assembly

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I. Introduction

A. Assembly Directions to the Task Force

The Matanuska-Susitna Borough (Borough) Assembly adopted Ordinance No. 22-020 [Appendix A] on March 1, 2022, to establish a Road Service Area (RSA) Task Force and directed that the Task Force (TF) shall consider the following issues:

1. The adoption and implementation of an alternate contract structure in Big Lake RSA 21, to include, but not limited to, a time and materials structure.
2. The scalability, or applicability of such methods to other road service areas.
3. Areawide brush-cutting.
4. Processes to address substandard roads Borough-wide.

The Assembly also directed that the TF may consider additional issues:

5. How to address the issue of currently maintained roads in RSA 21, which become impassable or have major deficiencies preventing safe public access to include whether modification of the existing maintenance specifications are warranted, or options for advancing capital improvements.
6. Other issues which may be pertinent to consideration of the items above.

B. Why a Task Force?

Why a RSA Task Force and what are its objectives?

Driving on many of the Borough's paved roads can be nerve-racking, even unsafe. Discontented Borough residents have voiced that some RSAs are not receiving the full measure of road maintenance services for which they are paying. Why pay for safe, competent, year-round maintenance when the results are unpaved roads covered with potholes, washboard ripples, standing water and/or roads that are constrained throughout the winter season as the snow banks close in on the middle of the road? The question arises, "Is there a way to only pay for the services received?"

To that aim, the TF considered alternate contract options to only pay for work that is completed. Recognizing that the Borough should aspire to provide a higher level of service, the TF considered other recommendations on how to improve the level of service available to Borough residents.

C. Task Force Committee Structure

The TF decided to create 4 committees, each committee was assigned a portion of the directives provided by the Assembly in Ordinance No. 22-020. The committees then reported their findings to the group for review and further discussion. The committees and the legislative directives were assigned as follows, using language directly from the legislation:

1. Committee 1 - Alternate Contract / Scalability (shall consider):

- *the adoption and implementation of an alternate contract structure in Big Lake Service Area No. 21 to include, but not limited to, a time and material structure; (and)*
- *the scalability or applicability of such a method to other road service areas.*

Committee 1 Members: Jashua Leatham and Gary Foster

2. Committee 2 - Brush Cutting (shall consider):

- *areawide brush cutting*

Committee 2 Members: Jill Parson and Gary Foster

3. Committee 3 – Substandard (shall consider):

- *processes to address substandard roads Borough-wide*

Committee 3 Members: Darren Zimmer and Gary Foster

4. Committee 4 - Alternate Specifications (may consider):

- *how to address the issue of currently maintained roads in RSA 21 which become impassable or have major deficiencies preventing safe public access , to include whether modifications of the existing maintenance specifications are warranted or options for advancing capital improvements.*

Committee 4 Members: Ken Walch and Jill Parson

D. Task Force Recommendations Summary

1. The TF recommends that the Assembly continue with the current “unit price per mile” maintenance contract format for the present road maintenance services contract. However, the TF further recommends that “time and materials” contracts can be used to repair impassable sections of road, for example to bring gravel to rebuild a road’s crown. These impassable sections must be repaired either as part of the maintenance contract, or bid as additional construction contracts to bring those sections into safe, year-round accessibility. The detailed recommendations are presented throughout the main body of this report.
2. The TF recommends that the recommendations suggested for the RSA 21 contract also apply to other Borough road services maintenance contracts.
3. The TF recommends that brush-cutting remains in each RSA maintenance contract and that brush-cutting begins and ends later in the year.
4. The TF recommends allocating road maintenance funds to focus on improving the impassable sections of roads, until all roads are safe and passable for emergency vehicles year-round, before committing RSA funds to upgrade roads to subdivision standards. Details of these recommendations are presented in the main body of the report.

For ease of review, a summary of the detailed recommendations will be included as Appendix G.

II. Main Body

A. General Findings

Through research, investigation, interviews, presentations, discussions and drive-along “windshield tours” the TF has developed a keen understanding and appreciation for the Borough’s efforts to maintain roads. Many of the Borough’s roads are poorly maintained. Why? The TF asserts that there are two breakdowns within the process:

1. The Road Service Maintenance Contract has not been fully enforced with the service criteria directed in the contract.
2. There are systemic and contractual issues that make fully executing the contract difficult. These issues are further refined throughout this report, but include:
 - a. Lack of management control mechanisms to ensure proper oversight of the Road Service Area Maintenance Contracts.
 - b. Lack of a common understanding of a properly maintained road, complicated by the wide disparity in road conditions.
 - c. A dearth of effective tools to establish a common operating picture of the Borough's road conditions.
 - d. A lack of consistent oversight and enforcement of contract criteria.

The TF believes the Borough can receive the full measure of competent road maintenance services to current funding levels, by adopting and properly implementing the recommendations provided in this report. However, recommendations only result in effective outcomes when the stakeholders (RSA Board Members, Public Works RSA Road Superintendents, Public Works management, Borough Assembly members and members of the public) implement the designated steps in a measured and disciplined manner.

B. Specific Findings and Recommendations

1. Contract Structure
 - a. **Issue:** What is the most appropriate structure for a Road Maintenance Contract for RSA 21? Is it scalable to other Borough road service areas?
 - b. **Discussion:** The Borough is not receiving the expected level of service under the current maintenance contract. Many of the roads are poorly maintained and do not achieve the level of maintenance expected, despite the Borough's efforts to provide residents and businesses with safe passable roads. There is a gap between what the taxpayer pays for maintained roads, by the way of property road service area mill rate taxes, and what the taxpayer receives. The TF finds that the contract structure currently in place provides for a fairly robust level of service. Although there are issues to address within the contract, the current "unit price per mile" structure is the appropriate structure to provide the highest level of service to Borough residents and businesses.
 - c. **Recommendation:** The Borough continue the current "unit price per mile" maintenance contract structure as the most appropriate vehicle to achieve the high level of road maintenance services desired.
2. Contract Criteria Knowledge
 - a. **Issue:** There is a lack of common understanding of what "Right" looks like.
 - b. **Discussion:** The TF discovered that various stakeholders assess problem areas differently. Each look at the same stretch of road with gravel berms on shoulders, or poor drainage, or other evident issues and deduce completely different opinions as to whether the road maintenance efforts are in compliance with the contract. There is no common recognition by the stakeholders on whether the road is properly maintained. Lack of a common understanding produces inconsistent results.

- c. **Recommendations:** Public Works should establish ongoing training and contract clarification sessions, to provide a common understanding of RSA criteria and expectations for road maintenance. Attendance would be expected by new maintenance contractors, noncompliant contractors, Public Works RSA Superintendents and RSA Board members.
3. Contract Oversight
- a. **Issue:** The Borough has not provided the necessary levels of administrative oversight to ensure maintenance contractors are in compliance with the contract.
 - b. **Discussion:** The Borough needs to provide the administrative oversight to ensure contractor compliance with the contract. The contract is clear in what it expects regarding contractor performance, yet non-compliance exists. There are 1100 miles of maintained roads in the Mat-Su Borough inventory and three PW RSA Superintendents to inspect the results of every mile maintained. While the TF did not conduct a Manpower Utilization Survey, the Public Works department may need additional resources (personnel, automation, funding and/or processes) to conduct the necessary road inspections and contract oversight. Paragraph 9 of the contract, Section I, SPECIAL PROVISIONS, the Borough gives tools to ensure services are upheld to the contracted performance criteria. Although these tools are available, the TF found few instances of the use of these tools.
 - c. **Recommendations:** The Borough conduct a manpower study to determine if their people to task ratios are properly balanced for this contract structure. Also, develop internal management control mechanisms to apply the available tools when contract deficiencies are noted, such as issue a Letter of Non-Compliance when warranted, as a means to ensure performance of the contract.
4. Areawide Brush-Cutting
- a. **Issue:** Should brush-cutting be an areawide contract?
 - b. **Discussion:** Brush/vegetation management along Borough roads is critical for visibility and proper drainage to safely navigate the roads at posted speeds. The existing RSA contracts provide a good framework for the contractors to cut brush but the TF recommends several amendments:
 - (1) The current contract requires cutting vegetation from May 1 through September 15 of each year. Due to a recent Department of the Interior Order [Appendix H] cutting vegetation along the roads where migratory birds have potentially built nests, could violate the intent of the Order. For this reason, a later start will minimize possible incidental take per the Order, and likely make an inventory of bird nests unneeded as part of the contract. Additionally, extending the season later in the summer will eliminate new growth and improve visibility of wildlife during the winter months. Furthermore, if cutting trees/shrubs for the first time the contractor should use the Bird Nesting Survey Form [Appendix I] to identify any active nests. Once trimmed, the lack of trees or tall shrubs should eliminate bird nesting sites in the cutting area and the survey should not be needed unless the area is expanded to include additional trees/tall shrubs.
 - (2) The current contract requires cutting vegetation a distance of eight (8) feet from the outside edge of the shoulder of the road. The TF finds for paved roads rated at 45 mph

or greater, vegetation should be cut up to 50 feet from the asphalt edge of the road or to the right-of-way boundary, whichever is less. The additional space provides better clearance to observe wildlife and offers greater space for snow removal during the winter months.

(3) The TF does not recommend consolidating the brush-cutting effort into a single Borough contract, but to continue this task within the existing RSA maintenance contracts, since existing contractors have the equipment to do this work or rent it only during the period needed. Also, keeping this activity in each RSA contract allows the contractor to employ personnel during the transition from summer maintenance to winter snow maintenance activities and possibly may reduce the overall price bid on the maintenance contract.

c. **Recommendations:**

(1) Change the contract to reflect brush cutting start and ending dates from July 22 through October 31, or a 4" or more snowfall, whichever comes first.

(2) Brush on roads rated fewer than 45 mph should be cut eight (8) feet from the road outside edge of the shoulder, or to the right-of-way, whichever is less per existing contract.

(3) For paved roads with 45 mph plus traffic, the clearing distance may be defined for each road to be greater than eight (8) feet depending on road speed, snow removal needs and terrain, in order to provide safe line-of-sight clearance.

(4) For trees/shrubs being cut for the first time, the contractor should use the Bird Nesting Survey Form to identify any active nests in the trees and shrubs. Once trimmed, the lack of trees or tall shrubs should eliminate bird nesting sites in the cutting area, and the survey should not be needed unless the area is expanded to include additional trees and shrubs.

(5) Retain brush-cutting within the existing RSA maintenance contracts.

5. Road Conditions Awareness

a. **Issue:** Presently, the Borough lacks comprehensive awareness of the conditions of the Borough's roads. The lack of awareness exacerbates the Borough's ability to properly maintain and effectively improve the roads in an analytically systematic method.

b. **Discussion:** A comprehensive inventory of the conditions of Borough roads is invaluable to properly manage and provide safe travel throughout the Borough. This information exists only in a dispersed state amongst the various RSA maintenance contractors, the RSA Boards and the Borough Public Works Superintendents. Consequently, it is not readily accessible for MSB Public Works staff analysis for remedial actions and planning purposes. Three tools presently in use and development will significantly improve this deficiency: The MSB Road Start-Up Inventory; the Public Works GIS database; and the MSB Problem Reporter. All three systems are currently under development and refinement, all three are tremendous assets to the Borough. The TF applauds the Borough's efforts in this area and encourages continued development and more importantly, the use of these analytical tools to better administer and plan the maintenance and improvement of the roads.

(1) Start-Up Inventory – An inventory of the conditions of each RSA's maintained roads serves as a baseline to both maintaining and improving the roads through the Road

Improvements Project (RIP) list and the Borough's long range transportation plan. This inventory is a contract requirement, paragraph 3.12, Section I, SPECIAL PROVISIONS, performed by the contractor within the first thirty days of the contract. This contractual requirement has not been enforced. Consequently, the Borough does not have a detailed and comprehensive inventory performed by the contractor describing present road conditions, ditches, culverts, drainage and other observations.

- (2) **GIS Database** – Borough GIS staff is developing a database to capture, display and analyze the start-up inventory information provided by the contractor. Public Works staff is reinforcing the contract requirements of the contractor, and will use the contractor's submissions to help populate the database. The TF finds this to be a very formative effort, one that will have a significant and favorable impact on road service area maintenance and development efforts. The Borough should complete both efforts and update the database annually. This database can serve as the baseline for future improvements and development planning.
- (3) **MSB Problem Reporter** – A third tool is the MSB Problem Reporter. Through this online reporting tool, residents are able to identify and report road damages, problem areas, maintenance non-compliance and other issues directly to the contractor and copied to the Borough. The TF expects that ongoing refinement of this tool will markedly improve the Borough's response to concerns about the roads. Although Problem Reporter complaints go directly to the contractor and to Public Works, it appears that the Borough is not utilizing the data to address overall issues with compliance or road conditions. Rather than just a conduit for complaints to the contractor, the Borough should also analyze this information to identify remediation and road improvements. Secondly, upon responding to the complaint to the contractor, the complainant receives a notice from the contractor that the problem is fixed. This response should not remove Borough staff from its management and oversight responsibilities. The TF recommends that the Borough Public Works Road Superintendent should be the one to close out the complaint once they determine the problem has been properly addressed.

c. **Recommendations:**

- (1) The Borough enforce the Start-Up Inventory requirements of RSA maintenance contracts and verify the accuracy of the information.
- (2) The Borough continue to expand and refine the GIS road condition database and produce useful criteria for future administration and road improvement planning and development.
- (3) The Borough further develop the online Problem Reporter system as an analytical tool as well as a response management tool, have Borough staff ensure complaint remediation before the complaint is closed out.

6. Road Improvement Investments

- a. **Issue:** Insufficient funding to improve the current inventory of substandard roads at an acceptable pace.

b. Discussion:

- Many roads within the Borough's inventory were either accepted into the inventory in a substandard condition or have degraded over time and do not meet the acceptable level of access. Road maintenance contractors maintain roads in their present condition, usually defined in the Start-Up Inventory, and can only marginally improve those roads through proper maintenance techniques. However, to improve the Borough inventory of substandard roads, capital improvement investment is now required to fund those efforts. The Borough relies mainly on RSA taxes to fund those investments. Other sources infrequently contribute to the effort, such as individuals or groups supported by the Local Improvement District (LID) or RSA Loan programs. Occasionally residents will pool their own funds to improve their roads or contractors requiring improved access to their worksites, may do the same.
- Approximately 80% of the 106 miles of road in RSA-21 are gravel and often 20% of those have impassable sections during certain times of the year. At the estimated cost of \$375K per mile for paving a standard road, or over \$1 million for full construction per mile to pave RSA-21 roads, it could take about 44 years at the current funding levels.
- Some RSA roads considered substandard can never be upgraded to meet Subdivision Construction Manual (SCM) standards because of physical conditions, such as right-of-way, grades, curve values, width, but roads can be repaired to meet year-round safe access for emergency vehicles. While considered nonstandard roads, repairs need to focus on improving drainage through, for example, swales, ditching, culverts, adding gravel, and ensuring a 3%+ crown. Impassable sections may be repaired, but if the remainder of the road is passable and maintainable, upgrades may not be needed immediately. The roads thus repaired remain nonstandard, but safe to drive all year around.
- The budgetary process for road improvements is passive. Appropriations pay the bills, then whatever is leftover has been applied to the Road Improvements Project (RIP) list, to fund road upgrades to SCM standards. By keeping the RSA funds in the road maintenance and repairs funding account, instead of applying the funds to the RIP list, these funds can be used to direct priorities to sections of impassable roads and expedite the improvement of substandard roads into a better quality of road through T&M contracts, or bids for road maintenance repairs. Presently the RSA 21 Board receives reports each month summarizing operations and maintenance expenses, but no specifics on project expenses, or the status of projects from the RIP list. Having a detailed list provided quarterly, to show how the RSA funds are being spent in these account funds, will greatly improve the RSA 21 Board's ability to define and prioritize work needed to repair and/or upgrade RSA 21 roads in the Board's recommendations to the Borough Assembly and the Borough Manager.

c. Recommendations:

(1) Prioritize spending RSA funds to repair or improve impassable sections of roads to make them safe for year-round travel first, before considering upgrades to make the road meet SCM standards.

(2) The Borough should seek additional sources of RIP funding through reallocating funds not spent after a project has been completed, state or federal programs or grants, or commercial cost sharing opportunities. Consider hiring a grant researcher and grant writer on a commission basis.

(3) Update the Road Service Area Operating Manual which is posted on the Borough website: [rsa-operating-manual-jan-2012.pdf \(matsugov.us\)](#) and formally adopt it by the Borough for implementation.

(4) Within 30 days of the end of each quarter the RSA Boards be provided a detailed list of all operations and maintenance and capital projects expenses (Account Funds 277, 405 and 410) for the prior quarter. This information is essential for the RSA Boards to make informed and timely recommendations on the budget and perform other duties as outlined in MSB Code 5.15.015 for RSA Supervisors.

III. Task Force Membership and Meeting Schedule

Chairperson – Gary Foster

Vice Chairperson – Darren Zimmer

Member – Jashua Leatham

Member – Ken Walch

Member – Jill Parson

The Task Force held meetings every other Tuesday from 2:00 - 4:00 pm from May 5, 2022, through October 25, 2022. Beginning November 1, 2022, the Task Force switched to meeting weekly. Detailed dates and locations can be found in [Appendix F] RSA Task Force meeting schedule.

IV. Mat-Su Borough Support and Participation

MSB Deputy Manager – George Hays

Public Works Director – Tom Adams, PE

Purchasing Director – Russ Krafft

Operations & Maintenance Manager – Don Thomas

O&M Road Maintenance Superintendent – Tyler Blazejewski

MSB Executive Coordinator – Tiffany Richards

MSB Senior Executive Coordinator – Mary Miller

V. Acknowledgments

The Task Force is grateful to Borough staff participating in the Task Force meetings and acknowledges others below who also shared their time and expertise in preparation of this report:

Maury Robinson, Municipality of Anchorage (MOA) Manager of Public Works Administration, described several alternatives for road maintenance contracts in the MOA and the costs for the different services offered.

Cheyenne Heindel, Borough Director of Finance, previewed new reports for the RSAs which will give RSA Supervisors valuable information about RSA revenues, expenses, and active projects.

Jennifer Ballinger, Borough Public Works Operations and Maintenance Specialist, and **Lyndsey Brisard**, Borough Revenue and Budget Manager in Finance Department, explained the monthly financial reports received by all the RSAs and fielded questions from the Task Force about report content.

Mokie Tew, Borough Assembly Member for District 5 which includes RSA 21, participated in most meetings and offered his knowledge about how the road maintenance contract has been enforced and suggestions for improvements.

Nicholas Spiropoulos, Borough Attorney, briefed the Task Force and kept the TF advised of legal aspects of the Open Meetings Act.

Kenneth Klewein, Borough GIS Manager, offered information on Problem Reporter and anticipated improvements to this important tool for use by Public Works, RSA Supervisors, and the public.

VI. Appendices

- A. Ordinance No. 22-020
- B. Committee 1 Report by Jashua Leatham and Gary Foster
- C. Committee 2 Report by Jill Parson and Gary Foster
- D. Committee 3 Report by Darren Zimmer and Gary Foster
- E. Committee 4 Report by Ken Walch and Jill Parson
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- I. Bird Nesting Form

Appendix A

Ordinance No. 22-020

NONCODE ORDINANCE

Sponsored By: Borough Manager
Introduced: 02/15/22
Public Hearing: 03/01/22
Amended: 03/01/22
Adopted: 03/01/22

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 22-020**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY
ESTABLISHING A TASK FORCE TO REVIEW AND MAKE RECOMMENDATIONS TO
THE ASSEMBLY REGARDING ROAD SERVICE AREA SERVICES IN BIG LAKE ROAD
SERVICE AREA 21 AND POTENTIALLY OTHER AREAS.

WHEREAS, in a report dated September 29, 2021, Borough Administration performed a Road Maintenance Services and Cost Analysis ("Analysis") for delivering services within road service areas ("RSAs") in the Borough; and

WHEREAS, one issue that was considered in the Analysis was whether there was a more cost effective method to deliver services; and

WHEREAS, the Analysis attempted to compare the Matanuska-Susitna Borough model of fixed-price contracts with Fairbanks and Kenai Boroughs' methods; and

WHEREAS, it is hard to make comparisons because of differences in services, expectations, and opportunities; and

WHEREAS, the Analysis concluded with a suggestion that if the Assembly wanted to explore a time and materials contract structure, that a resolution be brought forth to establish a pilot program to gather data that would be more easily comparable; and

WHEREAS, Resolution Serial No. 21-135 was proposed to implement a time and materials structure in Big Lake RSA No. 21 from July 1, 2022 through June 30, 2023; and

WHEREAS, the Matanuska-Susitna Borough Assembly received verbal and written comments and considered Resolution Serial No. 21-135 at the February 1, 2022 regular Assembly meeting; and

WHEREAS, during Assembly discussions, a proposal to form a task force was brought forward to have a focused group of people consider the issues; and

WHEREAS, during Assembly discussions, the issue of addressing substandard roads was also considered; and

WHEREAS, the Assembly deems it prudent to establish a Task Force.

BE IT ENACTED:

Section 1. Classification. This is a non-code ordinance.

Section 2. Creation of Task Force. A board, to be called the Road Service Area Task Force, is hereby established.

Section 3. Membership of Task Force. The Task Force shall consist of five members and two alternate members. The alternate members may attend all meetings, and be provided all materials, but may not vote unless all members are not present. In the event that one member is not present, alternate 1 may vote. In the event 2 or more members are not present, both alternates may vote. The provisions of MSB 4.05.071 (Compensation and reimbursement) and

MSB 4.05.110(A) (Officers) do not apply to the Task Force. The Mayor shall appoint the chairperson, vice-chairperson, members, and alternate members, subject to Assembly confirmation.

Section 4. Limitations, Powers and Duties of the Task Force.

1) The Task Force shall have advisory functions only, and shall not otherwise act, individually or collectively, as a borough agent.

2) All Task Force members and alternates who communicate with other Task Force members, alternates, Borough staff, or members of the public related to the issues of the Task Force shall provide a complete copy of the communication to the other members and staff of the Task Force at the next meeting of the Task Force. If such communication is not in writing, the Task Force member or alternate shall prepare an accurate description of the conversation noting the date, time, location, and people present and deliver the description to the other members, alternates, and staff of the Task Force.

3) The Task Force shall consider the following issues:

A) the adoption and implementation of an alternate contract structure in Big Lake Road Service Area No. 21 to include, but not limited to, a time and material structure;

B) the scalability or applicability of such a method to other road service areas;

C) areawide brush cutting; and

D) processes to address substandard roads Boroughwide.

4) The Task Force may consider the following additional issues:

A) how to address the issue of currently maintained roads in RSA 21 which become impassible or have major deficiencies preventing safe public access, to include whether modifications of the existing maintenance specifications are warranted or options for advancing capital improvements;

B) other issues which may be pertinent to consideration of the items contained in Section 4(3)above.

Section 5. Staff to the Task Force. The Borough Manager shall assign up to 5 staff members, and not himself, to attend and assist the Task Force in their duties. The Borough Clerk shall obtain the schedule of meetings and ensure advertising the meeting of the Task Force. The Borough Attorney shall provide staff to provide legal interpretations and discussions as needed. Staff are not voting members of the Task Force.


Section 6. Report. The Task Force shall deliver a written and oral report to the Borough Assembly no later than December 20, 2022 as to the findings and recommendations of the Task Force.

Section 7. Effective date and expiration. This ordinance shall take effect upon adoption. This ordinance, and the Task Force, will expire on December 21, 2022.

ADOPTED by the Matanuska-Susitna Borough Assembly this 1 day
of March, 2022.


EDNA DeVRIES, Borough Mayor

ATTEST:


LONNIE R. McKECHNIE, CMC, Borough Clerk
(SEAL)

PASSED UNANIMOUSLY: Hale, Nowers, McKee, Yundt, Tew, Sumner, and
Bernier

Appendix B

Committee 1 Report

Committee 1 Members: Jashua Leatham and Gary Foster

1. Committee 1 - Alternate Contract / Scalability (shall consider):

- A) *the adoption and implementation of an alternate contract structure in Big Lake Service Area No. 21 to include, but not limited to, a time and material structure; (and)*
- B) *the scalability or applicability of such a method to other road service areas;*

Road Service Area Task Force Committee 1 Report Alternate Contract / Scalability

Committee Findings and Recommendations

To be thorough with my research I spent time reviewing the RSA contract, the many issues facing the maintenance of borough roads, and speaking with borough residents, the Director of Public Works, and previous coworkers who work with contracts often. There are some major issues we are facing as we examine and provide recommendations to the Assembly. I will limit my recommendations directly to the task committee 1 is assigned to.

Recommendation 1

Issue: Determine what contract will work best for RSA 21.

Discussion: During my research I reached out to a few individuals I have worked with in the civil engineering field that deals with contracts. We reviewed the needs and issues facing RSA 21 that have been discussed in our meetings. We looked at a few different contract structures that could be used for the RSA contract. Each contract structure has its pros and cons as listed below.

Contract structure considered:

1. Lump sum

- a. Pro
 - i. Predictability of contract cost for budget
 - ii. Lower financial risk
 - iii. All work included in the contract will be completed within budget
 - iv. Simple accounts payable processes
- b. Con
 - i. Contract must be thorough and clear
 - ii. Contract inflexible
 - iii. Change to contract will require change orders/additional paperwork
 - iv. Normally charged a higher rate because the contractor takes more financial risk.
 - v. Use of inferior materials
 - vi. Short cuts or cost cuts to maximize contract profit

2. Time and Materials

- a. Pro
 - i. Incentive for work to be done
 - ii. Quality materials
 - iii. Easy to add more scope to improve roads if funds are available in the RSA contract
- b. Con

- i. Contractor not motivated to work efficiently
- ii. Unpredictable budget to complete required work
- iii. Rising labor and material cost
- iv. Tracking cost requires more work

3. Cost-plus

- a. Pro
 - i. Better materials
 - ii. Pay for only work completed
 - iii. Complete work on time and budget
- b. Con
 - i. Tracking cost requires more work
 - ii. Hard to budget for the year
 - iii. Rising labor and material cost
 - iv. Borough carries risk of cost overruns
 - v. Must have a trustworthy contractor

Lump Sum

Under a lump sum contract, also known as a stipulated sum contract, the contract provides explicit specifications for the work, and the contractor provides a fixed price for the project. These contracts require the borough to complete the project's plans, designs, specifications, and schedule before the contractor can establish a price. The contractor then estimates the costs of materials, tools, labor and indirect costs such as overhead and profit margin and provides a quote.

This is the current contract structure the borough uses and there have been a few issues that we have been facing with this structure. Here is a list of issues we have brought up or discussed:

- Poor roads that cannot be maintained based off current standard
- The inventory list is put together after the contract is bid
- We have not conducted a manpower study to determine if the borough worker to task rations are properly balanced, but this may be an item of concern to complete borough tasks.
- Poor or no training on current standards
- Contract has some unreasonable standards
- Contract has some unclear standards
- Contract isn't clear on an explanation of what quality work is for each trade
- The contract leaves a lot of room for the contractor to underperform on the maintenance contract

Time and Materials

With a time and materials contract, instead of quoting a fixed price for the entire project, a contract will describe the rough scope of the job along with a quote for a fixed hourly wage plus the cost of materials. The contractor might also include a maximum price for the project — commonly called a “not-to-exceed” clause as a guarantee to protect the client against runaway costs.

To switch to this contract structure the borough will still need to address the previous issues described in the lump sum section as well as some additional items to make this an effective solution. Here is a list of additional items to be addressed:

- Borough will need to hire additional people to manage new tasks associated with this structure
- It's a common issue with T&M projects to get lower quality work
- This is not a good option if we can clearly identify the scope and specification of the work

The benefit here is that the contractor won't be paid for items in the contract that aren't being done.

Cost-Plus

A cost-plus contract is one in which the contractor is paid for all the project's expenses plus an additional fee for the job. The additional fee is intended to be the contractor's profit. Also known as cost-reimbursement contracts, these arrangements contrast with fixed-price contracts, in which the contractor is paid a single set fee for a project, regardless of total expenses. Cost-plus contracts shift some of the risk from contractors to customers, who may have to pay more to cover increased expenses.

To switch to this contract structure the borough will still need to address the previous issues described in the lump sum section as well as some additional items to make this an effective solution. Here is a list of additional items to be addressed:

- Contractors putting their profit in the bid is not great because it makes the bid come down to who is willing to take less money as profit. This is not good because you will lose quality of work.
- Budgeting in a cost plus tends to go over the expected budget.
- More change orders

Recommendation: Continue using lump sum contract structures while addressing the concerns mentioned above. In addition to the recommendation above, we highly recommend the borough conduct a manpower study to determine if their people to task rations are properly balanced for this contract structure.

Recommendation 2

Issue: Roads that are unable to be held to current road standard. This is due to old roads that were accepted into the borough that can't meet the current standards and is unable to be serviced fully under an RSA contract.

Discussion: I want to recommend developing a few different road classifications. Each classification will be held to a reasonable standard associated with each RSA contract. This will help clear up any confusion on what shall be done even if the road can't be maintained in accordance with a road that meets all the standards. What this does is makes sure certain tasks are completed and there is no interpretation of what should and should not be done. It is the contracts job to clearly say what the scope of work should be. It is not fair to have a contractor make road improvements under an RSA contract. It's not the job of the contractor under the RSA contract to make sure a road has the ability to be fully serviced as a standard road. Like wise we should be able to hold them to a maintenance standard that corresponds to the exiting road. As roads are improved through other funds, they are then moved to a classification that now meets that road and how it should be serviced.

The idea is to have a clear list of task and responsibilities that must be meet/done to provide the best road we can with what we have at the moment. As the borough moves forward and fixes all the road then these different road classifications should go away, and we will again have a single standard that all roads

shall meet. This is a temporary solution that will help the borough and the contractor meet the needs of the borough citizens.

Recommendation: Have the borough develop and determine how many different road classifications there should be and how each should be maintained.

Recommendation 3

Issue: Contract has unrealistic requirements and expectations

Discussion: There are a few situations in the contract that require the contractor to fix or respond to certain problems in a very short time frame. The idea here is that safety is the number one priority and anything that is associated with safety is highly important and should be addressed right away. The issues are the time frame for some of these repairs or tasks are not realistic. This can leave the contractor in a bind but can also put the borough in a bind as they can be held to this same standard. This allows citizens to call the borough out even if it is an unrealistic request.

Recommendation: A review of the contract to determine if certain tasks must be performed within an unrealistic time frame and update them to a realistic time frame.

Recommendation 4

Issue: Start up inventory

Discussion: A start up inventory is a great tool that can be used to manage roads that don't meet current design standards as well as issues that develop over time. I have used an inventory format in the past that works as follows and has been extremely successful in maintaining existing infrastructure as well as planning for infrastructure improvements. The bases of how this would work is three parts. The owner/borough would do an in-depth inventory and develop a tracking system. This large effort would only be a one-time task to get a baseline. Then each year the borough would do a check up on all inventory issues and update the inventory as needed. Third, have the contractor also perform a start inventory. The last two tasks could be done at the same time having a borough representative (who is properly trained) and the contractor go over the roads or issues of concern together.

Recommendation: Develop an in-depth start up inventory and work with the contractor to continually update and monitor inventory.

Recommendation 5

Issue: Borough follow through

Discussion: It has come up a few times in our meetings where roads that should be maintained properly are not being maintained properly. It seems like the RSA managers need additional help (that is trained) to monitor and make sure the contracts are being fulfilled. There is currently a part in the contract that says if the current RSA contractor is not completing work correctly then a different contractor can be called in to perform the work. Then the price it took to complete the work by the new contractor will be withheld from the original contractor to pay for the work. I think this is an underutilized item in the contract. The problem still remains that the borough doesn't have enough of a work force to fully complete this work. It is clear that the new public works director is fixing issues that have been going on

for some time. It looks like the borough is already headed in a direction that will better serve the people of this borough.

Recommendation: Review the boroughs manpower utilization and priority of tasks to ensure they have placed the right level of effort to address the proper priorities to execute the contract effectively.

Recommendation 6

Issue: Borough-wide scalability

Discussion: After reading through the current contract, it seems as though there are not many alterations between RSA's. I think keeping the existing contract structure as a lump sum while fixing the issues previously discussed will do extremely well borough wide. I would like to bring up one more time that I think it is extremely important for 3 things to happen to make this work well. One, updating the contract to include different standards for different road conditions. Two, completing a thorough and trackable inventory. Three, make sure all employees working on this are properly trained.

Recommendation: This would do well Borough-wide.

Appendix C

Committee 2 Report

Committee 2 Members: Jill Parson and Gary Foster

2. Committee 2 - Brush Cutting (shall consider):

C) areawide brush cutting; and

Road Service Area Task Force Committee 2 Report Brush Cutting

Proposed changes to Vegetation Control 7.2.3 below:

1. Change dates to: starting July 22 and continuing thru October 31 or a 4" or more snowfall, whichever comes first.
 - a. The later start will minimize possible incidental take per USFWS letter [Appendix H] and likely make an inventory of bird nests unneeded as part of the contract.
 - b. If vegetation is cut closer to the end of summer, new growth of brush is unlikely to be high enough to be a safety issue until after mid-July.
 - c. Cutting brush later in the year minimizes brush obscuring wildlife during winter months.
2. Brush on roads with speed limits less than 45 mph should be cut at least 8 feet from the outside edge of the shoulder or to the right-of-way, whichever is less, per existing contract.
3. For paved roads with 45 mph plus traffic, the clearing distance is defined for each road to be up to 50 feet from the asphalt edge of the road or to the right of way boundary, whichever is less, depending upon road speed, snow removal needs, and terrain which may restrict clearing.
 - a. The specific distance for each qualifying road is designated in the contract, to provide better clearance to observe wildlife (moose).
 - b. Extra width also allows for leaving the cuttings back from the ditches and providing additional space for snow removal.
 - c. For the first cutting to this depth, contractor should use the Bird Nesting Survey Form [Appendix I] to identify any active nests in trees/shrubs being cut for the first time. Once trimmed, the lack of trees or tall shrubs should eliminate bird nesting sites and the survey should not be needed unless the area is expanded to include additional trees/ tall shrubs.
4. For all roads Public Works can provide, in the contract, a table listing a posted mph and its distance for brushing, allowing for greater line-of-sight clearance as road speed increases.
5. Cutting at intersections should remain as in existing contract (7.2.3.2).
6. Existing contract is clear as to maximum height of cut vegetation, signage while brushing and a pilot car needed. Existing contract also specifies that brush must be removed from road surfaces, shoulders, ditches and private property.

Should this be an areawide contract and be removed from each RSA road maintenance contract? Recommend No.

1) Since existing contractors have the equipment to do this work, or they rent it only during the period needed. When already invested in the equipment, or it's easily available, its makes sense to continue to include in the maintenance contract. Keeping this activity in each RSA contract allows the contractor to employ personnel during the transition from summer maintenance to winter snow maintenance activities and possibly may reduce the overall price id on the maintenance contract.

2) It eliminates the need to coordinate its brushing contract with the road maintenance contractor, to ensure no conflict in working same area.

This proposal reflects a Resolution from RSA21 Board at their May 10, 2022 meeting to change the startup date for brush cutting to July 22. This resolution did not address changing the end date.

Appendix D

Committee 3 Report

Committee 3 Members: Darren Zimmer and Gary Foster

3. Committee 3 – Substandard (shall consider):

A) processes to address substandard roads Borough-wide.

Road Service Area Task Force Committee 3 Report Borough Substandard Road Process

Part I

Committee Finding and Recommendations

Finding Narrative: Committee #3 of the Mayor's RSA Task Force considered and examined the Matanuska-Susitna Borough's (MSB) processes to address substandard roads Borough-wide. The committee's overall assessment is that the MSB's process is substantive and formative. However, there are evident gaps between the processes' desired and actual outcomes. Many of the roads within the MSB's inventory are in substandard conditions at various times of the year and can be less than safe to navigate. While this report does not describe the MSB's process, it offers a series of recommendations to help the MSB bridge the gap between the aspiration of providing safe and competently managed roads and achieving it.

Recommendation 1

Issue: Lack of a commonly understood, established standard for road maintenance.

Discussion: Based on several interviews and road inspections, it appears evident that there is a lack of a shared or common understanding of what merits a properly maintained road. Subsequently, the maintenance effort to sustain the existing road conditions (and perhaps improve them) is negatively affected. Those tasked with assessing MSB roads and the efforts to maintain those roads presented discrepant assessments of problem areas along the roads. Without a shared understanding of what 'Right' looks like, it is unlikely that the MSB can apply common standards to the Road Service Areas.

Recommendation: Establish an MSB training course to institutionalize Road Service Area standards for road maintenance. Require attendance by new maintenance contractors, noncompliant contractors, RSA Road Superintendents, and RSA Board Members and open it to others who assess our roads (MSB Assembly Members et al.). The goal of this training is not to teach attendees how to operate machinery but to assess what a properly maintained road looks like. This way, when machinery operators, contracted inspectors, road superintendents, or any public members who attended the course inspect a road, they all come away with the same assessment that the road has, is, or is not maintained within compliance with the contract.

Recommendation 2

Issue: Conflicting MSB road service area standards leads to ambiguity in understanding the applicable maintenance standards.

Discussion: During interviews, when asked to identify the MSB's authoritative source governing the maintenance standards of the MSB roads, most identified the MSB Subdivision Construction Manual (SCM). The SCM is the MSB's definitive, authoritative document identifying the standard for designing and constructing all subdivision improvements within the MSB. For this purpose, it works well, but it does not serve as a standardization document for the maintenance of roads that never have and currently do not

meet the SCM standards. The maintenance contractor cannot transform a substandard road (one that does not comply with SCM) into a standardized road through maintenance efforts alone.

The SCM classifies roads as Residential, Residential Sub-collector, Residential Collector, Mountain Access Pioneer Road, Alleys, and others. Each of these classifications of roads is further defined with detailed access and design criteria with required (optimum) dimensional data.

The RSA Maintenance Contract does not align with the SCM's classifications and only qualifies two types of roads, Primary and Secondary. These roads are further differentiated between gravel and paved roads. The contract thoroughly articulates minimum maintenance standards for each road by winter and summer season. Even though many identify the SCM as the MSB's road standards, the RSA maintenance contracts serves as the de facto series of standards for the MSB's roads. The contract and not the SCM governs road service maintenance competency.

There are several ambiguities within the contract language, such as: "workmanship will meet the highest standards of the trade (Section 8, Warranty), without providing a reference document to that authoritative standard of trade. Another example is the Intent Phrase to "provide safe, courteous, competent, year-round road maintenance" (Intent paragraph). The contract leaves it to the reader to infer that safe is a road surface 'that a properly equipped and maintained vehicle can drive at the posted speed limit, or 25 MPH if not posted without sustaining damage to the vehicle or be in jeopardy of losing control.' (Para 7 Minimum Road Maintenance Standards). It is more difficult to infer what courteous and competent maintenance means and how one would should comply with that standard.

The SCM clarifies the standards for introducing new roads into the MSB's inventory, and the RSA Maintenance Contracts offer a standard for maintaining the MSB's roads already in the inventory. The problem is that once a road is accepted into the MSB inventory, it no longer needs to be maintained to the standard established in the SCM, as the maintenance contract seems to require a lesser standard. Furthermore, roads introduced into the MSB inventory below the SCM standard serve as an unending source of problems for the contractor as the ambiguity permits a variety of perceptive views on what is right and what is wrong. This leads to a perception management issue where residents or other stakeholders perceive the road is not maintained to standard, whereas the contractor believes it is.

Recommendation. MSB develops a comprehensive set of standards for the wide variety of conditions of roads within the MSB inventory. Reflect those standards in the MSB Road Service Maintenance Contract. Additionally, these standards of maintenance should aligned with the documented condition of the roads as agreed upon in the joint "Start-Up Inventories" (more information on the Start-Up Inventory to follow).

Recommendation 3

Issue: The MSB fails to hold the road maintenance contractors compliant with and accountable to the standards established in their contracts.

Discussion: Any casual drive through the MSB's roads yields numerous examples of poorly maintained roads not in compliance with the contractual requirements (i.e., potholes, wash-boarding, lack of grading, vegetation, and poor drainage control). The taxpayers are not getting the full measure of service they are paying. The MSB has incorporated several mechanisms to identify noncompliance to include, but not limited to: contractor self-management, Road Superintendent supervision, RSA Board Members assessments, resident complaints, Assembly members' observations, and many more. Yet, with all these

sources to identify noncompliance, MSB roads are often maintained below standards. Correction of deficiencies seems to rest heavily on contractor self-regulation, RSA Board member recommendations, and Road Superintendent oversight. The mechanisms for compliance are present yet poorly executed.

Recommendation: MSB Staff develops and enforces management control mechanisms to ensure its staff and RSA Board members are adequately trained and supervised and responsibly and competently execute their oversight responsibilities.

Recommendation 4

Issue: Insufficient funding to improve the current inventory of substandard roads at an acceptable pace.

Discussion: Many roads within the MSB's inventory were either accepted into the inventory in a substandard condition or degraded over time and do not meet the acceptable level of access. Road maintenance contracts maintain roads in the present condition and can only marginally improve those roads through proper maintenance techniques. However, to improve the MSB inventory of substandard roads, capital improvement investment is required to fund those efforts.

The MSB relies mainly on RSA appropriated levies to fund those investments. Other sources infrequently contribute to the effort, such as individuals or groups (LID Program, RSA Loan) of residents banding together to improve their roads, contractors requiring improved access to their worksites, and occasional state and federal funding of specific projects. The fiscal year 2022 budget identifies approximately \$683,000 for the Road Improvement investment for RSA 21.

According to an RSA 21 board member, approximately 80% of the 100 miles of road in the RSA are substandard. Of that 80%, 20% are often safely impassible during certain times of the year. Only 20 miles are paved. At the cost of \$X (edit note - need to confirm the correct numbers) per mile to improve these roads, it will take X years to provide the residents of RSA21 with safe, paved roads at current funding levels.

To execute the MSB government's powers and responsibilities of providing transportation systems, the MSB should seek additional funding sources to supplement the appropriations process.

Recommendation: Hire, on a commission basis, a grant researcher and writer. Conduct other investigations into supplemental funding sources to invest in the MSBs roads (Matching funds programs for businesses...)

Recommendation 5

Issue: Contractor Start-Up Inventory does not appear to be collected or employed to any discernible aim.

Discussion: Paragraph 3.12 of the Special Provisions Section of the MSB Maintenance Contract directs contractors to conduct a detailed and comprehensive inventory and assess the characteristics of the roads they are to maintain. They have 30 days to identify the roads' features and details they cannot maintain in full compliance with the contract. Through discussions with the MSB staff, this measure does not appear to be enforced; only two of the RSA maintenance contractors have inventories on file. There are three issues with this.

1. The lack of a coordinated 'baseline' on the conditions of the roads that the contractor must maintain leads to the acceptance of poorly maintained roads. Without an agreed-upon, lower standard for preserving the condition of pre-contract, substandard roads, the default standard must be those identified within the contract or the SCM. However, as many substandard roads cannot physically be maintained at that higher condition, a lesser standard is de facto accepted. Because a 'baseline' is unavailable, the MSB accepts substandard performance of roads that the contractor deems impossible to maintain to the Contract or SCM standard. That substandard performance can become the new standard for all roads, including those that can be maintained to contractual (or SCM) standards. By not having this baseline, the MSB is not providing its staff the information tools to discriminate between actual, sup-par performance (on standard roads) and where that lower level of performance is acceptable and agreed upon substandard roads that cannot meet the contractual requirements.

2. The comprehensive inventory assessment is an invaluable tool to help populate an MSB database depicting the conditions of MSB roads. This information exists only in a dispersed state amongst the various RSA maintenance contractors, the RSA Boards, and Superintendents. Consequently, it is not readily accessible for analysis and planning by the MSB to better maintain road situational awareness for action and planning purposes.

3. The MSB's failure to enforce a critical contractual requirement 30 days into a new contract sets the performance standards suggesting that noncompliance with the contract is acceptable.

Recommendation: MSB Staff enforces the maintenance contract and requires each contractor to conduct the inventory. Furthermore, use the collective inventories to develop a comprehensive situational awareness of the condition of the MSB's roads for action and planning purposes. The MSB staff is well underway with developing this tool and could use these inventories as its baseline.

Committee Observations and areas for consideration (not formal recommendation)

Observation: The budgetary process for road improvement is reactionary or passive. Appropriations pay the bills, then whatever is leftover is applied against the Road Improvement Program requirements. Consider using the budget process as a tool to drive road improvement priorities, rather than using it as a reactive process to pay bills, then use the leftover monies to fund the Road Improvement Program.

Observation: The MSB budget cycle from July to June does not align well with the construction season. The construction season is well underway when dollars become available for commitment/obligation to the Public Works Directorate. This leads to a complicated series of agreements or delayed projects. Consider aligning the MSB fiscal year with the physical year.

Observation. RSA Boards are underpowered. Although RSA boards are 'advisory' in nature, they are underutilized in their capacity to support road service needs. Consider leveraging their experience, man-power, and intellectual capacity by relying more heavily on them for:

- The RSA budgetary process (maintenance contract, other maintenance projects, roads improvement list RIP)
- Place them into an 'approval' or at least 'concurrence' required status for the development and prioritization of other maintenance projects (\$250K per RSA, \$25K per project)
- Require RSA boards to brief the Assembly on their recommendations for RIP and their priorities for safety, accessibility, and improvement that they employed.

- Direct a 'Matrixed' approach for the RSA Boards to use when forming their recommendations based on MSB priorities for safety and accessibility.

Part II

Committee Background: Attentive to resident concerns about the substandard quality of some of Big Lake's roads, the MSB Assembly established a Task Force to examine several aspects of the Road Service Maintenance program to improve processes. The Task Force, by approved motion, established several committees to address each of the MSB-directed tasks. Ordinance series no 22-020 specifically tasks the Task Force to consider several issues. This committee is concerned with the directive to consider processes to address substandard roads Borough-wide.

Committee Task: Consider processes to address substandard roads Borough-wide.

Task Amplification: Review the formal and informal Borough process to identify RSA roads that fail to meet the Borough published standards. Further, identify Borough processes (means and ways) to improve substandard roads. Attempt to identify shortcomings with adherence to, or within, the process itself. Develop and make recommendations for better compliance or improvements to the process.

Methodology:

- Subject matter expert interviews
- Review Borough documentation
- Establish Borough, de facto, 'substandard roads' process
- Identify the intended outcome of these processes
- Evaluate if the intended result is accomplished
- If not, establish why not. What is not working as intended
- Develop remedial actions to bring adherence back into alignment or improve the process

Interviews

- RSA 21 Board member Mr. Bill Haller
- RSA 21 former Board member, Mr. Greg Quinton
- RSA 21 Road Superintendent, Mr. Tyler Blazejewski
- District 5 Assemblyman, Mr. Mokie Tew
- MSB Public Works Department Director, Mr. Terry Dolan
- MSB Public Works Department Director, Mr. Tom Adams, P.E.
- MSB Public Works Department, Jennifer Ballinger, Acting O&M Div. Manager
- MSB Public Works, Brad Sworts, Pre-Design & Engineering Division Manager
- MSB Public Works, Alex Senta, Project Management Division Manager
- RSA-21 Maintenance Contractor was unavailable for discussions.

Appendix E

Committee 4 Report

Committee 4 Members: Ken Walch and Jill Parson

4. Committee 4 - Alternate Specifications (may consider):

A) how to address the issue of currently maintained roads in RSA 21 which become impassable or have major deficiencies preventing safe public access , to include whether modifications of the existing maintenance specifications are warranted or options for advancing capital improvements;

Road Service Area Task force Committee 4 Report Alternate Specifications

We need a new contract. The present contract is not clear on how to pay for work performed under the maintenance contract. The bid form provides payment for maintenance for all work required under the contract using a unit price per mile, including shaping to carry drainage away from the road, brush control, pothole and washboard removal. The problem is that all of this is included in one bid line item for the entire job.

There is no relationship between the elements that make up the work and the payment identified under the contract. Example: if drainage away from the road is not maintained, there are no provisions for a failure of the contractor to provide that service which is identified in the contract. It is clear upon road inspections that maintenance of the road to specifications of the contract is not being done. We know from reports and observations that the contractor is not maintaining the roads as required by the contract. It is this committee's belief that the contractor is most likely receiving full payment of \$5400 (original year) plus per mile of road, even though much of the road maintenance specifications are not being performed. Therefore the Borough is paying full price for work required, but not performed. This is a gross violation of the intent of the contract. Example: Purinton Parkway where the crown has been bladed off, not graded to carry drainage off the road, is a failure to meet requirements of the contract: certain width, drainage, crown etc.

1. The bid price is made up of numerous different requirements, without identifying the elements of work that make up the bid price, have lumped all elements together into one price. How do we measure work done and allocate fair payment.
2. In the existing contract – who is the Borough Project Manager (Section 32 – Authority) and what is their authority? Public Works MUST prepare this new contract structure and have the authority to enforce.
3. The contract needs to itemize segments of work, attach a cost, and develop a way to identify whether work has been done or not, and pay for work done. Easiest way to fix this omission is to write a new contract. Public Works needs to chair the committee to do so and has to be willing to change, not just doctor, the contract. Get a qualified engineer to prepare the contract. One example of itemizing: determine a unit price for a cubic yard of gravel to repair a road that can be applied without requiring a contract change order.

We can pull examples from other governments (google “sample gravel maintenance contracts”).

If we do not approach this as a Task Force recommendation for a new contract, we are doubtful that our existing contract can provide the method and means to solve RSA 21 problems.

Appendix F

RSA Task Force Meeting Schedule

2022 RSA Task Force Schedule of Meetings:

Date	Time	Location
05/05/22	2:00 - 4:00pm	MSB/Lower Level Conference Room
05/24/22	2:00 - 4:00pm	MSB/Lower Level Conference Room
06/07/22	2:00 - 4:00pm	MSB/Lower Level Conference Room
06/21/22	2:00 - 4:00pm	MSB/Lower Level Conference Room
07/05/22	2:00 - 4:00pm	MSB/Lower Level Conference Room
07/19/22	2:00 - 4:00pm	TBD
08/02/22	2:00 - 4:00pm	MSB/Lower Level Conference Room
08/16/22	2:00 - 4:00pm	MSB/Lower Level Conference Room
08/30/22	2:00 - 4:00pm	Station 7-3
09/13/22	2:00 - 4:00pm	Station 7-3
09/27/22	2:00 - 4:00pm	MSB/Lower Level Conference Room
10/11/22	2:00 - 4:00pm	Station 7-3
10/25/22	2:00 - 4:00pm	Station 7-3
11/01/22	2:00 - 4:00pm	Station 7-3
11/08/22	2:00 - 4:00pm	MSB/Lower Level Conference Room
11/15/22	2:00 - 4:00pm	Station 7-3
11/22/22	2:00 - 4:00pm	Station 7-3
11/29/22	2:00 - 4:00pm	Station 7-3
12/06/22	2:00 - 4:00pm	Station 7-3
12/13/22	2:00 - 4:00pm	Station 7-3
12/20/22	2:00 - 4:00pm	MSB/Lower Level Conference Room
12/20/22	6:00 - 8:00pm	Assembly Chambers - Final Report Presentation

Appendix G

Recommendation Roll-Up

Appendix G – Recommendation Roll-Up

1. Contract Structure

Recommendation: The Borough maintain the current “unit price per mile” contract structure as the most appropriate vehicle to achieve the high level of road maintenance services desired, if administratively enforced.

2. Contract Criteria Knowledge

Recommendations: Public Works (PW) should establish ongoing training and contract clarification sessions, to provide a common understanding of RSA criteria and expectations for road maintenance. Attendance would be expected by new maintenance contractors, noncompliant contractors, Borough PW Superintendents and RSA Board members.

3. Contract Oversight

Recommendations: The Borough conduct a manpower study to determine if their people to task ratios are properly balanced for this contract structure. Also, develop internal management control mechanisms to apply the available tools when contract deficiencies are noted, such as issue a letter of Non-Compliance when warranted, as a means to ensure performance of the contract.

4. Areawide Brush-Cutting

Recommendations:

- A. Change the contract to reflect brush cutting start and ending dates from July 22 thru October 31, or a 4” or more snowfall, whichever comes first.
- B. Brush on roads rated fewer than 45 mph should be cut eight (8) feet from the road outside edge of the shoulder, or to the right-of-way, whichever is less per existing contract.
- C. For paved roads with 45 mph plus traffic, the clearing distance may be defined for each road to be greater than eight feet depending on road speed, snow removal needs and terrain, in order to provide safe line-of-sight clearance.
- D. For trees/shrubs being cut for the first time, the contractor should use the Bird Nesting Survey Form to identify any active nests in the trees and shrubs. Once trimmed, the lack of trees or tall shrubs should eliminate bird nesting sites in the cutting area, and the survey should not be needed unless the area is expanded to include additional trees and shrubs.
- E. Retain brush-cutting within the existing RSA maintenance contracts.

5. Road Conditions Awareness

Recommendations:

- A. Enforce the Start-Up Inventory requirements of RSA maintenance contracts and verify the accuracy of the information.
- B. Continue to expand and refine the GIS road condition database and produce useful criteria for future administration and road improvement planning and development.

- C. Further develop the online Problem Reporter system as an analytical tool as well as a response management tool. Have Borough staff ensure complaint remediation before the complaint is closed out.

6. Road Improvement Investments

Recommendations:

- A. Prioritize spending RSA funds to repair or improve impassable sections of roads, to make them safe for year-round travel first, before considering upgrades to make the road meet SCM standards.
- B. The Borough should seek additional sources of RIP funding through reallocating funds not spent after a project has been completed, state or federal programs or grants, or commercial cost sharing opportunities. Consider hiring a grant researcher and grant writer on a commission basis.
- C. Update the Department of Public Works Road Service Area Operating Manual, which is posted on the Borough website: [rsa-operating-manual-jan-2012.pdf \(matsugov.us\)](https://www.matsugov.us/files/rsa-operating-manual-jan-2012.pdf) and formally adopt it by the Borough for implementation.
- D. Within 30 days of the end of each quarter the RSA Boards be provided a detailed list of all operations and maintenance and capital projects expenses (Account Funds 277, 405 and 410) for the prior quarter. This information is essential for the RSA Boards to make informed and timely recommendations on the budget and perform other duties as outlined in MSB Code 5.15.015 for RSA Supervisors.

Appendix H

DOI Order No. 225



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington D.C. 20240



DIRECTOR'S ORDER NO.: 225

Subject: Incidental Take of Migratory Birds

Sec. 1 What is the purpose of this Order? The U.S. Fish and Wildlife Service (Service) interprets the Migratory Bird Treaty Act (MBTA) to prohibit incidental take of migratory birds and will enforce the statute accordingly. This Order provides background and guidance to Service employees, including expectations for conducting Service activities, providing technical assistance, and prioritization of our enforcement activities.

Sec. 2 What is the legal authority for this Order? The legal authority for this Order is the MBTA ([16 U.S.C. 703-712](#)).

Sec. 3 What terms do you need to know to understand this Order?

- a. **Migratory bird** in [50 CFR 10.12](#) means “any bird, whatever its origin and whether or not raised in captivity, which belongs to a species listed in 50 CFR 10.13, or which is a mutation or a hybrid of any such species, including any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof.” The list of protected birds is maintained in regulation at 50 CFR 10.13 and includes over 1,000 species. Migratory birds are protected based on whether their species, family, or taxonomic group is covered under at least one of the four bilateral migratory bird treaties. Birds are protected even if they do not migrate, no matter their origin, and whether or not they are raised in captivity (50 CFR 10.12).
- b. **Incidental take** means the taking or killing of migratory birds that results from, but is not the purpose of, an activity.¹ Our assessment of whether an activity violates the MBTA will take into account case law, including the case law applicable in particular jurisdictions.
- c. **Beneficial practice** means an action implemented in an effort to avoid and minimize the incidental take of migratory birds. We also refer to beneficial practices as best management practices, conservation measures, best practices, mitigation measures, etc.

¹ Note that “take,” and thus incidental take, under the Endangered Species Act (ESA) differs in scope from “take” under the MBTA. Compare 16 U.S.C. 1532(19) and 50 CFR 17.3 with 16 U.S.C. 703(a) and 50 CFR 10.12.

Sec. 4 What is the background for this Order?

- a. A wide range of activities can result in the incidental take of migratory birds, including activities conducted by public- and private-sector entities and the general public. Most individuals and organizations have an interest in, and in the case of Federal entities, a responsibility for, protecting migratory birds.
- b. This Order confirms that the Service has reestablished its longstanding policy and practice of enforcing the MBTA pursuant to its interpretation of the Act as prohibiting the incidental take of birds federally protected on the List of Migratory Birds ([50 CFR 10.13](#)). With the October 4, 2021 rulemaking (86 FR 54642), the Service revoked the interpretation codified by the January 7, 2021 rule (86 FR 1134), which had briefly established the opposite interpretation.
- c. With the revocation rule, the Service returns to the interpretation of the MBTA implemented for the previous several decades by the Service, the Department of the Interior, and the Department of Justice. This Order clarifies how we will prioritize program and law enforcement resources consistent with that interpretation upon the effective date of that rule, which is December 3, 2021.

Sec. 5 What is the policy on enforcement of incidental take of migratory birds?

The Service recognizes that a wide range of activities may result in incidental take of migratory birds. Pursuing enforcement for all these activities would not be an effective or judicious use of our law enforcement resources. For that reason, the Service will focus our enforcement efforts on specific types of activities that both foreseeably cause incidental take and where the proponent fails to implement known beneficial practices to avoid or minimize incidental take. Our intention through this policy is to apply a transparent and consistent approach to managing and prioritizing our enforcement of incidental take, taking into account the case law applicable in a given jurisdiction and the facts and circumstances of each case.

- a. The following types of conduct are not a priority for enforcement:
 - (1) A member of the general public conducting otherwise legal activities that incidentally take migratory birds;
 - (2) A Federal agency conducting activities in accordance with a signed memorandum of understanding with the Service developed under Executive Order 13186 for the conservation of migratory birds; or
 - (3) A public- or private-sector entity conducting activities in accordance with applicable beneficial practices for avoiding and minimizing incidental take.
- b. The Service prioritizes the following types of conduct for enforcement:
 - (1) Incidental take that is the result of an otherwise illegal activity; or
 - (2) Incidental take that:
 - (i) results from activities by a public- or private-sector entity that are otherwise legal;
 - (ii) is foreseeable; and

(iii) occurs where known general or activity-specific beneficial practices were not implemented.

- c. The Migratory Bird Program maintains a [comprehensive website of beneficial practices, conservation measures, and decision support tools](#).

Sec. 6 What is the policy on Service activities that may result in incidental take of migratory birds?

- a. Service personnel must review their activities to determine if incidental take is likely. Common actions that may result in incidental take of migratory birds include, but are not limited to, infrastructure construction, operation, and maintenance; vegetation clearing and management; controlled burns; and projects meant to eradicate invasive species.
- b. If an activity will foreseeably result in incidental take of migratory birds, Service personnel must develop and implement beneficial practices to avoid or minimize impacts to migratory birds.
- c. Service personnel should ensure their activities minimize negative effects to migratory bird habitats to promote the conservation of migratory bird populations.
- d. Service personnel may consult with the Regional Migratory Bird Program to review actions for potential effects to migratory birds and their habitats and provide technical assistance on beneficial practices intended to avoid or minimize those effects.

Sec. 7 Where can Service employees find information on beneficial practices to reduce impacts to migratory birds? The Migratory Bird Program maintains a [comprehensive website of beneficial practices, conservation measures, and decision support tools](#). For further assistance, contact Migratory Bird Program representatives.

Sec. 8 What is the status of other guidance relevant to this Order?

- a. This Order revokes and replaces the Director’s memorandum entitled “Guidance on the Recent M-Opinion Affecting the Migratory Bird Treaty Act,” April 11, 2018.
- b. Solicitor Opinion M-37041, Incidental Take Prohibited Under the Migratory Bird Treaty Act (January 10, 2017), remains suspended and temporarily withdrawn as of February 6, 2017.
- c. Solicitor Opinion M-37050, The Migratory Bird Treaty Act Does Not Prohibit Incidental Take (December 22, 2017), was permanently withdrawn on March 8, 2021.

Sec. 9 When is this Order effective? This Order goes into effect on December 3, 2021. It remains in effect until we incorporate our interpretation that the MBTA prohibits incidental take into the Code of Federal Regulations (CFR), incorporate it into the U.S.

Fish and Wildlife Service Manual, or until we extend, amend, supersede, or revoke it, whichever comes first. If we do not take any of these actions, the provisions of this Order will terminate 18 months from the date it was signed.

Sec. 10 Application. This Order is intended only to improve the internal management of the U.S. Fish and Wildlife Service and does not create any right or benefit, substantive or procedural, separately enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

/sgd/ Martha Williams
PRINCIPAL DEPUTY DIRECTOR,
Exercising the Delegated Authority of the Director,
U.S. Fish and Wildlife Service

Date: October 5, 2021

Appendix I

Bird Nesting Form

BIRD NESTING SURVEY FORM

Date:

Start Time:

Location of Bird Nest Survey/Road Name:

From Milepoint:

To Milepoint:

Direction of Travel:

- North South East
 West

Nesting Birds Observed:

- Yes No

Location of Nesting Area 1:

Location of Nesting Area 2:

Location of Nesting Area 3:

Location of Nesting Area 4:

Location of Nesting Area 5:

Location of Nesting Area 6:

Location of Nesting Area 7:

Location of Clearing Activities/Road Name:

From Milepoint:

To Milepoint:

Type of Clearing Equipment Being Used:

Hours of Clearing Operations:

From:

To:

Observer's Name:

Company Name: