

SUBJECT: FHWA Federal Lands Access Program (FLAP) and Transportation Bill, A brief statement of FLAP program understandings including the lack of funds for road maintenance

BACKGROUND

Roughly 120 miles of major paved roads located within LBL are maintained by KY and TN including routine maintenance. Prior to Map-21 and FLAP maintenance was paid for with Forest Highway Program funds. Since the origination of Map-21 and FLAP, Federal Highways has indicated funds cannot be used for maintenance.

DISCUSSION

The FLAP program became a newly developed program roughly 5 years ago when introduced in the then new Map-21 Transportation Bill. FLAP largely replaced a prior program known as the Forest Highway Program. The Forest Highway Program was available to fund road maintenance as well as construction and did so for many years. The language describing the newly developed FLAP program did not mention funds being available for road maintenance. In addition, the FLAP program also requires 20% matching funds when the prior Forest Highway program did not.

FHWA representatives are clear to reaffirm that FLAP funds cannot be used to pay for maintenance of the nearly 120 miles of major paved roads managed by KY and TN. Both KY and TN have indicated they will not be able to perform road maintenance if funds are not made available to do so.

There continues to remain a small amount of Forest Highway Funds available to both KY and TN that are being used to pay for road maintenance. These funds are anticipated to be exhausted in late 2017.

Although the Map-21 Transportation Bill was replaced in December of 2015 with the newly approved Fixing America's Surface Transportation Act of 2015 (the "FAST Act" or "Highway Funding Act") the FLAP program is believed to have remained substantially unchanged.

REFERENCE INFORMATION

16 U.S. Code § 460111–14 - Forest highways

§ 460111–14. Forest highways

(a) In general

For purposes of section 204 [1] of title 23, the road known as “The Trace” and every other paved road within the Recreation Area (including any road constructed to secondary standards) shall be considered to be a forest highway.

(b) State responsibility

(1) In general

The States shall be responsible for the maintenance of forest highways within the Recreation Area.

(2) Reimbursement

To the maximum extent provided by law, from funds appropriated to the Department of Transportation and available for purposes of highway construction and maintenance, the Secretary of Transportation shall reimburse the States for all or a portion of the costs of maintenance of forest highways in the Recreation Area.

(Pub. L. 105–277, div. A, § 101(e) [title V, § 514], Oct. 21, 1998, 112 Stat. 2681–231, 2681–313.)

Public Law No: 109-59 (08/10/2005)

SAFE, ACCOUNTABLE, FLEXIBLE, EFFICIENT TRANSPORTATION EQUITY ACT: A

LEGACY FOR USERS

SEC. 1119. FEDERAL LANDS HIGHWAYS.

(m) Forest Highways.--Of the amounts made available for public lands highways under section 1101--

- (1) not to exceed \$20,000,000 per fiscal year may be used for the maintenance of forest highways;
- (2) not to exceed \$1,000,000 per fiscal year may be used for signage identifying public hunting and fishing access; and
- (3) not to exceed \$10,000,000 per fiscal year shall be used by the Secretary of Agriculture to pay the costs of facilitating the passage of aquatic species beneath roads in the National Forest System, including the costs of constructing, maintaining, replacing, or removing culverts and bridges, as appropriate.

Section 204 of the MAP-21 legislation states what the funds can be used for.

It will pay for Preventive Maintenance but does not list Routine Maintenance.

Eligible activities - preventive maintenance is the maximum extent listed as eligible on transportation facilities that are located on or adjacent to, or that provide access to, Federal land. The MAP-21 legislation for FLAP (Section 204) does not allow for routine maintenance such as roadside mowing. Routine maintenance is defined as "Maintenance work that is planned and performed on a routine basis to maintain and preserve the condition of the highway system or to respond to specific conditions and events that restore the highway system to an adequate level of service."

Here is an excerpt from Section 204 of the legislation outlining the eligible activities under FLAP. The legislation can be found at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr4348enr/pdf/BILLS-112hr4348enr.pdf>.

“§ 204. Federal lands access program

“(a) USE OF FUNDS.—

“(1) IN GENERAL.—Funds made available under the Federal lands access program shall be used by the Secretary of Transportation and the Secretary of the appropriate Federal land management agency **to pay the cost of**—

Land Between the Lakes – State Responsibility to Maintain Paved Roads

“(A) transportation planning, research, engineering, preventive maintenance, rehabilitation, restoration, construction, and reconstruction of Federal lands access transportation facilities located on or adjacent to, or that provide access to, Federal land