

Delta Road Protection Program

An Unbiased Approach to Real, Cost-Effective Road Protection

Frequently Asked Questions – Spring 2015

✓ **Why should a municipality adopt the Delta Road Protection Program?**

The Delta Road Protection Program (DRPP) can be thought of as a road insurance program. Much as health insurance protects you when serious health problems arise, the DRPP offers protection for local roads when they are subjected to high-impact, concentrated traffic associated with construction activity. The DRPP gives municipalities a technically sound, step-by-step framework to consider and address damages from such traffic and to recover appropriate costs from the parties responsible for the damage. An added benefit of the DRPP is that it was developed in an objective manner with no stake in or opinion of potential development.

Large-scale development and new energy initiatives such as wind farms, natural gas exploration and pipeline construction are just some of the situations that can lead to traffic not foreseen when most local roads were built. Damages to local roads from such development activities can lead to repair costs far in excess of local highway budgets.

Delta's Program operates in three basic steps:

- Conduct a Baseline Study – Delta studies and records existing road conditions
- The Municipality adopts a standard Road Use Agreement and/or a Local Law that ties development activity to the DRPP. We will gladly provide the names of the law firms we have worked with if requested.
- Monitoring of Concentrated Traffic Projects – Delta documents any road damages and provides a sound technical basis for recovering the cost of repairs from responsible parties.

✓ **Does the DRPP affect existing community businesses or local “heavy” traffic such as school buses, delivery vehicles, farm traffic, and milk trucks?**

First and foremost, there is no regulation by the DRPP of an existing business operating in your community. The DRPP focuses solely on the impacts to local roadways during and related to a particular project development. Activity regulated by the DRPP does not include land-clearing activity or the improvement of a parcel related solely to “farm woodland” or “land used in agricultural production” pursuant to New York Agricultural & Markets Law § 301.

✓ **Are there other options for protecting local roads?**

Road Use Agreements (RUAs) of various sorts have been around for many years. Some have provided protection of local roads, while others have failed to do so. Factors to consider when evaluating RUA's include:

- Who prepared the RUA? Some are provided by prospective developers and do not necessarily always have a municipality's best interests in mind.
- Does the RUA include an objective, technically sound approach to documenting existing conditions and predicting likely damages? Some are primarily legal documents that provide few technical details of exactly how to assess and address likely damages.

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- Does the RUA include a process to be followed for making repairs? Many Agreements are not based on detailed or sound engineering and do not provide a legally defensible basis for recovering costs from responsible parties.

✓ **Can a developer be forced to build a highway where a narrow country road currently exists?**

A developer is only responsible to maintain or restore the road to the condition it was in immediately prior to the developer's heavy traffic loads' (trucks, equipment, etc.) use of the road. The only time a road would be upgraded (widened, additional pavement, etc.) occurs when an upgrade is required to sustain the developer's traffic without incurring additional damage.

✓ **Some towns and counties in New York have passed overweight vehicle laws to protect against concentrated traffic. Will such laws protect our local roads from heavy, but not overweight, high-volume traffic?**

Usually, the answer is no. Overweight vehicle laws focus on the regulation of traffic exceeding a gross vehicle weight limit, such as 80,000 pounds. The issue is that legal loads of high repetition can damage a local road, but would not necessarily be regulated by weight-based approaches. Also, depending on the regulated weight limit, overweight vehicle laws can negatively impact and regulate local traffic that poses no significant risk to local roads, such as milk trucks or other heavy, but low-repetition traffic. The DRPP is based on actual damage factors, using nationally recognized engineering standards.

✓ **Can the DRPP address traffic originating in and traveling to other towns that passes through our town?**

Yes. The DRPP can be used to measure the impacts of concentrated traffic utilizing a municipality's roadway and to determine repairs responsible parties should undertake.

The challenge is for a municipality to become aware of a potential threat before heavy, concentrated traffic is passing through. If projects are being proposed in nearby municipalities, your Municipality's monitor should gather information about the project to determine whether haul routes might impact your roads. The sooner information is known, the sooner Delta can assist you in determining your needs.

✓ **Why is the existing traffic, or the traffic associated with the development after it is opened, not regulated?**

Municipal agencies such as planning boards are responsible for establishing guidelines and policies for that traffic which can be expected following completion of a development. Expected traffic can be from current businesses, industrial parks, etc. The DRPP deals only with the short term spike in traffic that is related to any activity which is associated with a development during construction. In other words, this program deals with potential damage caused by the development during construction; if "everyday" traffic is expected to grow following completion of the development (e.g., a new shopping mall opening), it is expected that concerns with the post construction traffic will be addressed by the planning board and/or other appropriate agencies.

✓ **What is the minimum impact threshold and how is it established?**

The combination of weight and repetition (of loads) is what damages a road. Low-impact local baseline (everyday traffic not associated with a construction activity) does not fall under the provisions of the DRPP. The DRPP distinguishes between unusual, concentrated traffic during a project development and normal, baseline traffic. It does so in a non-discriminatory manner based on sound engineering principles. Here's how: the DRPP follows national highway engineering

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standards published by the American Association of State Highway and Transportation Officials (AASHTO), and uses the AASHTO highway traffic load unit known as the “Equivalent Single Axle Load” (ESAL) to quantitatively assess the effects of traffic. The ESAL is an engineering unit of measure calculated on the basis of BOTH axle weight/spacing and number of repetitions. This unit of measure allows the DRPP to differentiate between the impact of low-repetition, heavy traffic (such as milk trucks) versus high-repetition, heavy traffic.

The majority of municipalities within the DRPP are using a 50-ESAL minimum impact threshold to avoid municipal responsibility for damage caused by developer traffic during atypical seasonal weather.

Keep in mind this is only a threshold which triggers further review of the developer associated traffic and roadways to determine if unacceptable damage will occur. The threshold selected by the municipality should be discussed with the engineer and documented prior to use and must be used on all projects moving forward.

It’s also important to note that, if the developer’s traffic on any portion of haul routes exceeds the minimum impact threshold, municipally owned “unimproved” roads (those having less than 4” of gravel) are categorically regulated regardless of the developer’s ESAL count on those roads.

✓ **Is there a single “wear and tear threshold” that applies to all roads?**

No, because the capacity of every road is different. The approach discussed above is the “first pass” to determine if a development has the potential to cause excessive damage. The capacity of each road is a function of the unique pavement layers that make up the road, and the classification and condition of the natural soils beneath the pavement. If a development triggers further review based on the above criteria, the specific wear and tear threshold is determined for each haul route.

✓ **What happens if the data provided by the developer is perceived to be inaccurate?**

The only way to know the affiliation with 100% accuracy is to count them at the development site entrance/s. Typically, developers of the size subject to regulation by the DRPP are likely not interested in a possible stop work order by shorting a few trucks on a form. Additionally, the developer would also be responsible for the costs incurred by the municipality associated with this effort and could face legal action, as he/she is required to sign the DRPP traffic volume forms stating that the types and volumes provided are accurate. This provides further reason for the developer to be honest on the form.

✓ **Is it necessary for Delta to core or sample every paved town road as part of the Program?**

Core sampling is only performed along haul routes for proposed traffic that exceeds the minimum impact threshold. At that time, tests are performed at the responsible party’s expense. Spacing of the road corings is discussed with the Municipality prior to occurring.

✓ **Will all concentrated traffic projects, large or small, be subject to the same expenses for protecting or repairing roads?**

The level of required testing and analysis varies, depending on the level of proposed concentrated traffic and the anticipated amount of damage to occur. When minimal damage is expected, testing expenses are minor and likely repairs are relatively small. The most expensive testing and repair methods come into play for intense types of projects where greater amounts of damage are forecast.

✓ **Who is responsible for the upgrades and costs associated with them?**

The cost of the engineering and construction associated with a particular development is the responsibility of the developer. Escrow funds are established in advance of the work to ensure that the municipality is not left with an unplanned expense in the unlikely event that the developer leaves town.

Part of the implementation of the program is the documentation of what methods the municipality uses to make repairs, construct, and reconstruct their roadways, culverts, and bridges. This documentation, along with any available historical data for doing this work, is compiled into an engineer's report that is provided to the municipality. This data is utilized in conjunction with the upgrade or repairs designed by the engineer to identify a scope of work and estimated cost. This information is then shared with the municipality, which in turn shares it with the developer. The municipality retains the right to make the repairs itself or allow the developer to make them or if appropriate, put the work out for competitive bid. .

✓ **How much time needs to be invested by the developer and municipality?**

Previous experience suggests that it takes the municipality less than an hour to review and consolidate the data as long as the forms are correctly filled out by the developer.

Once a local law is passed or a standard road use agreement is adopted, the developer is responsible for filling out a few standard forms (provided to the municipality by Delta) and identifying on a map the road/s which will be used during construction. The data on the forms is basic and usually something they already have on hand, including but not limited to contact info for their company, the number and types of trucks and where they are coming from, and the anticipated starting and ending dates for construction. These forms are then provided to the municipality which consolidates the traffic volumes onto another form to determine if further regulatory review is required.

✓ **Are we discouraging development by enlisting in this program?**

Actually, the answer is quite contrary to this thought. By having an established protocol for dealing fairly and consistently with developers regardless of size, the municipality is streamlining the process to get the development started. There are no issues of going back and forth with different interpretations of road use agreements or how damage will be dealt with.

✓ **What is the cost to a municipality of participating in the Delta Program?**

There is a one-time, up-front fee to fund the baseline survey and associated training. After that, costs for Delta's review and evaluation of responsible parties' concentrated traffic plans and prospective haul routes are paid by the responsible parties. Any additional costs to the municipality following Delta's baseline survey would be minor costs to keep manuals and cost information up to date from year to year.

✓ **Does the DRPP account for multiple developers using the same roads?**

Yes. The DRPP's Program Manual, provided to municipalities as part of the Delta Program, explains how to address projects with multiple developers. During periods of joint use, damages caused by each developer are apportioned based on the amount of each developer's traffic and time of road use. Pre-testing and post-testing are done at critical times when new developers start and stop haul route use.

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An important point to note on this topic is that if a party is individually unregulated, the traffic associated with that developer cannot be combined with concurrent use by additional developers and be regulated.

✓ **Can our municipality use a different engineering company other than Delta to implement the DRPP and manage concentrated traffic projects in our town?**

The DRPP relies on the expertise, manual, and methods developed by Delta Engineers, Architects, & Land Surveyors, P.C. Consequently, Delta's manual and associated methods are not authorized for reproduction or use by any third party, other than municipal officials in cooperation with Delta and / or its subcontractors. A municipality can elect to use a different engineering company; however an approach other than the DRPP would need to be followed.

✓ **How long does it take to implement the program?**

The process is driven primarily by the municipality. The pre-development engineering portion of the implementation can be accomplished within a month or two, noting there are seasonal limitations during the year when the required field work cannot occur. Further processing time for passage of a local law and/or adoption of a standard road use agreement varies at the local end, based on requirements to hold meetings, hearings, address any local concerns, etc.

✓ **What are the chances that a developer or other concentrated traffic source will challenge the Delta Program in court?**

Due to its unbiased approach, we believe the Delta Program is in the best interest of municipalities AND concentrated traffic sources. The Delta Program was designed to reduce the likelihood of legal conflict; but given the unique nature of each concentrated traffic project, there is no guarantee that legal challenges will not arise.

The following summarizes why we believe the DRPP benefits everyone involved, thereby reducing the chances for a legal conflict:

- Those responsible for creating high-impact, concentrated traffic need passable roads, and cannot afford delays due to making repairs to damaged or destroyed roads. The DRPP aims to keep roads safe and passable using a workable framework fair to all parties.
- Some developers offer their own Road Use Agreements to municipalities. By implementing the DRPP in conjunction with adoption of a local law and/or standard road use agreement, the Municipality also saves valuable time and expenses by not having to review multiple Road Use Agreements.
- The risks of delays, the cost of stand-by time, and the hurdles of litigation are all counterproductive to the efforts of most developers. Experience has shown that it is more cost-effective to comply with reasonable road protection requirements than to enter litigation.

✓ **Who do I contact for further information or to arrange a presentation about the Delta Program?**

Feel free to contact Chris Maby, our DRPP Manager. Chris can be reached at 607-231-6625 or via email at cmaby@deltaengineers.com.