

RAILROAD AND UTILITY

CHAPTER 10

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Federal Laws

- 1. 23 USC 109(I)**
- 2. 23 USC 123**

Federal Regulations

- 1. 23 CFR 645 Utilities – Subpart A-Utility Relocations, Adjustments, and Reimbursements**
- 2. 23 CFR 645 Utilities – Subpart B-Accommodation of Utilities**
- 3. 23 CFR 645.117(d) – Cost Development and Reimbursement**
- 4. 48 CFR 31 Contract Cost Principles and Procedures**
- 5. 49 CFR 24 Uniform Relocation Act**

Utility Program Guide, FHWA

STATE OF OREGON

Oregon Constitution

Oregon Revised Statutes

- 1. ORS 35.510 Relocation Duties of Public Entity**
- 2. ORS 366.321 Expense of Relocating Municipal Facilities**
- 3. ORS 373.020 State Highway routed through Cities**
- 4. ORS 374.305 to 374.330 Permission to build on ROW**
- 5. ORS 758.010 Authority to construct utilities on ROW**
- 6. ORS 758.020 Joint occupancy of poles**
- 7. ORS 758.210 to 758.270 Underground utility facilities**

Oregon Administrative Rules

- 1. OAR 734-051-0215(9) Utility Relocations responsibility by Developers**
- 2. OAR 734-055 Permit regulations**
- 3. OAR 860 Public Utility Commission**
- 4. OAR 952 Oregon Utility Notification Center**

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Definitions

Acronyms

Federal Acronyms

General Acronyms

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INTRODUCTION AND PURPOSE

10.100 INTRODUCTION

The Utility Relocation Program establishes and implements a uniform standard and process for relocating utility facilities that complies with Federal, State, and local laws and rules. Utility facility relocations can be either non-reimbursable or reimbursable based on the property rights associated with their physical location.

If you are reading this manual online then the text underlined and colored in blue denotes links to websites containing additional or full text of material represented.

Under the Fifth Amendment of the Constitution of the United States and Article 1 of the Oregon Constitution's Bill of Rights, no person shall be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation. Public Law 91-646, Title III of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, further defines the duties of the public agency to apply those basic rights during property acquisition and relocation activities.

Except within cities, under Oregon Revised Statute (ORS) [758.010](#) Utility Owners are given the right to construct, maintain, and operate their facilities within the right of way of public roads. Utility Owners have certain rights and protections when their facilities are required to be relocated due to a roadway project. Because these rights are covered under the Federal Uniform Relocation Act, Federal regulations, and state laws and rules, it is the responsibility of the Right of Way Section to provide necessary assistance and direction.

The ODOT Utility Relocation Program policies for reimbursable and non-reimbursable relocations are derived from the Oregon Constitution, Oregon Revised Statutes, Oregon Administrative Rules (OAR), and the Code of Federal Regulations (CFR). [OAR 734-055](#) provides the authority for permitting and the manner in which the utility facility is allowed in the right of way. Federal Regulation [23 CFR 645](#) provides direction as to when and which costs of relocation are eligible for reimbursement and the relationship between the State Transportation Department rules and regulations and FHWA regulations.

The statewide ODOT Utility Relocation Leadership Team (URLT) provides leadership for the program. URLT is comprised of representatives from each Regional Technical Center and operates under the authority and guidance of the Technical Leadership Team (TLT). The Utility Relocation Program is administered by the Project Administration Unit of the Right of Way Section and implemented by the Regions.

The Utility Relocation Process chart at the end of this section depicts the relocation steps involved in a utility facility relocation. The typical project timeline, as shown on this chart, starts with project conception and follows through to the completion of construction.

10.110 ORGANIZATION STRUCTURE

Managing transportation within the State of Oregon is a complex hierarchy of Departments, Divisions, Sections, Units, and Regions. Each has their responsibilities and authorities assigned by the group above them. There are 5 Regions and 15 Maintenance Districts within the State of Oregon that work with utility facility relocations.

1. Regions – as related to the Utility Relocation Program

Each Region is responsible for the execution of the Utility Relocation Program for those construction projects that are within their geographic boundaries. Each Region has one or more technical experts known as a Region Utility Specialist(s) (RUS).

The RUS is responsible for the implementation of the Utility Relocation Program standard process and procedures. Each RUS works with Technical Center staff, District Maintenance staff, Construction staff, Project Leader (PL), and Utility Owners to identify facility conflicts and negotiate the relocation of the utility facilities that conflict with their assigned ODOT projects.

2. Districts

District Maintenance units are responsible for the maintenance and operation of the state highways within specific geographical areas.

The District Maintenance units work with the RUS in reviewing the utility facility relocation plans. The reviews make certain the utility facilities will not conflict with the maintenance and operation of the state highways. The Permit Specialists issue the encroachment permits for the relocated utility facilities.

3. Right of Way Section

The ODOT Right of Way Section is responsible for the oversight of Department right of way activities that includes real property appraisal, property acquisition, occupant relocation, and project-related property management. This Section is charged with ensuring compliance with federal and state laws and regulations and maintaining uniform application of policy and procedures.

The Right of Way Section provides direct project support to the five ODOT Regions in the areas of project authorization and funding, appraisal and relocation review, settlement approval, condemnation and mediation, utility facility relocation oversight, and access management/research. It functions as the liaison between FHWA and the five ODOT Regions in these right of way matters.

The Right of Way Section is comprised of three office units: Right of Way Operations, Right of Way Program Management, and Right of Way Project Administration.

The State Utility Liaison (SUL) is a part of the Program Management Unit. The SUL receives and reviews all project related utility facility relocation documentation for

compliance and consistency to the Utility Relocation Program; and maintains the utility relocation tracking database. The SUL reviews plans, schedules, and estimates for reimbursable relocations and issues notices to proceed. The SUL creates agreements with Utility Owners that request the State Contractor to perform their work. The SUL receives the Utility Owner's progress and final billings from the Region Utility Specialist(s) (RUS) and provides the final review and recommendation for payment.

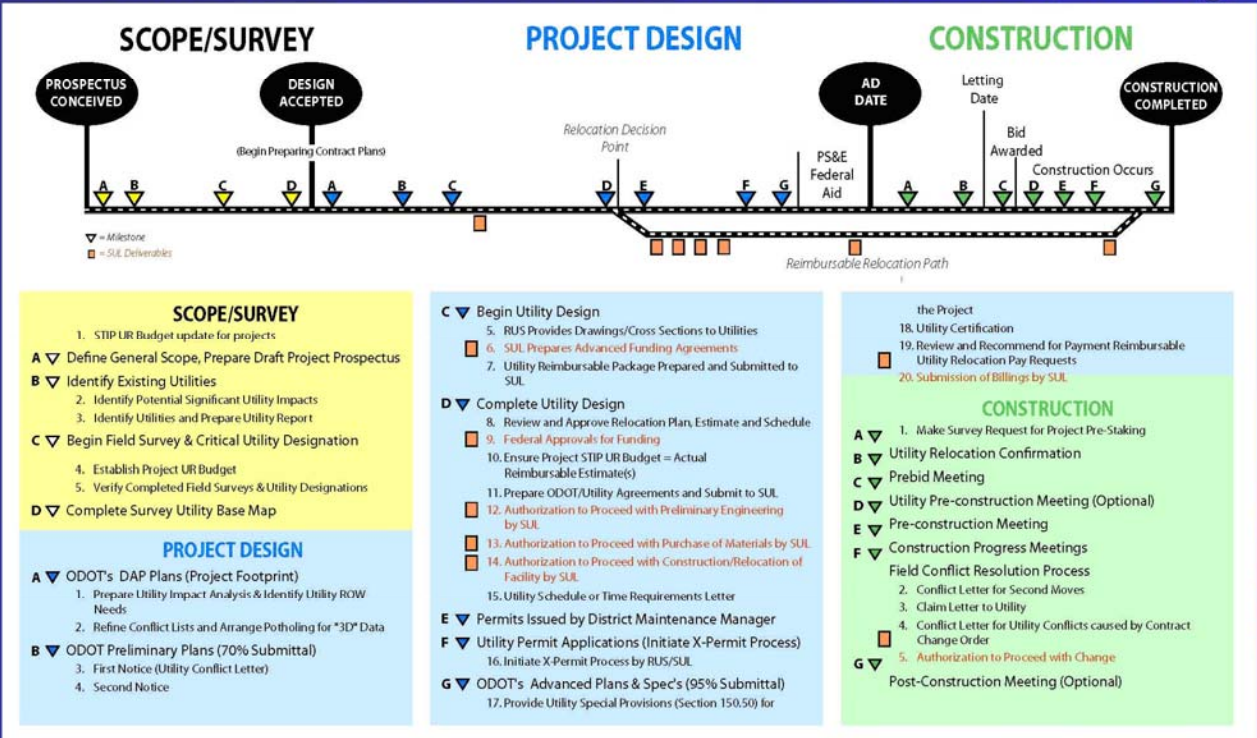
4. Utility Relocation Leadership Team (URLT)

The Utility Relocation Leadership Team (URLT) was created at the direction of the Project Development Leadership Team (PDLT) and established under PDLT Operation Notice PD-01. Under the authority and guidance of the Technical Leadership Team (TLT), the URLT has leadership responsibility for the statewide Utility Relocation Program.

Leadership of the URLT is assigned by the TLT to the Right of Way Section's Unit Manager as that unit is responsible for the Utility Relocation Program. The core membership is comprised of representatives from each of the Regional Technical Centers, and the State Utility Liaison. The Regional representatives are the managers of the Region Utility Specialists.

The URLT is tasked with providing management oversight and guidance to the Utility Relocation Program and establishes policies and procedures that can be implemented uniformly statewide. The team facilitates communication and collaboration between the Regional Technical Centers, Office of Maintenance, and Technical Service's Right of Way Section Utility Relocation Program.

ODOT HIGHWAY UTILITY RELOCATION PROCESS (existing)



ROLES AND RESPONSIBILITIES

As relates to the Utility Relocation Program

10.200 GENERAL

The Right of Way Unit is responsible for the administration of the Utility Relocation Program. However, there are other Units and Sections that play a key role in its success. The sections below describe those sections and units, key personnel and roles and responsibilities that assist in the delivery of the program.

10.210 FEDERAL HIGHWAY ADMINISTRATION (FHWA)

Title 23 of the United States Code of Federal Regulations (USC) governs the Federal-aid Highway Program. FHWA uses the State Departments of Transportation through a Stewardship Agreement to carry out the federal-aid transportation programs within their respective states. Division offices in each of the States are established to provide oversight and coordination of the Federal-aid programs.

The Division Office works with the Unit Manager and SUL to provide oversight and coordination of the Federal-aid Utility Relocation program. This office reviews and approves funding for the reimbursable relocation work that uses federal monies.

10.220 CENTRAL OFFICE

The Central Office provides policy, administration, guidance, training, agreements, and support to the Regions. The Central Office includes the URLT, Right of Way Unit, the Transportation Program office, and Financial Services. The Central Office is where all master files are indexed and filed according to project key numbers.

1. Utility Relocation Leadership Team (URLT)

The URLT, as defined under Section 10.110, has the leadership responsibility for the statewide Utility Relocation Program. The URLT's responsibilities are:

1. Create the policies, which are approved by the Technical Leadership Team (TLT), related to the scope of the Program that includes the relocation of utility facilities residing in the State's right of way.
2. Facilitate communication and collaboration between Regional Technical Centers, Office of Maintenance, and Technical Services' Right of Way Section Utility Relocation Program.
3. Provide an atmosphere and opportunity for collaborative problem solving and idea sharing.
4. Work toward the success of the Utility Relocation Program, the Department of Transportation, and State of Oregon and provide the needed support to the project development process.

2. Right of Way Unit

a. Right of Way Unit Manager

In the Unit's function for the ODOT Utility Relocation Program, the Right of Way Unit Manager is responsible for:

- 1) Leadership of the Utility Relocation Leadership Team, preparation, and distribution of policy and procedural instructions to the Region Utility Specialists to insure conformity and professional quality to the program.
- 2) Coordination of utility facility relocation policy and procedures with applicable state and federal laws to comply with the laws and ensure maximum federal participation in project costs.
- 3) Interaction with FHWA, other ODOT Sections, Regions, Consultants, and outside agencies concerning utility facility relocation policies.
- 4) Provide technical expertise and supervisory support to the State Utility Liaison.

b. State Utility Liaison (SUL)

The State Utility Liaison, under the supervision of the Right of Way Unit Manager, is responsible for the day-to-day operations and provides technical leadership for the Utility Relocation Program. These duties include:

- 1) Receive copies of all utility relocation letters from Region Utility Specialists (RUS) and Utility Coordinators to review for consistency.
- 2) Ensure STIP Utility Relocation (UR) budget has current utility relocation estimates and that an Expenditure Account (EA) is assigned to reimbursable utility facility relocation work.
- 3) Prepare all Notices to Proceed for reimbursable Preliminary Engineering (PE), Construction, and Materials.
- 4) Prepare Advance Funding Agreements for utility facility relocation work added to construction contracts.
- 5) Review RUS recommended Utility Owner cost billings. Recommend payment for reimbursable relocation expenditures to the Unit Manager and submit to Finance Office for payment.
- 6) Notification to Utility Owner of 1-year time limit to submit billings.
- 7) Maintain and revise as directed by policy the form letters used for the Utility Relocation Program.
- 8) Maintain original reimbursable expenditure documentation.
- 9) Maintain the database of all utility facility relocations associated with ODOT projects.
- 10) Lead the RUS quarterly meetings and bring issues to the URLT from the RUS team.
- 11) Utility Relocation Program liaison for Local Agency and Consultant projects.
- 12) Provide support to the URLT
- 13) Assist with the analysis of Delay Claims and notify the Utility Owner for financial reimbursement to ODOT.
- 14) Assist the State External Auditors.
- 15) Submit Utility Certificate of Materials Origin (CMO's) to the Construction office.

16) Closing of reimbursement files

3. Transportation Program Office

The Transportation Program Office plans and directs the financial operations of the Highway Division of ODOT. This office also houses the Local Government Section that oversees the Local Agency Program.

a. Transportation Program Office

This section directs and coordinates the preparation, approval, and programming (allocation) of all ODOT Federal Aid monies, including city and county. Budgeting for reimbursable utility facility relocations is programmed through this office.

b. Local Government Section

This section manages the Local Government Section and oversees the Local Agency Program. This office focuses on coordination and policy development with local agency groups and process improvements for local agency project development and delivery. It also acts as the interface between the Local Program and the other major business lines. It provides oversight, coordination, and process improvements to ensure federal stewardship responsibilities are met. This oversight includes programs such as the Utility Relocation Program for Local Agencies.

4. Financial Services

The Financial Services Branch provides financial and accounting processes for the Department of Transportation. It provides the funding administration for ODOT projects and assigns Expenditure Accounts (EAs) to the various accounts within a project budget. The reimbursable portion of the Utility Relocation Program is coordinated through this branch with the assigning of the Utility Reimbursement (UR) EAs and payment of the approved billings.

10.230 REGIONS

There are 5 Regions with 15 maintenance districts within the State of Oregon that work with utility facility installations and relocations. Each Region has a manager that oversees the Region Utility Specialist (RUS). The Regions and Local Public Agencies (LPA) may elect to hire Utility Coordinators to perform the same duties as the RUS for outsourced projects. The manager of the RUS also sits on the Utility Relocation Leadership Team (URLT). Each District has a manager that oversees the Permit Specialist that issues the permits to occupy state right of way.

1. Technical Center

The Region Technical Centers are comprised of multi-discipline technical specialists and Engineers who are responsible for the delivery of project Plans, Specifications, & Estimate (PS&E).

a. Region Utility Specialist (RUS)/ Utility Coordinator

Region Utility Specialists coordinate between the Project Leader, technical staff, construction staff, local maintenance sections, and Utility Owners to identify and relocate utility facilities per the policies and procedures of the Utility Relocation Program. Their duties include:

- 1) Identify potentially significant utility facility impacts during project scoping.
- 2) Contact all Utility Owners to notify them of upcoming projects and request facility information.
- 3) Prepare utility relocation or conflict report(s) / updates as needed to the Project Leader.
- 4) Provide technical support on project teams.
- 5) Establish project UR budget and monitor expenditures against the budget. If an increase in the budget is required, the RUS prepares the justification and submits it to the Project Leader and SUL for programming.
- 6) Verify completed field utility facility surveys shown on the base map.
- 7) Prepare utility facility impact analysis if needed and identify the utility facility ROW needs.
- 8) Review, confirm, compile the conflict list and arrange for potholing.
- 9) Send first notice (Utility Conflict Letter with enclosures) to Utility Owners, Project Leader (PL), SUL, District Manager (DM), and Project Manager (PM).
- 10) Send Spur (Failure to Respond) Letter to the Utility Owner and SUL when the Utility Owner fails to meet a required deadline or requested response.
- 11) Provide specialty maps and drawings to the Utility Owners.
- 12) Provide the reimbursable document package to the Utility Owners.
- 13) Review and secure agreement of the utility facility relocation plan and schedule from the affected designer(s), PM, and DM.
- 14) Review and comment on Draft Utility Owner/ODOT agreements as needed. (Cooperative improvement agreement e.g. irrigation districts or municipal agreement).
- 15) Prepare and issue Second Notice (Time Requirement Letter) – Relocation schedule and plan approval Letter to Utility Owner, PL, SUL, DM, Permit Specialist, and PM.
- 16) Prepare utility facility relocation Special Provisions and submit to Specifications Writer.
- 17) Prepare Utility Certification for final Plans, Specifications & Estimate (PS&E). Get the Area Manager's approval for any exceptions that may be required.
- 18) Review Billings and recommend payment for relocation reimbursement requests. The Area Manager's approval is required on all payments over \$10,000.
- 19) Prepare Survey request for the project reference staking for utility facility relocation work.
- 20) Provide technical guidance to the Construction Project Manager as needed.
- 21) Submit required signed originals of relocation and reimbursable documentation to the State Utility Liaison.

2. Project Development

The Project Delivery Unit is responsible for the ODOT program management leadership and support. They have developed a comprehensive guide that describes the process from concept through construction management and transition to maintenance. The guide can be accessed online at:

http://www.oregon.gov/ODOT/HWY/PDU/pd_guide.shtml .

A key role in project delivery is that of the Project Leader. This position is assigned a project and follows it from concept through award of the construction contract.

a. Project Leader (PL)

Project Leaders are assigned to in-house projects to provide project management leadership through the development phase of each project. The RUS/Utility Coordinator supplies the project leader with copies of all utility facility information so that they can assure project deliverables are met.

3. Local Agency Projects

Locally sponsored projects are included in the STIP and can be funded by either state or federal funds. ODOT must oversee the expenditure of these funds based on state and federal laws, ODOT/FHWA Stewardship Agreement, and agreements with the Association of Oregon Counties and League of Oregon Cities. An overview of the Local Agency Guidelines (LAG) is located online at:

http://www.oregon.gov/ODOT/HWY/LGS/lag_manual.shtml .

Details about the Local Agency Program will be discussed in Section 10.900. The primary representative between the Local Agency and ODOT is the Local Agency Liaison.

a. Local Agency Liaison (LAL)

The Local Agency Liaison works directly with the Local Agencies during the development and construction of projects when State or Federal monies are involved. The LAL's role is to assist local agencies through all phases of project development and delivery to assure the requirements for state and federal programs and procedures are met.

For the Utility Relocation Program part of the process, the LAL coordinates with the SUL to provide oversight of the program and training in process and procedure as required.

4. Construction

The ODOT Construction Manual describes or references those practices needed to administer Contracts under the Oregon Standard Specifications for Construction. The manual describes contract administration practices that the agency has established to assure contracts are administered in a consistent and uniform manner statewide. Duties

and responsibilities between Construction and the Utility Owners and Railroads are covered in Chapter 24. The Manual can be accessed at:

<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/CM.shtml>

a. Project Manager (PM)

The Construction Project Manager is the Agency's representative in relationships with the construction contractor, the public, and others. The PM is specifically responsible for the performance of construction contract administration. During Project Development, the PM is a technical resource to the project team.

The PM communicates expectations about contract requirements to the contractor. The PM reviews the contractor's project schedule to see that it realistically depicts the work and has not overlooked work restrictions, seasonal events, environmental or permit conditions, or utility facility relocation schedules and impacts. During the Pre-Construction Conference (Pre-Con), the PM includes the Utility Owner representatives and provides an opportunity for the Contractor and the Utility Owner to review schedules, relocation information, and potential conflicts with those facilities that could not be relocated prior to the contract.

When a Contract Change Order modifies the design of the project, the PM consults with and obtains approval from the Engineer of Record for that portion of the work. The PM also consults with the Region Utility Specialist if there is a potential for utility facility conflicts and includes those conversations as part of the supporting data for the Change Order.

b. Inspector

The PM assigns one or more individuals to perform inspection on a construction project. The inspector's responsibilities are to inspect and document work and materials to assure compliance with the requirements of the contract and represent the PM in communications with the Contractor and others. The inspector is also assigned the duty to observe and record the presence of utility contractors working on the project.

The inspector may become aware of issues involving traffic, property owners, local governments, or utility facilities that affect or are affected by the contractor's work. The inspector is responsible to keep the PM informed of both the progress of the work and any known or anticipated problems.

10.240 DISTRICTS

1. Maintenance Sections

There are 15 maintenance districts across the state. Each district is responsible for the day-to-day maintenance and operation of the state highways between the right of way boundaries within their geographical area. The Maintenance districts issue the permits as required by Oregon law for any and all utility facilities occupying or crossing over those right-of-ways.

a. District Manager (DM)

The District Manager oversees a technical staff and several maintenance units. The technical staff includes permit specialists. During project development the DM or his representative, usually the Transportation Maintenance Manager (TMM) is part of the Project Team. The DM or his representative also review and agree to the utility facility relocation plans to assure they comply with the safety and maintenance needs of the highway.

b. Permit Specialists

The RUS works with the Permit Specialist in reviewing the utility relocation plans and keeping the permit specialist apprised of utility relocations that will require permits before the start of the relocation work.

PROJECT DEVELOPMENT, GENERAL GUIDELINES, AND UTILITIES OVERVIEW

10.300 GENERAL

The purpose of this section is to present how the Utility Relocation Program operates within the overall Project Development segments of the Project Delivery process. The Project Delivery process information within this section is derived from the Project Delivery Unit's Project Delivery Guide (2010) as published on the internet at:
http://www.oregon.gov/ODOT/HWY/PDU/pd_guide.shtml .

The [Federal Utility Program Guide](#) has been developed by the FHWA to assist individuals administering Federal-aid highway programs that involve –

- the use of Federal-aid highway funds for the relocation and adjustment of utility facilities, and
- the accommodation of utility facilities and private lines on Federal-aid highway right-of-way.

The forms referenced in this section used by the RUS/Utility Coordinator can be found at:
http://www.oregon.gov/ODOT/HWY/ROW/utility_form_library.shtml .

Project development process, as it relates to utility facility relocation, begins with scope, survey, and design and ends with certification of utility facility relocation. The Utility Relocation

Program is an important component of the Project Development Process. Any element of construction can impact utility facilities. By law, Utility Owners are required to relocate, remove, adjust, or protect their facilities when they are in conflict with roadway construction. Identification and resolution of utility facility conflicts throughout the development process minimizes costs to Utility Owners and construction project costs.

10.310 SCOPE/SURVEY

Scoping, mapping, and design development are the beginnings of a project. During these stages the project is defined and options evaluated leading to a single design option. Communication with Utility Owners is initiated and facility information is exchanged in order that design options can be weighed against impacts and costs.

1. Utility relocation budget development

The discipline specialists review the proposed project scope, schedule, and budget and begin the task of analyzing the options to get to a final project scope.

RUS/Utility Coordinators communicate with the Utility Owners identified within the proposed project area. Facility maps and permits are used to identify potential reimbursable relocations. The initial scoping report is revised to reflect the additional information and a more accurate budget for reimbursable relocations is developed.

2. Identifying Existing Utility Facilities

In order to evaluate the design alternatives and impacts, a base map must be created with the roadway, slope, right of way, and utility facility information. The survey crew gathers electronic coordinate data within the project site and develops a three-dimensional map with all the elements.

a) Utility Facility Locates

Anyone excavating or intending to excavate is required by law to request the underground utility facilities to be marked before the work begins. The Utility Owners or their representatives shall mark their facility locations with type and owner information that the survey crew records.

b) Notification Process

Ten (10) business days prior to the survey crew going onsite to map the project area, the survey crew places a call to the Oregon Utility Notification Council (OUNC) requesting the marking of underground utility facilities. A ticket is generated by the OUNC that records the company, contact information, location, and type of work to be performed.

The survey crew provides the ticket number to the RUS/Utility Coordinator. The ticket contains the information relayed during the filing as well as a list of the Utility Owner, contact person(s), and phone number. The RUS uses this information to assist in the creation of the Utility Owner contact list for the utility report.

3. Verification of Utility Facility Mapping

Upon completion of the base map, the surveyor transmits the electronic file to the designer. The surveyor or designer provides a copy for the RUS to review. The RUS compares the mapping to the facility maps that have been collected from the Utility Owners and may have to review onsite if there are concerns or discrepancies.

In those cases where the Utility Owner cannot release their facility maps, a copy of the base map is provided to the Utility Owner. The Utility Owner returns the base map with corrections corresponding to their facilities.

4. Utility Report

The initial Utility Report prepared for the draft STIP is refined, if necessary, by the RUS/Utility Coordinator as the project team works toward a final design alternative. The RUS/Utility Coordinator evaluates the impacts of the different alternatives and works with the project team to help come to a final project design that minimizes impact to Utility Owners and costs to the project.

10.320 PROJECT DESIGN

After a design is selected and the designers begin adding details to the selected alternative, the designers develop an initial utility facility conflict list. The designers evaluate utility facility conflicts against design elements to see if the impacts to the utility facility can be avoided or minimized without compromising the cost to ODOT.

The RUS/Utility Coordinator meets with the designer to evaluate the initial conflict list and discuss options for both ODOT and the Utility Owner. The RUS/Utility Coordinator should encourage avoidance of utility facilities whenever possible. Design modifications may be offered to the Utility Owner as an alternate to relocation with the Utility Owner paying for the differential costs.

Existing structures usually have utility facilities attached or running through the structure. It can be anticipated that utility companies will want to attach their facilities to new structures. As soon as practical, the RUS/Utility Coordinator should begin the process of identifying the utility facilities that may need accommodation on the structure. The [ODOT Bridge Design and Drafting Manual \(BDDM\)](#) Section 1.4.7 provides information for utility facilities to be installed in or on bridges.

10.330 CONFLICT LETTER (First Notification)

The Conflict Letter is considered the “first notification” as per [OAR 734-055-0045\(2\)](#). Conflict analysis begins with the designers and technical specialists. Conflicts occur when a construction design element falls within the “reasonable accuracy” limits as defined by [OAR](#)

[952-001-0010](#) of a marked underground facility. The preliminary Utility Conflict List developed during the design stage is refined by collaboration between the RUS, designers, and other technical specialists during the development of Preliminary or Advance Plans. Roadway, drainage, environmental, signal, temporary widening and detours, and structural designs need to be developed to provide the conflict information to prepare the conflict letter.

Once the conflict list has been refined, the RUS will prepare the Conflict Letter and enclosures to send to the Utility Owner. The Utility Owners need to know as early as possible which facilities are in conflict in order to prepare plans, get approvals, and contract or schedule their manpower, equipment, and materials.

The RUS/Utility Coordinator has proposed right of way and current easement information from the survey and mapping of the project. The RUS/Utility Coordinator can usually determine if the Utility Owner has reimbursable rights from that information. The Conflict Letter issued to those that appear to have no reimbursable rights has instructions to the Utility Owner to notify the RUS with documentation if they believe their facility is reimbursable.

If the RUS knows a Utility Owner is eligible for reimbursement at the time of the conflict letter, a Reimbursable Conflict Letter is issued with an attached Reimbursement Information Form (RIF) and Utility Relocation Estimate form to be filled out by the Utility Owner. The Utility Owner must return the documents as soon as possible to the RUS. Once the information is collected, the RUS/Utility Coordinator will send a reimbursement package to the SUL.

1. Plan Review with Utility Owners

After the Conflict List has been issued, a meeting may be held to review the design and conflict list that has been prepared. The Utility Owner, RUS, and designer discuss the impacts to the utility facilities and determine where additional horizontal and vertical data may be required through potholing. Design modifications will be considered to minimize utility facility impacts.

a) Utility Facility Test Hole Excavation

The initial Utility Conflict List developed during the design stage is refined by collaboration with the RUS, designers, and other technical specialists. The group prepares a list of locations that need further vertical and/or horizontal data. The RUS provides the list of locations to the Utility Owner so that the owner can provide ODOT with the requested information. The data is used to confirm whether a conflict exists or whether a minor design modification would avoid the conflict.

Typically, the Utility Owner is responsible for the cost of the utility facility test-hole. If a Utility Owner is eligible for reimbursement, ODOT will hire a test-hole contractor or reimburse the Utility Owner for the costs of test-hole excavations. Whenever possible, it is best to have the survey crew record the horizontal position and vertical depth to include the data in the 3-dimensional model of the project.

Once the Conflict Letter is issued, the process of establishing utility facility relocation plans, estimate, and schedule is dependent upon the facility being reimbursable or non-reimbursable. The process for reimbursable facility relocations is described in Section 10.340 and the non-reimbursable facility relocation process is described in Section 10.350.

10.340 REIMBURSABLE UTILITY FACILITY RELOCATION PROCESS

The basis for determining if the utility facility relocation is eligible for reimbursement comes from Federal regulation [23 CFR 645.107\(a\)](#). Under provisions [in 645.103\(d\)](#), FHWA reimbursement to the State is governed by either a State standard as established by State law or regulation, or by an FHWA standard as established by regulation. Should FHWA and State Standards differ, FHWA reimbursement is limited to the one that is more restrictive. Billing and auditing procedures are covered under Section 10.400.

Oregon State Statute [ORS 366.321](#) defines when a Utility Owner is eligible for reimbursement by ODOT for the relocation of their facilities due to a State Highway project. To facilitate in the analysis of reimbursable eligibility a matrix has been developed and can be accessed at: http://www.oregon.gov/ODOT/HWY/ROW/docs/utility_forms/miscellaneous_forms/prior_rights_matrix.pdf. For reimbursable relocations the State Agency that is requesting the relocation is responsible for the cost.

When filing the Reimbursable Information Form (RIF), the Utility Owner must declare whether their proposed relocation includes an upgrade or **betterment** to their system. A betterment is considered to be any upgrade or increase in functional capacity that is not a result of complying with current codes or standards for that type of utility facility. If a betterment will result from the planned relocation, a detailed cost split between replacement of the facility in kind and the additional functional capacity must be itemized and shown in the estimate submitted by the Utility Owner.

1. Certification of Reimbursement Eligibility

During the design phase, a preliminary or draft right of way map is produced by the survey crew. The map shows the existing right of way, adjacent property boundaries, easements, and proposed right of way based on the proposed construction footprint. The RUS uses the information from the draft right of way map to determine potential eligibility for a reimbursable relocation.

When the relocation of a utility facility is determined to be reimbursable, a RIF is enclosed with the Conflict Letter. The Utility Owner must return the form with documentation to show they have a compensable property right, or prior rights. Acceptable evidence is the physical document showing easements, fee title, x-permit, service agreements, or affidavits of prescription or estoppels. Forms for the affidavits of prescription and estoppels are located on the [ODOT Utility Form website](#) or can be included as enclosures to the Conflict Letter. Once eligibility is confirmed, the

RUS/Utility Coordinator prepares a Reimbursement Certification Form and submits the reimbursement package to the SUL. The package includes the Transmittal Request Form, the Reimbursement Certification, the RIF, and documentation of why the utility facility relocation is reimbursable (i.e. easement, deed, estoppel, prescription, etc.).

2. Estimated Preliminary Engineering And Construction Schedule And Estimate

The RIF includes an estimate for Preliminary Engineering and Construction along with who will be performing the work. Relocations which indicate a **betterment** to the utility facility will have a split estimate itemizing the cost differentials between restoring the original facility and the improvements. The RUS/Utility Coordinator compares the estimate to the Utility Relocation (UR) budget for the project. Adjustments to the UR budget are made by the Project Leader and STIP Coordinator. The RUS/Utility Coordinator submits the estimate along with the reimbursable eligibility documentation to the SUL. The SUL requests a project Expenditure Account (EA) to be assigned and issues a Notice to Proceed with Preliminary Engineering.

3. Preliminary Engineering By Utilities

The Utility Owner can perform preliminary engineering in one of two ways: either by themselves or through a consultant. See Section 10.400 for billing and auditing.

- a) The Utility Owner can prepare the plans and perform construction with its own forces. It prepares an estimate of the cost of the preliminary engineering and submits it through the RUS for review and approval by the SUL.
- b) The Utility Owner has the plans prepared by an Engineering Consultant. The Consultant agreement, whether part of a continuing agreement or a new Engineering Contract, must be submitted and approved prior to receiving the Notice to Proceed with Preliminary Engineering from the SUL.

A new Engineering Contract must be advertised and awarded based on the competitive bid process. The advertisement, bid tabulation and selection of the qualified bidder is submitted to the SUL for review and approval of the process before a Notice to Proceed is issued.

4. Notice To Proceed

The SUL is the only one with the authority to issue the Notice to Proceed. The Notice to Proceed is required for both Preliminary Engineering and Construction for any reimbursable work performed by the Utility Owner; including, but not limited to, relocation of facilities and materials purchases.

The relocation plans and schedule are reviewed by the RUS/Utility Coordinator, designer, district manager or designee, and construction project manager. The review is to ensure that all conflicts have been resolved and the proposed schedule will not impact the schedule of the project. After review, the RUS/Utility Coordinator forwards the package to the SUL for final approval and the Notice to Proceed with Construction.

Before a Construction Notice to Proceed can be issued, the RUS/Utility Coordinator must confirm that the right of way acquired for the project has been cleared and is in the possession of ODOT.

5. Utility Facility Construction Alternatives

The construction of utility facilities can be completed one of three ways. Utility Owner's workforces can complete the work, the Utility Owner can competitively contract the work out, or the Utility Owner can ask for the utility facility relocation work to be added to the ODOT project. The Utility Owner requires the right of way boundary to be identified and any 'no work' areas staked so it can lay out its proposed facility relocation for review and approval by the RUS/Utility Coordinator.

In each of the three situations detailed below, where federal highway funds are involved on the Project, in order to comply with the 23 CFR 635.410, Buy America, requirements, the Utility shall limit the quantity of foreign materials incorporated into the Work as follows. Section 635.410 of Title 23, Code of Federal Regulations, and the Intermodal Surface Transportation Efficiency Act require that all iron or steel manufacturing processes, including without limitation the casting of ingots, for iron or steel materials permanently incorporated into the Project shall occur in the United States. All foreign-origin iron or steel materials incorporated in the Project shall be removed and replaced with domestic iron or steel materials at the Utility's expense. The cost of foreign-origin iron or steel materials shall be the value of the iron or steel products as of the date they are delivered to the Project Site.

Manufacturing processes include without limitation the application of coatings to finished iron or steel products or components. Coatings include epoxy coating, galvanizing, painting, and any other coating that protects or enhances the value of the steel or iron product or component.

The Utility shall provide the State with a Certificate of Materials Origin (CMO), on a form furnished by the State, before incorporating any iron or steel products into the Project. Unless a Certificate of Materials Origin has been provided to the State, the materials shall be considered of foreign origin.

The Utility shall retain manufacturers' certificates verifying the origin of all domestic iron or steel materials for three years after the date of final payment for the Project, and shall furnish copies to the State upon request.

If a Utility knows of a part that it not available domestically, as part of the Buy America requirements, they are to contact the State Utility Liaison immediately.

a) Utility Owner Workforces

Prior to the Utility Owner commencing any construction work with its own workforces, the Utility Owner must submit plans and a detailed estimate for approval. The documents are submitted through the RUS/Utility Coordinator to the

SUL. The SUL reviews the documents and estimate and confirms there is sufficient UR budget to cover the costs. After all of the documentation is reviewed and approved the SUL will then issue the Notice to Proceed with Construction.

b) Utility Owner Work by Contract

If the Utility Owner chooses to contract out the construction of the relocation, the Utility Owner may use a continuing agreement, or prepare Plans, Specifications, and Estimates (PS&E) for the project and submit it to ODOT prior to advertising the project. If the Utility Owner chooses to bid the project then the project must be advertised and awarded based on the competitive bid process. Advertising and bid tabulations are submitted to ODOT for confirmation of the process and selection. Upon confirmation the SUL ensures that the UR budget will cover the costs and then issues a Notice to Proceed with Construction. Depending upon the site conditions, additional survey layout may be required at the time the Utility Owner's contractor begins their relocation work.

c) Work Added to ODOT Contract

Utility facility relocation work added to an ODOT contract must be requested in writing. The ODOT project team will evaluate if the work is a good fit with the overall project. Once the project team agrees to allow the work to be added to the contract, the Utility Owner may be required to submit their plans, specifications, and estimate for review and addition to the project. See Section 10.370 for utility facility relocation work included in ODOT contracts.

10.350 NON-REIMBURSABLE UTILITY FACILITY RELOCATION PROCESS

A non-reimbursable utility facility is one that is located in the right of way by permit and the Utility Owner has no compensable property right. Any State Agency may request a utility that is located within the highway right of way to relocate at the expense of the utility owner when such relocation is a necessary result of that State Agency exercising its legal authority or obligation.

1. Submittal Of Relocation Plan

The Conflict Letter, as required by [OAR 734-055-0045\(2\)](#), is submitted to the Utility Owner by the RUS. The letter contains an itemized list of identified conflicts. The Utility Owner is required to respond within 30 days or a timeframe designated within the letter with a proposed schedule to complete their relocations.

A copy of the Conflict List and Preliminary or Approved Plan Sheets with the identified conflicts are attached to the Conflict Letter. The Utility Owner uses the conflict list and project plan sheets to prepare its Relocation Plan. The Utility Owner requires the right of way boundary and any 'no work' areas staked so it can lay out its proposed facility for review and approval. Depending upon the site conditions, additional survey layout may be required at the time the Utility Owner's contractor begins their relocation work.

2. Review Of Relocation Plan And Schedule

The RUS/Utility Coordinator, in collaboration with the designer, district manager or designee, and construction project manager, reviews the relocation documentation submitted by the Utility Owner. The review is to ensure that all conflicts have been resolved and the proposed utility facility relocation work schedule will not impact the schedule of the project. There will be times when the relocation work cannot be finished until a specific phase of the project is complete. The approved schedule proposed by the Utility Owner is included in the project Special Provisions under Section 00150.50. The project contractor is required to incorporate the utility facility relocation schedules into the project schedule per Section 00180.42 of the Special Provisions. If the Utility Owner wants to add work to the contract, see Section 10.370.

10.360 SUBMITTAL OF TIME REQUIREMENT LETTER (Second Notice)

[OAR 734 Division 55](#) requires the Utility Owners to provide their estimated time required to complete relocation within 30 days or time frame designated in the Conflict Letter from the RUS/Utility Coordinator. Before the schedule can be developed and reviewed, the RUS/Utility Coordinator contacts the Right of Way section for a timeline of the right of way acquisition and possession.

Once the schedule, relocation plan, and estimates are reviewed and approved, the RUS prepares and issues a Time Requirement Letter to the Utility Owner. This letter meets the second notice requirement as defined in [OAR 734-055-0045\(4\)](#). The letter is a confirmation of the schedule as agreed upon between the State and the Utility Owner. The letter includes the relocation date or dates that are included in the Project Special Provisions.

10.370 UTILITY FACILITY RELOCATION WORK INCLUDED IN ODOT CONTRACTS

Relocations that are included in the contract documents require the Utility Owner, RUS/Utility Coordinator, SUL, and designer to work together to prepare agreements and plans and specifications. The SUL is the only one authorized to enter into letter agreements with the Utility Owners.

The Oregon Constitution states that the revenue collected from taxes on motor vehicle use and fuel are used exclusively for highway purposes. Highway trust funds cannot be utilized for non-highway purposes, i.e., non-reimbursable utility facility relocation work. Therefore, funds

covering the cost of non-highway construction must be deposited with the agency administering the highway construction contract in advance of the actual construction.

The Utility Owner provides a written request to ODOT for the relocation work to be incorporated into the project. Reimbursable and non-reimbursable work can be included into ODOT projects. The process is similar for both types of work:

- a. Analysis of the work to be incorporated;
- b. Agreements between ODOT and the Utility Owner written by the SUL;
- c. Fund deposits made for non-reimbursable work;
- d. Fund deposits made for betterment work not qualified as reimbursable.

For work that is not standard to ODOT, the Utility Owner develops plans, specifications, and estimate that are incorporated into the contract documents. The plans and specifications are reviewed by ODOT staff and must be submitted in the format and media ready for incorporation into the ODOT contract documents.

10.380 LETTER OF AGREEMENT (ADD WORK AGREEMENTS)

There are two basic types of letter agreements covering utility facility relocation work included in ODOT contracts, the Add Work Letter Agreement- fixed cost and the Add Work Letter Agreement. These agreements are prepared by the SUL. For Buy America requirements see section 10.340 (5).

1. Add Work Letter Agreement – Fixed Cost

For minor non-reimbursable utility facility relocations the Utility Owner can request the utility facility relocation work be added to the contract at a fixed cost not to exceed \$5,000. The work commonly performed under this type of arrangement is for items that can be easily quantified such as adjustment to manholes, valve boxes, etc. on paving or preservation projects. The fixed cost is based on the most recent ODOT average bid unit cost for the Region as provided by the project estimate. The Utility Owner pays ODOT for the work at the time the contract is awarded. Should the final quantities differ from the original agreement during construction, the Utility Owner will be billed for the additional quantities or receive a refund based on the cost established by the agreement.

2. Add Work Letter Agreement

Work that is more complex in nature is covered under the second type of agreement. At the time the agreement is written and signed by the Utility Owner, the estimated quantity and value of the work is determined and added to the ODOT contract documents. The Utility Owner cannot remove the work from the ODOT contract once the agreement is signed. The Utility Owner will deposit with ODOT the estimated value prior to contract bid opening. Upon completion of the construction, a verification of the actual costs will be made and the Utility Owner will be billed for any additional costs or refunded any remainder of their initial deposit.

10.390 UTILITY CERTIFICATION

The Utility Certification is required before a project can be advertised for bid. The requirements and process for preparing the certification is covered in Section 10.700.

UTILITY BILLING AND AUDITING

10.400 BILLING

All reimbursable billing documentation of the Utility Owner, its contractors and subcontractors are subject to audit by representatives of the State and the Federal Highway Administration and will be retained for a period of five years from Utility Owner's receipt of payment of the final bill.

Reimbursement eligibility is covered under Title 23 CFR 645 Subpart A and this manual. CFR 645 states, "the FHWA's reimbursement to the State Transportation department (STD) will be governed by State law (or State regulation) or the provisions of this regulation, whichever is more restrictive." Per the Federal Acquisition Regulation (FAR), Part 31.201-3(a), "the burden of proof shall be upon the contractor to establish that such cost is reasonable." Reimbursement is paid on reasonable actual expenses and shown with supporting documentation.

A Utility Owner can submit either progressive billings throughout the relocation or a single bill once the relocation work has been completed. The Utility Owner has one (1) year from the time of completion of its work to submit a final billing. The Utility Owner must submit an invoice with the supporting documents to request reimbursement.

The RUS/Utility Coordinator reviews the billing documentation submitted by the Utility Owner and verifies that all required information attached is accurate and represents verifiable actual costs. All supporting documentation must be verifiable and include, but is not limited to the following requirements listed below:

10.410 INVOICE DATA REQUIREMENTS

- Invoices must include company name, address, phone, fax numbers and email address. It's preferred that invoices are printed on the Company's letterhead.
- Invoices must state whether the bill is a progressive bill or a final bill and the total dollar amount requested.
- The current date the invoice is submitted to Agency. If submitting a revised invoice, the invoice date should be changed to the new submittal date.

- Utility Owner Invoice number is a unique number for each invoice. If submitting a revised invoice, the invoice number should reference the previously submitted invoice. (For example, invoice No. 2256 revised to Invoice No. 2256-R.)
- Title of the Project and Key number
- Billing period with begin and end dates. The beginning date must not be prior to the Notice to Proceed date issued by the State Utility Liaison, or within any previous billing periods.

Per the Federal Acquisition Regulation (FAR), Part 31.201-3(a), “the burden of proof shall be upon the contractor to establish that such cost is reasonable.”

10.415 SUPPORTING DOCUMENTATION REQUIREMENTS

The supporting documentation must be included with each invoice and itemized in verifiable categories and be available for audit by. Supporting documentation must be in accordance with 48 CFR 31 – Contract Cost Principles and Procedures. ODOT Supporting documentation must include, but is not limited to the following items:*

Labor:

- Detailed labor records that show the daily hours worked by employee, including pay rate. (Employee number or name, classification, hours worked, date worked, and unit cost).
- Summary of what job the employee was working on (detail location).

Equipment:

- Equipment description, rates, dates worked, and hours used.

Materials/Tools:

- All materials used including description, price per unit, quantity, and total cost.
- All Certificate of Materials Origin which are required on all Federal Aid projects.

Subcontractors and Vendors:

- Copies of original invoices from vendors/subcontractors to support all billed costs.
- Copies of continuing contracts or lowest bid documents if not already submitted to the State Utility Liaison.

Overhead/Additive rates:

- All applicable indirect costs/overhead rates must be approved prior to invoicing and payment. Indirect costs can include but are not limited to general overhead, employee fringe benefits, material and other additives. Indirect costs must comply with 48 CFR Part 31 of the Federal Acquisition Regulations, refer to:

http://www.access.gpo.gov/nara/cfr/waisidx_04/48cfr31_04.html Indirect cost rates may be subject to audit by ODOT Audit Services

- Local and State Governments are required to go through the federal OMB Circular [A-87](#) Cost Allocation plan approval process, refer to: http://www.whitehouse.gov/sites/default/files/omb/assets/agencyinformation_circulars_pdf/a87_2004.pdf prior to reimbursement of indirect costs/overhead. Direct costs, i.e. employee salaries, employee fringe benefits, materials, subcontractors, etc. are allowable.
- Allowance for Funds Used During Construction (AFUDC) charges are unallowable.

* This list is not all-inclusive. More documentation may be required and requested by the department.

10.420 RECOMMENDING PAYMENT

Once the billing is verified, the RUS or Utility Coordinator signs the interoffice memo recommending payment and then submits the billing package to the SUL.

If the individual Utility Owner billing for a project exceeds \$10,000.00, the RUS or Utility Coordinator must obtain written verification and approval from the respective Area Manager confirming that there are sufficient funds in the project budget for the billing. The Area Manager's written approval must be submitted with the memo recommending payment. If any Utility Owner billing causes the overall Utility Relocation Expense Account (UR EA) to exceed the programmed budget, the respective Area Manager must approve in writing any further monthly Utility Owner billings. The SUL verifies that the billing documentation and calculations are correct and recommends approval of payment to the Right of Way Unit Manager. The Right of Way Unit Manager signs the approval for payment and the SUL submits the billing to ODOT Financial Services Department.

ODOT is required to pay its bills within 45 days. This timeframe has been established by [ORS 293.462](#) and discussed in the Accounts Payable and Expenditures Chapter of the Financial Administration and Standards Manual. The RUS/Utility Coordinator has 10 business days to review the complete billing documentation package, get the Area Manager approval when applicable, and forward the payment recommendation to the SUL. If the Utility Owner's billing package is incomplete, the RUS/Utility Coordinator must request in writing any needed additional support documents. Stamp all incoming invoices and supporting documentation with the date of receipt. The SUL has three business days to review the bill and have it signed and turned into the Finance Office for payment.

PERMITS

10.500 GENERAL

Permits are issued through the District Maintenance offices. These permits are provided for the installation, maintenance, and operation of utility facilities such as pipe lines, pole lines, buried cable, and conduits to be located in State owned right of way. [Oregon Administrative Rule \(OAR\) 734-055](#) provides the authority and process by which the Department of Transportation issues permits for utility facilities to occupy State Highway Right of Way.

10.510 PERMITS

Each Utility Owner is responsible for obtaining the permits required for their project. There are two types of permits available, the standard permit, and the “X” permit. Permit forms can be found at: <http://www.oregon.gov/ODOT/HWY/ROW/docs/3457.pdf>

1. STANDARD PERMIT

The standard permit is issued to the Utility Owner for the installation, maintenance, or relocation of their facility within State Highway Right of Way. Facilities installed under a standard permit are not eligible for relocation reimbursement from any State Agency. Facilities relocated at the request of other than a State Agency or pursuant to a developer project will be at the cost of the requesting party.

2. X-PERMIT

“Utility facilities that originally occupied a portion of the right-of-way in which the owner had a compensable interest or a prior right to occupy said right-of-way, will be issued a permit titled “X” Permit.”

For Utility Owners relocating as a result of a highway project, the RUS/Utility Coordinator gathers the property right documentation from the owner and certifies its validity. The RUS/Utility Coordinator provides the certification along with the approved relocation plan and timing agreement to the SUL and Permit Specialist. Once certified, the Utility Owner fills out the standard permit form and submits it to the Permit Specialist. Supplemental Permit Special Provisions are attached to the X-Permit. The Special Provisions detail the property rights, rule exceptions and future relocation rights. For reimbursable relocations the State Agency requesting the relocation is responsible for the cost.

10.520 PERFORMANCE BONDS

[OAR 734-055-0025 and 734-055-0035](#) define the requirements of the insurance policies and bonds. For issuance of a bond, ODOT policy is to follow the direction of the District Manager. The District Manager may request a permit applicant to provide a certificate of self insurance or liability and property damage insurance policy and a performance bond.

The Liability and Property Damage policy provides protection against claims against ODOT for the permit applicants work under the permit. The performance bond is requested at a specific value that is determined by the cost of ODOT having to perform repairs to the highway in an instance where the utility facility work causes damage or substandard repair and they do not return to repair the damage.

SPECIAL PROVISIONS

10.600 GENERAL

Special Provisions are those specifications that are put together to enable a contractor to bid a project successfully. The RUS/Utility Coordinator is required to provide the utility facility relocation special provisions for each project. The Specification Writer prepares and compiles a set of preliminary special provisions and distributes the appropriate sections to the technical disciplines. The RUS/Utility Coordinator provides the necessary utility facility relocation information and submits the revised special provisions to the Specification Writer. The utility facility relocation special provisions identify the Utility Owner and facilities within the project site, estimated completion times for relocations, and instructions for coordination and advance notifications to the Utility Owner.

10.610 SPECIAL PROVISION 150.50

There are two sections under Special Provisions (SP) 150 that are filled out by the RUS/Utility Coordinator. The first section under 00150.50 contains the contact information for the Utility Owners that are located on the project site but have no anticipated conflicts or relocations to perform. The second section under 00150.50 is the list of Utility Owners that will be performing relocations during the contract or have special requirements when working around their facilities.

The completion date agreed upon and confirmed in the Timing Letter with the Utility Owner is provided under the Estimated Completion Date in the second section of 00150.50. Language for the proximity to high pressure gas lines and power lines is provided in the Special Provisions. Special Provisions to include safety watchers or advance notice to specific Utility Owners has to be added by the RUS/Utility Coordinator. The information used by the RUS/Utility Coordinator is contained in the Timing Letter agreement made with the Utility Owner.

10.620 SPECIAL PROVISION 180.40 & 180.42

Special Provisions Section 00180 pertains to the Prosecution and Progress of the Contractor on an ODOT Construction Project. Section 180.40 is where Irrigation Season information is placed should an irrigation facility be within the project limits. Section 180.42 adds a requirement for the Contractor to hold a group utility facility relocation scheduling meeting with representatives from the Utility Owners involved in the project. The meeting is held prior to the

Contractor preparing his schedule and assists the Contractor by providing the time frames and staging required by the Utility Owners. The recommendation to include these special provisions is made by the RUS/Utility Coordinator.

10.630 OTHER SPECIFICATIONS

The RUS may develop other specifications to be added to the Special Provisions to clarify utility facility relocation accommodation work or utility facility relocation work added to the contract. The RUS/Utility Coordinator must follow any Technical Services Bulletin (TSB) or process which details the steps that are followed in creating a project specific Special Provision. See the following website:

<http://www.oregon.gov/ODOT/HWY/TECHSERV/technicalguidance.shtml>

UTILITY CERTIFICATION

10.700 GENERAL

The certification of project related utility facility relocation work is required by federal regulation 23 CFR 635.309. Utility Certification is required for all federal and state funded projects, whether the utility facilities are in conflict or not. The Utility Certification is submitted to the SUL and Project Leader. The Project Leader includes the Utility Certification along with the previously submitted Timing Letters as part of the PS&E documents. See Section 10.935 for the Local Public Agency process.

10.710 CONTENT OF UTILITY CERTIFICATION

The Utility Certification form can be found in the [Utility Forms library](#). All utility facilities within the project limits are listed on the Certification. The Utility facilities are separated into two sections. One section is for listing those Utility Owners that will be relocating or adjusting facilities before, during, or after construction. The other section is a listing of the Utility Owners and facilities located within the project limits, but no conflicts are anticipated.

An exception to the Certification occurs when an agreement on a utility facility relocation schedule has not been confirmed. A Public Interest Finding, approved by the Area Manager, must be included with the Utility Certification when any exceptions are present. The Utility Certification is a required document for PS&E.

10.715 RESPONSIBILITY FOR PREPARATION AND APPROVAL OF THE UTILITY CERTIFICATION

The RUS/Utility Coordinator prepares the Utility Certification for all state and federally funded projects. The Timing Letters for each Utility Owner are submitted to the Project Leader and SUL as they are prepared and serve as the support documents for the Certification. If there is

a utility facility relocation exception, the Area Manager is required to sign the Utility Certification Form.

10.720 TIMING OF THE UTILITY CERTIFICATION

The Utility Certification can be submitted at any time during project development, but no later than PS&E submittal,

10.725 COORDINATION WITH CONSTRUCTION OFFICE

When the Project Leader completes the Project Development stage, a transition package of critical project development documentation is prepared. The package of documentation is handed off to the Construction PM. Included in the transition package are utility facility relocation agreements and timing schedules.

CONSTRUCTION

10.800 GENERAL REQUIREMENTS

The relationship between the Construction Project Manager (PM), Contractor, and the Utility Owners is described in the [ODOT Construction Manual](#). The information presented in Chapter 11 of the Construction Manual covers the Pre-Construction Conference (Pre-Con). The information presented in Chapter 24 of the Construction Manual covers monitoring and documenting the work performed by the Utility Owners.

10.805 UTILITY PRE-CONSTRUCTION CONFERENCE

The RUS/Utility Coordinator in conjunction with the PM determines during project development whether a Utility Pre-Con is required. If it is needed, the RUS/Utility Coordinator adds Section 0180.42 to the contract Special Provisions. This section requires that a Utility Pre-Con be held prior to the Project Pre-Con.

During this meeting the Contractor meets with representatives from all the Utility Owners prior to developing his project schedule. Discussion during the meeting covers:

- a. Notification time frame when Contractor is ready for utility facility relocation work to commence;
- b. Time frame to complete utility facility relocation work;
- c. Coordinating work zone signing, flagging, and work areas;
- d. Intermittent utility facility relocation work;
 1. Notification lead time
 2. Response time;
 3. Time to complete relocations;
 4. Coordination with Contractor work force.

The Contractor submits his schedule, which includes the utility facility relocation timing requirements, prior to the project Pre-Con.

10.810 PROJECT PRE-CONSTRUCTION CONFERENCE

The Pre-Construction Conference (Pre-Con) is required per the Oregon Standard Specification for Construction and occurs within 30 days of the Notice to Proceed for Construction. The meeting must be held before any work starts on a project. Typically the Pre-Con is a single meeting with the Construction Project Manager (PM) and staff, Contractor, Sub-contractor representatives, Utility Owner representatives, and Technical Services representatives.

The utility facility relocation portion of the Pre-Con covers utility facilities within the project limits. This meeting establishes the communication between the Contractor and the Utility Owners when a Utility Pre-Con has not been required. The Contractor and the Utility Owners discuss which facilities have been relocated and where, which facilities have been abandoned, and the coordination with the contractor's schedule for any remaining relocations. The Contractor and the Utility Owners also establish a notification and relocation time frame for any unidentified utility facility conflicts that may occur during construction.

10.815 REQUIRED COMMUNICATIONS

Under Section 00150.50 of the Standard Specifications, the Contractor has requirements to meet when dealing with the Utility Owners and their facilities. The Contractor must follow the rules adopted by the Oregon Utility Notification Center.

10.820 INSPECTION

The Construction Project Manager is responsible for the monitoring of all utility facility relocations.

10.830 UTILITY CAUSED DELAYS

When a Utility Owner fails to timely relocate their facilities and causes additional costs to ODOT, those costs are eligible for recovery. Any utility facility adjustments deemed beneficial for contractor convenience are negotiated and paid by the contractor. The following steps are found in Chapter 24-5 of the Construction Manual for recovering those costs.

1. Notification of Intent to File Delay Claim

The Contractor is responsible for notifying the PM when the Contractor perceives there is a delay or additional cost resulting from a Utility Owner's failure to relocate their facilities within the time frame stated in the Special Provisions. The PM and Contractor document the time, labor, equipment, and materials impacts for future analysis of the damages to the Contractor.

2. Notifications to the Utility

Once the Contractor has notified the PM there will be additional costs due to a utility facility relocation delay, the PM issues a letter to the Utility Owner. The letter includes any documentation supporting the claim and offers the Utility Owner the opportunity to monitor and track the costs. The RUS and SUL receive a copy of the letter and documentation.

3. Tracking Costs of Delay Claim

The PM staff tracks the additional work performed by the Contractor. Delays impacting the contract time must impact the critical path of work designated on the Contractor's schedule. Cost impacts include but are not limited to:

- a. Additional mobilization of equipment
- b. Slow down of production or productivity rates
- c. Expanded workforce to accelerate production

4. Settlement with Department's Contractor

Section 27 of the ODOT Construction Manual describes the detail process of settlement of a Contract dispute between ODOT and the Contractor. The RUS and SUL participate in the analysis.

5. Recovery of Costs from Utility

The step by step process of recovering costs from a Utility Owner is itemized in Section 24-5 of the ODOT Construction Manual.

Once the settlement with the Contractor has been established, the Project Manager (PM) sends the estimated utility cost assessment or liability to the SUL. The SUL forwards the information to the Utility Owner with a copy to the RUS. The SUL initiates the billing process with the Highway Program Office. The SUL sends an acknowledgement to the PM that the Utility Owner has been billed with copies sent to the RUS and Construction Administration Engineer. The Highway Program Office invoices the Utility Owner, receives payment(s), and disperses the funds as necessary.

10.840 UNANTICIPATED UTILITY CONFLICTS

Changes in plans, quantities, or details of construction are inherent in the nature of construction. Early and frequent communication with the Utility Owners throughout the duration of the project can minimize the impacts from unanticipated utility facility conflicts. When a utility facility is discovered, the Utility Owner is required to relocate as per OAR 734-055.

1. Identification And Reporting Of Conflict

Upon discovery of an unanticipated conflict, the Contractor notifies the Project Manager (PM). The PM meets with the Contractor and Utility Owner's representative to discuss corrective measures and develop a plan to resolve the conflict. If the Contractor's schedule or costs are impacted by the resolution, he presents those costs to the PM.

2. Reimbursable Conflicts

Discovery of reimbursable conflicts do occur during construction. Upon discovery of the utility facility conflict, the contractor notifies the PM and the Utility Owner. The RUS can assist in the verification of reimbursable rights. The Utility Owner will have to furnish the documentation showing proof of eligibility for reimbursement. Once reimbursable rights have been verified, the PM or designee performs the duties of the RUS/Utility coordinator and follows the process as described in Section 10.340 of this manual.

3. Non-Reimbursable Conflicts

Discovery of non-reimbursable conflicts do occur during construction. Upon discovery of the utility facility, the contractor notifies the PM and the Utility Owner. The PM or designee performs the duties of the RUS/Utility coordinator and follows the process as described in Section 10.350 of this manual.

LOCAL AGENCY PROJECTS

10.900 GENERAL

The role of fulfilling FHWA stewardship responsibilities and supporting local agencies in the delivery of their federal-aid transportation projects resides with ODOT's Local Agency Program. ODOT's Local Agency Program consists of the central Local Government Section and Regional Local Program Units that serve the 5 Regions in Oregon. The Local Agency Guidelines (LAG) Manual is located at:

http://www.oregon.gov/ODOT/HWY/LGS/lag_manual.shtml .

10.910 STATE AND FEDERALLY FUNDED PROJECTS

With the FHWA/ODOT Stewardship Agreement, ODOT has received major delegations of authority and responsibility from FHWA. ODOT is responsible to FHWA for administering the successful implementation of federal-aid programs and projects. These responsibilities can be categorized as Policy and Procedures, Program Management and Project Implementation.

As a part of ODOT's obligation to ensure compliance, the Local Public Agency (LPA) is required to follow all state and federal laws, and the policies of this manual.

Each specific local assistance program provides funding which requires distribution, management and oversight control to ensure that the funds are expended to meet the program goals and that allocations and budget authority are not exceeded. ODOT distributes both state and federal fund allocations to the local agencies as specified by law and program requirements.

Some activities delegated by FHWA to ODOT cannot be further delegated to local agencies and remain ODOT's responsibility. These include the following activities as specified in the LAG Manual:

1. Approval of authorization to proceed;
2. Preparation of federal agreements;
3. Pre-award audit review of consultant contracts over \$250,000;
4. Approval of Utility Relocation Agreements involving federal reimbursement;
5. Approval of Specific Authorization for Utility Relocation involving federal reimbursement;
6. Independent Assurance Sampling and Testing (IAST) for National Highway System (NHS) projects;
7. Approval of payments from ODOT to local agencies;
8. Right of Way Certification; and
9. Issuance of rail grade crossing orders.

ODOT also provides assistance to local agencies in interpreting the regulations, manuals and guidelines, as they apply to specific project conditions. ODOT's Regional Local Agency Liaisons (LAL), Certification Program Manager and other Local Government Section staff are all available to aid local agencies.

10.920 LOCAL PUBLIC AGENCY (LPA) UTILITY FACILITY RELOCATION

Most transportation improvement projects involve utility facilities in some fashion. Depending on the project, Utility Owner involvement could be relatively minor, such as requiring the owner to mark their facility locations that are in the project area. Alternatively, Utility Owners might be required to relocate their facilities due to conflicts with the project.

Relocation of utility facilities may be reimbursable. Typically, if the Utility Owner has a compensable property interest in its present location, it would be entitled to reimbursement. If the utility facility was located on public right of way by permit or franchise agreement, the relocation would generally be non-reimbursable. The local agency's utility permit or franchise agreement should explicitly define these parameters. If there is a reimbursable utility facility, the State Utility Liaison must be contacted to complete all necessary agreements.

This section of the Right of Way manual outlines the basic requirements governing the utility facility relocation and reimbursement procedures and practices to be used by a local agency on state and federally funded local projects. The policy and procedures are intended to be used as general guidelines by local agencies in the execution of their projects.

10.930 UTILITY RELOCATION REQUIREMENTS

The procedures for developing the Conflict Letter, identifying reimbursable rights, and establishing relocation timelines is the same for Local Agency Projects. See Section 10.300 for details. Copies of letters and other documentation are submitted through the Local Agency Liaison (LAL) to the SUL.

10.935 UTILITY CERTIFICATION

A Utility Certification can be completed at any time during project development, but no later than PS&E submittal and must be completed before approval can be granted to advertise a project. The Certification is required for all projects, regardless of whether utility facilities are in conflict or not. It is prepared by the LPA and submitted to the LAL and the State Utility Liaison (SUL). See also Section 10.700.

10.940 PROCEDURES FOR REIMBURSABLE UTILITY RELOCATIONS

The process for establishing the agreements for reimbursing the Utility Owner for preliminary engineering and construction is covered under Section 10.340. The Local Public Agency submits the documentation through the LAL to the SUL. The SUL is the only one authorized to finalize the agreements and issue the Notice to Proceed.

10.950 ADDING NON-REIMBURSABLE UTILITY RELOCATION WORK TO A CONTRACT

If the relocation is non-reimbursable, a Utility Owner may add work to the contract when the necessary agreements are in place. The Utility Owner must submit a written request to the LPA to have work added to the contract. The LPA will contact the LAL, who forwards the documentation to the SUL to have an Add Work Agreement completed.

The SUL will prepare the Add Work Agreement and send it to the Utility Owner to be signed. When the signed Add Work Agreement has been returned, the SUL will then send the signed Agreement to the Highway Program office, the LAL, and LPA. The Highway Program office will contact the Utility Owner to collect payment.

10.960 UTILITY BILLINGS

Review of any reimbursement claim for utility facility relocation work is primarily the responsibility of the LPA, with technical assistance from the LAL and SUL. In general, the LPA Office reviews the billing so they can certify that the work was completed satisfactorily, as agreed by all parties. The LPA also reviews the technical aspects of the billing to ensure adherence to the intent of the Agreement.

Expenses by the Utility Owner incurred prior to receiving the State/Federal funding authorization date and Notice to Proceed are not eligible for reimbursement. Authorization can be requested and provided by the SUL for advance purchase of materials prior to the Notice to Proceed with Construction. This allows for materials that have long delivery times and must be ordered in advance of construction. Relocation can not begin until the Notice to Proceed has been issued.

10.965 PROCESSING A UTILITY BILL

Invoice and documentation requirements are covered under Section 10.400 thru 10.415. The step by step process for processing a bill is:

1. LPA Office

- a. LPA receives the bill from the Utility Owner
- b. LPA reviews the bill for accuracy, completeness, and actual verifiable costs. The LPA verifies that the work is finished and has conformed to the agreement. If the estimate was based on a percentage of the total work, the percentage used at the time of billing should match.
- c. LPA prepares a cover memo.
- d. LPA approves bill for payment and sends a cover memo and the original bill to the LAL, who then submit it to the SUL.

2. SUL

- a. Receives bill for actual verifiable costs and cover memo from the LAL.
- b. Compares bill to agreement.
- c. Confirms funding authorization with Highway Finance
- d. Approves bill and forwards to Financial Services for payments.
- e. Keeps file copy of billing and backup for audit purposes.

3. Financial Services

- a. Reviews invoice for proper accounting practices.
- b. Authorizes payment of bill.
- c. Images all invoices and documentation.
- d. Sends check (payment) to Utility Owner.

APPENDIX A

Laws, Rules, Regulations, and Guides

GENERAL

The following section includes references to legal regulations and laws pertaining to the Utility Relocation Program. It is a general guideline and not meant to be all inclusive.

Statutes, rules, and regulations set policy and procedures which govern the way this program operates. Utility facilities can be found to occupy Federal, State, and local roads and streets right of ways throughout the State of Oregon. Location of utility facilities within the right of way is controlled by the right of way owner to protect and maintain the use and safety of the roadways.

ODOT's utility facility relocation and reimbursement policy and procedures originate with the Oregon Constitution and Oregon Revised Statute (ORS) ORS [35.510](#). The ORS stipulates that the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, codified as [49 CFR 24](#), guides state policy and procedures. [49 CFR 24](#) further refers to [23 CFR 645A](#) which is the Federal policy and procedure for relocation and reimbursement of utility facilities.

The location, access for maintenance, and relocation for highway improvements of utility facilities are regulated by Federal, State, and/or local laws. The following sections address the various State, Federal, and local laws and regulations as they apply to utility facilities lying within Federal and State highway rights of way.

FEDERAL LAWS

State and Federal Highway authorities have developed policies and practices which govern when and how Utility Owners use public right-of-way and under what conditions public funds may be used to relocate the facilities to accommodate highway construction.

Two sections of Federal highway law in Title 23 of the United States Code (cited as 23 USC) deal specifically with utility facilities:

1. **[23 USC 109\(I\)](#) Federal-Aid Highways Standards**
Section (I) addresses the accommodation of utility facilities within the right of way of Federal-aid highways and the criteria used to analyze eligibility.
2. **[23 USC 123](#) Federal-aid Highways – Relocation of utility facilities**
When the State laws or legal contract between the State and Utility Owner entitle a Utility Owner to reimbursement for relocating their facility, Federal funds may be used to reimburse the State for the costs of the relocation. The Federal reimbursement follows the transportation project's Federal-aid participation ratio.

FEDERAL REGULATIONS

Federal Regulations are referenced as Code of Federal Regulations or abbreviated as CFR.

Policies and procedures for the relocation and Federal funding of relocations began in the 1940's under General Administration Memorandum Number 300 (GAM-300). Many of those policies and procedures are still in effect, in part or in whole, and are the basis of the current 23 CFR 645. The full regulation reference is Title 23 – Highways, Chapter 1 – Federal Highway Administration, Department of Transportation, Subchapter G – Engineering and Traffic Operations, Part 645 – Utilities.

1. **23 CFR 635.410 – Buy America requirements**
This regulation requires the use of domestic steel and iron in federally funded construction projects.
2. **23 CFR 645 Utilities – Subpart A – Utility Relocations, Adjustments, and Reimbursements**
Subpart A defines when and which costs of relocation are eligible for reimbursement and the relationship between the State Transportation Department rules and regulations and FHWA regulations.
3. **23 CFR 645 Utilities – Subpart B – Accommodation of Utilities**
This section defines the policies and procedures for accommodating utility facilities within the right of way of Federal-aid or direct Federal highway projects. Covered within this section are the State Transportation Department policy requirements as to the fulfilling of the Federal Highway occupancy and safety standards.
4. **23 CFR 645.117 (d) - – Cost development and reimbursement**
(d) Overhead and indirect construction costs. (1) Overhead and indirect construction costs not charged directly to work order or construction accounts may be allocated to the relocation provided the allocation is made on an equitable basis. All costs included in the allocation shall be eligible for Federal reimbursement, reasonable, actually incurred by the Utility Owner, and consistent with the provisions of 48 CFR part 31.
5. **48 CFR 31 – Contract Cost Principles and Procedures**
“No presumption of reasonableness shall be attached to the incurrence of costs by a contractor. If an initial review of the facts results in a challenge of a specific cost by the contracting officer or the contracting officer’s representative, the burden of proof shall be upon the contractor to establish that such cost is reasonable.”
6. **49 CFR 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs (Uniform Act)**
This section puts into effect the Uniform Act of 1970. Section 24.306 of the Act refers specifically to utility facility relocation and reimbursement policies and procedures.

UTILITY PROGRAM GUIDE, FHWA

The Federal Utility Program Guide is located on the internet for all users to have access to the latest information and changing laws and regulations that control the use of Federal funds for utility facility relocations. The internet address for the guide is:

<http://www.fhwa.dot.gov/reports/utilguid/utilin.cfm>. This is an excellent resource for the administration and evaluation of utility facility relocations and eligibility of reimbursement.

Material presented in 23 CFR 645 is reviewed by subject matter in the guide. A historical perspective is included for several items to explain why certain policy requirements were established. Examples are included to show how certain provisions have been applied.

The information in the guide is accurate as of the date of the guide. Generally, FHWA requirements and policies regarding utility facility relocation, adjustment, and accommodation have remained consistent over the years. However, from time to time certain regulations and/or policies and practices have been and may be modified.

STATE OF OREGON

OREGON CONSTITUTION

The basis for reimbursing Utility Owners for facilities relocated during construction when they have prior right or a property right within the right of way is based on the Oregon Bill of Rights, Article I, Section 18.

Article IX, Section 3a allocates the funding source and exclusive use for the funds for the construction, improvement, repair, maintenance, and operation of public highways, roads, streets, and rest areas.

Development of the Department of Transportation and the creation of policy and procedures are addressed under the Oregon Revised Statutes [ORS 184.610](#) to [184.666](#).

OREGON REVISED STATUTES

The Oregon Revised Statutes (ORS) are the codified body of statutory law governing the State of Oregon and are subordinate to the Oregon Constitution. The complete ORS citation can be accessed electronically at the following website: <http://www.oregonlaws.org>

This section pertains to those Statutes concerning the relocation of both non-reimbursable and reimbursable utility facilities.

1. **[ORS 35.510](#) – Relocation duties of public entity; use of certain federal relocation assistance program policies.**

Relocation procedures of a public entity as the result of a program or public project must comply with the Uniform Act.

2. **[ORS 366.321](#) - Expense of relocating municipal facilities payable by department; exceptions.**
Where applicable, ODOT will reimburse any municipal corporation, district, or authorities for the relocation of their facilities that are located within public right of way or within State Highway right of way prior to the designation as State Highway. Exceptions for this reimbursement are when the facilities are required by law or Transportation Commission regulations to be installed by permit.
3. **[ORS 373.020](#) – Jurisdiction over streets taken over for state highway routing through cities; effect on public utility duties.**
Complete jurisdiction and control of streets taken over by the Department of Transportation as provided in [ORS 366](#) and [ORS 105.760](#), and [ORS 373.010](#) through [373.030](#) is vested in the department and extends from curb to curb. If there is no regular established curb, then such control extends over the portion of the right of way as may be utilized by the Department for highway purposes. The cities retain the exclusive right to grant franchises over, beneath, and upon any such streets and to control and regulate such franchises.
4. **[ORS 374.305](#) to [374.330](#) – Necessity of permission to build on rights of way.**
This gives the Department of Transportation authority to issue permits to regulate the placement and removal of facilities on the public right of way. This is the Statute Authority for Oregon Administrative Rule (OAR 734-Division 55)
5. **[ORS 758.010](#) – Authority to construct lines and facilities; requirements and conditions.**
Except within cities, any person or corporation has a right and privilege to construct, maintain, and operate utility facilities along the public roads. The Department retains the right to designate the location of such facilities and/or remove the facilities if they are determined to be a public nuisance.
6. **[ORS 758.020](#) – Joint occupancy of poles.**
The county court, board of county commissioners or the Department of Transportation, when designating the location of poles along a designated scenic or recreational corridor, may require joint occupancy. If term and conditions cannot be agreed upon by the facility owners, then the Public Utility Commission may determine the reasonable terms and conditions to be met.
7. **[ORS 758.210](#) to [758.270](#) – Underground electric and communications facilities.**
A public authority shall have the power to require the conversion of overhead electric or communications facilities to underground facilities in underground assessment districts. The underground assessment districts are created by cities and counties along city streets, county roads, and state highways.

OREGON ADMINISTRATIVE RULES

The Oregon Administrative Rules (OARs) are the rules and regulations having the force of law in Oregon. They are the administrative and regulatory corollary to the Oregon Revised Statutes. Citations to the rules are in 3 parts: the Chapter, the Division, the specific part. A common citation would be 734-055-045(6).

The following citations reference those OARs that pertain to the occupancy of utility facilities on public right of way.

1. **[OAR 734-051-0215\(9\)](#) – Liability and Control for Construction and Maintenance, Repair, Operation and Use of Approaches**

Access permit applicants make relocation arrangements with the Utility Owners affected by the construction of the access. Evidence of the arrangements with the Utility Owners is required before permission to proceed with construction can be made.

2. **[OAR 734-055](#) – Department of Transportation, Highway Division, Pole lines, buried cables, pipe lines, signs, miscellaneous facilities, and miscellaneous operation.**

Division 55 includes the Department of Transportation Highway Division's rules and regulations for issuing permits to occupy the State right of way and under what conditions the Utility Owner may construct and maintain their facilities on the right of way.

X-Permits are described under [734-055-0110](#) for such cases where the Utility Owner has a prior right or compensable interest in the property before it is acquired by the State.

3. **[OAR 860](#) - Public Utility Commission**

The Public Utility Commission (PUC) regulates customer rates and services of the investor-owned utility facilities in the State of Oregon. Laws that govern the functions of the PUC are contained in the [ORS Chapters 756](#) through [774](#).

Of prime interest to the ODOT Utility Relocation Program is [OAR 860-024](#) which defines the safety standards for the individual utility facility types and the maintenance of mapping and records of underground facilities.

[OAR 860-024-0007](#) directs the Utility Owners to comply with [OAR 952](#).

4. **[OAR 952](#) - Oregon Utility Notification Center**

The Oregon Utility Notification Center, its board and duties are established under ORS [757.542](#) through [757.562](#) and [757.993](#).

[OAR 952](#) establishes the laws for excavators, designers, and utility facility owners to request and have marked the utility facilities that lie within the boundaries of areas under proposed construction or immediate construction.

Violations of any rule of OAR 952 are filed through the OUNC with a [Request for Administrative Action](#) (RAA). The OUNC researches the necessary background information for the complaint and forwards it to the Oregon Public Utility Commission (OPUC) for appropriate action. There are instances when the survey crew encounters problems getting adequate facility markings for design surveying. All attempts should be made to communicate and work with the Utility Owner prior to filing an RAA. Documenting the contact time, date, and contact person during the communications will provide the OUNC additional background for their investigation.

The color coding and types of markings for the individual utility facilities are designated under [952-001-0070](#).

See Appendix C for the Derivation of ODOT's Utility Relocation and Reimbursement Policy

APPENDIX B Definitions and Acronyms

DEFINITIONS

**Allowance for
Funds Used
During
Construction
(AFUDC)**

AFUDC is a component of construction costs representing net cost of borrowed funds and a reasonable rate on other funds used during the period of construction. AFUDC is capitalized until the project is placed in operation by concurrent credits to the income statement and charges to utility plant, based generally on the amount expended to date on the particular project. Effective January 1, 1977, FERC amended the Uniform System of Accounts establishing formulas for maximum allowable AFUDC rates.

Betterments

The basic premise of a utility facility relocation is that a utility owner's service should be restored so that it may continue to provide its product to its users in a fashion similar to that which existed prior to its relocation as a result of the highway project. When the utility owner plans to replace its facility with one of higher functional capacity, it is considered a betterment and that portion of increased capacity is not eligible for reimbursement. An exception exists if the betterment is caused by a legal or regulatory commission code, or current design practices of the Utility and a benefit to the highway project, or if the current materials are no longer manufactured.

Easements

An easement is the right to use the real property of another without possessing it. Easements are recorded in property deed descriptions and follow the property through successive sales or transfers of ownership.

**Estoppel
Easement**

A utility facility was placed upon private property with permission of the fee owner of the property without an easement added to the property deed. Subsequent owners of the property made no objection to the utility facilities placed up on the property. The utility owner can declare an estoppel easement and relocation of the facility becomes reimbursable.

Miscellaneous Permit	A fully executed form with the Oregon Department of Transportation to construct pole line, buried cable, pipe line, signs, miscellaneous operations, and miscellaneous facilities within the public right of way under the jurisdiction and control of the Department. The permit includes the standard form as well as all attached exhibits and special permit provisions deemed necessary by the District Manager.
Non-Reimbursable Utility	Any utility facility located under permit within the public right of way under Oregon Department of Transportation jurisdiction and control is not eligible for relocation reimbursement when directed to relocate by the Department.
Prescriptive Rights	A utility facility was placed upon private property and continuously maintained for a period of 10 years or more. There was no written or implied easement recorded upon the property deed at the time of installation or during the 10-year period. At no time during that 10-year period did the property owner dispute the presence of the utility facility. The utility owner can now claim a prescriptive easement and relocation of the facilities becomes reimbursable.
Private Property Rights	Private property is any property that is not public and is under the control of a single person or group of persons jointly. This person or group of persons control and use the property, benefit from the property (i.e. mining or rent), can transfer or sell the property, and can exclude others from the property.
Public Interest Finding	Public Interest Findings (PIFs) are letters from the Area Manager to document to the project file that the best interest of the public is addressed when an element of the project scope is not included in the prime contract. Exceptions contained within the Utility Certification would require a PIF in order for the PS&E package to be approved.
Reimbursable Utility	A utility required to relocate due to a highway construction project is eligible for reimbursement of their relocation costs when they have a property interest (title or easement) to the land they currently occupy. Municipally owned facilities on a current or prior to Department occupancy of municipally owned public right of way are also eligible for reimbursement of relocation costs.

Utility

Any privately, publicly or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm, water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system which directly or indirectly serves the public. The term utility shall also mean the utility inclusive of any substantially owned or controlled subsidiary. The term utility includes those utility-type facilities which are owned or leased by a government agency for its own use, or otherwise dedicated solely to governmental use. The term utility includes those facilities used solely by the utility which are a part of its operating plant.

X-Permit

Utility facilities that originally occupied a portion of the right-of-way in which the owner had a compensable interest or a prior right to occupy said right-of-way, will be issued a permit titled "X" Permit. Applicant will be responsible for furnishing the District Manager with the documentation of the prior rights. The special provisions of this permit will identify the obligations and responsibilities of applicant and the Department.

ACRONYMS

The following acronyms are found within Chapter 10.

Federal Acronyms

AFUDC	Allowance for Funds Used During Construction
CFR	Code of Federal Regulations
FAR	Federal Acquisition Regulation
FHWA	Federal Highway Administration
IAST	Independent Assurance Sampling and Testing
NHS	National Highway System
USC	United States Code

General Acronyms

CMO	Construction of Materials Origin
DM	District Manager
EA	Expenditure Account
LAG	Local Agency Guidelines
LAL	Local Agency Liaison
LPA	Local Public Agency
OAR	Oregon Administrative Rule

ODOT	Oregon Department of Transportation
ORS	Oregon Revised Statutes
OUNC	Oregon Utility Notification Council
OPUC	Oregon Public Utility Commission
PDLT	Project Development Leadership Team
PE	Preliminary Engineering
PL	Project Leader
PM	Project Manager
PS&E	Plans, Specifications, and Estimate
RAA	Request for Administrative Action
RIF	Reimbursement Information Form
ROW (ROWs)	Right-of-Way (Rights-of-Way)
RUS	Region Utility Specialist
SP	Special Provisions
STIP	State Transportation Improvement Plan
SUL	State Utility Liaison
TLT	Technical Leadership Team
TSB	Technical Services Bulletin
UR	Utility Relocation(usually combined as UR EA)
URLT	Utility Relocation Leadership Team

APPENDIX C

Derivation of ODOT Utility Relocation and Reimbursement Policy Prepared by Andrew Griffith, ODOT ROW Section 3/27/98

The purpose of this paper is to provide additional information on the derivation of reimbursement policy for utility relocation on Oregon Transportation Commission (OTC) approved projects. The State's utility relocation and reimbursement policy originates from the following sources:

- Oregon Constitution
- ORS 281.060; Relocation Duties Of Public Entity; Use Of Certain Federal Relocation Assistance Programs; Policies
- The federal Uniform Relocation Act of 1970 and its amendments of 1987
- 49 CFR 24; Uniform Relocation Assistance And Real Property Acquisition For Federal and Federally Assisted Programs
- 23 CFR 645A; Utility Relocation's, Adjustments, and Reimbursement

ODOT bases its reimbursement policy on:

23 CFR 645A: Utility Relocation's, Adjustments, and Reimbursement which is contained in FHWA's Program Guide for Utility Adjustments and Accommodation on Federal-Aid Projects.

On federal aid projects it is evident and very understandable that ODOT must follow the policies and procedures outlined in 23 CFR 645A. However, there are many OTC approved projects which are funded entirely with State dollars. Further, even on federal aid projects, the majority of utility reimbursement has historically been paid for using state funds. Therefore, the question of relevance and authority of 23 CFR 645A becomes apparent. In other words, are the provisions of 23 CFR 645A applicable to State funded projects or to federal aid projects when the utility reimbursement is paid with State dollars?

To answer this question, the derivation of the State's reimbursement policy must be examined. The source of the Oregon's utility reimbursement policy is vested in the Oregon Constitution.

The discussion below focuses on how each of these are related and ultimately linked to 23 CFR645A in forming the elements for ODOT's policy and procedures for utility relocation and reimbursement.

Oregon Constitution

Since 1859, Oregon's Constitution has provided the framework for the State's government. Specifically with regard to the State's taking of property for the use of roads, Article 1, Section 18 of the Constitution says:

“Private property shall not be taken for public use, nor the particular services of any man be demanded, without just compensation”.

If there is a taking of private property, such as a utility’s easement and facilities, the Utility must be compensated and made whole.

For information purposes, the entire section of Article 1 is attached as Exhibit A.

ORS 281.060; Relocation Duties of Public Entity; Use Of Certain Federal Relocation Assistance Programs; Policies

The enabling legislation that evolved from the Constitution is ORS 281.060.

ORS 281.060 Relocation Duties of Public Entity; Use of Certain Federal Relocation Assistance Programs; Policies, states in part:

“Whenever any program or project is undertaken by a public entity which program or project will result in the acquisition of real property, notwithstanding any other statute, charter, ordinance, or rule or regulation, the public entity shall: In acquiring the real property, be guided by the land acquisition policies in section 301 of the 1970 federal Act as amended by the Uniform Relocation Act amendments of 1987 and the provisions of section 302 of the 1970 federal Act.”

Exhibit B contains the entire statute.

This means that the State of Oregon, specifically, ODOT uses the federal Uniform Relocation Act of 1970 and its amendments of 1987 as the basis for state policy and procedures on relocation and reimbursement.

49 CFR 24; Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs

The Uniform Relocation Act of 1970 and its amendments of 1987 were codified and implemented as:

Title 49 of the Code of Federal Regulations, Part 24 (49 CFR 24); Uniform Relocation Assistance And Real Property Acquisition for Federal and Federally Assisted Programs

49 CFR 24 covers all aspects of right of way acquisition for State agencies to follow including:

- Real property acquisition
- General relocation requirements
- Payments for moving and related expenses
- Replacement housing payments
- Mobile homes

Additionally, **Section 24.307; Discretionary Utility Relocation Payments** of 49 CFR 24 (see Exhibit C), refers specifically to utility relocation and reimbursement policy and procedures.

Further, **Appendix A of 49 CFR 24**, states:

Section 24.307(c) describes the issues which must be agreed to between the displacing agency and the utility facility owner in determining the amount of the relocation payment. To facilitate and aid in reaching such agreement, the practices in the Federal Highway Administration regulation, **23 CFR part 645, subpart A, Utility Relocations, Adjustments and Reimbursement, should be followed.**

Summary

To reiterate, ODOT's utility relocation and reimbursement policy and procedures originate with the Oregon Constitution and ORS 281.060. ORS 281.060 stipulates that the federal Uniform Relocation Act, codified as 49 CFR 24, guide state policy and procedures. 49 CFR 24 further reveals that 23 CFR 645A should be followed as the policy and procedures which govern utility relocation and reimbursement.

Therefore because of this link, it is evident that for State funded projects or federal aid projects where the utility reimbursement is paid with State dollars, the provisions of 23 CFR 645A do indeed apply.

Exhibit "A"

Oregon Constitution, Article 1, Section 18. Private Property or Services Taken For Public Use.

Private property shall not be taken for public use, nor the particular services of any man be demanded, without just compensation; nor except in the case of the state, without such compensation first assessed and tendered; provided, that the use of all roads, ways and waterways necessary to promote the transportation of the raw products of mine or farm or forest or water for beneficial use or drainage is necessary to the development and welfare of the state and is declared a public use. [Constitution of 1859; Amendment proposed by S.J.R. No. 17, 1919, and adopted by people May 21, 1920; Amendment proposed by S.J.R. No. 8, 1923, and adopted by people Nov. 4, 1924]

Exhibit "B"

ORS 281.060 Relocation Duties of Public Entity; Use of Certain Federal Relocation Assistance Programs; Policies.

Whenever any program or project is undertaken by a public entity which program or project will result in the acquisition of real property, notwithstanding any other statute, charter, ordinance, or rule or regulation, the public entity shall:

- (1) Provide fair and reasonable relocation payments and assistance to or for displaced persons as provided under sections 202, 203, 204 and 206 of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Uniform Relocation Act amendments of 1987;
- (2) Provide relocation assistance programs offering to displaced persons and others occupying property immediately adjacent to the real property acquired the services described in section 205 of the 1970 federal Act as amended by the Uniform Relocation Act amendments of 1987 on the conditions prescribed therein;
- (3) In acquiring the real property, be guided by the land acquisition policies in section 301 of the 1970 federal Act as amended by the Uniform Relocation Act amendments of 1987 and the provisions of section 302 of the 1970 federal Act;
- (4) Pay or reimburse property owners for necessary expenses as specified in sections 303 and 304 of the 1970 federal Act;
- (5) Share costs of providing payments and assistance with the Federal Government in the manner and to the extent required by sections 211 (a) and (b) of the 1970 federal Act as amended by the Uniform Relocation Act amendments of 1987; and
- (6) Appoint such officers, enter into such contracts, utilize federal funds for planning and providing comparable replacement housing, and take such other actions as may be necessary to comply with the conditions and requirements of the 1970 federal Act as amended by the Uniform Relocation Act amendments of 1987. [1971 c.142 s.2; 1973 c.373 s.1; 1975 c.613 s.5; 1989 c.14 s.1]

Exhibit “C”

Code of Federal Regulations

TITLE 49 --TRANSPORTATION

Subtitle A --Office of the Secretary of Transportation

PART 24--UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Subpart D--Payments for Moving and Related Expenses

Sec. 24.306 Discretionary Utility Relocation Payments.

(a) Whenever a program or project undertaken by a displacing agency causes the relocation of a utility facility (see Secs. 24.2 (aa) and (bb)) and the relocation of the facility creates extraordinary expenses for its owner, the displacing agency may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

- (1) The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or right-of-way; and
- (2) The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement; and
- (3) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the displacing agency; and
- (4) There is no Federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the displacing agency's program or project; and
- (5) State or local government reimbursement for utility moving costs or payment of such costs by the displacing agency is in accordance with State law.

(b) For the purposes of this section, the term extraordinary expenses means those expenses which, in the opinion of the displacing agency, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.

(c) A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally assisted program or project, less any increase in value of the new facility and salvage value of the old facility. The displacing agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. (See appendix A, of this part, Sec. 24.307.)

Section 24.306 Discretionary Utility Relocation Payments

Section 24.307(c) describes the issues which must be agreed to between the displacing agency and the utility facility owner in determining the amount of the relocation payment. To facilitate and aid in reaching such agreement, the practices in the Federal Highway Administration regulation, 23 CFR part 645, subpart A, Utility Relocations, Adjustments and Reimbursement, should be followed.