

Chapter 10. Railroad and Utility

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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) 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.

10.340 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.

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.

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 is 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 with in 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 time frame 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](#).

10.380 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.

10.415 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 CRF 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.

10.510 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.**

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 CFR 635.410](#) – **Buy America requirements**
This regulation requires the use of domestic steel and iron in federally funded construction projects.
2. [23 USC 109\(l\)](#) Federal-Aid Highways Standards
Section (l) addresses the accommodation of utility facilities within the right of way of Federal-aid highways and the criteria used to analyze eligibility.
3. [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 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.
2. [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.
3. [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.
4. [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.”
5. [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

<u>AFUDC</u>	<u>Allowance for Funds Used During Construction</u>
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

<u>CMO</u>	<u>Construction of Materials Origin</u>
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
OPUC	Oregon Public Utility Commission
ORS	Oregon Revised Statutes
OUNC	Oregon Utility Notification Council
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