

Chapter 11. Utilities Coordination

11.1 OVERVIEW

This chapter provides information on the utility coordination and utility relocation requirements for all certified LPA federal-aid highway construction projects. Depending on project complexity, utility coordination needs may be minor (for example, utilities must mark facility locations) or major (for example, utilities must relocate facilities). Regardless of complexity, all projects must have a completed utility certification form (co-certified by ODOT) submitted with the final PS&E package.

Under 23 CFR 645.105, “utility” is defined as “a 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 company inclusive of any wholly owned or controlled subsidiary.”

In the sequence of project development, to avoid construction delays, utility coordination should begin early in the design process, generally beginning at approximately 30% design or sooner if possible. As design work begins, the LPA should consider the following:

- Project scope and complexity
- Existing utility facilities in the project right of way and project area
- Utility relocation timelines
- Options to eliminate or reduce utility relocations
- Availability of right of way for tree and brush clearing, and other utility concerns
- Whether affected utilities may be eligible for reimbursement of relocation costs (which may also require utility agreement(s) and a utility relocation (UR) phase in the STIP)
- Providing required utility conflict notifications and relocation timeline requirements
- Coordinating utility co-certification by the ODOT state utility liaison

These considerations are covered in more detail below. The LPA’s utility coordinator should consult the Oregon Utility Relocation Manual to comply with federal and state requirements.

The ODOT Certification Program Guidance and Forms webpage provides links to utilities guidance, templates, and sample documents intended for use by certified LPAs. See Resources in section 11.8 below.

11.2 APPLICABLE LAWS, RULES, REGULATIONS

The following laws, rules, and regulations contain key provisions involving project utility coordination requirements:

11.2.1 Federal

- 23 USC 109(l), Accommodation of utilities on federal-aid right of way
- 23 USC 123 Relocation of utility facilities
- 23 CFR 635, Subpart C, Physical Construction Authorization
- 23 CFR 645, Subpart A, Utility Relocation Adjustment and Reimbursement
- 23 CFR 645, Subpart B, Accommodation of Utilities
- 23 CFR 635.410, Buy America requirements

11.2.2 State of Oregon

- ORS 758.025, Relocation of utilities in highway right of way
- ORS 366.321, Expense of relocating municipal facilities payable by [ODOT]
- ORS Chapter 757, Utility Regulation Generally
- OAR Chapter 734, Division 55, Pole Lines, Buried Cables, Pipe Lines, Signs, Miscellaneous Facilities and Miscellaneous Operations (ODOT, State Highway right of way)
- OAR Chapter 952, Division 1, Oregon Utility Notification Center
- OAR 952-001-0090, Delay of excavation response

11.2.3 Local

LPA projects will typically also involve local laws, including city and/or county code and/or franchise agreements that are applicable to utility relocations within the project jurisdiction.

11.3 PROJECT DEVELOPMENT AND DELIVERY

Considering utility issues early-on and coordinating throughout project development will give all parties time to work out the details of avoidance, relocation, protection or upgrading as a project is being designed. The earlier the utilities are contacted to start the process, the more likely the utility coordination work will go smoothly, and the project schedule will be met.

11.3.1 Certified LPA Responsibilities

Generally, the LPA is responsible for performance of the following non-exhaustive utility coordination activities for certified LPA projects in compliance with the Oregon Utility Relocation Program on federal-aid projects:

- Assign a project utility coordinator (may also be the LPA's project manager).
- Identify the project footprint to be able to accurately and affirmatively identify affected utilities in the right of way.
- Determine utility conflicts and relocation needs (as early as possible).
- Provide required notifications to utilities in or around the project area.
- Make an initial determination of whether any utilities are reimbursable.
- Ensure a separate utility relocation (UR) phase is programmed in the STIP (if there may be reimbursable utilities).
- Determine utility relocation timelines.
- Enter into and administer any utility relocation agreements if applicable.
- Provide the utility with notice to proceed for any reimbursable work (only after ensuring FHWA authorization and ODOT notice to proceed with the applicable phase of work).
- Include appropriate utility information in the special provisions of the project construction specifications (typically 00150.50(f) and (g)).
- Co-certify with ODOT that all necessary utility coordination has been completed and/or utility relocation arrangements have been made (prior to final PS&E).
- Ensure project Buy America/Build America, Buy America requirements are also met with respect to utility relocation work.
- Administer the utility coordination provisions in construction contract and coordinate with the contractor and utilities on any delay claims that arise due to a utility's failure to relocate according to the notified relocation timelines.

11.3.2 Applicable Utility Relocation Guidance

The Oregon Utility Relocation Manual is the primary resource for the ODOT Utility Relocation Program. The manual details the utility relocation and reimbursement procedures and practices that a certified LPA must use on federal-aid projects.

The ODOT Utility Relocation Guide is a more technical resource that details the utility evaluation and relocation processes and staff roles and responsibilities for ODOT-delivered projects, including sample checklists, workflows, and forms. While not directly applicable to LPA projects, the guide may be a helpful resource for certified LPAs in developing or refining utility relocation process workflows.

11.3.3 Project Development /Engineering Guidelines

Refer to Section 2 (Project Development, General Guidelines, and Utilities Overview) of the Oregon Utility Relocation Manual for utility coordination information on the following:

- Subsurface Utility Engineering
- Scope and Survey
- Utility Relocation Budget Development
- Identifying Existing Utility Facilities
- Verification of Utility Facility Mapping
- Utility Report
- Project Design

11.3.4 Utility Coordination, Conflicts Evaluation, Notifications

Utility coordination occurs through the entire design phase and sometimes into construction. Throughout project design, official letters are sent to utility owners to notify them of an upcoming project. Through this notification process, potential conflicts are identified and discussed or ruled out.

Certified LPAs must follow the utility notification and plan review processes outlined in Section 3 (Utility Coordination) of the Oregon Utility Relocation Manual, including issuing project notification letters, conflict letters, time requirement letters and utility certifications.

Sample notification and conflict letters intended for certified LPA use are available on the ODOT Certification Guidance and Forms webpage. See Resources in section 11.8 below.

11.3.5 Relocation

Under the Oregon Utility Relocation Program, relocations of affected utilities are either non-reimbursable or reimbursable. If the utility is located on public right of way by permit or franchise agreement, the relocation would generally be non-reimbursable. The LPA's utility permit or franchise agreement should explicitly define these parameters. However, if the utility has a compensable property interest in its present location, it would typically be entitled to reimbursement.

Non-reimbursable utility relocations do not require a separate utility phase, and ODOT will not issue a separate notice to proceed to the LPA for this work. Refer to Section 3-3 in the Oregon Utility Relocation Manual for non-reimbursable utility relocation procedures.

11.3.6 Reimbursable Utility Relocation Agreements

Per 23 CFR 645.113(a), on federal-aid projects involving utility relocations, the LPA and the utility must agree in writing on their separate responsibilities for financing and accomplishing the relocation work. When federal reimbursement is requested, LPA is responsible for the development and execution of utility relocation agreements.

The form of agreement(s) may vary depending on the LPA and utility's requirements and type of work to be performed. At a minimum the items listed at 23 CFR 645.113 must be included in the agreement. The requirements of "Buy America" (23 CFR 635.410) and "Build America Buy America" (Infrastructure Investment and Jobs Act (IIJA), Pub. L. No. 117-58, includes the Build America, Buy America Act, Pub. L. No. 117-58, Sections 70901-70941) apply to all reimbursable utility work on the project. Such provisions and the requirement to submit certificate of material origin (CMO) forms must be included in the utility agreement.

After the LPA and utility owner execute the agreement, the LPA must issue a separate notice to proceed for each phase of authorized relocation work. However, note the ODOT and FHWA funding phase approvals needed in section 11.4.3 below, which must occur before the LPA issues notice to proceed to the utility.

Refer to Section 3.7 of the Oregon Utility Relocation Manual for additional information and requirements. Also refer to the Checklist for Utility Agreements for certified LPA on the Certification Guidance and Forms webpage. The checklist provides guidance on what the LPA is required to include in the agreement for the work to be eligible for federal reimbursement. See Resources in section 11.8 below.

11.4 REIMBURSEMENT ELIGIBILITY AND INVOICING

FHWA reimbursement will be governed by state law or regulation or the provisions of 23 CFR 645, Subpart A, whichever is more restrictive. When state law or regulation differs from the federal regulation, a determination shall be made by ODOT subject to the concurrence of FHWA as to which standards will govern, and the determination documented accordingly, for each relocation encountered. (See 23 CFR 645.103.)

11.4.1 FHWA Reimbursement Criteria

There are four eligibility criteria that are presented in 23 CFR 645.107. Federal funds may participate (at the federal pro rata share) in relocation costs necessitated by highway construction if any one of the four criteria are met:

- The utility has a property interest in its present location
- The state has some legal obligation or legislative authority to pay for relocation costs
- The utility is owned by a public agency (municipally-owned), occupies public right of way, and is not required by law or agreement to move at its own expense
- The utility relocation involves implementing safety corrective measures to reduce roadside hazards of utility facilities to highway users

11.4.2 ODOT Utility Reimbursement Guidance

Refer to Section 5 (Utility Invoicing and Auditing) and 5-1 (Reimbursement Eligibility) of the Oregon Utility Relocation Manual.

11.4.3 STIP Programming, Federal Authorization, and ODOT Notice to Proceed

For the work to be eligible for federal reimbursement, the LPA must ensure the costs for any utility-related work are programmed in the STIP under the appropriate phase of work, are covered by the supplemental project agreement, have FHWA authorization, and the LPA has received notice to proceed from the ODOT project contact for the applicable phase of work.

Reimbursable utility relocation work performed by a utility may need to be reimbursed under a separate UR phase programmed in the STIP. Thus, it is important for the LPA to confirm how relocation work performed by the utility will be reimbursed prior to agreeing to or authorizing such work. Also note, the project environmental approvals must be complete prior to obligation of a UR phase.

When a UR phase needs to be obligated, the LPA utility coordinator submits the reimbursement information form (RIF) (734-5321) and the cost estimate to the ODOT state utility liaison (copy the certified LPA project manager and ODOT project contact). The state utility liaison will initiate the obligation process with FHWA and ODOT Program and Funding Services, once FHWA authorization is approved, the ODOT project contact will issue a notice to proceed to the LPA. The LPA should allow at least four weeks for the obligation request to be processed by ODOT and FHWA.

11.4.4 Progress Billings

Reimbursement can only be made from a submitted invoice that is accompanied by sufficient support documentation showing actual costs spent. Only approved actual costs, additive rates, and overhead expenditures spent on the activity being reimbursed are eligible for reimbursement.

Utility-related project development and design work should be invoiced under the preliminary engineering phase of the project, and construction work invoiced under the construction phase or UR phase as applicable to the project. Only the eligible construction costs of a reimbursable utility should be invoiced and paid under an obligated UR phase: no LPA engineering nor ODOT oversight costs should be invoiced to the UR phase.

The progress billing requirements of Section C, Chapter 3 of this manual apply to all utility relocation costs for which the LPA seeks federal reimbursement. Additionally, when processing invoices received from a reimbursable utility, the LPA must also apply: (1) the Invoicing Requirements in subsection 5.2, and (2) the Recommending Payment procedures in subsection 5.4 of the Oregon Utility Relocation Manual, except the LPA's utility coordinator shall document and advance the recommendation of payment through the certified LPA's internal invoice review and payment process. When progress billings are submitted to ODOT for reimbursement, the LPA must clearly identify all reimbursable utility relocation costs as billable to UR phase.

All invoices, supporting documentation, and proof of payment, and approval actions are subject to review by ODOT and FHWA. If the LPA has any questions or concerns about the eligibility of a utility's work for reimbursement or the adequacy of the supporting documentation, the LPA is encouraged to seek review by the ODOT state utility liaison prior to payment of the invoice.

11.5 SPECIFICATIONS

In accordance with 23 CFR 635.309(b), when the LPA determines completing the utility relocation work before the start of highway construction is not feasible or practical, the project specifications must include the applicable special provisions with respect to utility coordination requirements for the construction contractor.

Each certified LPA's ODOT-approved General Conditions for Construction include standard utility coordination provisions in subsection 00150.50 Cooperation with Utilities, which need to be supplemented by project-specific special provisions identifying utilities in the project area, whether there are conflicts, and relocation timelines.

The ODOT Boilerplate Special Provisions provide an example of project-specific utility coordination provisions at 00150.50 (f) and (g). Additional utility coordination special provisions may be appropriate when recommended by the utility coordinator – 00180.40 (irrigation facility) and 00180.42 (group utility relocation scheduling meeting) are two examples.

Refer to Section 8 (Special Provision) of the Oregon Utility Relocation Manual for information.

11.6 UTILITY CERTIFICATION

11.6.1 Utility Coordination Certification Required for FHWA Construction Authorization

Per 23 CFR 635.307, Coordination, requires utility work to be coordinated with the physical construction to prevent unnecessary delay or cost for the physical construction. Per 23 CFR 635.309, Authorization, lists conditions for authorizing physical construction. In addition, 23 CFR 635.309(b) requires a statement that all utility work has been completed, or that all necessary arrangements have been made to complete the utility work during highway construction.

FHWA has a longstanding policy of disallowing participation in time extensions and delay claims associated with utility and railroad work or right of way clearances because of the requirements to assure proper coordination with these third parties prior to construction authorization.

11.6.2 ODOT Requirements for Utility Certification

To prepare for co-certification by the LPA and ODOT that all utility coordination requirements have been completed in accordance with 23 CFR 635.309(b), the following documents are required to be prepared and submitted to the ODOT state utility liaison (at least two weeks) prior to PS&E and as the documents are generated:

- Copies of all Project Notification Letters (when no conflicts are found)
- Copies of all Conflict Letters
- Copies of all Time Requirement Letters
- Utility Certification for Certified Local Public Agency Project form (734-5162) (signed by the LPA's utility coordinator)
- A draft set of project special provisions for subsection 00150.50 that includes the name of each utility within the project limits, the utility's contact information, the type of work, completion date and any special considerations

Required sample notification letters and the utility certification form for certified LPA use are available on the ODOT Certification Guidance and Forms webpage. See Resources in section 11.8 below.

The completed utility certification form, co-certified by the ODOT state utility liaison, must be submitted with the final PS&E package to ODOT for approval.

11.7 CONSTRUCTION

Certified LPAs are to follow the process described in their ODOT-approved General Conditions and Quality Program Plan for construction of their utility relocation projects. Generally, the LPA is responsible for coordinating with the construction contractor and utilities on previously unidentified conflicts and any delay claims that arise due to a utility's failure to relocate according to the notified relocation timelines. Refer to Section 9 (Construction) of the Oregon Utility Relocation Manual for guidance on the following:

- Preconstruction conference(s) including utilities
- Required communications
- Inspections
- Utility-caused delays
- Unanticipated conflicts
- Identification and reporting conflicts
- Reimbursable conflicts (triggers utility coordinator activities)
- Non-reimbursable conflicts (triggers utility coordinator activities)

11.8 RESOURCES

For situations not covered here, or for other related questions, contact the ODOT project contact or [ODOT State Utility Liaison](#).

Provider	Resource Title	Description	Link
eCFR	23 CFR Part 645 Utilities	FHWA, Code of Federal Regulations	https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-645?toc=1
eCFR	23 CFR Part 646-Railroads	FHWA, Code of Federal Regulations	https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-646?toc=1
FHWA	Utilities Program	Webpage (access principal documents, subsurface utility engineering (SUE) standards, publications, trainings, etc.)	https://www.fhwa.dot.gov/utilities/
ODOT	Boilerplate Special Provisions	Webpage (access example of boilerplate special provisions for 00150.50)	https://www.oregon.gov/odot/Business/Pages/Special-Provisions.aspx
ODOT	Certification Guidance and Forms (under Utilities and Railroad - Guidance, Templates & Samples)	Webpage (access utility manual, guide, sample notification letters, utility agreement checklist, and utility certification form 734-5162, etc.)	https://www.oregon.gov/odot/LocalGov/Pages/Certification-Guidance-Forms.aspx
ODOT	Oregon Utility Relocation Manual	Manual	https://www.oregon.gov/odot/ROW/Docs_Uilities/Utility-Relocation-Manual.pdf
ODOT	Utility Certification for Certified LPA	Form 734-5162	https://www.oregon.gov/odot/Forms/20DOT/7345162.docx
ODOT	Utility Relocation Program	Webpage	https://www.oregon.gov/odot/ROW/Pages/Utilities.aspx