

## Chapter 14 Utility Relocation

### CONTENTS

SECTION/SUBJECT	PAGE
14.1 Introduction .....	1
Definitions .....	1
Utility Relocation Procedures .....	2
14.2 Federal Reimbursement .....	5
Anticipated Utility Relocation .....	6
Unanticipated Utility Relocation .....	9
Special Authorizations .....	9
14.3 High and Low-Risk Underground Facilities .....	10
14.4 Audit Requirements .....	10
14.5 References .....	11

### EXHIBITS

- Exhibit 14-A Local Agency Submittal Requirements for Federal Participation in Utility Relocations
- Exhibit 14-B Local Agency Utility Agreement Provisions for Federal Participation
- Exhibit 14-C FHWA Specific Authorization/Approval of Utility Agreement
- Exhibit 14-D Notice to Owner
- Exhibit 14-E Report of Investigation
- Exhibit 14-F Utility Agreements
- Exhibit 14-G Utility Agreement Clauses
- Exhibit 14-H Stages of R/W Utilities through Stages of Project Development
- Exhibit 14-I Local Agency/Utility Owner Special Agreement

\* Unless stated otherwise, all references to Exhibits in this chapter refer to the Local Assistance Procedures Manual (LAPM) Exhibits located at: <http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>.

## Chapter 14 Utility Relocation

### 14.1 INTRODUCTION

The procedures in this chapter have been designed to comply with the Federal Highway Administration's (FHWA) regulations and requirements under Code of the Federal Regulations (CFR) governing utility relocations. The purpose of this chapter is to provide guidelines to the local agency when performing R/W utility relocations on projects outside of the State Highway System (SHS) and financed with federal funds.

Utility relocation procedures in this chapter only apply when relocating public utility facilities that serve the general public. Service connections and private utilities are handled through R/W Acquisition under Cost to Cure (23 CFR710.203), and Uniform Act (49 CFR 24: Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-assisted Programs).

Forms and Exhibits included in this chapter are to provide the local agency with working samples. The language in these forms has been reviewed and approved by Caltrans Legal Department. The local agency has the option to modify the format of these forms or to use its own forms. However, the local agency's own forms have to satisfy all required elements under 23 CFR 645.113, and the use of non-approved forms and clauses will require review and approval by Caltrans Legal Department on a case-by-case basis.

**Any Federal-aid project that involves any R/W utility relocations shall be accomplished in accordance with the Utility Procedures described in the Caltrans Right of Way Manual, Chapter 13.**

**These manuals are available online at the following URLs:**

**RIGHT OF WAY MANUAL:**

<http://www.dot.ca.gov/hq/row/rowman/manual/>

**ENCROACHMENT PERMITS MANUAL:**

[http://www.dot.ca.gov/hq/traffops/developserv/permits/encroachment\\_permits\\_manual/](http://www.dot.ca.gov/hq/traffops/developserv/permits/encroachment_permits_manual/)

### Definitions

**Public Utility Facilities** – Publicly and privately owned utility facilities, which serve the public.

**Impacted Utility Facility** – A public utility facility has been identified as in conflict with the proposed activity of a transportation project.

**Utility Relocation** – Any adjustment to the impacted utility facility required by the proposed transportation project.

**Owner** – Utility company, municipal utility department, who owns the impacted facility.

**Utility Coordinator** – Local agency's person who acts as a liaison with owners.

**District R/W Utility Coordinator** – District Right of Way Utility Coordinator assigned to this project.

**Conflict Resolution Plan (Relocation Plan)** – Plan from owner to resolve the conflict with activity of a transportation project. This plan should clearly define scope of work and the duration of construction.

**Claim Letter** – Owner’s liability determination along with supporting documentations. It is the owner’s responsibility to support their claim.

**Unanticipated Utility Relocation** – Unforeseen, or discovery utility relocation as a result of accident or incomplete utility verification/conflict identification.

### **Utility Relocation Procedures**

The following steps have been modeled after the Caltrans Right of Way Utility Relocation procedures. These activities are performed in different stages of project development (See Exhibit 14-H, “*Stages of R/W Utilities through Stages of Project Development*”) to ensure proper and complete utility clearance prior to R/W Certification.

This procedure is designed to identify utility conflicts early in the design stage. It provides the Project Engineer with an opportunity to evaluate the proposed plan and make adjustments to avoid or lessen the impact on existing utility facilities. Thus, it reduces utility relocation cost, saves time, and prevents discovery conflicts during construction.

**NOTE:** *It is strongly recommended that each local agency adopt and follow these procedures:*

#### **Utility Verification**

- In the early phase of the Design process, the Utility Coordinator sends a proposed project plan to owner and request for owners’ facility map(s) of any facility located within project limits.
- Utility Coordinator forwards owners’ map(s) to the Project Engineer. The Project Engineer plots all existing facilities onto UTILITY SHEET (Refer to Caltrans *Design’s Standard Plan* or *American Society of Civil Engineers [ASCE], Standard Guidelines for the Collection and Depiction of Existing Subsurface Utility Data*).

#### **Identifying Conflict**

- Project Engineer identifies all impacted utility facilities within project limits.
- Provide conflict maps for each impacted facility to the Utility Coordinator.

#### **Requesting Conflict Resolution Plan (This step would be done only after National Environmental Policy Act approval.)**

- Utility Coordinator contacts and informs the owner(s) of the conflict(s), requests conflict resolution plan(s), detail cost estimate(s), and owner’s liability determination.

- When the above items are received from owner(s), the Utility Coordinator will forward the plan(s) to the Project Engineer for approval.

### **Liability Determination**

After the conflict resolution plan(s) is approved by the Project Engineer, a liability determination must be made to determine whether the local agency is legally liable for any portion or all of the relocation cost(s). (See Chapter 13, "Utility Relocation," Section 13.04.00 of the Caltrans *Right of Way Manual* for guidance.)

- Liability can be determined by property rights, franchise rights/agreements, State and local statutes/ordinances, permits, or finding by the local agency's counsel.
- Complete "Report of Investigation" (ROI) (See Exhibit 14-E). The ROI is a document that determines the local agency's liability for relocation costs.
- The cost of relocating such facilities is eligible for federal participation:
  - a) Only when the relocation is made necessary by the proposed construction.
  - b) Only when the local agency is legally liable to pay for any portion of the relocation.

The Utility Coordinator shall send a proposed copy of the ROI, Notice to Owner (NTO), and Utility Agreement to District Local Assistance Engineer (DLAE) and District Right of Way Utility Coordinator for review and approval, prior to sending out to owner.

**NOTE:** For State highway projects, the local agency must ensure that all utility relocations and encroachments are accomplished in accordance with Caltrans policies, procedures, standards, practices, and statutes. In addition, any existing agreements or contracts between the Department of Transportation (Caltrans) and a utility owner will also obligate the local agency in such circumstances.

### **Notifying Owner**

- After the conflict resolution plan is approved and liability is determined, the Utility Coordinator shall seek concurrence from the owner in case the liability determination is different from owner's claim letter.
- Once the owner concurs with the liability (this is referred to as "Meeting of the Minds"), the Utility Coordinator will issue a written NTO (See Exhibit 14-D, "Notice to Owner") to the owner. The local agency must make all necessary arrangements with owners of the affected utility facilities for their relocations.
- The NTO will clearly define the impacted facility, owner's conflict resolution plan number and date, estimated completion date, and liabilities.
- The local agency shall provide all other necessary permit(s) related to the relocation to the owner prior to the commencing of work. **Only when any ordered work is located within the SHS, a Caltrans Encroachment Permit**

**is required.** The Utility Coordinator can request the permit through the District Right of Way Utility Coordinator.

- If the local agency is liable for any portion of the relocation, a Utility Agreement (See Exhibit 14-F, “Utility Agreements” and Exhibit 14-G, “Utility Agreement Clauses”) will also be prepared and sent to the owner along with the NTO.
- The local agency’s liability portion and authority to pay for the relocation must be clearly cited in its Utility Agreement and in the “liability” section of the NTO.

**NOTE:** For freeway projects, State policy and procedure take precedence for cost liability determination even where relocation work to support or accommodate the project may take place outside of the state’s R/W.

### **Right of Way Utility Clearance Memo**

- Once all utility conflicts have been resolved, the Project Engineer and the Utility Coordinator will issue a Utility Clearance Memo that clearly lists all conflicts, locations, the NTO numbers and issued date, liability, and estimated completion date.
- The information on this memo will be incorporated into the R/W Certification.

### **Managing the Physical Relocation**

- Prior to any physical relocation work being commenced, the Project Engineer and Utility Coordinator shall make sure all agreements have been executed, Specific Authorization/Approval of Utility Agreement has been approved (if federal funding is sought), and funding has been secured.
- The Project Engineer and Utility Coordinator shall monitor the progress and verify that the relocation has been carried out according to the conflict resolution plan and schedule.

### **Managing Relocation Invoices**

- The Utility Coordinator will process utility relocation invoices for reimbursement in accordance to the procedures described in Chapter 5, “Invoicing,” of the *Local Assistance Procedures Manual* (LAPM).
- The Project Engineer and Utility Coordinator shall make sure the owner provides credit when applicable, for salvage value, betterment, and all supporting documents are attached to the invoice.

### **Utility Records Keeping**

The Utility Coordinator will create a Utility File for each impacted facility. These records will be retained by the local agency as required by FHWA regulations.

Section 23 CFR 645.119(c)(1)(iv), Alternate Procedure approval, requires documentation of actions taken in compliance with State and federal policies. All engineering decisions affecting the utility relocation from the beginning of planning to the completion of the relocation and billing, should be documented in the local agency's Utility File diary.

It is essential that documented field verification of the progress and completion of all reimbursable utility work be provided by the local agency. This required documentation is met by the use of detailed inspector's diaries or their equivalent.

**If the local agency wishes not to request federal participation for the utility relocation work on projects off the SHS, even though they will be requesting federal participation in other R/W activities and/or the construction phases of the project, the local agency may use its own utility relocation policy and procedure as long as they comply with FHWA's regulations and requirements under 23 CFR 645, and other related federal regulations. However, the local agency must provide the proposed utility relocation plan to the DLAE for forwarding to the District Right of Way Utility Coordinator for review so that proper R/W certification on utility relocation matters may be given prior to construction.**

## 14.2 FEDERAL REIMBURSEMENT

Federal regulations governing utility relocation are described extensively in 23 CFR, Part 645. Local agencies should be familiar with these regulations. The following procedures are based on the above-mentioned and other federal regulations, which must be followed when the local agency requests federal participation in a utility relocation:

Under the current federal transportation funding act and the FHWA Alternate Procedure process (23 CFR 645.119), E-76 utility relocation work has been delegated to Caltrans on "Delegated" projects for full review oversight requirements by FHWA (See Chapter 2, "Roles and Responsibilities," of the LAPM). Caltrans also has approval authority for "Specific Authorization" and "Approval of the Utility Agreement."

The Utility Coordinator will send all submissions to the District Right of Way Utility Coordinator for review and approval.

The following items must be included in the request:

1. Copy of Notice to Owner
2. Fully executed Utility Agreement
3. Approved owner's conflict resolution plan showing the necessary relocations
4. The completed Report of Investigation and any supporting documents
5. An itemized estimate of the local agency's relocation costs

Such review typically takes three weeks. Submission must be sent in advance of the proposed Right of Way Certification date. The DLAE is not responsible for delays due to an incomplete or erroneous relocation package.

**NOTE:** *If federal funds are not participating in utility relocation then items 1 through 5 above still apply. However, neither the Specific Authorization form (Exhibit 14-C) nor an E-76 is needed for said utility relocation, since the local agency is not seeking federal reimbursement.*

## Anticipated Utility Relocation

To apply and qualify for federal reimbursement, the following steps must be followed:

### **Authorization to Proceed (E-76)**

Prior to the start of any physical utility relocation work, the local agency must complete the “Request for Authorization to Proceed with Utility Relocation” form (Exhibit 3-C) and “Request for Authorization Data Sheet” (Exhibit 3-E) where all anticipated utility facilities requiring relocation will be listed with an estimated cost to relocate each facility.

On page 2 of Exhibit 3-C, under utility relocation, the “Alternate Procedure” box must be checked. The completed E-76 must request the use of the Alternate Procedure (23 CFR 645.119(e)(2)) and must include a list of every utility facility anticipated to be relocated along with the utility company’s name and best available estimate of the total local agency costs involved for each facility.

The E-76 request must be submitted to the DLAE, who will forward the request to the District Right of Way Utility Coordinator for review and comment. The E-76 request form will then be processed by the DLAE.

### **Specific Authorization to Relocate Utilities**

In addition to Exhibits 3-C and 3-E, and prior to commencement of any physical relocation, the local agency must also request and receive a “*Specific Authorization to Relocate Utilities*” form (Exhibit 14-C) for each utility relocation. Form 14-C must also be attached to the R/W certification whether the utility relocation happens before or during construction or if done by the utility owner/utility owner’s contractor or the local agency’s highway contractor. Either the utility owner or the construction contractor may perform all or portions of the utility facility relocation for which Specific Authorization approval is requested.

**NOTE:** *Exhibit 14-C is a dual form, containing both the “FHWA Specific Authorization to Relocate Utilities” and “FHWA Approval of Utility Agreement.”*

#### **i) Work by Utility Owner or Owner’s Contractor**

If the relocations are to be performed by the utility owner and federal participation is requested, the *Field Review Form* (See Exhibit 7-B) should include the item with sufficient detail to allow programming of the work in the R/W phase for approval by FHWA under a Utility Agreement.

**NOTE:** *Prevailing Wages are required for any work performed by Owner’s contractor (Labor Code Section 1720).*

#### **ii) Work by Local Agency’s Highway Contractor**

If the relocations are to be performed during the construction phase by the local agency’s highway contractor, the work should be included in the Plans, Specifications and Estimate. The local agency must also add the following statement to the “Remarks” section of Exhibit 14-C:

“The proposed adjustment of utility facilities to be performed by the local agency’s highway contractor is approved. Payment for the utility adjustment will be vouchered through the construction phase. Therefore, the authorization date for this work will be the date that the FHWA approves the construction project.”

The local agency must attach a copy of the approved Specific Authorization to the R/W Certification submittal. Utility relocation costs may be included in the highway contract as a bid item, as supplemental work, or as a contract change order, and financed from funds in the construction work authorization.

In the event a major change in scope of work and/or relocation cost is found to be necessary, a revised Specific Authorization to Relocate Utilities must be immediately submitted for authorization prior to the new work being commenced.

Any minor change that does not include changes in scope of the work, addition or deletion of the proposed conflict resolution plan, may be submitted in a letter to Caltrans describing the change including revised maps and estimate, and requesting that the change be included under the original authorization.

### **Approval of Utility Agreement**

The local agency must submit each executed Utility Agreement and a request for FHWA approval of the Utility Agreement to the DLAE for processing. This approval authority has been delegated to the Caltrans Division of Right of Way and Land Surveys by FHWA. Such review and approval typically takes three weeks if the local agency used the pre-approved utility clause from Exhibit 14-G. For local agency owned utilities, the appropriate agreement and clauses for the local agency to use are found in Exhibit 14-I.

Upon approval, Caltrans will provide the local agency with the FHWA Approval of Utility Agreement form (Exhibit 14-C) for each Utility Agreement. Any exceptions to the approval will be noted in writing on the “Remarks” section of the form, and the local agency will be requested to concur with the exceptions or to prepare a rebuttal. It is anticipated that an agreement will be reached on all such items prior to any physical work commencement to avoid the loss of eligibility.

It is strongly recommended that the standard Utility Agreement Clauses found in Exhibit 14-G be used in every circumstance. Use of nonstandard clauses requires Caltrans Headquarters Legal review and recommendation before the Utility Agreement can be executed. When applicable, the following items should be shown in the itemized estimate(s) of the relocation costs.

#### **i) Credits**

- FHWA Regulations (23 CFR 645.117(h)) require salvage credit to any highway or freeway project for the value of facilities removed as part of the relocation for future use or resale.

- FHWA Regulations (23 CFR 645.117(h)) also require betterment credit for the cost of any betterment to the facility being replaced or adjusted.

**NOTE:** For projects on the State Highway System, State law (Section 705 of the California Streets and Highways Code) requires that utility owners itemize, estimate, and invoice for utility relocation to show a credit for the used life of an existing utility facility being replaced in connection with improvement to a freeway. Where these credits are received by the local agency, they must be properly listed on the invoice and deducted from the total federal-aid reimbursement amount.

## ii) Removal Only

Where the entire utility transaction consists of removal without replacement, consideration should be given to handling it as an R/W clearance item and invoicing for federal reimbursement in that fashion. If processed as an R/W clearance activity, the following conditions apply:

- The utility owner must have a property right in the existing location, which is compensable in eminent domain.
- The local agency must enter into an agreement with the owner providing for the removal of the facility. In support of the invoice for federal reimbursement, the file must contain information to show that the cost of removal by the utility owner was more cost-effective than the local agency buying the facilities and having them removed by some other method.

Where legitimate “removal without replacement” charges are included in a utility owner’s invoice and the local agency has not arranged to receive a credit for salvage (See above), the charges may be invoiced for federal reimbursement only when they are reduced by the amount of salvage attributable to the subject facilities, as shown by the utility owner’s records available for audit as noted in the Utility Agreement (48 CFR 31).

## iii) Using Right of Way Clearance Contract

Where utility relocation work is performed by the local agency under an R/W clearance contract, a conformed copy of the executed contract must be forwarded to the DLAE before submitting an invoice for federal reimbursement.

## iv) Using Consultants

When a local agency or utility owner employs a consulting engineer to perform engineering services in connection with a specific utility relocation, and federal participation is involved, the procedures in Chapter 10, “Consultant Selection,” of the LAPM shall apply. The consultant agreement must satisfy the criteria specified in Chapter 13, Section 14 of the Caltrans *Right of Way Manual*, including a completed pre-award evaluation, if applicable. These steps must be performed by the local agency early in the process to avoid loss of eligibility.

**Non-reimbursable**

FHWA regulations prohibit federal reimbursement for costs of interest during construction or interest on funds borrowed by the owner for performing the relocation.

**Unanticipated Utility Relocation**

After the normal period to apply for Specific Authorization to Relocate Utilities has expired and an unanticipated utility relocation is encountered, the Utility Coordinator must immediately notify the DLAE and request a Special Authorization to Relocate Utilities. The approved environmental documents may also need to be re-evaluated depending on the scope of the utility relocation. The Special Authorization to Relocate Utilities is reserved for those cases where required work could not be identified in time to secure normal authorization, or when the contractor's operations will be delayed. The local agency must provide a statement with full explanation of the special circumstances for the request. Requests for Special Authorization to Relocate Utilities must be based on substantial reasons.

Special Authorization to Relocate Utilities must be upgraded by the local agency to full Specific Authorization status before the local agency submits an invoice for reimbursement.

**Special Authorizations**

There are two types of Special Authorization to Relocate Utilities: 1) Written and 2) Verbal. Both written and verbal Special Authorization to Relocate Utilities is "Preliminary Authorization." The request will be reviewed and approved on a case-by-case basis. No utility work may begin before Special Authorization to Relocate Utilities is obtained, or risk the eligibility for reimbursement.

The submittal for either written or verbal Special Authorization to Relocate Utilities request must contain:

- Reason for special "Preliminary Authorization."
- Name of the owner, type of facility, as they are listed in the E-76.
- Best available liability determination, including documentation such as an ROI.
- Best available itemized cost and estimate.
- Breakdown of time, material, and equipment costs.
- Relocation plan showing the R/W, access control, existing and proposed utility facility.
- The name of the entity who will perform the work. (If the utility owner's contractor will be performing the work, explain how the contractor was selected.)

**Written Authorization**

If a written Special Authorization to Relocate Utilities is obtained, a complete request package (Exhibit 14-A, "*Submittal Requirements for Federal Participation in Utility Relocations*," in this chapter) must be submitted to the DLAE within 30 days. The DLAE will forward the request package to the District Right of Way Utility Coordinator for review and approval.

The approval should contain a statement that the District Right of Way Utility Coordinator has reviewed the relocation plans and is familiar with the circumstances requiring Special Authorization to Relocate Utilities.

### **Verbal Authorization**

Verbal Special Authorization to Proceed may be requested, if during construction a previously unknown utility conflict is discovered that will delay the contractor. Verbal Special Authorization to Proceed may be obtained from the District Right of Way Utility Coordinator (via the DLAE) by telephone or fax. The District Right of Way Utility Coordinator will confirm each verbal authorization via letter to the local agency's Project Engineer. Such confirmation letters shall be issued within five working days or sooner, depending on the complexity of the relocation and the circumstances, which necessitate it. A copy of each confirmation letter will be sent to the DLAE.

If Verbal Special Authorization to Proceed is obtained, the local agency must furnish a written submittal to the DLAE confirming the information and containing a fully documented relocation plan. This must be accomplished within 30 days. An appropriate diary of decisions and discussions shall be maintained.

## **14.3 HIGH AND LOW-RISK UNDERGROUND FACILITIES**

The Caltrans Policy on High and Low Risk Underground Facilities within Highway R/W requires all High Risk Utility Facilities located within project limits be positively identified and shown on project plan.

For Federally Participating projects off the State highway system, compliance with the state's policy on High and Low Risk Underground Facilities is not mandatory. It is highly recommended that this policy be followed to insure the maximum safety during construction of the project.

**NOTE:** *For projects on the SHS: All local agency projects on the SHS shall conform to the state's "Policy on High and Low Risk Underground Facilities within Highway Rights of Way." See Caltrans Project Development Procedures Manual (PDPM), Appendix LL, Utilities. A copy of the policy may be obtained from Caltrans Division of Design and is also available online at: [http://www.dot.ca.gov/hq/oppd/pdpm/apdx\\_htm/apdx\\_ll/apdx\\_ll.htm](http://www.dot.ca.gov/hq/oppd/pdpm/apdx_htm/apdx_ll/apdx_ll.htm)*

*When performing R/W Utility Relocation on a State highway project, local agency's Project Engineer must complete the "Project Engineer's Certification of Utility Facilities" and submit it as an attachment to the project certification, as required by the policy.*

## **14.4 AUDIT REQUIREMENTS**

The Utility Coordinator is responsible for submitting a request for any applicable audits as described in Section 5.8 of Chapter 5 of the LAPM.

**NOTE:** *For projects on the SHS, refer to Chapter 13, of the Caltrans Right of Way Manual, and discuss with the District Right of Way Utility Coordinator.*

## **14.5 REFERENCES**

- 23 Code of Federal Regulations (CFR) 645
- 48 Code of Federal Regulations (CFR), Chapter 1, Part 31
- California Streets and Highways Code, Sections 702, 703, 705, and 706
- Caltrans Encroachment Permits Manual
- Caltrans Project Development Procedures Manual, Appendix LL, Utilities
- Caltrans Right of Way Manual (ROW Manual)
- Code of Civil Procedure, Section 1268.350
- Government Code, Section 53630
- Water Code Sections 7034 and 7035
- Moving Ahead for Progress in the 21st Century (MAP-21)