

DERIVATION OF ODOT'S UTILITY RELOCATION AND REIMBURSEMENT POLICY

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

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

ODOT bases its reimbursement policy on:

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

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

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

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

Oregon Constitution

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

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

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

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

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

The enabling legislation that evolved from the Constitution, is ORS 281.060. **ORS 281.060 Relocation Duties of Public Entity; Use of Certain Federal Relocation Assistance Programs; Policies**, states in part::

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

In acquiring the real property, **be guided by** the land acquisition policies in section 301 of the 1970 federal Act as amended by the Uniform Relocation Act amendments of 1987 and the provisions of section 302 of the 1970 federal Act."

Exhibit B contains the entire statute.

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

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

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

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

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

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

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

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

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

Summary

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

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

Exhibit “A”

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

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

Exhibit “B”

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

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

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

Exhibit “C”

Code of Federal Regulations

TITLE 49 --TRANSPORTATION

Subtitle A --Office of the Secretary of Transportation

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

Subpart D--Payments for Moving and Related Expenses

Sec. 24.306 Discretionary Utility Relocation Payments.

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

(1) The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or right-of-way; and

(2) The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement; and

(3) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the displacing agency; and

(4) There is no Federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the displacing agency's program or project; and

(5) State or local government reimbursement for utility moving costs or payment of such costs by the displacing agency is in accordance with State law.

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

for use of the property, or has voluntarily agreed to be responsible for such expenses.

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

Section 24.306 Discretionary Utility Relocation Payments

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