



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: **INFORMATION**: Utility Accommodation on Federal Lands Date: December 8, 2021

From: Brian J. Fouch, P.E. /s/
Director, Office of Preconstruction, Construction,
and Pavements In Reply Refer to: HICP

Nicholas Thornton /s/
Director, Office of Real Estate Services

To: Directors of Field Services
Division Administrators
Federal Lands Highway Division Engineers

Several Federal Land Management Agencies (FLMA) have engaged with Federal Highway Administration's Office of Infrastructure regarding coordination by State Departments of Transportation (SDOTs). In particular, we have received questions about situations where the SDOT contracts or authorizes a utility or contractor to install or otherwise locate assets that do not serve a transportation purpose within the highway right-of-way on land under the jurisdiction of an FLMA. This memorandum discusses the requirements that apply in such situations.

Note that 23 CFR 645.205(d) states:

“When utilities cross or otherwise occupy the right-of-way of a direct Federal or Federal-aid highway project on Federal lands, and when the right-of-way grant is for highway purposes only, the utility must also obtain and comply with the terms of a right-of-way or other occupancy permit for the Federal agency having jurisdiction over the underlying land.”

Authorizing or directing a utility company or a contractor to do otherwise (e.g. not consulting with the relevant Federal agency) could violate the terms of the SDOT's easement. When a SDOT is granted a highway easement deed by FHWA in order to operate and maintain a highway on federally-owned land under the process outlined in 23 CFR 710.601, that deed authorizes the SDOT to use the land for highway purposes only. See 23 U.S.C. 317(a) and 23 CFR 710.601(b). Any proposed non-highway use requires coordination with the relevant FLMA to ensure that the non-highway use is permitted.

Please share this information with the SDOT in your State. If you have questions, please contact Julie Johnston, Utilities, Railroad & VE Program Manager at Julie.Johnston@dot.gov.

Except for any statutes and regulations cited, the contents of this memorandum do not have the force and effect of law and are not meant to bind States or the public in any way. This memorandum is intended only to provide information regarding existing requirements under the law or agency policies.