

Memorandum

Subject: **INFORMATION: America's Great Corridors
of Commerce Guidance on the Use of Highway
Right-of-Way**

Date: September 1, 2026

From: Emily Biondi, Associate Administrator *Emily Biondi* In Reply Refer to: HEP-1
Office of Planning, Environment, and Realty HIF-1
Brian Hogge, Acting Associate Administrator
Office of Infrastructure *BHogge*

To: Directors of Field Services
Division Administrators
Division Directors
Division Realty Specialists and Utility Program
Managers

Purpose

The "America's Great Corridors of Commerce" initiative of the U.S. Department of Transportation (DOT) aims to maximize the utility and potential of the Nation's highway corridors through development of new pathways of commerce within the United States that combine major highway, electrical transmission, and communications infrastructure to give the Nation a transformative foundation for 21st-century growth.

This guidance memorandum supports the initiative by providing clarification to Federal Highway Administration (FHWA) Division Offices working with State departments of transportation (State DOTs) on certain uses of the highway right-of-way (ROW) that can be leveraged by State DOTs to address pressing public needs relating to communications access and energy transmission. This guidance memorandum supports the consistent utilization of the ROW for electrical transmission, water transmission, and broadband projects. State DOTs are encouraged to collaborate and pursue projects that would benefit from a multi-State approach. FHWA Division Offices should share this memorandum with State DOTs for their consideration. Note, this guidance memorandum replaces previous FHWA guidance issued on April 27, 2021, titled, "State DOTs Leveraging Alternative Uses of the Highway Right-of-Way Guidance," which was removed from FHWA's website per Executive Orders 14151, *Ending Radical and Wasteful Government DEI Programs and Preferencing*, and 14154, *Unleashing American Energy*, and DOT Order 2100.7, *Ensuring Reliance Upon Sound Economic Analysis in Department of Transportation Policies, Programs, and Activities*.

Alternative uses of the highway ROW can enable better utilization of the full value and productivity of the existing asset while also reducing or eliminating ongoing maintenance expenses for State DOTs. For example, State DOTs may create new revenue opportunities through participation in public-private partnerships to develop projects and negotiate agreements that include use of the highway ROW and produce land lease or land license payments that reduce the States' energy costs, both actual and over the life cycle of the energy project.

Such electrical transmission, water transmission, and broadband projects could:

- promote energy security by fostering generation needed for affordability and reliability; in particular, linear bulk electric transmission projects, whether high voltage alternating current (HVAC) or high voltage direct current (HVDC);
- foster local job markets that enhance the Nation's energy and broadband industries;
- create potential revenue for State DOTs to develop transportation projects and negotiate agreements that include land lease or land license payments; and
- reduce or eliminate ongoing maintenance expenses for State DOTs.

Coordination with State Departments of Transportation

FHWA Division Offices should collaborate with State DOTs in reviewing utility accommodation policies (UAPs) under subpart B of part 645 of title 23, Code of Federal Regulations (CFR). FHWA Division Offices should focus particularly on consideration of ROW and utility accommodation interests as part of the transportation planning process.

In addition, FHWA Division Offices should share with State DOTs practices that further broadband deployment initiatives, such as resource sharing. Best practices include minimizing repeated excavation of the roadway, coordinating with broadband utilities during highway construction, and integrating trenchless technologies into construction practices, as appropriate.

Energy Generation and Transmission, Water Transmission, and Broadband Projects

There are two methods for accommodating electrical transmission, water transmission, and broadband projects in the ROW of a Federal-aid highway:

1. Accommodation as a utility under 23 CFR part 645; or
2. Approval as an alternative use of the highway ROW under 23 CFR part 710.

FHWA Division Offices should encourage State DOTs to consider addressing these projects through accommodation as a utility to the extent practicable and consistent with State law.

In addition to the Federal regulations referenced below, these projects also must comply with all applicable title 23 requirements.

Accommodation as a Utility

As stated in 23 CFR 645.205, it is in the public interest to accommodate utility facilities on the highway ROW of a Federal-aid or direct Federal highway project when such use and occupancy

of the highway ROW does not adversely affect the highway or traffic safety, or otherwise impair the highway or its aesthetic quality and does not conflict with the provisions of Federal, State, or local laws or regulations.

The Federal definition of a utility facility in 23 CFR 645.207 is broad and intended to cover the extensive array of uses that are defined by the States. State laws and regulations may be narrower in scope than the Federal definition. In determining whether a proposed installation is a utility, the most important consideration is how the State DOT views it under its own State laws and regulations (23 CFR 645.209(m)).

Federal regulations provide each State DOT with flexibility regarding utility accommodation, and FHWA must give programmatic approval of the UAP. However, if a proposed utility facility is not consistent with the approved UAP, the State DOT may request an exception in accordance with 23 CFR part 645, subpart B.

State DOTs are not required to charge fair market rent or other fees for use of the ROW if accommodating the installation as a utility, and fees may be set at the discretion of the State. State DOTs are encouraged, but not required, to allocate fees for transportation uses, purposes, and services.

The State DOT's UAP outlines the procedures, criteria, and standards to evaluate and to approve applications for utility facilities within the highway ROW. Subsection 645.211(c)(3) of title 23, CFR, requires specifications for and methods of utility installation, giving States the flexibility to incorporate a diverse range of technologies for utility construction. Each State DOT must submit a UAP in accordance with 23 CFR 645.211 and 645.215, addressing how the State DOT will consider applications for utility accommodation within highway ROW. State DOTs may accommodate utility facilities in the Interstate or non-Interstate highway ROW in accordance with 23 CFR part 645, subpart B.

If a State does not view a particular use as a utility under State laws and regulations, these installations may also be approved in the highway ROW as an alternative use of ROW under 23 CFR part 710.

Alternative Use of the ROW

As a separate path from accommodation as "utilities," FHWA may approve alternative uses of the highway ROW if it is determined that such occupancy, use, or reservation is in the public interest and will not impair the highway or interfere with the free and safe flow of traffic thereon (23 CFR 1.23(c)).

This memorandum establishes that electrical transmission, water transmission, and broadband projects are acceptable alternative uses of the Interstate or non-Interstate highway ROW and are in the public interest if they comply with 23 U.S.C. 111 and Federal property management regulations at 23 CFR 1.23, 23 CFR part 710.

Fair Market Value (FMV) Exceptions

Alternative uses of the highway ROW, meaning any non-highway uses, are subject to 23 U.S.C. 156 requirements to charge FMV for the lease or disposal of highway ROW if the property was acquired with Federal-aid highway funding. FHWA can approve an exception for a social, environmental, or economic purpose (23 U.S.C. 156(b) and 23 CFR 710.403(e)).

This memorandum establishes that electrical transmission, water transmission, and broadband projects located on Interstate or non-Interstate highway ROW qualify for an exception to the FMV requirement under 23 U.S.C. 156(b). However, State DOTs retain full discretion on whether to seek such a waiver, and this memorandum does not impact their ability to charge FMV for the use of DOT-owned ROW.

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