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6.01 RIGHT-OF-WAY INVOLVEMENT

CDOT has the responsibility for the acquisition of right of way on all federal and state projects. At times, permanent or temporary easements are necessary to accommodate certain aspects of design and construction. The easements are acquired at the time the property necessary for the project is acquired.

It is important that the proper width of right of way is available for each project prior to construction. The width depends on the cross-section elements of the highway, topography, land use, environmental constraints, structures and ultimate development of the area.

It is important that the right of way acquired be sufficient for construction and needs such as clear vehicle recovery areas (clear zone), widening when future traffic volumes warrant it, and enhancements. All permanent features should be constructed within right-of-way or permanent easements; temporary easements should be restored to their original condition after construction or contain only improvements such as driveways or ditches that are used exclusively by the property owner.

If at any time there are changes in the plans that affect the right-of-way, it is the Resident Engineer's responsibility to notify the Right-of-Way Manager. Changes are not encouraged, as they might adversely affect and delay the right-of-way clearance.

- I. The Resident Engineer is responsible for:
 - A. Identifying preliminary survey and right of way needs at the scoping meeting.
 - B. Submitting a survey request to the Region Survey Coordinator.
 - C. Furnishing comprehensive design information such as embankment toes, structure limits and road approach design right-of-way requirements to the Right-of-Way Manager as soon as possible after the Field Inspection Review so that new right-of-way and easement limits can be determined and right-of-way plans and descriptions prepared.

- II. Region right-of-way clearance can involve the following:
 - A. Right-of-way involvement
 - 1. Design Scoping Review, identify survey/right-of-way needs.
 - 2. If right of way or easements are not required, proceed with right-of-way clearance.
 - 3. Determine survey activities required, such as boundary, control or topographic surveys.
 - 4. Investigate existing right of way and adjacent property ownership.
 - 5. Identify and define proposed right-of-way lines, parcels and easements to be acquired; prepare and authorize plans.
 - 6. Start right-of-way acquisition process.

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- B. Access control
 - 1. Determine if access control is required, and, if so, where.
 - 2. Use existing right-of-way plans and descriptions, field inspection.
 - 3. Coordinate with Region Access Coordinator.
 - 4. Identify existing and new access points on all plans.
 - C. Identification of existing easements.
 - 1. Ascertain utility easements and agreements.
 - 2. Determine if existing utilities need to be relocated.
 - 3. Review easements of record still in existence on property to be acquired.
 - D. Easement acquisition requirements
 - 1. Determine location of necessary easements.
 - 2. Determine purpose and nature of easement.
 - 3. Indicate requirements on plans.
 - E. Relocation assistance
 - 1. Region Right-of-Way unit will complete an Acquisition Stage Relocation Plan.
 - 2. Region Right-of-Way unit will meet with property owners and tenants to explain the relocation program.
 - 3. Region Right-of-Way unit will inspect property, discuss issues such as estimate of property and replacement costs with landowners and tenants.
 - 4. Region Right-of-Way unit will assist property owners in obtaining alternate facilities.
 - 5. Region Right-of-Way unit will arrange for moving personal property from any land acquisition or easement.
 - F. Identify trespass access to right of way, review situations with Region Access Manager for resolution.
 - G. Identify property where permission is needed to perform environmental studies and other surveys and obtain permission from landowners to enter property for these purposes
 - H. Advertising devices
 - 1. All signs on the project will be inventoried and indicated on all plan sheets.
 - 2. Signs may be acquired or relocated as a part of the right-of-way process.
- III. Right-of-Way Program in Project Development project development process
The process can be divided into five categories or work activities. The following outline is provided to assist in conceptualizing the process that takes place during a right-of-way project for the acquisition of private properties for public purposes. The right-of-way phase must be budgeted and obligated in ProMIS before right-of-way charges can be incurred.
- A. Planning
 - 1. Environmental impacts and public involvement
 - 2. Plan requirements
 - 3. Ownership and title data
 - 4. Lead time
 - 5. Certification requirements

- B. Appraisals
 - 1. Appraisal requirements
 - 2. Owner accompaniment
 - 3. Agency approval of appraisal
 - 4. Appraisal report formats
 - 5. Appraiser qualifications
 - 6. Appraiser certification
 - 7. Review responsibilities
 - 8. Review considerations
 - 9. Review appraiser qualifications
- C. Acquisition
 - 1. Prompt written offer
 - 2. Accelerated negotiations
 - 3. Payment before possession
 - 4. Summary statement
 - 5. Ninety-day notice to vacate
 - 6. Owner retention of improvements
 - 7. Administrative settlements
 - 8. Legal settlements
 - 9. Condemnation

NOTE: Any commitments with the property owners must be communicated to the Resident Engineer for inclusion in the plans. The Resident Engineer should check with Right of Way for any commitments, such as fence-type gates, excess dirt, moving a tree.

- D. Relocation process
 - 1. Planning
 - 2. Notices
 - 3. Advisory assistance
 - 4. Payments
 - 5. Housing of last resort
- E. Property management
 - 1. Pre-construction
 - 2. Post-construction

IV. Project management

All federal-aid projects must meet the requirements of Title 23, United States Code, and the FHWA must review and approve selected state actions on federal-aid projects. This includes actions related to public hearings; relocation assistance; right-of-way acquisition; and plans, specifications, and estimates.

For CDOT to be reimbursed for eligible project costs by the FHWA, certain requirements must be met. Reimbursement for eligible project costs is based on the requirements set forth in the "Uniform Act." Title II and Title III of the Act contain the requirements with which the acquiring agency must comply.

Section 6-3

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- V. Right-of-Way plans review
 - A. On projects requiring right of way or easements, the Region Right of Way Manager shall hold a Right of Way Plans Review with the Resident Engineer and others as deemed necessary immediately preceding authorization to appraise and acquire to determine that the proposed right-of-way and easement limits are sufficient to construct and maintain the project. The Region Right-of-Way Manager or Survey Coordinator shall determine if the right-of-way plans are sufficiently complete in accordance with the Right-of-Way Plans Review Guidelines.
 - B. Right-of-way plans shall not be submitted for authorization until after the Right of Way Plans Review has been conducted and all parties agree as to the right of way to be taken.
 - C. After a project has been authorized for appraisal and acquisition, design revisions that affect right of way will not be considered until the revision has been justified by the office initiating the revision and concurrence has been received from the Resident Engineer, Region Survey Coordinator or the Region Right-of-Way Manager and the Region Program Engineer.
 - D. After a parcel has been filed for condemnation with the Attorney General's Office, right-of-way plan revisions will not be considered until the Chief Engineer has approved them.

VI. Authorization of right-of-way projects
General

- A. Requirements for project authorization
 - The Region Program Engineer is responsible for the obligation of right-of-way funds and establishing the spending authority under Function 3114. The following steps must be completed before authorization can proceed to the acquisition or relocation stage under Functions 3111 or 3109.
 - 1. Obligation of funds and establishment of spending authority under function 3114 by Region
 - 2. Environmental approval
 - 3. Design public hearing and Field Inspection Review held by Region
 - 4. Preparation of right-of-way plans and descriptions
 - 5. Hardship parcels (H-Parcels) approved by FHWA
 - 6. Acquisition Stage Relocation Plan prepared (7-b Study)
 - 7. Right-of-Way Plan Review conducted
 - 8. Sufficient funds obligated by the Region

After these conditions have been met, the Right-of-Way Program in Project Development shall issue a Form 462a, Right of Way Plan Approval, authorizing the entire project for Functions 3111 and/or Function 3109 as applicable.

VII. Region transmittal of data

The Right-of-Way Program in Project Development requires the following package of materials from the Region Right-of-Way Manager for authorization. The package shall include:

- A. Letter requesting authorization functions
- B. Three sets of half-scale (11" x 17") prints (two colored)
- C. Two sets of legal descriptions
- D. Two sets of memorandums of ownership's with deeds attached
- E. Explanation of how unusual ownership conflicts were handled
- F. Copy of land service facilities justification letters. These facilities may now be approved by CDOT without FHWA concurrence.

VIII. The Chief Engineer has been delegated to handle the approval for land acquisition actions and the tendering of payment to land owners for damages in connection with a previously approved highway project.

By copy of the same transmittal letter requesting review, the Regional Right-of-Way Manager will:

- A. Ensure the following conditions are met before the Transportation Commission package is sent to the Chief Engineer for approval:
 - 1. The project is on the State Highway System
 - 2. The project is in the budget previously approved by the Transportation Commission
 - 3. Acquisition is permanent in nature
- B. Ensure the Transportation Commission package contains:
 - 1. Land acquisition approval form
 - 2. Right-of-way cost estimate (Form 438)
 - 3. Copy of Resolution 886-D
 - 4. One set of half-scale plans

IX. Clearance of projects for construction

Before any federal-aid project can be advertised for construction, the Federal Highway Administration requires a letter certifying that all right of way has been acquired and relocation carried out. All exceptions must be stated as to what action is being carried out to clear the project.

On all projects under the jurisdiction of CDOT procedures, all non-conditional clearance letters will be written by the Region Right-of-Way Manager to the Resident Engineer with a copy to the Federal Highway Administration and the Right-of-Way Program in Project Development. Conditional right-of-way clearances shall be written by the Right-of-Way Program in Project Development.

On all major construction projects over \$1 million on the National Highway System, the clearance letter must be written by the Right-of-Way Program in Project Development to the Federal Highway Administration for its concurrence.

On all urban projects and all projects located off the State Highway System, the Region must receive a certification clearance letter from the local public agency and forwarded to Right-of-Way Program in Project Development. The Region must monitor the acquisition process in sufficient depth to ensure that all applicable

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state and federal laws, rules and regulations were adhered to by the local public agency. After all the necessary documentation has been received, the Region Right-of-Way Manager will issue a clearance letter under the certification acceptance procedure.

CDOT has overall responsibility for the acquisition, management, and disposal of real property on federal-aid projects. This responsibility includes assuring that acquisitions and disposals by CDOT are made in compliance with legal requirements of state and federal laws and regulations.

CDOT has the authority to enter into written agreements with other state, county, municipal, or local public land acquisition organizations or with private consultants to carry out federally delegated authorities. The organizations, firms or individuals must comply with the policies and practices of CDOT. CDOT is required by federal regulations to monitor real property acquisition activities to assure compliance with state and federal law. CDOT is also responsible to inform these organizations of all such requirements and for imposing sanctions in cases of material non-compliance.

Additional References:

1. CFR 23, Part 710.201 through 713.308, Right of Way issues
2. *CDOT Right-of-Way Operations Manual*
3. *Federal-aid Policy Guide*
4. *FHWA Right-of-Way Project Development Guide*
5. Fifth Amendment, U.S. Constitution
6. See Appendix A for forms

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6.02 PERMITS REQUIRED TO WORK ON GOVERNMENT LAND

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Permits or other agreements are required whenever the Department or a Contractor is required to do work outside the right-of-way or easement area that has been previously obtained from other government entities. Permit areas include property owned or under the authority of the United States Bureau of Land Management, United States Forest Service, United States Bureau of Indian Affairs, United States Bureau of Reclamation, the National Parks Service, the State of Colorado Board of Land Commissioners, the State Division of Wildlife, or State Division of Parks and Outdoor Recreation. Property owned by other state agencies such as the Department of Corrections, Department of Institutions, Department of Military Affairs, or State Patrol, is usually handled by the Division of State Buildings in the Department of General Support Services.

For highway construction work to be performed on property that is owned by any of the above-referenced agencies, the agreement of that agency by special use permit, easement or other document is required. The Resident Engineer, through the Region Right-of-Way Manager and the Right-of-Way Program in Project Development, will apply for the required document from the pertinent agency after considering that agency's concerns and expectations. The agency may issue the permit or easement, turn down the request, or ask that it be revised.

The above-referenced agencies require their approval, by special use permit, highway easement deed, property grant or other document before any work related to construction can begin, including environmental clearances, utility relocations, surveying or related work. Requirements, roles, authorities, planning, coordination, etc., for federal lands (Bureau of Land Management and Forest Service), are described in a memorandum of understanding titled "Memorandum of Understanding Related to Activities Affecting the State Transportation System and Public Lands in the State of Colorado." A current copy can be obtained from the Environmental Programs office in the Project Development Branch.

The Resident Engineer is responsible for initiating and coordinating with the Region Right-of-Way Manager, and the Region Utility Engineer and/or Region Planning/Environmental Manager, when applicable, to provide the necessary information to obtain the special use permit, highway easement deed, grant or other document. The Region Right-of-Way Manager shall be responsible for securing the right-of-way clearances and submitting the information to the Right-of-Way Program in Project Development to make application for state and federal lands, including the plans, appraisals, and right-of-way acquisition documents.

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SPECIAL USE PERMITS

State of Colorado Land (Land Board)

The Right-of-Way Program in Project Development makes the application directly to the State Board of Land Commissioners, which includes the following material:

1. State Land Board application form
2. Half-sized plan sheet showing the State Land Board parcels
3. The determination of fair market value and value finding (or appraisal)
4. Legal description of the parcels including a copy in electronic format

BUREAU OF LAND MANAGEMENT/FOREST SERVICE/OTHER FEDERAL PROPERTY

Right-of-way plan sheets upon which the parcels and/or easements to be acquired are highlighted or crosshatched and location of easements are prepared by the Region Survey Coordinator. The Right-of-Way Program in Project Development uses these maps to prepare the following:

1. The application to FHWA, which is reviewed and then forwarded to the agency that owns the property.
2. The Highway Easement Deed with stipulations, which is forwarded for the signatures of the Chief Engineer and Chief Clerk before being submitted to FHWA for final execution.

The Region Right-of-Way Manager clears the right of way for construction following the issuance of the letter of consent by the owner/agency.

The Region Right-of-Way Manager supplies final half-sized plan sheets for the entire project to be delivered to the appropriate county assessor's office for each county in which portions of a project might lie, so as to facilitate the removal of the newly CDOT-owned property from the county tax rolls. The Region Survey Coordinator shall prepare a set of final plans that are signed and sealed, for deposit into the public records with the appropriate county clerk and recorder's offices.

Additional References:

1. 23 CFR 660A, Special Programs, Forest Highways
2. *CDOT ROW Manual*, Chapter 2
3. *CDOT Survey Manual*
4. Memorandum of Understanding, United States Forest Service and Bureau of Land Management, August-September 1995
5. CRS 38-50-101 ff, Survey Plats and Monument Records – General Provisions
6. CRS 38-51-101 ff, Survey Plats and Monument Records - Minimum Standards for Land Surveys and Plats,
7. CRS 38-52-101 ff, Survey Plats and Monument Records - Colorado Coordinate System

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6.03 UTILITY INVOLVEMENT

CDOT has established procedures for coordinating with utility companies when utilities may be impacted by a project. Numerous conditions result in the need to relocate or coordinate construction around utilities, such as:

1. A utility may conflict with proposed construction.
2. Road construction may provide a convenient opportunity to place new utility or upgrade existing ones.
3. Existing unsafe or hazardous conditions may easily and economically be mitigated during construction.
4. Certain non-aesthetic visual impacts may be replaced with a more acceptable solution.

A utility is a private or publicly owned line, facility or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, stormwater not connected with highway drainage, or any other similar type of commodity which directly or indirectly serves the public [23 CFR Part 645.105(m) Utility Relocations, Adjustments, and Reimbursement, Definitions].

CRS 38-5-101, Eminent Domain Act; CRS 43-1-225, Transportation Act; and other state laws and Constitutional provisions give utilities the right to construct their lines within highway right of way, provided they meet CDOT's established criteria (see the *CDOT Utility Manual*). As a result, many utilities are located adjacent to or within the highway right of way.

Prior to advertisement of any construction project, the Region Utility Engineer must issue a Utility Clearance in accordance with 23 CFR Part 635.309(b), Physical Construction Authorization. This clearance certifies that all conflicts with the utility companies involved with the project have been addressed in the Plans, Specifications and Estimate package or satisfactorily resolved.

The utility clearance letter is directed to the Federal Highway Administration (FHWA) on projects with FHWA oversight. On projects where CDOT has oversight, the clearance letter is directed to the Resident Engineer.

The Region Utility Engineer is the liaison between the Resident Engineer and all utilities affected by the project.

The Region Utility Engineer 's duties include, but are not limited to:

1. Identifying, verifying, and locating known utilities within project limits.
2. Verifying utility conflicts.

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3. Coordinating necessary utility relocations.
4. Negotiating necessary utility agreements and/or permits.
5. Drafting project utility specifications.
6. Issuing project utility clearance.
7. Processing utility billings.

The Resident Engineer is responsible to:

1. Ensure that existing utility lines and any relocations requirements are accurately shown and/or reflected in the Plans, Specification and Estimate package.
2. In consultation with the Region Utility Engineer, make further investigations as needed to verify utility conflicts.
3. Ensure that any utility involvement is properly scoped, programmed, budgeted, and authorized.

The Utilities unit, Safety and Traffic Engineering Branch:

1. Advises the Resident Engineer or Region Utility Engineer on utility issues.
2. Assists with developing or processing of utility agreements.
3. Assists with obtaining utilities authorizations as needed.

Utilities phase authorization (function 3988) is required prior to incurring costs on any utility relocation work for which the utility owner will be directly reimbursed out of federal-aid project funds. The region must initiate the authorization process by indicating a phase start date and estimated phase costs in the ProMIS (budgeting system) data for the project. The Office of Financial Management and Budget (OFMB) compiles this data in its Quarterly Obligation Plan, which it then submits to FHWA for phase authorization approval. To obtain timely authorization, the region must meet the submission deadlines specified by OFMB.

Agreements for utility services to the project, such as water and sewer to a rest area, or electric power to a lighting system, are treated as construction, rather than utilities phase costs, and therefore do not require utility phase authorization.

Utility phase authorization is also not required for utility work that will be performed by the Contractor on the utility owner's behalf, or coordinated through that Contractor by means of a plan force account item. In either case, such expenses are treated as construction phase costs.

Utility relocations at project expense will be documented by:

1. A Form 690, Standard Utility Agreement, if the owner has or will have performed the work and be reimbursed by CDOT; or
2. A Form 691, Contractor Adjusted Utility Agreement, if the work will be incorporated into the highway contract and performed by CDOT's Contractor on the utility owner's behalf.

For non-reimbursable utility relocations, CDOT and the utility agency should execute a letter of understanding for the agreed-upon work, the timeframe for completion, coordination requirements, and the utility's responsibility for costs. In some instances, CDOT and the utility owner may find it to be more efficient or economical to have utility work that is the owner's cost responsibility incorporated into the highway contract and performed by the Contractor. In such cases, CDOT and the owner may enter an agreement for CDOT to perform the work and for the owner to reimburse the project.

A Form 1284, Utility Relocation Permit, shall be issued to cover all relocation work. The permit may incorporate any related agreement and shall include all necessary terms and conditions for the utility work to be accomplished at a time convenient to and in coordination with the highway project.

The utility clearance letter should include, at a minimum:

1. A list of involved utilities
2. Whether the work will be performed at project expense
3. If at project expense, type of agreement and estimated cost
4. Contract force account work if any
5. Draft utility specification attached, when required

Activities include:

1. The Region Utilities Engineer attends the scoping meeting to assess the potential for utility involvement.
2. After the preliminary Form 463a, Design Data, has been issued, the Region Utility Engineer contacts the utility owners for base maps or other information on existing utilities.
3. The Resident Engineer plots existing utilities as accurately as possible onto preliminary plans, using base maps, survey or other available data. Subsurface utility engineering techniques, such as electromagnetic detection methods, should be used to verify or supplement base map data for buried utility lines.
4. The Region Utility Engineer furnishes preliminary plans to utility owners and conducts a utility Field Inspection Review, in coordination with the project Field Inspection Review, to verify existing lines and identify potential conflicts.
5. If necessary to verify conflict or to develop relocation requirements, the Region Utility Engineer and Resident Engineer will arrange further investigations, such as pot holing. At critical locations, subsurface utility engineering techniques such as non-destructive vacuum excavation methods should be used to visually identify and determine the precise horizontal and vertical location of buried utility lines.
6. If the utility must relocate, the Region Utility Engineer determines the eligibility of reimbursement based on state or federal laws or regulations, in consultation with Staff Utilities as needed.

Section 6-11

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7. The Region Utility Engineer negotiates the Standard Utility Agreement, Contractor-Adjusted Utility Agreement, or other form of agreement as may be necessary to cover the utility work. The Region Utility Engineer transmits the agreements requiring the Chief Engineer, Attorney General, and/or Controller approval to Headquarters Utilities unit for review and further processing.
8. The CDOT Headquarters Utilities unit verifies utility phase authorization status as necessary; reviews the agreement for compliance; routes the agreement for approval of the Chief Engineer, Attorney General and CDOT Controller; and assembles and distributes the executed agreement packages.
9. The Region Utility Engineer obtains the utility's concurrence on all non-reimbursable utility relocation requirements.
10. The Resident Engineer incorporates all necessary relocation details into the final project plans.
11. The Region Utility Engineer furnishes the FHWA and/or the Resident Engineer with utility clearance and specification, and coordinates any necessary utility permits as outlined earlier in this section.

Additional References:

1. *AASHTO Policy on Geometric Design of Highways and Streets*
2. *AASHTO Guide for Accommodating Utilities within Highway Right of Way*
3. *AASHTO Policy on the Accommodation of Utilities Within Freeway Rights-of-Way*
4. *Program Guide, Utility Adjustments and Accommodation on Federal-Aid Highway Projects*, Publication No. FHWA-PD-98-013, 4th Edition, March 1998
5. *Highway/Utility Guide*, Publication No. FHWA-SA-93-049, June 1993
6. USC 23 Section 109(l), Standards; Section 111, Agreements Relating to Use of and Access to Rights-of-Way - Interstate System; Section 123, Relocation of Utility Facilities
7. *CDOT Policy Directive 390.0, Accommodation of Utilities Within State Highway System ROW*
8. *CDOT Procedural Directive 512.1, Project Scoping and the Design Scoping Review (DSR)*
9. CFR 23 Part 635C, Physical Construction Authorization
10. See Appendix A for forms

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6.04 RAILROAD INVOLVEMENT

To prescribe procedures for advancing projects involving contractors' work on railroad facilities by CDOT Contractors or railroad forces.

When the Contractor is required to perform work on railroad facilities or within the railroad company's right of way, the Contractor must obtain railroad-highway insurance protection for the Contractor's operations on behalf of the railroad company, as stipulated in the railroad agreement. The railroad company should also be contacted for work on grade-separated crossings of railroad right of way or work that may encroach upon right of way.

An agreement between the railroad and state and/or local agency is required on all projects that will alter an existing railroad facility or that will encroach on railroad right of way. The Resident Engineer will be responsible for initiating a railroad/highway agreement, in consultation with the Railroad Program Manager, Utilities unit, Safety and Traffic Engineering Branch.

When a highway project involves work on railroad property or railroad crossing, the following documentation and procedures are usually necessary:

1. The Contractor is responsible for obtaining Public Liability and Property Damage Insurance for itself and for any subcontractors. Evidence of the coverage shall be furnished to CDOT and to the railroad.
2. The Contractor also shall obtain Railroad's Protective Liability and Property Damage Insurance on behalf of the railroad.
3. The Design Unit develops railroad encroachment plans, defines construction responsibilities between railroad and highway, and submits plans for authorization and approval by the railroad.
4. If the railroad/highway agency agreement will provide for direct reimbursement of any costs to the railroad from federal-aid highway funds, the Resident Engineer will coordinate with the CDOT Railroad Program Manager to obtain federal authorization (function 3987).
5. The CDOT Railroad Program Manager prepares and submits a draft agreement, including a railroad estimate, for approval by the railroad and local agency, if applicable. The executed agreement is signed by all involved parties before being approved by the Attorney General and the Controller.
6. The CDOT Railroad Program Manager prepares and submits a Public Utilities Commission application when required, such as railroad crossings and over/underpasses. The application is not necessary for minor railroad encroachment. For local agency projects, the entity is responsible for this activity.

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NOTE: Early coordination with the railroad company and with the Railroad Program Manager is critical as this process may take up to a year to obtain clearance.

Additional References:

1. CFR 23 Part 140I, Reimbursement for Railroad Work; Part 646A Railroad-Highway Insurance Protection, and Part 646B, Railroad-Highway Projects
2. *FHWA Railroad - Highway Grade Crossing Handbook*