

### **6.14.1 Applications to the Bureau of Land Management and the U.S. Forest Service**

#### **Purpose and Authority**

FHWA is authorized to appropriate and transfer certain public lands owned by the United States and managed by the Bureau of Land Management (BLM) or the U.S. Forest Service (USFS) to DOT&PF under the 1958 Highway Act ([23 U.S.C. 107\(d\)](#) and [23 U.S.C. 317](#)) for the following purposes for federal-aid highways (commonly referred to as Section 317 Transfers):

- ROW
- Sources of materials for construction or maintenance
- Maintenance and stockpile sites
- Roadside and landscape development

Allow at least 120 days' lead time for processing and issuing rights of way or material sources.

Rights-of-way for utility relocation and, in some cases, trails or pathways are not covered by the above authorization. Apply for them separately as a special-use permit under 1964 law. OT&PF may also apply for highway ROW under this law. Use

[Standard Form 299 \(Exhibit 6-3\)](#) at the end of this chapter).

### **Procedure for Section 317 Transfers**

#### **Preliminary Meeting**

Arrange a preliminary meeting with the agency head as soon as DOT&PF is aware of the need for the ROW or material site.

#### **Appropriation Request**

The regional chief ROW agent must make a written request for appropriation to FHWA (see suggested format, using the [Sample Appropriation Request Letter \(BLM\) \(Exhibit 6-4\)](#) at the end of this chapter) or the [Sample Appropriation Request Letter \(Forest Service\) \(Exhibit 6-5\)](#) at the end of this chapter) and include the following:

- A statement that the public land is absolutely necessary for the ROW for the project
- A statement that the land is or is not under selection. If the land is under selection by the State or by a Native corporation, include a letter of nonobjection from the selecting agency
- A copy of the approved environmental document
- A copy of the plat, which must include or have attached the signed [Engineer's Statement \(Exhibit 6-6\)](#) at the end of this chapter). (NOTE: The engineer whose name appears in the statement must sign it.) The appropriate citation must read: 72 Stat. 916, [23 U.S.C. 317](#)
- The legal description

#### **Materials Sources on BLM Property**

Include a Mining and Reclamation Plan that consists of a map, plat, sketch, or aerial photograph showing the following:

- The area applied for and its identification
- The area to be disturbed, including stockpile area
- Existing and proposed access
- The names and locations of major topographic and known cultural features

### **Mining Plan**

Include the following:

- A description of proposed methods of operation
- Periods of operation, including starting date
- A description of measures to prevent hazards to public health and safety and unnecessary degradation
- A cross-section diagram showing pit design and original ground level
- Screening methods (if possible)
- Volume required

### **Reclamation Plan**

Describe the proposed manner and time to complete rehabilitation, including revegetation methods, grade of backslopes, backfill methods, and a map, plat, sketch, or aerial photograph showing the area to be reclaimed. Recommend future use.

### **Letter of Consent**

After considering the application, the agency issues a letter of consent to FHWA and includes any special stipulations. FHWA sends a copy of the letter of consent to the regional chief ROW agent.

### **Transfer of Use Rights**

When the regional chief receives the letter of consent, construction may proceed. After construction:

- The Regional Chief ROW Agent must prepare a [Highway Easement Deed \(BLM/ROW\) \(Exhibit 6-7ROW\)](#) at end of this chapter) for a highway right-of-way on BLM property, a [Highway Easement Deed \(BLM/MS\) \(Exhibit 6-7MS\)](#) for a materials source on BLM property, or a [Highway Easement Deed \(USFS\) \(Exhibit 6-8\)](#) using as-built plans. Include in the deed any additional stipulations from the letter of consent for the transfer to the state.
- The Assistant Attorney General (AAG) assigned to the region must review the deed for legal sufficiency and sign the appropriate space on the deed. The AAG returns the deed to the regional chief ROW agent, who transmits it to the FHWA Division Office.

- The Division Office will forward the deed to the FHWA Western Legal Services for a legal sufficiency review, requesting that the deed be returned to the Division Office for signature by the division administrator.
- The Division Office must return the signed deed to the regional chief ROW agent for recording.
- The region provides a copy of the recorded deed to the agency from which the property was appropriated.

FHWA administers the ROW or materials site grant as a nonexclusive right, subject to the reservation of leasable or salable minerals to the United States.

### **Termination**

The appropriation terminates if either of the following occurs:

- DOT&PF has not begun construction or use of the materials for highway purposes within 10 years (or less, if agreed upon between FHWA, the agency, and DOT&PF)
- DOT&PF notifies FHWA that the need for the ROW or materials no longer exists and the lands have been acceptably rehabilitated.