



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

1200 New Jersey Ave., SE
Washington, D.C. 20590

In Reply Refer To:
HCC-1

Malcolm Dougherty
California Department of Transportation
1120 N Street
Sacramento, California 94273

Dear Mr. Dougherty:

Thank you for your June 24 letter asking to what extent fees may be charged for the use of electric vehicle (EV) charging stations installed at rest areas and fringe or corridor parking facilities located on Interstate rights-of-way (ROWs). The Federal Highway Administration (FHWA) applauds this effort to encourage and promote the use of EVs by providing EV stations at convenient sites.

Under 23 U.S.C. § 111(a), States are prohibited from constructing or locating "automotive service stations or other commercial establishments for serving motor vehicle users" on Interstate ROWs. EV charging stations are, by definition, part of the infrastructure that supplies energy for the recharging of electric vehicles and fit into the category of "serving motor vehicle users." Section 111(a) does contain an exception to this general prohibition, however, for commercial establishments serving motor vehicles if they were in existence prior to 1960. In such "grandfathered" areas, States could install EV charging devices within the Interstate ROW and charge a fee for their use. In addition, if the State does not charge fees for their use, States may install and operate EV charging stations in a rest area or fringe or corridor parking facilities located within the Interstate ROW.

Although the ability to charge fees for use of EV charging stations within the Interstate ROW is constrained, Federal-aid funding may be available to pay for up to 80% of the cost of installing the EV charging infrastructure. A State may use Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds. Under certain conditions, National Highway Performance Program (NHPP) funds or Surface Transportation Program (STP) funds (*see* 23 U.S.C. § 133) may be used to install new EV charging stations or refueling stations for natural gas. The CMAQ Program has funded many alternative fuel projects over the years across the country. Consistent with the prohibition on commercial establishments within the Interstate ROW, states may place fueling infrastructure funded by these programs at non-grandfathered facilities within the Interstate ROW only if no fee is charged for their use.

We recognize that 23 U.S.C. § 137(f)(1) authorizes the placement of EV charging stations at fringe and corridor parking facilities within the Interstate ROW, and section 137(f)(2) permits States to charge fees sufficient to support such fringe and corridor parking facilities. These provisions, however, do not authorize States to charge fees for the use of EV charging stations at such parking facilities within the Interstate ROW. Section 1401(d)(1)-(2) of MAP-21 makes it clear that although States may establish EV charging stations at “any parking facility funded or authorized under [MAP-21] or title 23” (emphasis added), such stations may not be established where section 111(a) prohibits “commercial establishments serving motor vehicle users.” Section 1401(d) thus applies to all parking facilities, including section 137(f) parking facilities, and the section 111(a) prohibition against charging fees applies even to EV charging stations at fringe and corridor parking facilities in the Interstate ROW authorized by section 137(f).

Some previous transportation reauthorization bills and proposals, including GROW America (Section 1305), would provide an exemption to the Title 23 prohibition on assessing a fee for EV charging and idle-reduction facilities on interstate ROW. With one exception, none of these proposals has been enacted.¹ Nevertheless, FHWA will continue to explore ways in which we can support the construction and operation of new EV infrastructure consistent with existing law.

I hope that this clarifies FHWA’s position on EV charging stations located on interstate ROWs. If you have any questions, please contact Robert Black of my staff at (202) 366-1359.

Sincerely,



Thomas G. Echikson

Chief Counsel

¹ In 2005, Congress amended 23 U.S.C. § 111 in SAFETEA-LU (section 1412) by adding subsection 111(d) to allow States to charge for truck idling reduction facilities (including electrification). In 2008, however, Congress repealed this subsection in 2008.

cc:

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