



## **Patent Easements** **Frequently Asked Questions**

The following provides information on Frequently Asked Questions regarding Federal Patent Easements and the Abandonment Process. Additional information is available on the MCDOT website (<https://www.maricopa.gov/775/Abandonment-of-Patent-Easements>). Specific questions may be directed to MCDOT Planning staff at [MCDOTPlanning@maricopa.gov](mailto:MCDOTPlanning@maricopa.gov).

### **General**

#### **1. What is a Patent Easement?**

Patent Easements were created by the Federal Government pursuant to the Small Tract Act of 1938 to provide a corridor for roadway and utilities through the small tracts (properties) that were conveyed to private ownership.

#### **2. Do I have Patent Easements on my property?**

If your property is located in unincorporated Maricopa County you may contact MCDOT Planning staff at [MCDOTPlanning@maricopa.gov](mailto:MCDOTPlanning@maricopa.gov) to determine if a Patent Easement exists on your property or has been previously abandoned based on MCDOT records.

Copies of Patent Easements are available on the Bureau of Land Management website.

#### **3. Can I abandon a Patent Easement on my property?**

Arizona State Statute ([A.R.S. §11-251.16](#)) authorizes Arizona counties to administer the abandonment of Patent Easements under certain conditions. Maricopa County [Ordinance P-34](#) establishes the procedures and guidelines for abandoning these easements in Maricopa County.

Abandonment of the Patent Easement will not be effective until the Application is submitted and reviewed by all affected parties (utilities, municipalities, and agencies), public notice is provided, and a public hearing is held. At the public hearing, the Board of Supervisors reviews and can formally approve the abandonment by adoption of resolution. This action allows the recording of the resolution in the chain of title to the property previously burdened by the Patent Easement.

#### **4. Can I build or place a structure in a Patent Easement?**

Structures cannot be placed within a Patent Easement. Any structure placed in a Patent Easement may be subject to removal or destruction without compensation.

Maricopa County requires structures to maintain yard setbacks from public easements, including Patent Easements. Yard area zoning requirements are measured from the internal property side of the Patent Easement line. For information on setback requirements please contact Maricopa County Planning and Development at 602-506-3301.

#### **5. My neighbor is blocking a Patent Easement that I either currently use or would like to use. Can MCDOT help?**

MCDOT staff can verify the status of a Patent Easement and whether it has been partially or fully abandoned; however, the County does not involve itself in disputes between private landowners concerning issues in a Patent Easement area. This would be a private civil matter.

#### **6. Our Patent Easement has an unpaved road that is hard to traverse. Can the County fix this?**

The County has no responsibility for improving or maintaining Patent Easements that are not a part of the MCDOT roadway system. The MCDOT Road Information Tool identifies which roadways are within the MCDOT system:  
<http://gis.maricopa.gov/roadinformationpublic/>.

When an unpaved road is in the MCDOT system, additional questions can be forwarded to MCDOT Planning ([MCDOTPlanning@maricopa.gov](mailto:MCDOTPlanning@maricopa.gov)).

When an unpaved road is **not** in the MCDOT system, Maricopa County Planning and Development Department staff can provide more information on permits required to pave or maintain (grade) the road. Maricopa County Planning and Development can be reached at 602-506-3301.

### **Patent Easement Abandonment Process**

#### **7. Do I need to come to the MCDOT office to submit the paperwork and fee for a Patent Easement abandonment Initial Determination or Application?**

MCDOT offers three ways to apply:

- In-person at the MCDOT office: 2901 West Durango Street, Phoenix, Arizona 85009
- First Class Mail addressed to: Maricopa County Department of Transportation, Engineering Division, 2901 West Durango Street, Phoenix, Arizona 85009
- Email to: [MCDOTPlanning@maricopa.gov](mailto:MCDOTPlanning@maricopa.gov), MCDOT staff will follow-up via phone call to collect payment

## 8. How long does the Patent Easement abandonment process take?

The Patent Easement abandonment process takes a minimum of six months. *This timeline can vary widely depending on several factors* including (but not limited to): objections received, Application submittal timelines, and the Board of Supervisors schedule.

### ***Initial Determination Phase:***

Timeline - Approximately one month from payment confirmation.

During this phase the Initial Determination request will be distributed to all affected parties (utilities, municipalities, and agencies) for review. At the conclusion of the Initial Determination review period, a letter will be provided to the applicant describing the preliminary review results.

If review responses are received by MCDOT following conclusion of the Initial Determination review period, MCDOT will update and issue a new determination letter to the applicant.

***Note:*** Applications must be submitted within six months of conclusion of the Initial Determination phase. Objections received during the Initial Determination phase should be addressed prior to submitting the Application. If objection resolution is ongoing and exceeds the six-month time frame the applicant may provide proof of said ongoing resolution efforts to MCDOT staff and request an extension.

### ***Application Phase:***

Timeline – Approximately six weeks from time that payment is confirmed, exclusive of Board of Supervisor approval process. If new objections are received during the Application phase and resolution is needed it may cause a delay in proceeding to the Board of Supervisors.

During this phase the Application request will be distributed to all affected parties (utilities, municipalities, and agencies) for review. If no objections are received during the Application phase that require resolution, the request proceeds directly to the Board of Supervisors for approval upon conclusion of the Application review period.

***Note:*** If objections are received during the Application phase, MCDOT Staff will work with the applicant on how to best proceed to ensure maximum opportunity for approval. Due to the nature of objections, these scenarios must be handled on a case by case basis.

**Board of Supervisors:** Approval by the Board of Supervisors is a two-step process. Timelines may vary dependent on Board of Supervisors scheduling.

***Set Hearing Date:*** Typically held approximately one month after the review period has ended. At this meeting the Board of Supervisors will set the date for the required Public Hearing. Once the hearing is set, and no fewer than 60 days before the public hearing, notice of the hearing date will be mailed to adjacent property owners, posted at the site, and posted on the MCDOT website.

***Public Hearing:*** Held a minimum of 60 days after the set hearing date. At this meeting the Board of Supervisors will review the request, Staff Report, public and agency comments, and will take action to approve or deny the request.

## **9. My Initial Determination review just ended, and I received a review conclusion letter – what is my next step?**

Applicants are allowed to proceed to the Application phase directly after completion of the Initial Determination phase. Next steps may vary depending on whether or not objections were received in the Initial Determination Phase. The following provide details on typical situations:

***No Objections - all reviewer responses received:*** Proceed to the Application phase. Please note that agencies reserve the right to change their review response during the Application phase. If a late objection is received before the Application payment is processed, MCDOT Staff will work with the applicant to determine the best way to proceed to maximize opportunity for approval.

***No Objections - not all reviewer responses received:*** Reviewing agencies are not required to provide responses during the Initial Determination phase. If no objections were received, applicants can proceed to the Application phase; however, it is important to understand that all responding and non-responding agencies may object during the Application phase.

***Objections received:*** It is MCDOT standard practice to recommend abandonment in accordance with the most restrictive objection received. If objections were received, the applicant has several options depending on the objection details:

***Willing to modify request*** - If the applicant is comfortable modifying the abandonment request to be consistent with the most restrictive objection received, they may proceed to the Application phase with a modified request.

***Not willing/unable to modify request*** - If the applicant is not comfortable modifying the abandonment request consistent with the most restrictive objection received, or if a full objection was received, the applicant is strongly encouraged to contact the objecting party to identify potential solutions prior to proceeding to the Application phase. Outstanding objections at the conclusion of the Application review period may impact the staff recommendation for abandonment to the Board of Supervisors.

If objections are resolved, the applicant should provide confirmation to MCDOT with the Application. MCDOT staff will review any outstanding objections with applicants when Applications are submitted.

### **10. Who may object to my Patent Easement abandonment request?**

All reviewers can object to abandonment of the Patent Easement. Reviewers include staff from Maricopa County Departments, affected utilities, and agencies or municipalities within one mile.

MCDOT does not involve itself in disputes between applicants and reviewing agencies. It is MCDOT standard practice to recommend abandonment to the Board of Supervisors in accordance with the most restrictive objection received.

Members of the public may also submit objection to abandonment of the Patent Easement during the public noticing period. If public objections are received, this information is provided to the Board of Supervisors for consideration.

### **11. If I don't agree with an objection can I still proceed?**

The Board of Supervisors is not expressly prohibited from approving abandonment over the objection of MCDOT or another reviewing agency (such as a municipality). In this situation, the owners seeking the abandonment of a Patent Easement shall have the obligation to demonstrate before the Board of Supervisors that the Patent Easement is not being used by the public or is no longer necessary.

Maricopa County Ordinance P-34 prohibits the Board of Supervisors from approving an abandonment over the objection of any utility, the Arizona State Land Department or the Bureau of Land Management.

### **12. What information needs to be provided in the letter from the lender?**

The letter from the lender should acknowledge that a Patent Easement Abandonment Application will be filed with MCDOT for the property and express support for, or consent to, the action. The letter from the lender does not approve or deny the Patent Easement abandonment itself.

MCDOT has prepared a separate Lender FAQ sheet that can be shared with lender organizations, available on the MCDOT website.

### **13. Do I need to attend the Board of Supervisors meetings?**

Applicants are not required to attend the Board of Supervisors meetings; however, meetings are open to the public and applicants are welcome to attend. A decision will be made on the Patent Easement abandonment at the hearing date (the second Board of Supervisors meeting).

If the applicant does not agree with the MCDOT recommendation, it is the responsibility of the applicant, or their representative, to submit information to the Board of Supervisors or attend the Board of Supervisors hearing and present a rebuttal case for abandonment of the Patent Easement by demonstrating that the Patent Easement is not needed for public access.

**14. Why is there a sign posted on my property? How long do I need to leave it?**

Public noticing requirements from the County Ordinance require that notice of the public hearing be posted at the site for no less than 60 days before the public hearing. This posting must remain in place until the hearing date.

If a sign is destroyed or removed prior to the hearing date, please contact MCDOT staff for a replacement ([MCDOTPlanning@maricopa.gov](mailto:MCDOTPlanning@maricopa.gov)). Early removal of a poster may impact the hearing date.

**15. How do I know once an abandonment has been approved by the Board of Supervisors?**

Applicants can view the Board of Supervisors meeting and summary materials posted by the Clerk of the Board following the meeting. MCDOT staff will also email the applicant once they have received confirmation from the Board of Supervisors of approval. Receipt of official recorded documentation may take several weeks.