Report to the Transportation Advisory Board

Prepared by the Maricopa County Department of Transportation

Case #/Title: DOT-01-2013 – Quiet Zone Ordinance

Meeting Date: January 21, 2014

Supervisor Districts: All Districts

Applicant: Department of Transportation

Request: Approve the proposed ordinance establishing a process for the creation of railroad quiet zone measures, in accordance with federal requirements and approved engineering standards, to prevent or reduce unwanted train horn noise, thereby promoting the public health, safety and welfare in residential areas of unincorporated portions of the County.

Support/Opposition: No comments in opposition have been received to date. A Stakeholder Workshop was conducted on November 5, 2013. No one attended. First TAB meeting held on November 19, 2013. No opposition.

Department Recommendation: Recommend approval of the proposed ordinance by the Board of Supervisors.

Discussion: Federal regulations (49 Code of Federal Regulations Parts 222 and 229) provide for quiet zones to be established to control the use of horns at highway-rail grade crossings. The Federal Railroad Safety Authorization Act of 1994 required the Secretary of Transportation to issue regulations requiring the sounding of locomotive horns at all public highway-rail grade crossings and providing exceptions under specific conditions and circumstances. The final federal rule took effect on June 24, 2005.

There are currently 564 quiet zones authorized nationally; nine of these are in Arizona. (Source: U.S. Department of Transportation, Federal Railroad Administration, August 2013.) Maricopa County has established two quiet zones, in April of 2009. These are located at Meeker Boulevard and R.H. Johnson Boulevard. Although the County was able to work through the quiet zone process in 2009, Maricopa County needs a formal

process to efficiently respond to citizen requests for quiet zones if more requests arise. The proposed ordinance would provide this orderly process in close conformance with the federal regulations and would provide a means to fund the required formal evaluations.

Quiet zone measures could potentially be most appropriately applied to unincorporated portions of the County, in response to property owners' requests.

The proposed ordinance would:

- Prescribe definitions associated with quiet zones;
- Set forth administrative responsibilities for MCDOT;
- Establish necessary forms and accounting procedures;
- Prescribe application and evaluation procedures;
- Authorize MCDOT to receive voluntary financial contributions by property owners to provide a means of funding a formal quiet zone evaluation; and
- Establish quiet zone implementation procedures in accordance with federal requirements.

This is the first of two TAB meetings required by the EROP. The attached Initialization Form sets forth the timeline for the EROP process for this proposed ordinance.

In accordance with the Maricopa County Resolution, "Moratorium on Increased Regulatory Burdens", the County Manager authorized the Department to proceed with this case in September 2013. The County Manager also briefed the Board of Supervisors in October 2013.

Presented by: John B. Hauskins, P.E., Director

Attachments: County Manager Case Approval (1 page)
Initialization Form (1 page)
Proposed Quiet Zone Ordinance (13 pages)

Maricopa County
Department of Transportation

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Date: September 20, 2013

To: Tom Manos, County Manager

Via: Joy Rich, AICP, Deputy County Manager

From: John B. Hauskins, P.E., Director 9-20

Re: County Manager Approval – Proposed Ordinance regarding Railroad Quiet Zones

In accordance with the Maricopa County Resolution, "Moratorium on Increased Regulatory Burdens," the Department of Transportation (MCDOT) is seeking your approval to adopt an ordinance via the Enhanced Regulatory Outreach Process (EROP).

The requested ordinance qualifies for County Manager Approval under the moratorium, as these changes are necessary to comply with federal law regarding the establishment of railroad quiet zones (49 CFR Parts 222 and 229, Use of Locomotive Horns at Highway-Rail Grade Crossings; Final Rule, Section 222.9). We would refer to this new EROP case as DOT-01-2013 – Quiet Zone Ordinance.

The requested ordinance will provide a procedure for MCDOT to address county property owners' concerns related to unwanted train horn noise, through a quiet zone program supplemented by voluntary financial contributions.

We are requesting your approval to move this proposed ordinance forward in accordance with the Maricopa County Resolution, "Moratorium on Increased Regulatory Burdens."

Approved by Tom Manos, County Manager

Maricopa County Enhanced Regulatory Outreach Program
Initialization Form

Department: Transportation	**Contact:** Mitch Wagner (6-5858)	**Date Entered in Process:**

Item Name and Number: Quiet Zone Ordinance (DOT-01-2013)

Step Number	Process to be Completed	Upcoming Dates	Comments
1	County Manager Briefed BOS	10-21-13	
2	Stakeholder Notification 2 weeks prior to Stakeholder Workshop	10-22-13	
3	Conduct Stakeholder Workshop	11-05-13	
4	Stakeholder Notification 2 weeks prior to Citizen's Board or Commission	11-05-13	
5	Public meeting to Initiate Regulatory Change	11-19-13	
6	Specific Departmental Processes	N/A	
7	Stakeholder Notification 2 weeks prior to Citizen's Board or Commission	01-07-14	
8	Public Meeting to Make Recommendation to BOS	01-21-14	
9	Schedule BOS Public Hearing	01-23-14	
10	BOS Public Hearing	02-12-14	
11	Item Adopted	02-12-14	

MARICOPA COUNTY
QUIET ZONE ORDINANCE No. ___

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION TO ADDRESS COUNTY PROPERTY OWNERS' CONCERNS RELATED TO UNWANTED TRAIN HORN NOISE, THROUGH A QUIET ZONE PROGRAM SUPPLEMENTED BY VOLUNTARY FINANCIAL CONTRIBUTIONS BY PROPERTY OWNERS.

WHEREAS, the laws of the State of Arizona including Arizona Revised Statutes Sections 11-251 and 11-251.05 authorize the Board of Supervisors to lay out, maintain, control and manage public roads and adopt ordinances within Maricopa County; and

WHEREAS, neighborhoods and residents seek to employ quiet zone measures, in accordance with federal requirements and approved engineering standards, to prevent or reduce unwanted train horn noise, thereby enhancing the quality of life in residential areas of unincorporated portions of the County; and

WHEREAS, quiet zone measures could potentially be most appropriately applied to unincorporated portions of the County, in response to property owners' requests; and

WHEREAS, this ordinance would further promote the public health, safety and welfare in residential areas of unincorporated portions of the County by allowing the Maricopa County Department of Transportation to appropriately apply application of quiet zone measures intended to prevent or reduce unwanted train horn noise; and; NOW

IT IS HEREBY ORDAINED by the Board of Supervisors of Maricopa County, Arizona, that the Maricopa County Quiet Zone Ordinance is hereby adopted as fully set forth in this ordinance.

MARICOPA COUNTY
QUIET ZONE ORDINANCE No. ___

CHAPTER 1 – PURPOSE AND TITLE

101. PURPOSE

The purpose of this ordinance is to authorize the Maricopa County Department of Transportation to address county property owners' concerns related to unwanted train horn noise, through a quiet zone program supplemented by voluntary financial contributions.

102. TITLE

This document shall be referred to and known as the "Quiet Zone Ordinance".

CHAPTER 2 – SEVERABILITY AND APPLICABILITY

201. SEVERABILITY

If any portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance.

202. APPLICABILITY

This document shall apply to unincorporated areas of Maricopa County within the jurisdiction of the Maricopa County Board of Supervisors and property owners in those areas of the County.

CHAPTER 3 - ACRONYMS

The following acronyms are for the purposes of this ordinance and are identified in **49 CFR Parts 222 and 229, Use of Locomotive Horns at Highway-Rail Grade Crossings; Final Rule**, Section 222.9 as supplemented by MCDOT:

AZCC:	Arizona Corporation Commission
ADOT:	Arizona Department of Transportation
Final Rule:	*49 CFR Parts 222 and 229 Use of Locomotive Horns at Highway-Rail Grade Crossings; Final Rule*
FRA:	Federal Railroad Administration
MCDOT:	The Maricopa County Department of Transportation
MUTCD:	Manual on Uniform Traffic Control Devices
NSRT:	Nationwide Safety Risk Threshold

QZRI:	Quiet Zone Risk Index
RIWH:	Risk Index with Horns
SSM:	Supplemental Safety Measure

CHAPTER 4 - DEFINITIONS

The following definitions are for the purposes of this ordinance and are identified in **49 CFR Parts 222 and 229, Use of Locomotive Horns at Highway-Rail Grade Crossings; Final Rule**, Section 222.9 as supplemented by MCDOT:

Alternative Safety Measures (ASM):
A safety system or procedure, other than a Supplementary Safety Measure (SSM), which, after individual review and analysis by the Associate Administrator, is determined to be an effective substitute for the locomotive horn in the prevention of highway-rail casualties. For the purposes of this ordinance, MCDOT will only consider the FRA approved SSMs when considering a Quiet Zone within its jurisdiction. ASMs are further defined in 49 CFR Part 222.

Associate Administrator:
Associate Administrator for Safety of the FRA

Diagnostic Team:
A group of knowledgeable representatives with an interest in a highway-rail grade crossing. It is organized by the public authority responsible for that crossing. The team, using crossing safety management principles, evaluates conditions at a grade crossing to make determinations or recommendations concerning the safety needs at that crossing. The diagnostic team is composed of railroad personnel, public safety or law enforcement, engineering personnel from the State agency responsible for grade crossing safety, and other concerned parties.

Grade Crossing Inventory Form:
US DOT National Highway-Rail Grade Crossing Inventory Form

Nationwide Safety Risk Threshold (NSRT):
Reflects a measure of risk based on a nationwide calculation that reflects the average level of risk to the motoring public at a public highway-rail grade crossing equipped with flashing lights and gates, and at which locomotive horns are sounded. A risk level above this threshold represents a significant risk with respect to loss of life or serious personal injury. This threshold is calculated annually and published by the FRA in the Federal Register.

Partial Quiet Zone:
A segment of rail line at least one-half (1/2) mile in length that contains one or more consecutive public crossings where the train horn is not routinely sounded between the hours of 10:00 p.m. and 7:00 a.m.

Private Highway-Rail Crossing
Means a highway-rail at grade crossing, which is not a public highway-rail grade crossing. Private highway-rail grade crossings will not be considered for Quiet Zone evaluation or implementation under this policy. All private crossings within a one-half (1/2) mile radius of the crossing must be abandoned.

Property Owner
Means any person or corporation possessing legal or equitable title to the property whether for that person, corporation or another and includes persons or corporations holding or expecting title under a contract for the sale of real property.

Public Authority:
Means the public entity responsible for traffic control or law enforcement at the public highway-rail grade crossing

Public Highway-Rail Crossing:
If a public authority maintains the roadway on both sides of the crossing, the crossing is considered a public crossing.

Quiet Zone:
A section of rail line at least one-half (½) mile in length that contains one or more consecutive public highway-rail grade crossings at which locomotive horns are not routinely sounded.

Quiet Zone Risk Index (QZRI):
Reflects the measurement of risk to the motoring public after adjustments to account for the lack of locomotive horn use at the crossing and considering SSMs implemented within the Quiet Zone.

Supplementary Safety Measure (SSM)
A safety system or procedure established in accordance with the Final Rule, which is provided by the appropriate traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing and determined to be an effective substitute for the locomotive horn in the prevention of highway-rail casualties. Examples of SSMs are provided in the Final Rule. For complete information and requirements associated with SSMs see the Final Rule document.

CHAPTER 5 - ADMINISTRATION

501. ADMINISTRATIVE RESPONSIBILITY

It shall be the responsibility of the Maricopa County Department of Transportation (MCDOT) to implement this ordinance.

502. ADMINISTRATIVE FORMS AND ACCOUNTING PROCEDURES

The Department may develop and revise administrative forms and accounting procedures as necessary and appropriate to implement this ordinance.

503. GENERAL PROCEDURES

The Department shall apply the following general procedures when considering a request for a quiet zone:

A. Initial Contact

A property owner may contact the Traffic Management Division of the Maricopa County Department of Transportation (MCDOT) at (602) 506-8600 to inquire about a Quiet Zone. The County will mail an informational packet to the requestor. After reading the information, if residents or property owners are interested in pursuing a Quiet Zone, they should fill out the "Request for Quiet Zone" form provided in the informational packet and return it to the County Traffic Engineer. Upon receipt of the form by the County, the Quiet Zone process will be initiated.

The informational packet (see Appendix A) will include the following items:

Quiet Zone Cover Letter
The letter will provide important instructions and the website link to the Federal Railroad Administration (FRA) Guidelines.

Request for Quiet Zone - Form
This form will describe the location of the proposed Quiet Zone and the contact information of the requestor or who will act as the representative (point of contact) for further correspondence through the process.

Petition for Quiet Zone - Form
This form will include petition instructions that can be used by the requestor in obtaining the necessary support for Quiet Zones. **A two-thirds (2/3) majority of signatures must be obtained from the property owners living within the designated one-half (1/2) mile radius of the crossing(s) as defined by MCDOT, plus 100% of all fronting property owners who are directly impacted by the Quiet Zone are necessary to allow for further consideration or evaluation.** The Petition will include instructions and return contact information. It will also include proximity of the signatories to the crossing.

Forms provided in the informational packet should be filled out and sent to **Maricopa County Department of Transportation, 2901 W. Durango Street, Phoenix, Arizona 85009 (Attn: Traffic Engineer).**

NOTE: The FRA will only permit an authorized public authority to apply for Quiet Zone status. Individual residents or property owners do not have the authority to obtain Quiet Zone status without MCDOT's concurrence that a particular Quiet Zone is acceptable.

B. <u>Quiet Zone Initial Screening</u>:

An initial screening will be conducted by MCDOT to identify if the crossing(s) requested will be considered for further evaluation. The initial screening will be conducted on a pass/fail basis to determine if the following minimum requirements are met:

- No private crossing exists within a one-half (1/2) mile radius of the desired Quiet Zone location. If a private crossing is found to exist it shall be a responsibility of the community to work with the owners, individuals and/or entity utilizing the crossing to close it off to allow for further consideration as a Quiet Zone.

- The length of the desired Quiet Zone must be a minimum one-half (1/2) mile.

- The Quiet Zone requested is limited to those areas where the quality of life for the adjacent public is impacted by the train noise. Qualifying land uses are residential, hotel/motel and/or resort located within one-half (1/2) mile radius of the crossing.

- The minimum two-thirds signatures required as part of the petition shall consist of the qualifying property owners living within one-half (1/2) mile radius of the crossing, plus 100% of all fronting property owners that are directly impacted by the Quiet Zone request.

The initial screening may be prepared using a standard MCDOT evaluation form.

If the minimum requirements are not met, the County will notify the requestor (specified in the Request for Quiet Zone form) in writing that the request has been denied and the reasons for the denial.

3. <u>Quiet Zone Preliminary Evaluation</u>:

If the proposed Quiet Zone meets the initial screening requirements, the County will notify the requestor (specified in Request for Quiet Zone form) in writing that a preliminary Quiet Zone evaluation will be conducted as outlined in Appendix B. The preliminary evaluation will consist of the following:

<u>Conduct a field investigation at the crossing(s).</u>

- Review US DOT National Highway-Rail Grade Crossing Inventory Form;
- Inventory the existing traffic control devices;
- Inventory the highway-rail safety devices;

- Inventory the existing geometric features at the crossing;
- Obtain distances between the crossing(s) and the adjacent driveways and intersections; and
- Observe other notable deficiencies and safety measures at the crossing.

This investigation will assist in developing the minimum improvements specified by MCDOT. The checklist in Appendix B can be used to help in field investigation.

Calculate Preliminary Quiet Zone Risk Index (QZRI) and Risk Index with Horn (RIWH) Values. This consists of determining the QZRI value, which is the risk index without horns, and the Risk Index with Horns (RIWH) based on the FRA Quiet Zone Calculator. The FRA Quiet Zone Calculator can be found on the FRA web site http://www.fra.dot.gov/us/content/1318. A Quiet Zone will be considered for further evaluation only if the QZRI is less than or equal to the RIWH or the QZRI is less than or equal to the National Significant Risk Threshold (NSRT).

Establish Quiet Zone Priority Ranking. This consists of an objective review of the merits of a particular Quiet Zone request compared to other competing requests. It is anticipated that a number of requests for Quiet Zones will be processed by MCDOT and that the implementation of Quiet Zones will occur over time as resources become available.

Upon completion of the preliminary evaluation, the MCDOT Traffic Management Division will notify the requestor in writing of the results. A public meeting will be held, arranged cooperatively between the Traffic Management Division and the Community Relations Branch, to share the results of the preliminary evaluation with the community. During the meeting, MCDOT will present the anticipated costs for the formal evaluation, design and construction of any Quiet Zone related improvements. Additional details on the next step in the process will be provided as well.

4. Quiet Zone Formal Evaluation

Based on the outcome of the preliminary evaluation and the public meeting, MCDOT may initiate a formal Quiet Zone evaluation. The formal Quiet Zone evaluation process shall be controlled by MCDOT.

Formal evaluation of the Quiet Zone at this point will be based on the following:

- Final results of the preliminary evaluation;
- Estimated design and construction costs associated with the proposed SSMs;
- Available funding of the parties involved;
- Signed financial commitments and agreements between the requestor and MCDOT; and
- Priority of each request.

NOTE REGARDING COST AND PAYMENT: It is important that each applicant/requestor understands that MCDOT will only contribute funds to the initial screening and preliminary evaluation steps. From the time that the preliminary evaluation is completed MCDOT will not contribute any additional funds to potential Quiet Zone projects. From this point forward, MCDOT shall inform the applicant that MCDOT will agree to continue with implementation of appropriate quiet zone measures only if the applicant agrees to voluntarily provide in advance of any further work 100% of the quiet zone costs to be incurred after completion of the initial screening and preliminary evaluation steps of the quiet zone process, as described in this Ordinance. The voluntary contribution must be in the form of a cashier's check or money order made payable to the "Maricopa County Department of Transportation." Personal checks will not be accepted.

The following items will be addressed at the start of the formal Quiet Zone evaluation:

- Identification of all project stakeholders;
- Identification of the diagnostic team; and
- Planning and notification of the time, date and location of the Diagnostic Team Meeting.

The MCDOT Traffic Management Division will conduct an evaluation, which will be prepared as outlined in this document and will include a preliminary cost estimate associated with the recommended Quiet Zone implementation plan. Prior to proceeding with design, the study results and cost estimate(s) will be presented to the requestor(s) for comment.

Upon resolution of the comments, if it is determined that design and construction are necessary, the requestor(s) shall bear all the costs associated with the Quiet Zone.

5. Quiet Zone Implementation

The FRA has established two (2) general approaches to reduce the crossing risk and qualify a Quiet Zone under the Final Rule. Approach 1 includes the application of SSMs as defined in chapter 4 of this ordinance. Approach 2 includes the application of ASMs as defined in chapter 4 of this ordinance. Under either approach, every crossing within the Quiet Zone must satisfy the following minimum requirements:

a. Every public crossing must be equipped with active warning devices including flashing lights, gates and bells.
b. Each crossing shall have a power out indicator.
c. The length of the Quiet Zone must be a minimum of one-half (1/2) mile, per FRA guidelines.
d. Each approach to the crossing on every public or private roadway must have an advanced warning sign (designed and placed in accordance with the MUTCD) that advises motorists that horns are not sounded at the crossing.

e. A diagnostic team shall review all crossings within a proposed Quiet Zone (MCDOT requirement).
f. All crossings shall be equipped with automatic bells regardless of whether bells or pedestrian facilities currently exist (MCDOT requirement)
g. Constant warning track circuitry shall be required at all crossings (MCDOT requirement)
h. No private highway-rail crossings are permitted within a designated Quiet Zone. Any private crossings within a designated Quiet Zone must be closed or otherwise abandoned from use (MCDOT requirement)
i. The desired Quiet Zone must meet all FRA and MCDOT requirements prior to implementation.

Note: MCDOT will only accept Quiet Zones established under Approach 1, Public Authority Designation. Thus, only Approach 1 is discussed below.

Approach 1. Public Authority Designation (Automatic Approval)

This approach may be used if the public authority complies with at least one of following conditions:

a. Implement one or more Supplemental Security Measures (SSMs) at every public crossing within the Quiet Zone.
b. Implement SSMs at crossings within the Quiet Zone such that Quiet Zone Risk Index (QZRI) is equal to or less than the Risk Index with Horns (RIWH) or the National Significant Risk Threshold (NSRT).

Use of this approach allows the public authority to designate a Quiet Zone without the necessity of FRA review and approval.

The following steps should be taken to establish a "New" Quiet Zone as necessary under the Public Authority Application method, as specified in 49 CFR Part 222.

1. As an initial step in designating a Quiet Zone, a field review will be conducted of each potential crossing within the length of the proposed Quiet Zone. A "diagnostic team", in accordance with 49 CFR Part 222, shall perform this field review. MCDOT shall document the diagnostic team's recommendations concerning the safety of the subject crossings in order to proceed with the Quiet Zone request. MCDOT will make a final decision on what improvements (if any) will be appropriate at each grade crossing within the desired Quiet Zone.

2. The MCDOT Traffic Management Division shall provide a written "Notice of Intent" to the Key Stakeholders and obtain their cooperation and comments as specified in the Final Rule. The notice shall be sent to following parties.

   - Applicable Railroad company
   - Local agencies responsible for highway and road safety

- ADOT Utilities and Railroad Division
- Arizona Corporation Commission (AZCC)
- Federal Railroad Administration (FRA)

This notice shall contain all of the following items:

- An identification of all crossings within the Quiet Zone. The US DOT National Highway–Rail Grade Crossing Inventory number and the street or highway name shall identify each crossing.
- Time period during which train horn restriction is sought (24 hours or from 10pm to 7 am).
- Brief explanation of the tentative plans for implementing improvements within the Quiet Zone.
- Name, title and contact information for the person who will act as point of contact during the development process.
- List of the names and addresses of each party notified.

3. Each party receiving a copy of the Notice of Intent will have an opportunity to submit information or comments about the desired Quiet Zone to MCDOT during the 60-day period after the date on which the Notice of Intent will be mailed. This 60-day comment period may terminate when MCDOT obtains comments or 'no-comment statements' from each railroad operating over the public grade crossing, from the Arizona Corporation Commission (AZCC) who is responsible for rail grade crossing safety in Arizona, and from all state or local agencies responsible for highway and or road safety for the roadways intersecting the railroad.

4. The USDOT Grade Crossing Inventory Form will be updated to reflect the existing conditions at each public grade crossing within the Quiet Zone. The instructions on how to update the form may be found at http://www.fra.dot.gov/us/content/801

5. The Traffic Management Division will coordinate with the State and the applicable railroad company in updating the national inventory forms for each public highway-rail grade crossing within the Quiet Zone.

6. After installation of the appropriate SSMs, the Traffic Management Division will send "Notice of Quiet Zone Establishment" by certified mail, return receipt requested, to the parties listed below. It shall be mailed no later than 21 days before the date on which train horns are scheduled to cease sounding. This notice shall not be served earlier than 60 days after the Notice of Intent has been mailed, unless the Notice of Quiet Zone Establishment contains a written statement affirming that written comments and/or 'no comment' statements have been received from each party that received the Notice of Intent. (49 CFR Part 222)

    - Applicable railroad companies operating within the Quiet Zone.
    - The highway or traffic control authority, and the law enforcement authority with jurisdiction over motor vehicle traffic at each Quiet Zone crossings.

- ADOT Utilities and Railroad Division.
- The AZCC.
- The FRA Associate Administrator.

The Notice of Quiet Zone Establishment shall include the following:[1]

- All crossings locations within the Quiet Zone. The US DOT National Highway-Rail Grade Crossing Inventory number and the street or highway name will identify each crossing.
- Regulatory provision that provides the basis for establishing the Quiet Zone (49 CFR Part 222).
- Copy of the FRA Quiet Zone Calculator web page that contains the data on which the County is relying, if the QZRI (Quiet Zone Risk Index) was used to justify establishment of a Quiet Zone.
- Diagnostic team's recommendation and a statement affirming that the state agency responsible for grade crossing safety and all affected railroads were provided an opportunity to participate in the diagnostic team review (if a diagnostic team was required under 49 CFR Part 222).
- Indication of the time period during which horn restriction will be observed.
- An accurate, complete Grade Crossing Inventory Form for each crossing within the Quiet Zone that reflects conditions at the crossing before new SSMs were implemented.
- Written statement affirming that the Notice of Intent was provided in accordance with the FRA Final Rule, indicating the date on which the Notice of Intent was mailed.
- Name and title of the person responsible for monitoring compliance with the requirements of the rule and his/her contact information, business address, telephone number, fax number, and email address.
- Name and addresses of all the parties notified in accordance with the rule; and
- A statement signed by the County Traffic Engineer certifying that the information submitted by the County is accurate and complete to the best of his/her knowledge and belief.

7. MCDOT will have an opportunity to reduce the risk within the desired Quiet Zone by adding SSMs at one or more crossings within a potential Quiet Zone. The Quiet Zone calculator shall be used in determining which SSMs may be used.

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[1] A sample of notification packet can be found at http://www.fra.dot.gov/downloads/safety/train_horn_rule/notification_sample_packet.pdf

504. GENERAL GUIDELINES

The Department shall use the following guidelines related to quiet zones:

In order to meet the minimum requirements for Quiet Zone designation, all crossings in the zone must have active warning devices including gates and flashing lights. All crossings must also have power out indicators and constant warning time track circuitry, if reasonably practicable.

According to the FRA, if all crossings within the zone meet the minimum requirements, they qualify for Quiet Zone status, if one of the following conditions is met:

A. The Quiet Zone Risk Index (QZRI), without implementation of additional safety measures is equal to or less than the national averages for risk (Nationwide Safety Risk Threshold), at gated crossings, where the train horn is routinely sounded; or

B. Implementation of FRA approved Supplementary Safety Measures (SSMs) at each public crossing within the Quiet Zone; or

C. Implementation of FRA approved SSM's at a sufficient number of crossings within the Quiet Zone to achieve a Quiet Zone risk (QZRI) that is below national averages (NSRT) for risk at gated crossings, where the train horn is routinely sounded; or

D. Implementation of FRA approved SSM's at a sufficient number of crossings within the Quiet Zone to achieve a Quiet Zone risk (QZRI) that is below the risk at the crossings within the Quiet Zone assuming that the train horn is sounded.

As described in the Final Rule, the minimum requirements for Quiet Zone eligibility include:

A. Every public crossing within the desired Quiet Zone must be equipped with active warning devices including flashing lights and gates.

B. Every public crossing within the designated Quiet Zone subject to pedestrian traffic and equipped with automatic bells shall retain those bells.

C. Each crossing must have a power out indicator and constant warning track circuitry, if reasonably practicable.

D. Each highway approach to every public and private crossing must have an advanced warning sign (in accordance with the MUTCD) that advises motorists that horns are not sounded at the crossing.

E. The length of a Quiet Zone must be a minimum of one-half (1/2) mile along the length of railroad right-of-way.

In order to assure the safety of its residents, MCDOT has adopted a more restrictive policy regarding Quiet Zone implementation than exists in the Final Rule. Additional requirements of MCDOT include:

A. A diagnostic team shall review all crossings within a proposed Quiet Zone.

B. All crossings shall be equipped with automatic bells regardless of whether or not pedestrian facilities currently exist.

C. Constant warning track circuitry shall be required at all crossings.

D. No private highway-rail crossings are permitted within a designated Quiet Zone. Any private crossings within a designated Quiet Zone must be closed or otherwise abandoned from use.

Report to the Transportation Advisory Board

Prepared by the Maricopa County Department of Transportation

Case #/Title: DOT-02-2013 – Patent Easement Abandonment Ordinance

Meeting Date: January 21, 2014

Supervisor Districts: All Districts

Applicant: Department of Transportation

Request: Approve the proposed ordinance establishing a process for the abandonment of patent easements that are not currently used or need in the future.

Support/Opposition: A Stakeholder Workshop was conducted on November 5, 2013. No one attended. First TAB meeting held on November 19, 2013. No one attended in opposition.

A series of emails was received from Mr. Leon Spiro, copies attached. The thrust of Mr. Spiro's concerns with the proposed ordinance is that he questions whether the county can legally abandon a patent easement "in total" or whether the abandonment is limited to the "county's interest." Mr. Spiro's initial email was provided to the TAB at their meeting on November 19, 2013. All emails from Mr. Spiro were forwarded to the County Attorney's Office for review. Mr. Spiro was advised that the County Attorney's office position remains the same as it was presented in earlier emails from Supervisor Chucri's office as follows:

The recently adopted legislation to which you made reference provides a procedure for abandonment of a patent easement. In order to abandon a patent easement a county must specifically find that the patent easement is not being used and is on longer needed. Therefore, for example, if a utility had its lines or equipment in a patent easement, it is being used, so abandonment would be inappropriate. Likewise, if people were actually using a patent easement as a right of way, or can demonstrate they need to use it as the means of access to property, abandonment would be inappropriate.

Abandonment of a patent easement by a county will extinguish the patent easement totally.

A subsequent email was received from Mr. Spiro wherein he raised the same general questions. The following clarification from the County Attorney's Office was sent to Mr. Spiro:

The question Mr. Spiro raised is "whether permission has been given to abandon these patent roadway and public utilities easements 'in total' or of 'only the counties interest?'

The question demonstrates a misunderstanding of patent easements, because the county has no "interest" in a patent easement. Patent easements were given to the public. The "interest" held by the county is that delegated by the federal government, as the original grantor, to the State of Arizona, which has now delegated that authority to the counties. As the original grantor of an easement, the county has the right to abandon or revoke an easement. Of course, permission of the grantee is also required. Because the grantee is the "public," the entity that acts on behalf of the public is, in this case, also the county. So if the county desires to extinguish a patent easement, it has the power to do so. No individual member of the public has any "interest" in a patent easement.

The recently adopted legislation which has triggered the propose ordinance provides a procedure for abandonment of a patent easement. In order to abandon a patent easement a county must specifically find that the patent easement is not being used and is on longer needed. Therefore, for example, if a utility had its lines or equipment in a patent easement, it is being used, so abandonment would be inappropriate. Likewise, if people were actually using a patent easement as a right of way, or can demonstrate they need to use it as the means of access to property, abandonment would be inappropriate.

The answer to the direct question is that abandonment of a patent easement by a county will extinguish the patent easement totally.

Department Recommendation: Recommend approval of the proposed ordinance by the Board of Supervisors.

Discussion: The federal Small Tract Act of 1938 created easements for roadway and utility purposes on parcels conveyed under the Act, generally referred to as "Patent Easements." States have the authority to abandon these Patent Easements and this authority was granted to Arizona cities and towns in A.R.S. §9-500.24. A.R.S. §11-251.16, effective September 13, 2013, grants to Arizona counties authority to abandon these Patent Easements.

There are many land parcels within Maricopa County that were originally conveyed by the United States to private landowners pursuant to the Small Tract Act, passed June 1, 1938. Generally speaking, these conveyances transferred fee title to the land to the new owner, subject to easements (referred to as "patent easements") for the benefit of the public for access and utilities.

A patent easement provides a local government or public utility the right to build a road or to install utilities within the patent easement area without the need to purchase or condemn the land. The owner takes the small tract subject to the access and utility rights reserved in the easement. Patent easements also provide rights of ingress and egress to property owners in the surrounding area. These rights are subordinate to the public's right to use and develop the easement area for physical and utility access.

Any structures placed within a patent easement by the fee owner are subject to removal or destruction. In such a situation, the fee owner is not entitled to compensation for the loss of the improvements.

The county has no responsibility for improving or maintaining patent easements. Neighboring owners or public utilities may have rights to use a patent easement roadway system. The county does not involve itself in disputes between private landowners concerning contested uses or other contested issues concerning a patent easement area.

Maricopa County requires structures to maintain setbacks from public easements reserved for ingress and egress, including patent easements. Yard area zoning requirements are measured from the easement line. Thus, patent easement can significantly impact the useable area of a parcel.

This is the first of two TAB meetings required by the EROP. The attached Initialization Form sets forth the timeline for the EROP process for this proposed ordinance.

In accordance with the Maricopa County Resolution, "Moratorium on Increased Regulatory Burdens", the County Manager authorized the Department to proceed with this case in September 2013. The County Manager also briefed the Board of Supervisors in October 2013.

Ordinance Revisions:

Revisions to the proposed ordinance have been made as reflected in the attached copy of the ordinance. *Section 2. Request.* was added to provide for an Initial Determination process designed to minimize expense to applicants and to streamline the application process. A provision was also added to require comments by application reviewers to be provided to MCDOT within 30 days after the request for abandonment has been found to be complete. The time frame for submittal by the Clerk of the Board of the ordinance and related documents to the Board of Supervisors was reduced from 48 hours to 24 hours before the meeting at which a request for abandonment of a patent easement is considered for resolution. Other minor non-substantive editing changes were made.

Presented by: John B. Hauskins, P.E., Director

Attachments:

County Manager Case Approval (1 page)
Revised Initialization Form (1 page)
Revised Proposed Patent Easement Abandonment Ordinance (8 pages)
Emails from/to Mr. Leon Spiro (17 pages)

Maricopa County
Department of Transportation

John B. Hauskins, P.E.
Transportation Director & County Engineer
2901 W. Durango Street
Phoenix, AZ 85009
Phone: 602-506-4644
Fax: 602-506-4858
www.maricopa.gov

Date: September 30, 2013

To: Tom Manos, County Manager

Via: Joy Rich, AICP, Deputy County Manager JM

From: John B. Hauskins, P.E., Director 9-30-2013

Re: County Manager Approval – Proposed Ordinance regarding Patent Easement Abandonment

In accordance with the Maricopa County Resolution, "Moratorium on Increased Regulatory Burdens," the Department of Transportation (MCDOT) is seeking your approval to adopt an ordinance via the Enhanced Regulatory Outreach Process (EROP).

The requested ordinance qualifies for County Manager Approval under the moratorium, as these procedures and fees are necessary to comply with the new state law authorizing counties to abandon patent easements (A.R.S. §11-251.16). We would refer to this new EROP case as DOT-02-2013 – Patent Easement Abandonment Ordinance.

The requested ordinance will provide a procedure and fee structure for MCDOT to process county property owners' request to abandon patent easement on their property.

We are requesting your approval to move this proposed ordinance forward in accordance with the Maricopa County Resolution, "Moratorium on Increased Regulatory Burdens."

Approved by Tom Manos, County Manager

Maricopa County Enhanced Regulatory Outreach Program
Revised Initialization Form

Department: Transportation	**Contact:** Mitch Wagner (6-5858)	**Date Entered in Process:**

Item Name and Number: Patent Easement Abandonment Ordinance (DOT-02-2013)

Step Number	Process to be Completed	Upcoming Dates	Comments
1	County Manager Briefed BOS	10-21-13	
2	Stakeholder Notification 2 weeks prior to Stakeholder Workshop	10-22-13	
3	Conduct Stakeholder Workshop	11-05-13	
4	Stakeholder Notification 2 weeks prior to Citizen's Board or Commission	11-05-13	
5	Public meeting to Initiate Regulatory Change	11-19-13	
6	Specific Departmental Processes	N/A	
7	Stakeholder Notification 2 weeks prior to Citizen's Board or Commission	01-07-14	
8	Public Meeting to Make Recommendation to BOS	01-21-14	
9	Schedule BOS Public Hearing	01-23-14	60 day notice for fee ordinance – SOLAR
10	BOS Public Hearing	04-09-14	
11	Item Adopted	04-09-14	

REVISED DECEMBER 19, 2013

AN ORDINANCE ADOPTING PROCEDURES FOR THE ABANDONMENT OF PATENT EASEMENTS PURSUANT TO A.R.S. §11-251.16

Whereas, the Arizona State Legislature has enacted Laws 2013, Chapter 49, relating to county powers and duties, effective on the ninety-first (91st) day after the date the fifty-first (51st) Legislature adjourns its first regular session sine die; and

Whereas, A.R.S. §11-251.16, as added by Laws 2013, Chapter 49, grants to Arizona counties authority to abandon easements created pursuant to the Small Tract Act of 1938; and

Whereas, the Arizona Legislature has required that public notice to be given by the Board of Supervisors before a resolution abandoning an easement created pursuant to the Small Tract Act of 1938 may be adopted; and

Whereas, the Maricopa County Board of Supervisors desires to establish procedures and guidelines for the abandonment of easements created pursuant to the Small Tract Act of 1938; and

Whereas, the Maricopa County Board of Supervisors recognizes it is important for property owners to have a process whereby the property owners may request the Board to remove unnecessary patent easements from their property under certain conditions.

NOW THEREFORE, BE IT ORDAINED BY THE MARICOPA COUNTY BOARD OF SUPERVISORS, as follows:

Section 1. Definitions. As used in this Ordinance, the following terms shall have the following meaning:

"Affected Utilities" means any and all suppliers of electricity, gas, water, sewer service, cable television, telephone service, internet services or other utilities that have

been registered with the Arizona Blue Stake Center that provide services in the vicinity of a patent easement for which abandonment has been requested.

"Board of Supervisors" means the Board of Supervisors of Maricopa County, Arizona.

"Land Abutting the Easement" means those properties, or any part thereof, that share a common boundary with the portion of a patent easement for which a request for abandonment is filed.

"Lender" means any person or institution with a recorded lien secured by a Deed of Trust or Mortgage in property that is burdened by a patent easement.

"Majority of the Owners" means greater than fifty percent (50%) of all record owners of all property that abuts the patent easement for which abandonment has been requested. If an undivided parcel is owned by multiple owners, such owners shall be deemed as one for purposes of this definition.

"MCDOT" means the Maricopa County Department of Transportation.

"Objection to Abandonment" means a notice in writing delivered to the Clerk of the Board of Supervisors on or before the date of the meeting of the Board of Supervisors at which abandonment of a patent easement is scheduled, which expresses opposition to the abandonment.

"Patent Easement" means an easement created pursuant to the Small Claims Act of 1938.

"Request for Abandonment" means the filing of an application in the form prescribed by Maricopa County, together with all supporting documentation, by all record title holders of property that is burdened by a patent easement to commence the process for having the patent easement removed from the property, if deemed justified and appropriate by the Board of Supervisors.

Section 2. Request.

~~a. A request for abandonment of a patent easement may only be filed by a majority of the record owners of the property burdened by the patent easement for which abandonment is being requested and shall be filed with MCDOT on forms prescribed by Maricopa County and shall be accompanied by the applicable filing fees established by the Board of Supervisors by separate ordinance.~~

a. **Section 2. Request.** A request for Initial Determination may be filed by any person. A request for Initial Determination shall be filed on forms provided by MCDOT and shall be accompanied by all required documentation and the required fee. The request for Initial Determination shall be promptly circulated by MCDOT to the Maricopa County Planning and Development Department, Maricopa County Public Works Real Estate Division, Maricopa County Parks and Recreation Department, the Real Estate Services Division of the Maricopa County Department of Finance and the Flood Control District for Maricopa County. In the event the property burdened by the patent easement for which abandonment is being requested has a common boundary with any municipality, any tribal nation, property of the Arizona State Land Department, the Federal Bureau of Reclamation and/or the Federal Bureau of Land Management, each of the affected entities shall also be provided with a copy of the request for Initial Determination. The reviewers named in this paragraph shall provide comments to MCDOT within fifteen (15) days of MCDOT's circulation of the request for Initial Determination. Once MCDOT has completed the review and within thirty (30) days of the circulation of the request for Initial Determination, a written Initial Determination shall be provided to the person requesting the Initial Determination.

b. Subsequent to receipt of a request for Initial Determination, if it is determined by the requesting party that a request for abandonment will be pursued, a request for abandonment shall be filed with MCDOT on forms prescribed by Maricopa County and shall be accompanied by the applicable filing fees established by the Board of Supervisors.. A request for abandonment of a patent easement may only be filed by a majority of the record owners of the property burdened by the patent easement for which abandonment is being requested.

c. Upon receipt of a request for abandonment of a patent easement, MCDOT shall review the request for completeness. No request for abandonment of a patent

easement shall be complete unless accompanied by the consent to the abandonment by any and all Lenders. MCDOT shall make its determination regarding completeness of the request within fifteen (15) days. MCDOT may return the request for abandonment to the requestor for adjustment to render the request complete.

~~b. Upon receipt of a request for abandonment of a patent easement, MCDOT shall review the request for completeness. No request for abandonment of a patent easement shall be complete unless accompanied by the consent to the abandonment by any and all Lenders.~~

d. Upon a determination that the request for abandonment of a patent easement is complete, said request shall be circulated by MCDOT to the Maricopa County Department of Planning and Development, the Maricopa County Department of Environmental Services, the Flood Control District of Maricopa County, the Maricopa County Public Works Real Estate Division, the Real Estate Services Division of the Maricopa County Department of Finance and Maricopa County Parks Department. In the event the property burdened by the patent easement for which abandonment is sought has a common border with any incorporated municipality or municipalities, a copy of the request for abandonment shall be sent to said municipality or municipalities. In the event the property burdened by the patent easement for which abandonment is sought has a common border with any property owned by the Arizona State Land Department, a copy of the request for abandonment shall be sent to the Arizona State Land Department. In the event the property burdened by the patent easement for which abandonment is sought has a common border with property owned by the Federal Bureau of Land Management, a copy of the request for abandonment shall be sent to the Federal Bureau of Land Management. In the event the property burdened by the patent easement for which abandonment is sought has a common border with any property that is part of a tribal reservation, a copy of the request for abandonment shall be sent to the appropriate Nation. In addition, MCDOT shall obtain from the Arizona Blue Stake Commission the identity of all Affected Utilities. The reviewers named in this paragraph shall provide comments to MCDOT within thirty (30) days after the request for abandonment has been found to be complete.

~~c.~~e. Upon receipt of input from the departments and agencies to which the request for abandonment of a patent easement have been circulated, but in no event later than fourteen (14) days after the request has been found to be complete, MCDOT shall prepare a report to the Board of Supervisors, including a recommendation if the request should be granted or denied. Said report shall include a determination of whether or not consent of all affected utilities has been obtained and shall include an analysis whether the patent easement for which abandonment is sought is being used or if the patent easement is still necessary. A copy of said report, together with any and all comments from any of the departments or agencies to which the request has been circulated, shall be posted on the MCDOT web site. MCDOT shall provide to the contact person named on the request for abandonment of a patent easement notice that the required documentation has been posted on the MCDOT web site and shall provide the necessary link to the posting.

~~d.~~f. When the report by MCDOT has been posted, the clerk of the Board of Supervisors shall schedule the request for abandonment of the patent easement for consideration by the Board of Supervisors.

~~e.~~g. Not fewer than sixty (60) days before any meeting at which the request for abandonment of the a patent easement shall be considered, MCDOT, on behalf of the Board of Supervisors, shall provide by certified mail written notice to the record owners of all land abutting the easement and to the Affected Utilities of the time, date and place of the meeting at which the request for abandonment of the a patent easement shall be considered by the Board of Supervisors. The notice shall provide a description of the property burdened by the patent easement for which abandonment is requested, and shall provide notice of the opportunity and deadline to provide objection to abandonment and the right to personally appear at the meeting and present objection to the proposed abandonment.

~~f.~~h. Not fewer than sixty (60) days before any meeting at which the request for abandonment of the a patent easement shall be considered, MCDOT, on behalf of the Board of Supervisors, shall post a notice in once location on or within the vicinity of the portion of the patent easement for which abandonment has been request. Said posting

shall provide notice of the time, date and place of the meeting at which the request for abandonment of a patent easement shall be considered by the Board of Supervisors. The notice shall advise of the opportunity and deadline to provide objection to abandonment and the right to personally appear at the meeting and present objection to the proposed abandonment. The posting shall be accomplished in accordance with the general practice of MCDOT for the posting of notices of abandonments.

~~g.~~i. Not fewer than ~~forty-eight~~twenty-four (~~48~~24) hours prior to the meeting of the Board of Supervisors at which a request for abandonment of a patent easement is to be considered for resolution, the clerk of the Board of Supervisors shall provide to each member of the Board of Supervisors a copy of the staff report, all documentation by the owners seeking abandonment of a patent easement and any written objection to abandonment received by MCDOT or any other county agency.

Section 3. Fees

a. The fee for an Initial Review shall be $250.00.

b. The fee for an Application for Patent Easement Abandonment shall be $1,600.00. If an Application for Patent Easement Abandonment is filed within six (6) months of the date upon which an Initial Review has been completed for the same patent easement, the applicant shall receive a credit against the fee for the Application for Patent Easement Abandonment in the amount of $250.00.

Section 4. Procedures before the Board of Supervisors.

a. The owners seeking the abandonment of a patent easement shall have the obligation to demonstrate that the patent easement is not being used by the public or is no longer necessary.

b. At the conclusion of the presentation of all arguments concerning the request for abandonment of a patent easement, and after deliberation, the Board of Supervisors shall grant the request, deny the request or postpone consideration of the request. The granting of any request for abandonment of a patent easement shall only

be accomplished by the Board of Supervisors adopting a formal resolution, which resolution shall be in form that will allow the recording of such resolution in the chain of title of the property burdened by the patent easement.

c. The grant of a request for abandonment of a patent may be subject to any and all conditions which the Board of Supervisors shall deem necessary.

Section 5. Criteria for granting relief.

In exercising its discretion to abandon a patent easement, the Board of Supervisors shall use the following criteria:

a. If a patent easement for which abandonment is requested shares a border with and is parallel to any right of way that has been opened and declared by Maricopa County, there shall be a rebuttable presumption that the patent easement is being used and is necessary.

b. If a patent easement for which abandonment is requested shares a border with and is parallel to any right of way that has been dedicated or granted to Maricopa County or to the public, there shall be a rebuttable presumption that the patent easement is still being used and is still necessary.

c. A request for abandonment of a patent easement may be granted only if a majority of the owners shall not have objected, either by providing written objection or presenting objection in person at any meeting of the Board of Supervisors at which a request for abandonment of a patent easement is considered.

d. No request for abandonment of a patent easement shall be granted over the objection of the Arizona State Land Department, the Federal Bureau of Land Management or any Affected Utility.

~~**e.** No request for abandonment of a patent easement shall be granted over the objection of a Lender.~~

e. In the event any municipality or tribe to which notice has been provided pursuant to this Ordinance shall provide written objection to the abandonment of

a patent easement, there shall be a rebuttable presumption that the patent easement is being used or that the patent easements remains necessary.

~~g.~~f. A request for abandonment of a patent easement shall only be granted when the Board of Supervisors determines in its discretion that the patent easement is not being used by the public at the time of the request or that said patent easement is no longer necessary.

Section 6. Effective abandonment.

Upon the adoption of a resolution abandoning a patent easement and the appropriate signatures being affixed, the original resolution shall be recorded in the office of the Recorder of Maricopa County by the Office of the Clerk of the Board of Supervisors. A patent easement shall be deemed to have been abandoned upon the recording of a resolution abandoning a patent easement which has been properly adopted by the Board of Supervisors. An abandoned patent easement shall no longer be a burden upon the property previously burdened by the patent easement.

Section 7. Effective date. This ordinance shall be effective on ~~either~~ the date that is thirty (30) days after adoption by the Board of Supervisors.

ADOPTED BY THE MARICOPA COUNTY BOARD OF SUPEVISORS on _____, ~~2013~~2014.

_____
~~Andrew Kunasek~~, Chairman

ATTEST:

_____
Fran McCarroll, Clerk of the Board of Supervisors

Mitch Wagner - MCDOTX

From: Mitch Wagner - MCDOTX
Sent: Monday, January 06, 2014 2:04 PM
To: 'leon spiro'
Subject: RE: Spiro to Townsend #2. Fw: HB 2031opa Count

Mr. Spiro ... I am not aware of any formal written County Attorney opinion on this issue. Below is further clarification from the County Attorney's office:

> The question Mr. Spiro raised is "whether permission has been given to abandon these patent roadway and public utilities easements 'in total' or of 'only the counties interest?'
>
> The question demonstrates a misunderstanding of patent easements, because the county has no "interest" in a patent easement. Patent easements were given to the public. The "interest" held by the county is that delegated by the federal government, as the original grantor, to the State of Arizona, which has now delegated that authority to the counties. As the original grantor of an easement, the county has the right to abandon or revoke an easement. Of course, permission of the grantee is also required. Because the grantee is the "public," the entity that acts on behalf of the public is, in this case, also the county. So if the county desires to extinguish a patent easement, it has the power to do so. No individual member of the public has any "interest" in a patent easement.
>
> The recently adopted legislation which has triggered the propose ordinance provides a procedure for abandonment of a patent easement. In order to abandon a patent easement a county must specifically find that the patent easement is not being used and is on longer needed. Therefore, for example, if a utility had its lines or equipment in a patent easement, it is being used, so abandonment would be inappropriate. Likewise, if people were actually using a patent easement as a right of way, or can demonstrate they need to use it as the means of access to property, abandonment would be inappropriate.
>
> The answer to the direct question is that abandonment of a patent easement by a county will extinguish the patent easement totally.

Thank you.

Mitch Wagner, Board Liaison
Maricopa County Department of Transportation
602-506-5858

CONFIDENTIALITY NOTICE: This message, with any attachments, is intended only for the use of the individual or entity to which it is addressed, and may contain information that is confidential and exempt from disclosure. If you are not the intended recipient, any dissemination, distribution, or copying of this message or any attachment is strictly prohibited. If you have received this message in error, please notify the original sender immediately by return E-mail and delete this message and all attachments. Thank you.

Public Disclosure Notice: This message and any messages in response to the sender of this message may be subject to a public records request.

From: leon spiro [mailto:leon_spiro@yahoo.com]
Sent: Sunday, January 05, 2014 4:51 PM
To: Mitch Wagner - MCDOTX

Cc: leon_spiro@yahoo.com; Katie Prendergast - DIST2X; Joseph Domanico; Dan Brenden; Wayne Peck; chucris@mail.maricopa.com; tfleming@azleg.gov; John Hauskins - MCDOTX; Darren Gerard - PLANDEVX; Charles Hart - PLANDEVX; chh@pima.gov; chris.coppola@arizonarepublic.com
Subject: Fw: Spiro to Townsend #2. Fw: HB 2031opa Count

Mitch Wagner, Liason Officer, MCDOT, Arizona; Mr. Wagner: My sincere thanks for informing me of the next step in Maricopa County's procedure for abandon ing a Small Tract Act of 1938 Federal Patent Roadway and Public Utilities Easement for Small Tract Act parcels, sold to individual Citizens. You mention the statement of "abandonment of these patented easements "in total" is attributed to a decision of County Attorney Bill Montgomery .can anyone produce this document , with his signature? Supervisor Chucri's Chief of Staff Katie Prendergrast is unable to produce a coonfirmation copy for that statement made. County Attorney Bill Montgomery is a U. S. Military West Point gr aduate who abided by the Military Code of , "FIRM AND FAIR". I assume that this fairness trait has not left County Attorney Mongomery. This "patent easement issue" is a "legal issue and not a judgement call". We view this "abandonment 'in total' a property right taking". Please read the "original Federal Land Patent with the specifed easement loocation". We understand that this original "patent (deed) provides dominant tenement easement rights and servient tenement easement obligations " that remain in perpetuity. It is advised "due dillegence". Why take the risk? Remind everyone concerned, to read Deputy Director Lynn Favor's Memorandum regarding Small Tract Act of 1938 Patent Roadway and Public Utilities Easements and Planning and Development Department Directive DD 2011-05, which is also about Federal Patent Roadway and Public Utilities Easements. Governor Jan Brewer has also addressed this same issue when she was a member of the Maricopa Board of Supervisor's. . Has the Legislation been changed? .May I call to your attention Arizona Appellate Court

Case titled Neal V, Brown, #1 CA-CV 06-0756, which was decisioned on a "fence construction placement for which there was a "required pre-construction inspection, which, I believe, was never ordered by the property owner" nor was one made . It is hard to believe that this fact was not uncovered by one of the Attorneys and Judges involved? This Appellaate Court Case #1 CA-CV 06-0756 , now, I understand is "Case Law" and is being referenced, most recently in Alaska. If we are correct, was the Court duped? One wonders, if this is correct, what does the Arizona Justice System do about a case like this? As a Citizen of Maricopa County, I "oppose this Ordinance change as I believe , as others do, that this abandonment is a "property right taking" . Small Tract Act of 1938 Patent (deeded) Roadway and Public Utilities Easements are different in that they were placed there by the Federal Government. Please, if you are permitted, see that this correspondence to you is seen by the by the Transortation Advisory Bo Also, we believe, they can not be legally assembled. If abandoned of city, town or county interest, these roadway easements then become "private roadways ". Leon Spiro, SFC-E7 (Retired) U. S, Army.

----- Forwarded Message -----
From: Katie Prendergast - DIST2X <prendergastk@mail.maricopa.gov>
To: leon spiro <leon_spiro@yahoo.com>
Sent: Friday, October 11, 2013 3:43 PM
Subject: RE: Spiro to Townsend #2. Fw: HB 2031

Hello Mr. Spiro,

Thank you for your reply. No, I am not an attorney and received information on the question you posed to Supervisor Chucri from the Maricopa County Attorney's Office. Below please find that information:

> The recently adopted legislation to which you made reference provides a procedure for abandonment of a patent easement. In order to abandon a patent easement a county must specifically find that the patent easement is not being used and is on longer needed. Therefore, for example, if a utility had its lines or equipment in a patent easement, it is being used, so abandonment would be inappropriate. Likewise, if people were actually using a patent easement as a right of way, or can demonstrate they need to use it as the means of access to property, abandonment would be inappropriate.

Abandonment of a patent easement by a county will extinguish the patent easement totally.

Please let me know if you have additional questions and I am happy to assist you.

Best regards,

Katie

From: leon spiro [mailto:leon_spiro@yahoo.com]
Sent: Thursday, October 10, 2013 10:00 AM
To: Katie Prendergast - DIST2X
Cc: leon_spiro@yahoo.com
Subject: Fw: Spiro to Townsend #2. Fw: HB 2031

Sorry. Spiro

----- Forwarded Message -----
From: leon spiro <leon_spiro@yahoo.com>
To: "pendergastk@mail.maricopa.gov" <pendergastk@mail.maricopa.gov>
Cc: "leon_spiro@yahoo.com" <leon_spiro@yahoo.com>; "btownsend@azleg.gov" <btownsend@azleg.gov>; "mugenti@azleg.gov" <mugenti@azleg.gov>; "murray_snow@azd.uscourts.gov" <murray_snow@azd.uscourts.gov>; "chucris@mail.maricopa.gov" <chucris@mail.maricopa.gov>
Sent: Thursday, October 10, 2013 4:44 AM
Subject: Fw: Spiro to Townsend #2. Fw: HB 2031

Katie Pendergast, Deputy Chief of Staff, Maricopa County; Mrs. Pendergast: Thank you for your reply to Supervisor Chucri's request. May I ask, are you an Attorney? I am presently not in Arizona. E Mail is the best and only way to comunicate at this time. I understand that E Mail communication is also for the record, and this is good regarding this legal issue . So that you may become more familiar with this issue now before you, may I suggest that you become familiar with Maricopa County Planning Department Memorandum #DD2011-05, Arizona Appellate Court Case #1 CA-CV 06-0756 . Please read or listen to Professor / Attorney Gary Birnbaum's 1 March 2005 Study Session Presentation given to the City of Scottsdale City Council . City Clerk Carolyn Jagger , I am sure still, will be pleased to provide you with a written and audio copy of this session. Please note also, the City Of Scottsdale's position regarding these Small Tract Act of 1938 Federal Patent Roadway and Public Utilities Easements. I am not a Lawyer. I will be pleased to provide you with any material that I may have regarding this issue. I see the answer to this question as being, "a yes, or a no". Many thanks for your reply. Leon Spiro, SFC-E7 (Retired) U. S. Army PS: The City of Scottsdale has "abandoned its interest in my front street which should be 66 feet wide and has made it into a 15 foot wide alley trail. The City of Scottsdale has not as yet permitted encroachment upon these abandoned portions . LS. ----- Forwarded d only -----
From: leon spiro mailto:leon_opyspiro@yahoo.com
To: "btownsend@azleg.gov" <btownsend@azleg.gov>
Cc: "mugenti@azleg.gov" <mugenti@azleg.gov>; "leon_spiro@yahoo.com" <leon_spiro@yahoo.com>; "jburges@azleg.gov" <jburges@azleg.gov>; "ag.inquieries@azag.gov" <ag.inquieries@azag.gov>
Sent: Sunday, August 11, 2013 10:25 AM
Subject: Fw: Spiro to Townsend #2. Fw: HB 2031

Brian Townsend, Senior Policy and Operations Advisor to the Majority; Mr. Townsend: I reference my last E Mail to you dated 7 August 2013. Sir, would you please acknowledge receipt of this E

Mail correspondence as I assume it may take you a while to answer questions asked of you. I await your reply.. Leon Spiro, SFC-E7 (Retired) U.S. Army. @scottsdaleaz.gov" <bwashburn@scottsdaleaz.gov>; "sscott@scottsdaleaz.gov" <sscott@scottsdaleaz.gov>; "mugenti@azleg.gov" <mugenti@azleg.gov>
Sent: Wednesday, August 7, 2013 5:05 AM
Subject: Fw: Spiro to Townsend #2. Fw: HB 2031

Brian Townsend; Mr. Townsend, I am of the understanding that E Mail correspondence is "for the record". And this, then, will then be a perfect means for referencing. And so, the question once again is whether newly passed HB2031, 2013, regarding the Small Tract Act of 1938 Federal patent easements, "abandons this deeded roadway and public utilties easement "in total" after the Counties abandonment procedure? I reference the "private property right of all owners of Federal Patent property sold under the Classification Order that created this neighborhood." We believe that this can not be abandoned. As the Sen ior Policy and Operation Advisor to the Majority, was this issue exlained to all Representatives. This should be a recorded document. May I have a copy. Once again, I suggest that you become familiar with Arizona Appellate Court Case #1 CA-CV 06-0756. Make sure you are familiar with the decenting opinion of Judge Murray Snow. I await your reply. This is a much better way to communicate which will make all involved, accountable. Leon Spiro, SFC-E7 (Retired) U.S. Army. Forwarded Message -----
From: Brian Townsend <BTownsend@azleg.gov>
To: leon spiro <leon_spiro@yahoo.com>
Sent: Tuesday, August 6, 2013 11:53 AM
Subject: RE: Spiro to Townsend #1. Fw: HB 2031

Mr. Spiro,

It may be easier to communicate over the phone to address your question regarding the meaning of certain terms. If you can provide me a phone number I am happy to call you or we can set up a specific time to talk so we do not miss each other. Just let me know.

Thanks,
Brian

From: leon spiro [mailto:leon_spiro@yahoo.com]
Sent: Tuesday, August 06, 2013 11:10 AM
To: Brian Townsend
Cc: leon_spiro@yahoo.com
Subject: Spiro to Townsend #1. Fw: HB 2031

Mr. Brian Townsend: I have your E Mail for which I thank you. I am presently out of Arizona and contacting you by phone may be difficult. E Mail may be a better way to communicate at this time. I have asked the question of Representative Ugenti and I assume that you will provide the answer ? I am more than willing to ----answer all questions asked of me. In the meantime, may I suggest that you become familiar with Ariizona Appellate Court Case #1 CA-CV 06-0756 which may contain some interesting material regarding Small TRact Act of 1938 roadway easements.. May I ask, "are you an Attorney"? I await your reply. Leon Spiro. SFC-E7 (Retired) U. S. Army - Forwarded Message -----
From: Brian Townsend <BTownsend@azleg.gov>
To: "leon_spiro@yahoo.com" <leon_spiro@yahoo.com>
Sent: Monday, August 5, 2013 3:00 PM
Subject: HB 2031

Mr Spiro,

Representative Ugenti asked me to contact you regarding your email to her about HB 2031. Please call me at your earliest convenience at 602-926-3958.

ich

Thank you,
Brian Townsend
Senior Policy and Operations Advisor to the Majority

Mitch Wagner - MCDOTX

From: Mitch Wagner - MCDOTX
Sent: Friday, January 03, 2014 2:23 PM
To: 'leon spiro'
Subject: Property Right Taking by Legislatuure? Fw. Request for answer.. Spiro to Sen. Griffibn #2. Fw: Patent Easement Abandonment. DOT-o2-2013t

Mr. Spiro ... I note that you included me on the email you sent to Senator Griffin and numerous others. I will leave it to Senator Griffin to respond to your questions and issues related to actions taken by the legislature. Your correspondence will be included in the staff report to the Transportation Advisory Board for their January 21st meeting when *DOT-02-2013 Patent Easement Abandonment Ordinance* is considered for recommendation to the Board of Supervisors for approval. As It appears that you have two primary concerns. First, whether a patent easement that is currently in use by a utility or other party will be abandoned. Second, whether the interest in the patent easement is abandoned "in total" or just "the county's interest." For the answer to both these issues, I would refer you to the earlier email you received from Supervisor Chucri's office that summarized the County Attorney's Office response as follows:

The recently adopted legislation to which you made reference provides a procedure for abandonment of a patent easement. In order to abandon a patent easement a county must specifically find that the patent easement is not being used and is on longer needed. Therefore, for example, if a utility had its lines or equipment in a patent easement, it is being used, so abandonment would be inappropriate. Likewise, if people were actually using a patent easement as a right of way, or can demonstrate they need to use it as the means of access to property, abandonment would be inappropriate.

Abandonment of a patent easement by a county will extinguish the patent easement totally.

Thank you.

Mitch Wagner, Board Liaison
Maricopa County Department of Transportation
602-506-5858

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Public Disclosure Notice: This message and any messages in response to the sender of this message may be subject to a public records request.

From: leon spiro [mailto:leon_spiro@yahoo.com]
Sent: Sunday, December 22, 2013 3:40 AM
To: ggriffin@azleg.gov
Cc: leon_spiro@yahoo.com; tfleming@azleg.gov; mugenti@azleg.gov; btownsend@azleg.gov; jburges@azleg.gov; ag.inquieries@azag.gov; Joseph Domanico; Dan Brenden; montgomeryb@mcao.maricopa.gov; Wayne Peck; Stephen Chucri - DIST2X; Katie Prendergast - DIST2X; Andrew Kunasek - DIST3X; chh@pima.gov; sfarley@azleg.gov; tadams@azleg.gov; cjagger@scottsdaleaz.gov; citycouncil@scottsdaleaz.gov; citycouncil@lasvegasnevada.gov; Tom

Manos - CAOX; Mitch Wagner - MCDOTX; Darren Gerard - PLANDEVX; Mike Freeman - PLANDEVX; district1@pima.gov; district2@pima.gov; district3@pima.gov; district4@pima.gov; district5@pima.gov; Dan Brenden; blebovitz@scottsdaleaz.gov; bwashburn@scottsdaleaz.gov; bcoffin@lasvegasnevada.gov; bbateman@utah.gov; citycouncil@scottsdaleaz.gov; copperphillips@cox.net; ed.montini@arizonarepublic.com; Fran McCarroll - COBX; gkamp@azleg.gov; Clinton Hickman - DIST4X; jburges@azleg.gov; john@reactionresearch.com; john@saaronline.com; John Hauskins - MCDOTX; jmurillo@scottsdaleaz.gov; jpadilla@scottsdaleaz.gov; korte@kortescottsdale.com; laurie.roberts@arizonarepublic.com; MaryRose Wilcox - DIST5X; noel@noelhebets.com; nanette.francella@wellsfargo.com; Katie Prendergast - DIST2X; pdial@azleg.gov; pneal@q.com; renocop@earthlink.net; rbarlow@lasvegasnevada.gov; rebecca.floyes@pima.gov; sam@samjwest.com; sscott@scottsdaleaz.gov; sfarley@azleg.gov; santhony@lasvegasnevada.gov; scott@outbackinspections.com; tcurtis@scottsdaleaz.gov; Terri Hogan - PLANDEVX; dolsen@goldwaterinstitute.org; chris.coppola@arizonarepublic.com; Lynn Favour - PLANDEVX
Subject: 2013-12-22 - Spiro - Property Right Taking by Legislatuure? Fw. Request for answer.. Spiro to Sen. Griffibn #2. Fw: Patent Easement Abandonment. DOT-o2-2013t

----- Forwarded Message -----
From: leon spiro <leon_spiro@yahoo.com

Sent: Saturday, December 21, 2013 5:15 PM
Subject: Fw: Request for answer.. Spiro to Sen. Griffibn #2. Fw: Patent Easement Abandonment. DOT-o2-2013t

Gail Griffin. Senator , Arizona State Legislature; Senator Griffin: I have received your letter dated 18 December 2013 which was a reply to my request to my correspondence of 29 November 2013. You asked for my address and I live at 7814 E. Oberlin Way, Scottsdale . 85266. I first made a similar request to Representative Michelle Ugenti who then requested Mr. Brian Townsend, Senior Policy Adviser to the Arizona Legislature for a response. I requested E Mail correspondence rather than the phone mainly because of a hearing disability. It appears this question asked of Representative Ugenti ,Chairwoman of the Government Affairs Committee will never be replied to. Others have been asked this same question that has been asked of you. I have come to you, the the presentor of the Griffin Amendment, the Legislator, who I believe, is the most knowledgeble, and I ask once again, is House Bill #2031,2013, permitting the Arizona Countys to "abandon these Small Tract Act of 1938 Patent Roadway and Public Utilities Easements "in total" or permitting the Arizona Counties to abandon only "the countys interest" in the patent (deeded) roadway annd public utilities easements? Simple question to an issue that was addressed with the passage of Arizona State Statute #9-500.24 . but do the Cities and Towns abandon 'in total"? The City of Scottsdale , I belive only

abandons th "City oof Scottsdales interest" in these Small Tract Act of 1938 Patent Roadway and Public Utilities Easements. If anyone tells you differently, I suggest you read the Resolution Document and required "Agreement Documents required of each property owner" for the correct answer. Please forwad any of my correspondence , but please, answer the question asked of you so that I may go forward. The answer is either "the Arizona Legislature is permitting the abandonment of the Small Tract Act of 1938 Patent Roadway and Public Utilities Easements "in total" or the Arizona State Legislature is permitting all Arizona Counties to only abandon the "counties interest' in these Small Tract Act of 1938 Roadway and Public Utilitiess Easements. As a Federal Small TRact Act of 1938 Parcel Owner we believe that with the citys, towns, and county abandonment of these patent easements, these patent roadway eeasements then can no longer be used by the public but are once again private roadways for use by only Small Tract Act of 1938 parcel owners. These roadway easements can not be encroached upon for anyting other than a roadway. All owners of land that was created by the Classification Order that creatted these neighborhoods are permitted access to go from area to area. All Small Tract Act oof 1938 Parcel Owners have "dominate tenament easement rights and servient tenament easement obligations". Leon Spiro, SFC-EE7 (Retired) U. S. Army. PS: I suggest that you read carefully the expired BLM Instructionl Memradum #91-196 that is so often referenced. LS.

----- Forwarded Message -----
From: Gail Griffin <GGriffin@azleg.gov>
To: leon spiro <leon_spiro@yahoo.com>
Sent: Wednesday, December 18, 2013 11:48 AM
Subject: RE: Request for answer.. Spiro to Sen. Griffibn #2. Fw: Patent Easement Abandonment. DOT-o2-2013t

Leon,

Please provide me with your address and I will refer your email to your senator.

Thank you.

Gail Griffin

From: leon spiro [mailto:leon_spiro@yahoo.com]
Sent: Friday, December 13, 2013 8:34 AM
To: Gail Griffin
Cc: leon_spiro@yahoo.com; Tim Fleming; tadams@az.leg; Brian Townsend; chh@pima.gov; tmanos@mail.maricopa.gov; brendend@mcao.maricopa.gov; domanico@mcao.maricopa.gov; dolsen@goldwaterinstitute.org; peckw@mcao.maricopa.gov; mitchwagner@mail.maricopa.gov; darrengerard@mail.maricopa.gov; mikefreeman@mail.maricopa.gov; joyrich@mail.maricopa.gov; Tim Fleming; district1@pima.gov; district2@pima.gov; district3@pima.gov; district4@pima.gov; district5@pima.gov; john@reactionresearch.com; john@saaronline.com; johnhauskins@mail.maricopa.gov; mikefreeman@mail.maricopa.gov; mitchwagner@mail.maricopa.gov; markstuart1001@cox.net; Michelle Ugenti; Steve Farley; leon_spiro@yahoo.com; lynnfavour@mail.maricopa.gov; laurie.roberts@arizonarepublic.com; lmilhaven@scottsdaleaz.gov; citycouncil@scottsdaleaz.gov; chucris@mail.maricopa.com; chris.coppola@arizonarepublic.com; jerbeck@lasvegasnevada.gov; john@reactionresearch.com; Jeff Dial; Judy M. Burges; savemtrose@earthlink.net; sam@samjwest.com; ortegarchi@cox.net; Tom Forese
Subject: Fw: Request for answer.. Spiro to Sen. Griffibn #2. Fw: Patent Easement Abandonment. DOT-o2-2013t

Gail Griiffin,Senator, Arizona State Legislature; Senator Griffin: I reference my E Mail "question correspondence" to you dated 29 November 2013, for which I asked if the newly passed House Bill 2031,20.I13 was permiitting the Small Tract Act of 1938 Patent Roadway and Public Utilities Easements , as deeded in each Land Patent issued at time of sale of these land parcels, by the U. S. Government , was permitting all Arizona Counties to abandon these "patent roadway and public utilities easements in total" or only "permitting only the Arizona 'Counties interest' in these roadway and public utilities easements to be abandoned"? As of this date Ii have received no reply to my question, nor have I received correspondence acknowledging receipt of my correspondence, from I assume, the most knowledgeable of all Legislators regarding this Small Tract Act of 1938. I await your reply to the question that affects so many homeowners and parcel owners of these Small Tract Act of 1938 Patented Parcels that were sold by the Federal Government to Uniited States Citizens. Leon Spiro, SFC-E7 (Retired) U. S. Army.

----- Forwarded Message -----
From: leon spiro <leon_ spiro@yahoo.com>
To: "ggriffin@azleg.gov" <ggriffin@azleg.gov>

Cc: "tfleming@azleg.gov" <tfleming@azleg.gov>; "btownsend@azleg.gov" <btownsend@azleg.gov>; "mugenti@azleg.gov" <mugenti@azleg.gov>; "chucris@mail.maricopa.gov" <chucris@mail.maricopa.gov>; "prendergastk@mail.maricopa.gov" <prendergastk@mail.maricopa.gov>; "peckw@mcao.maricopa.gov" <peckw@mcao.maricopa.gov>
Sent: Friday, November 29, 2013 7:36 AM
Subject: Request for answer. Fw: Patent Easement Abandonment. DOT-o2-2013

Gail, Gtiffin; Senator, Arizona State Legislature; Senator Griffin: II reference recently passed HB 2031, 2013, titled Patent Easement Abandonment, for which you were the presentor of the "Griffin Admendment". As, one of many, of the Arizona Small Tract Act of 1938 Federal Land Patent Parcel Homeowners and parcel owners affected by the passage of this legislation, I ask of you, because you may be the most knowledgeable regarding the intent of this legislation , I ask, is this Arizona Roadway and Public Utilities Easements abandonment legislation, "abandoning this Federal Land Patent Roadway and Public Utilities Easements", "in total" or "only abandoning the Counties interest" in these easements? We see this issue of "total abandonment" as a "private property right taking issue", which may be a future "State liability issue", as well. II await your reply and / or your acknowlegement of this correspondence. Many thanks. Leon Spiro, SFC-E7 (Retired) U.S. Army.

----- Forwarded Message -----zona
From: leon spiro <leon_spiro@yahoo.com>
To: "mitchwagner@mail.maricopa.gov" <mitchwagner@mail.maricopa.gov>
Cc: "brendend@mcao.maricopa.gov" <brendend@mcao.maricopa.gov>; "domanico@mcao.maricopa.gov" <domanico@mcao.maricopa.gov>; "dominaco@mail.maricopa.gov" <dominaco@mail.maricopa.gov>; "peckw@mcao.maricopa.gov" <peckw@mcao.maricopa.gov>; "tfleming@azleg.gov" <tfleming@azleg.gov>; "lynnfavour@mail.maricopa.gov" <lynnfavour@mail.maricopa.gov>; "jburges@azleg.gov" <jburges@azleg.gov>; "darrengerard@mail.maricopa.gov" <darrengerard@mail.maricopa.gov>; "chh@pima.gov" <chh@pima.gov>; "chucris@mail.maricopa.gov" <chucris@mail.maricopa.gov>; "mugenti@azleg.gov" <mugenti@azleg.gov>; "tmanos@mail.maricopa.gov" <tmanos@mail.maricopa.gov>; "akunasek@mail.maricopa.gov" <akunasek@mail.maricopa.gov>; "aubuchonlaw@cox.net" <aubuchonlaw@cox.net>; "noel@noelhebets.com" <noel@noelhebets.com>; "btownsend@azleg.gov" <btownsend@azleg.gov>; "tadams@azleg.gov" <tadams@azleg.gov>; "prendergastk@mail.maricopa.gov" <prendergastk@mail.maricopa.gov>; "mikefreeman@mail.maricopa.gov" <mikefreeman@mail.maricopa.gov>; "cjagger@scottsdaleaz.gov" <cjagger@scottsdaleaz.gov>; "district1@pima.gov" <district1@pima.gov>; "district2@pima.gov" <district2@pima.gov>; "district3@pima.gov" <district3@pima.gov>; "district4@pima.gov" <district4@pima.gov>; "district5@pima.gov" <district5@pima.gov>; "murray_snow@azd.uscourts.gov" <murray_snow@azd.uscourts.gov>; "jerbeck@lasvegasnevada.gov" <jerbeck@lasvegasnevada.gov>; "john@saaronline.com" <john@saaronline.com>; "johnhauskins@mail.maricopa.gov" <johnhauskins@mail.maricopa.gov>; "leon_spiro@yahoo.com" <leon_spiro@yahoo.com>; "paulmcneil@mail.maricopa.gov" <paulmcneil@mail.maricopa.gov>; "scott@outbackinspections.com" <scott@outbackinspections.com>; "scott@outbackpropertyservices.com" <scott@outbackpropertyservices.com>; "pneal@g.com" <pneal@g.com>; "jpadilla@scottsdaleaz.gov" <jpadilla@scottsdaleaz.gov>; "bwashburn@scottsdaleaz.gov" <bwashburn@scottsdaleaz.gov>; "sscott@scottsdaleaz.gov" <sscott@scottsdaleaz.gov>
Sent: Wednesday, November 27, 2013 4:53 AM
Subject: Fw: Patent Easement Abandonment. DOT-o2-2013

Mitch Wagner, Liason, Department of Transportation, frMaricopa County, Arizona; Mr. Wagner: Many thanks for for presenting my comments to the Transportation Advisory Board. I hope that this comment material will be mentioned in the Minutes , as being presented to the Board. at this meetinng. Mr. Wagner, may I ask, if by E Mail request, to have comment material presented and read to the Transportation Advisory Board during the "Public Comment period", which will be for the record, regarding this same issue, of what we believe to be, a "property right taking" by the Appellate Court in Case #1 CA-CV 06-0756, Neal v. Brown, because of possible Planning and Development Department and MCDOT errors in permitting construction of a fence in

a "Small Tract Act of 1938 Patent Roadway and Public Utilities Easement, without property owner, I believe, of ever receiving MCDOT approval, as per permit instructions?..How could this have ever happened, if true? I make this request because of not being able to attend any meetings at this time. Many thanks. I await your reply and / or your acknowledgement of this correspondence, Leon Spiro, SFC -E7 (Retired) U.S. Army.

----- Forwarded Message -----
From: Mitch Wagner - MCDOTX <mitchwagner@mail.maricopa.gov>omment
To: leon spiro <leon_spiro@yahoo.com>
Cc: "chucris@mail.maricopa.com" <chucris@mail.maricopa.com>; Andrew Kunasek - DIST3X <AKunasek@mail.maricopa.gov>; Dan Brenden <brendend@mcao.maricopa.gov>; Joseph Domanico <domanico@mcao.maricopa.gov>; "chh@pima.gov" <chh@pima.gov>; "john@reactionresearch.com" <john@reactionresearch.com>; "john@saaronline.com" <john@saaronline.com>; John Hauskins - MCDOTX <johnhauskins@mail.maricopa.gov>; Wayne Peck <peckw@mcao.maricopa.gov>; Mike Freeman - PLANDEVX <MikeFreeman@mail.maricopa.gov>; "miggi1@q.com" <miggi1@q.com>; "mugenti@azleg.gov" <mugenti@azleg.gov>; "jburges@azleg.gov" <jburges@azleg.gov>
Sent: Monday, November 25, 2013 9:24 AM
Subject: RE: Patent Easement Abandonment. DOT-o2-2013

Mr. Spiro ... Your email was provided to the Transportation Advisory Board at their last meeting on November 19. Thank you.

Mitch Wagner, Board Liaison
Maricopa County Department of Transportation
602-506-5858
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Public Disclosure Notice: This message and any messages in response to the sender of this message may be subject to a public records request.

From: leon spiro [mailto:leon_spiro@yahoo.com]
Sent: Saturday, November 23, 2013 7:43 AM
To: Mitch Wagner - MCDOTX
Cc: leon_spiro@yahoo.com; chucris@mail.maricopa.com; Andrew Kunasek - DIST3X; Dan Brenden; Joseph Domanico; chh@pima.gov; john@reactionresearch.com; john@saaronline.com; John Hauskins - MCDOTX; Wayne Peck; Mike Freeman - PLANDEVX; miggi1@q.com; mugenti@azleg.gov; jburges@azleg.gov
Subject: Fw: Patent Easement Abandonment. DOT-o2-2013

Mitch Wagner, Liason, Depart

ment of Transportation , Maricopa County. Mr. Wagner: I do hope you received my reply to your E Mail correspoondence? If the Advisory Board received the correspondence sent, we have done our job and alerted the Counnty. L. Spiro.

----- Forwarded Message -----**To:** "domanico@mcao.maricopa.gov" <domanico@mcao.maricopa.gov>
Cc: "jdomanico@mcao.maricopa.gov" <jdomanico@mcao.maricopa.gov>; "leon_spiro@yahoo.com" <leon_spiro@yahoo.com>
Sent: Wednesday, November 20, 2013 3:01 AM
Subject: Fw: Patent Easement Abandonment. DOT-02-2013

FYI.

----- Forwarded Message -----
From: leon spiro <leon_spiro@yahoo.com>
To: "mitchwagner@mail.maricopa.gov" <mitchwagner@mail.maricopa.gov>
Cc: "akunasek@mail.maricopa.gov" <akunasek@mail.maricopa.gov>; "chucris@mail.maricopa.gov" <chucris@mail.maricopa.gov>; "prendergastk@mail.maricopa.gov" <prendergastk@mail.maricopa.gov>; "peckw@mcao.maricopa.gov" <peckw@mcao.maricopa.gov>; "chh@pima.gov" <chh@pima.gov>; "markstuart1001@cox.net" <markstuart1001@cox.net>; "mrwilcox@mail.maricopa.gov" <mrwilcox@mail.maricopa.gov>;

"noel@noelhebets.com" <noel@noelhebets.com>; "tfleming@azleg.gov" <tfleming@azleg.gov>; "prendergastk@mail.maricopa.gov" <prendergastk@mail.maricopa.gov>; "peckw@mcao.maricopa.gov" <peckw@mcao.maricopa.gov>
Sent: Monday, November 18, 2013 2:08 PM
Subject: Fw: Patent Easement Abandonment. DOT-02-2013

Mitch Wagner,Liason, Department of Transportation, Maricopa County; Mr. Wagner: I have your reply for which I thank you. It will be much appreciated to have my comments mentioned to the Advisory Board. . Mr. Wagner , if permitted, can you provide me the name of the "Lead Attorney" of the Maricopa countys Atttorneys Office who is responsible for authoring this Small Tract Act of 1938 Patent Easement Ordinance change? If not, am I to assume that this Ordinance change will have the approval of County Attorney Bill Montgomery? The Board of supervisors has in the past abandoned these Small TRact Act Patent Easements but in the Resolution, states that there will be no encroachment in the patent easement. Mayy I suggest that you engage the services of Professor Gary Birnbaum and Attorney Noel Hebets to present their legal opinions regarding this preposed Ordinance change. If the abandonment of these "patent easements is in total" as stated in this draft, we view this as being a "property right taking". I have no idea what the opinions are of these Attorneys? My sincere thanks for presenting this issue to the Advisory Board. In the future, I would like to present to the Advisory Board some interesting material regarding Appellate Court Case #1 CA-CV 06-0756. Leon Spiro, SFC-E7 (Retired) U. S. Army.
----- Forwarded Message -----
From: Mitch Wagner - MCDOTX <mitchwagner@mail.maricopa.gov>
To: leon spiro <leon_spiro@yahoo.com>
Sent: Monday, November 18, 2013 9:11 AM
Subject: RE: Patent Easement Abandonment. DOT-02-2013

Mr. Spiro ... I appreciate your contacting the Maricopa County Department of Transportation regarding this item. I will share your comments with the Transportation Advisory Board at tomorrow's meeting. Please note that this ordinance was drafted by the County Attorney's office. Thank you.

Mitch Wagner, Board Liaison
Maricopa County Department of Transportation
602-506-5858
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Public Disclosure Notice: This message and any messages in response to the sender of this message may be subject to a public records request.

From: leon spiro [mailto:leon_spiro@yahoo.com]
Sent: Sunday, November 17, 2013 3:08 PM
To: Mitch Wagner - MCDOTX
Cc: noel@noelhebets.com; leon_spiro@yahoo.com; Stephen Chucri - DIST2X; chh@pima.gov; Andrew Kunasek - DIST3X; Darren Gerard - PLANDEVX; Mike Freeman - PLANDEVX; john@reactionresearch.com; markstuart1001@cox.net; annwallack@gmail.com; aubuchonlaw@cox.net; noel@noelhebets.com; Tom Manos - CAOX; tadams@azleg.gov; tfleming@azleg.gov; tom.horne@azag.gov; Dan Brenden; barredondo@azleg.gov; bjerbic@lasvegasnevada.gov; citycouncil@lasvegasnevada.gov; debra.lopez@azag.gov; dominaco@mail.maricopa.gov; Joseph Domanico; dguerin@goldwaterinstitute.gov; ed.montini@arizonarepublic.com; Fran McCarroll - COBX; jburges@azleg.gov; jerbeck@lasvegasnevada.gov; jmurillo@scottsdaleaz.gov; john@saaronline.com; sam@samjwest.com; ortegarchi@cox.net; renocop@earthlink.net; tforese@azleg.gov; mugenti@azleg.gov
Subject: Patent Easement Abandonment. DOT-02-2013

Mitch Wagner, Board Liason, Maricopa County; Mr. Wagner. Please read the following comment to the Transportation Advisory Board regarding #DOT-02-2013, Patent Easement Abandonment. Please be advised that we believe that the Small Tract Act of 1938 does not permit anyone to abandon these roadway and public utilities easements in total., but

only their interest. Please read Planning Department Department Directive Memorandum #dDD 2011-05. Has there been a change ? Before going forward with this request, why not get the approval of Maricopa County Attorney Bill Montgomery. Thank you for presenting this comment to all those in attendence. I await your acknowledgemnt of this correspondence. Leon Spiro, SFC-E7 (.Re.tired) U.S. Army

Mitch Wagner - MCDOTX

From: Mitch Wagner - MCDOTX
Sent: Wednesday, December 04, 2013 9:34 AM
To: 'leon spiro'
Subject: 2013-12-04 - Spiro - RE: Patent Easement Abandonment. DOT-o2-2013

Mr. Spiro ... I have forwarded your email to the County Attorney's Office for review. Thank you ... Mitch

Mitch Wagner, Board Liaison
Maricopa County Department of Transportation
602-506-5858

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Public Disclosure Notice: This message and any messages in response to the sender of this message may be subject to a public records request.

From: leon spiro [mailto:leon_spiro@yahoo.com]
Sent: Wednesday, November 27, 2013 4:53 AM
To: Mitch Wagner - MCDOTX
Cc: Dan Brenden; Joseph Domanico; dominaco@mail.maricopa.gov; Wayne Peck; tfleming@azleg.gov; Lynn Favour - PLANDEVX; jburges@azleg.gov; Darren Gerard - PLANDEVX; chh@pima.gov; Stephen Chucri - DIST2X; mugenti@azleg.gov; Tom Manos - CAOX; Andrew Kunasek - DIST3X; aubuchonlaw@cox.net; noel@noelhebets.com; btownsend@azleg.gov; tadams@azleg.gov; Katie Prendergast - DIST2X; Mike Freeman - PLANDEVX; cjagger@scottsdaleaz.gov; district1@pima.gov; district2@pima.gov; district3@pima.gov; district4@pima.gov; district5@pima.gov; murray_snow@azd.uscourts.gov; jerbeck@lasvegasnevada.gov; john@saaronline.com; John Hauskins - MCDOTX; leon_spiro@yahoo.com; Paul McNeil - PLANDEVX; scott@outbackinspections.com; scott@outbackpropertyservices.com; pneal@q.com; jpadilla@scottsdaleaz.gov; bwashburn@scottsdaleaz.gov; sscott@scottsdaleaz.gov
Subject: Fw: Patent Easement Abandonment. DOT-o2-2013

Mitch Wagner, Liason, Department of Transportation, frMaricopa County, Arizona; Mr. Wagner: Many thanks for for presenting my comments to the Transportation Advisory Board. I hope that this comment material will be mentioned in the Minutes , as being presented to the Board. at this meetinng. Mr. Wagner, may I ask, if by E Mail request, to have comment material presented and read to the Transportation Advisory Board during the "Public Comment period", which will be for the record, regarding this same issue, of what we believe to be, a "property right taking" by the Appellate Court in Case #1 CA-CV 06-0756, Neal v. Brown, because of possible Planning and Development Department and MCDOT errors in permitting construction of a fence in a "Small Tract Act of 1938 Patent Roadway and Public Utilities Easement, without property owner, I believe, of ever receiving MCDOT approval, as per permit instructions?..How could this have ever happened, if true? I make this request because of not being able to attend any meetings at this time. Many thanks. I await your reply and / or your acknowledgement of this correspondence, Leon Spiro, SFC -E7 (Retired) U.S. Army.
----- Forwarded Message -----
From: Mitch Wagner - MCDOTX <mitchwagner@mail.maricopa.gov>omment
To: leon spiro <leon_spiro@yahoo.com>
Cc: "chucris@mail.maricopa.com" <chucris@mail.maricopa.com>; Andrew Kunasek - DIST3X <AKunasek@mail.maricopa.gov>; Dan Brenden <brendend@mcao.maricopa.gov>; Joseph Domanico

<domanico@mcao.maricopa.gov>; "chh@pima.gov" <chh@pima.gov>; "john@reactionresearch.com" <john@reactionresearch.com>; "john@saaronline.com" <john@saaronline.com>; John Hauskins - MCDOTX <johnhauskins@mail.maricopa.gov>; Wayne Peck <peckw@mcao.maricopa.gov>; Mike Freeman - PLANDEVX <MikeFreeman@mail.maricopa.gov>; "miggi1@q.com" <miggi1@q.com>; "mugenti@azleg.gov" <mugenti@azleg.gov>; "jburges@azleg.gov" <jburges@azleg.gov>
Sent: Monday, November 25, 2013 9:24 AM
Subject: RE: Patent Easement Abandonment. DOT-o2-2013

Mr. Spiro … Your email was provided to the Transportation Advisory Board at their last meeting on November 19. Thank you.

Mitch Wagner, Board Liaison
Maricopa County Department of Transportation
602-506-5858
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From: leon spiro [mailto:leon_spiro@yahoo.com]
Sent: Saturday, November 23, 2013 7:43 AM
To: Mitch Wagner - MCDOTX
Cc: leon_spiro@yahoo.com; chucris@mail.maricopa.com; Andrew Kunasek - DIST3X; Dan Brenden; Joseph Domanico; chh@pima.gov; john@reactionresearch.com; john@saaronline.com; John Hauskins - MCDOTX; Wayne Peck; Mike Freeman - PLANDEVX; miggi1@q.com; mugenti@azleg.gov; jburges@azleg.gov
Subject: Fw: Patent Easement Abandonment. DOT-o2-2013

Mitch Wagner, Liason, Depart

ment of Transportation , Maricopa County. Mr. Wagner: I do hope you received my reply to your E Mail correspoondence? If the Advisory Board received the correspondence sent, we have done our job and alerted the Counnty. L. Spiro.
----- Forwarded Message -----**To:** "domanico@mcao.maricopa.gov" <domanico@mcao.maricopa.gov>
Cc: "jdomanico@mcao.maricopa.gov" <jdomanico@mcao.maricopa.gov>; "leon_spiro@yahoo.com" <leon_spiro@yahoo.com>
Sent: Wednesday, November 20, 2013 3:01 AM
Subject: Fw: Patent Easement Abandonment. DOT-02-2013

FYI.

----- Forwarded Message -----
From: leon spiro <leon_spiro@yahoo.com>
To: "mitchwagner@mail.maricopa.gov" <mitchwagner@mail.maricopa.gov>
Cc: "akunasek@mail.maricopa.gov" <akunasek@mail.maricopa.gov>; "chucris@mail.maricopa.gov" <chucris@mail.maricopa.gov>; "prendergastk@mail.maricopa.gov" <prendergastk@mail.maricopa.gov>; "peckw@mcao.maricopa.gov" <peckw@mcao.maricopa.gov>; "chh@pima.gov" <chh@pima.gov>; "markstuart1001@cox.net" <markstuart1001@cox.net>; "mrwilcox@mail.maricopa.gov" <mrwilcox@mail.maricopa.gov>; "noel@noelhebets.com" <noel@noelhebets.com>; "tfleming@azleg.gov" <tfleming@azleg.gov>; "prendergastk@mail.maricopa.gov" <prendergastk@mail.maricopa.gov>; "peckw@mcao.maricopa.gov" <peckw@mcao.maricopa.gov>
Sent: Monday, November 18, 2013 2:08 PM
Subject: Fw: Patent Easement Abandonment. DOT-02-2013

Mitch Wagner,Liason, Department of Transportation, Maricopa County; Mr. Wagner: I have your reply for which I thank you. It will be much appreciated to have my comments mentioned to the Advisory Board. . Mr. Wagner , if permitted, can you provide me the name of the "Lead Attorney" of the Maricopa countys Atttorneys Office who is responsible for authoring this Small Tract Act of 1938 Patent Easement Ordinance change? If not, am I to assume that this Ordinance change will have the approval of County Attorney Bill

Montgomery? The Board of supervisors has in the past abandoned these Small TRact Act Patent Easements but in the Resolution, states that there will be no encroachment in the patent easement. Mayy I suggest that you engage the services of Professor Gary Birnbaum and Attorney Noel Hebets to present their legal opinions regarding this preposed Ordinance change. If the abandonment of these "patent easements is in total" as stated in this draft, we view this as being a "property right taking". I have no idea what the opinions are of these Attorneys? My sincere thanks for presenting this issue to the Advisory Board. In the future, I would like to present to the Advisory Board some interesting material regarding Appellate Court Case #1 CA-CV 06-0756. Leon Spiro, SFC-E7 (Retired) U. S. Army.

----- Forwarded Message -----

From: Mitch Wagner - MCDOTX <mitchwagner@mail.maricopa.gov>
To: leon spiro <leon_spiro@yahoo.com>
Sent: Monday, November 18, 2013 9:11 AM
Subject: RE: Patent Easement Abandonment. DOT-02-2013

Mr. Spiro … I appreciate your contacting the Maricopa County Department of Transportation regarding this item. I will share your comments with the Transportation Advisory Board at tomorrow's meeting. Please note that this ordinance was drafted by the County Attorney's office. Thank you.

Mitch Wagner, Board Liaison
Maricopa County Department of Transportation
602-506-5858
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From: leon spiro [mailto:leon_spiro@yahoo.com]
Sent: Sunday, November 17, 2013 3:08 PM
To: Mitch Wagner - MCDOTX
Cc: noel@noelhebets.com; leon_spiro@yahoo.com; Stephen Chucri - DIST2X; chh@pima.gov; Andrew Kunasek - DIST3X; Darren Gerard - PLANDEVX; Mike Freeman - PLANDEVX; john@reactionresearch.com; markstuart1001@cox.net; annwallack@gmail.com; aubuchonlaw@cox.net; noel@noelhebets.com; Tom Manos - CAOX; tadams@azleg.gov; tfleming@azleg.gov; tom.horne@azag.gov; Dan Brenden; barredondo@azleg.gov; bjerbic@lasvegasnevada.gov; citycouncil@lasvegasnevada.gov; debra.lopez@azag.gov; dominaco@mail.maricopa.gov; Joseph Domanico; dguerin@goldwaterinstitute.gov; ed.montini@arizonarepublic.com; Fran McCarroll - COBX; jburges@azleg.gov; jerbeck@lasvegasnevada.gov; jmurillo@scottsdaleaz.gov; john@saaronline.com; sam@samjwest.com; ortegarchi@cox.net; renocop@earthlink.net; tforese@azleg.gov; mugenti@azleg.gov
Subject: Patent Easement Abandonment. DOT-02-2013

Mitch Wagner, Board Liason, Maricopa County; Mr. Wagner. Please read the following comment to the Transportation Advisory Board regarding #DOT-02-2013, Patent Easement Abandonment. Please be advised that we believe that the Small Tract Act of 1938 does not permit anyone to abandon these roadway and public utilities easements in total., but only their interest. Please read Planning Department Department Directive Memorandum #dDD 2011-05. Has there been a change ? Before going forward with this request, why not get the approval of Maricopa County Attorney Bill Montgomery. Thank you for presenting this comment to all those in attendence. I await your acknowledgemnt of this correspondence. Leon Spiro, SFC-E7 (.Re.tired) U.S. Army