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: November 19, 2013

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: No comments in opposition have been received to date. A Stakeholder Workshop was conducted on November 5, 2013. No one attended.

Department Recommendation: Move the proposed ordinance forward through the Enhanced Regulatory Outreach Program (EROP).

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.

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

Attachments:

County Manager Case Approval (1 page)
Initialization Form (1 page)
Proposed Quiet Zone Ordinance (7 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

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
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	12-12-13	60 day notice for fee ordinance
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	

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.

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.

c. 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.

d. 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.

e. 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.

f. 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.

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 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.

h. Not fewer than forty eight (48) 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.

f. 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. 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.

_____
Andrew Kunasek, Chairman

ATTEST:

_____
Fran McCarroll, Clerk of the Board of Supervisors

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