

PUBLIC EASEMENTS A PROPERTY OWNERS GUIDE

A. GENERAL

This brochure provides information for property owners regarding their responsibilities within areas of public easements on their properties. It is the responsibility of the property owner or agency to obtain all required construction, environmental, and underground service (dig alert) permits.

B. UNDERSTANDING PUBLIC EASEMENTS

1. ROAD EASEMENTS

The purposes of road easements are to provide for current or future improved public roadways, to avoid land locked parcels, or for general public access. These easements are acquired through a number of ways. The most common are easements dedicated by property owner during the development process, court rulings, eminent domain, subdivision, by Patent Reservation, the exercise of prescriptive rights, and by voluntary action.

1.1 County Maintained Roads Easements

Easements for roads in the San Bernardino County Maintained Road System (CMRS) fall under the jurisdiction of the Department of Public Works (DPW).

RESPONSIBILITY: DPW is responsible for maintaining all roads accepted into the CMRS. Trees and sidewalks within road easements are not maintained by DPW per County Tree Policy 08-12 and Streets and Highway Code 5610.

USE BY UNDERLYING PROPERTY OWNERS: It is preferred that no encroachments are constructed within any easement. However, if necessary, the underlying property owner shall apply for an encroachment permit and provide justification as to why the encroachment within the County easement is essential. Property owners can contact the Permits Section of County DPW at (909) 387-7995 or go online at http://www.sbcounty.gov/dpw/operations/permits_road.asp for more details.

1.2 Non County Maintained Road Easements

Road easements which are offered for dedication without County acceptance or are accepted by the County for public use but rejected for maintenance by the County are called non County maintained road easements.

RESPONSIBILITY: Underlying property owners are responsible for keeping these easements in compliance with the intent of the dedication requirement road easements, which are to be used for general public access, or for future public road improvements. These are public rights that are protected by law and any obstructions that cause a denial of such public rights can be removed at the property owner's expense through civil action.

USE BY UNDERLYING PROPERTY OWNERS: It is strongly recommended that no encroachments are constructed within any public easement. Any permitted work activity (e.g. grading) or encroachment that is constructed is at the property owner's own risk. Any work inside these easements may be subject to one or more permits including grading permits, building and safety permits, environmental permits and permission from other property owners.

1.3 Use of Public Road Easement by Utility Agencies

Utilities placed in public right-of-way (maintained or not maintained) must demonstrate the right to be in public right-of-way via franchise agreement or previously acquired private utility easements. For non-maintained dedicated roads –no permit from DPW is required. As long as utility is a public utility and the utility does not impede the traveling public they are allowed to install facilities in the dedicated right-of-way.

For private utilities in public right-of-way (maintained or not maintained) – a franchise agreement must be obtained or the utility must be placed outside dedicated right-of-way and a private easement must be obtained with adjacent property owners. No DPW permit required if utility is outside road right-of-way or on a non-maintained dedicated public road.

For non-maintained roads with no dedication – these roads are considered private and no DPW permit required. Utility must get private easements.

For maintained roads with no dedicated right-of-way, – road prescriptive right-of-way is typically to edge of disturbed area. Due to limited width of disturbance: Above ground utilities are to be placed beyond the disturbed area. It is strongly advised to contact DPW for the master plan right-of-way and place the utilities as close to the outside limit of the master plan right-of-way as possible to avoid future relocations if road is widened. The location may require a private utility easement from adjacent property owner. If above ground utility must be inside the disturbed limits, DPW will evaluate the location and determine if the obstruction will affect roadway maintenance and will issue a permit if maintenance will not be affected. Underground utilities require a permit from DPW if located within the disturbed limits.

2. DRAINAGE EASEMENTS

The general purpose of drainage easements are to maintain the historical flow and alignment of storm water runoff, or to provide building setbacks. These easements are most commonly acquired through dedication by the property owner during the development process. Drainage easements generally follow natural watercourses and are generally not maintained by the County.

RESPONSIBILITY: The underlying property owners are responsible for maintaining drainage easements. Drainage easements must follow the historic flow path and must not be blocked or their capacities reduced in anyway.

RESTRICTIONS OF USE BY UNDERLYING PROPERTY OWNERS: It is strongly recommended that no encroachments be constructed inside a drainage easement as it may cause drainage/flood damage to neighboring properties. Disputes among neighboring property owners or even civil cases may occur as a result of such encroachments. Property owners who divert or block the historical flows may be liable for any damages caused by their actions to downstream properties.

3. VACATION OF PUBLIC EASEMENTS

Under certain conditions, an existing public easement may no longer be necessary due to a variety of reasons such as changed conditions, topography, etc. The property owner can seek a vacation of an easement through the County Highway Planning Technical Committee (HPTC) by submitting an application and paying the applicable fees. Contact Right-of-Way Section at 909-387-7951 for more details.

4. PAVING NON-COUNTY MAINTAINED ROAD EASEMENT FOR PURPOSE OF COUNTY ASSUMING MAINTENANCE

Any work on a non County maintained road shall follow DPW standards and be constructed according to plans prepared by a registered civil engineer. Prior to any work performed, the property owner shall obtain an encroachment permit from DPW. If a property owner wishes to pave within a non County maintained road easement and request that the County exercise its discretion to accept that road into the CMRS, the owner can consult the Permits Section of County DPW at (909) 387-7995.

C. GENERAL RESTRICTIONS OF ENCROACHMENTS AND WORK ACTIVITY INSIDE NON COUNTY MAINTAINED PUBLIC EASEMENTS

General restrictions include, but not limited to, the following:

1. Encroachments must not block the public right to pass thru the road easements.
2. Encroachments must not block, or cause restriction of, or divert drainage courses.
3. Structures (walls, drainage facilities, etc) are still subject to building and safety requirements and permit requirements and must be designed by a registered engineer and constructed accordingly.
4. Buildings, accessory structures, and homes are not allowed to be constructed in the easement area.
5. Encroachments must not interfere with utilities.
6. Applicable environmental permitting may be required.
7. In some cases, easements, acquisitions and/or agreement letters must be signed by neighboring parcels affected by the work activity or encroachment.
8. No septic/leach lines, etc. are allowed in the public easement.
9. The encroachment or work activity must be maintained by the applicant/property owner.
10. Tree removal needs environmental approval and potential public input.
11. Any permitted work activity or building of structures inside non County maintained road easement or drainage easement is done so at the property owner's own risk.
12. Non County maintained public easements, by definition, are not maintained by the County. Public and property owners are encouraged to resolve access and maintenance issues among affected parties.,
13. If there is a complaint/report brought against a property owner regarding possible illegal encroachments on public easement, DPW staff will research the easement information and provide the information to the requesting party. Property owners are encouraged to seek resolutions acceptable to all involved parties.



5. CASES INVOLVING ROADS WITH NO PUBLIC DEDICATION ARE PRIVATE MATTERS AND PROPERTY OWNERS WILL BE DIRECTED TO PURSUE THEIR LEGAL RIGHTS AS APPROPRIATE.

D. ENFORCEMENT (MAINTAINED PUBLIC EASEMENT)

1. Any work activity or building of structures inside a County maintained road easement requires a permit as described in the Section B.1.1 above.

2. If there is a complaint/report brought against a property owner regarding possible illegal encroachments within County maintained road easements, such complaints will be reviewed and evaluated by DPW staff. Notices will be mailed to subject property owners requiring proper remedial actions.