

For: Statewide Encroachment Permits

Supersedes Bulletin 18-01

Effective Date: August 7, 2023

Encroachment Permit Application Denial; The Appeal and Escalation Process

A permit applicant has a right to appeal the ADOT District Encroachment Permit Office denial decision of an encroachment permit application. The first appeal that may be requested is the Informal Review where the District Engineer presides as reviewing officer. If the applicant is not satisfied with the results of the Informal Review, they may request a Formal Review with the State Engineer.

ENCROACHMENT PERMIT APPLICATION DENIAL

Under ADOT encroachment permit Arizona Administrative Code(R17-3-507), ADOT shall deny an encroachment permit application if:

- a. The proposed encroachment use is unlawful
- b. The applicant provides incomplete or inaccurate information
- c. The proposed encroachment use does not qualify under R17-3-502(B)
- d. The applicant disagrees with the requirements of the proposed permit

A Notice of Denial ([Annex A](#)) shall be sent to the applicant upon denial of an encroachment permit application and shall provide a justification for the denial with references to the statutes or codes on which the denial is based.

An explanation of the applicant's right to appeal with instructions to initiate the process for an Informal Review shall be sent to the applicant with the initial Notice of Denial.

INFORMAL REVIEW

To initiate the Appeal and Escalation process and request an Informal Review, an applicant must submit an Appeal and Escalation Request for Informal Review form ([Annex B](#)) to the District Encroachment Permit Office which issued the Notice of Denial. Appeals and escalations instructions are available on request of form ([Annex C](#)). The request for Informal Review must be sent to the District Encroachment Permit Office no later than 15 calendar days after the date on the Notice of Denial. If a request is received after 15 calendar days from the date Notice of Denial was sent, contact the Manager of ADOT Statewide Permits Services.

An Informal Review is led by the District Engineer or District Administrator within the ADOT District where the application was denied and may include ADOT staff members invited by the District Engineer or District Administrator.

Once an Appeal and Escalation Request for Informal Review is received by the District Encroachment Permits Office, a Notice of Informal Review ([Annex D](#)) will be sent to the applicant to let them know when and where the Informal Review will take place. The date of the Informal Review will be set at least 20 calendar days from the date of Notice of Informal Review and no more than 30 calendar days from the date of Notice of Informal Review. If the date and time proposed by the District Engineer or District Administrator cannot be accommodated by the applicant, the date can be adjusted and set beyond 30 calendar days from the date of Notice of Informal Review at the written request of the applicant. An updated Notice of Informal Review must be sent to the applicant to confirm the adjusted date.

If the applicant would like to have their attorney present at the Informal or Formal Reviews, they must submit their intent to appear with counsel in writing at least ten calendar days prior to the hearing date. The Engineer hearing the case will decide with guidance from the Attorney General's Office if an Assistant AG should be present during the Informal or Formal Hearing. Absent extraordinary circumstances, an applicant's failure to notify the District Engineer's Office or State Engineer's Office at least ten calendar days prior to the hearing date constitutes a waiver of the right to counsel at the Informal Hearing.

[Annex G](#) outlines the hearing procedures set forth by statute for Informal and Formal Reviews.

The District Engineer or District Administrator will issue a written decision within five business days of the Informal Review. The decision shall be sent to the applicant upon completion ([Annex E](#)). An explanation of the applicant's right to appeal with steps on how to submit for a Formal Review will be sent to the applicant with the written decision. The applicant may request a Formal Review with the State Engineer if not satisfied with the results of the Informal Review. The request for Formal Review must be sent to the State Engineer's Office within 15 calendar days from the date of the District Engineer's written decision regarding the Informal Review.

FORMAL REVIEW

If the applicant is not satisfied with the results of the Informal Review, a Formal Review request may be sent by the applicant to the State Engineer's Office within 15 calendar days from the date of Informal Review decision. The hearing officer shall be the State Engineer or the State Engineer shall designate a Deputy State Engineer as the reviewing officer. The State Engineer's Office may consult with the Attorney General's Office for legal guidance and to determine if an Assistant AG should be present during the Formal Review. The process for the Formal Review is similar to the Informal Review:

- Appeal and Escalation Request for Formal Review is received by the State Engineer's Office ([Annex F](#))
- Notice of Formal Review ([Annex G](#)) will be sent to the applicant to let them know when and where the Formal Review will take place; date of Review is at least 20 calendar days from

Notice of Formal Review date and no more than 30 calendar days from date of Notice of Formal Review; can be adjusted by applicant and must be documented in writing

- If the applicant plans to have an attorney present, the applicant must inform the State Engineer's Office at least ten calendar days prior to the Formal Review
- Review takes place.
- The State Engineer issues a decision within five business days of the Review and sends a written decision ([Annex H](#)). The decision by the State Engineer is final.