

IT'S GETTING CROWDED IN HERE: THE RULES FOR PERMITTING ALL KINDS OF STUFF IN THE RIGHT-OF-WAYS



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WHAT ARE WE DOING TODAY?

- A little bit of legal theory
- A lot of practical application of ROW rules



**HOW to
Do It?**

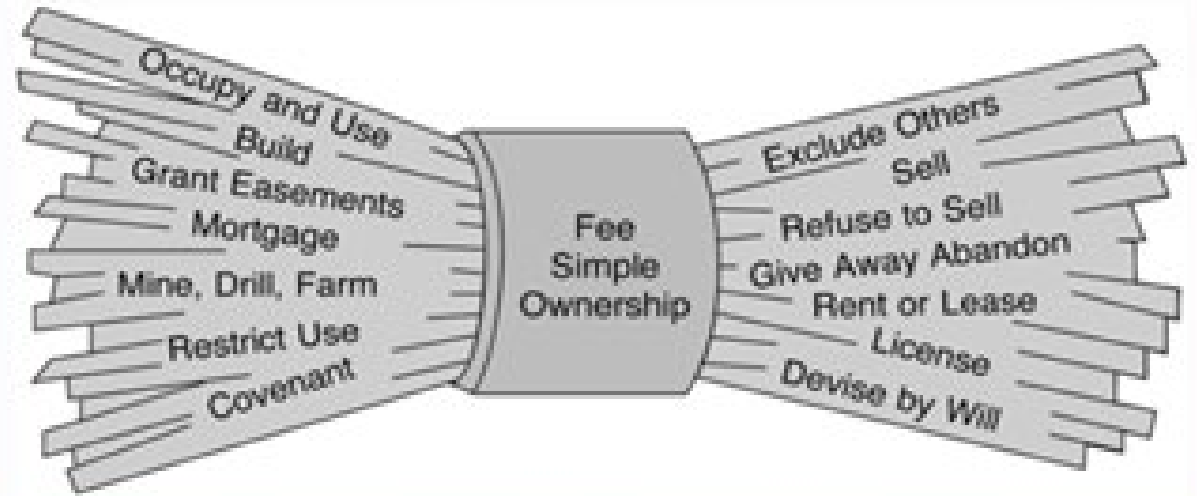
THE GATEKEEPER



RIGHT-OF-WAY LAW

- Property Law
- Fees and Easements
- Highways
 - Can be either fee or easement
 - Ownership vs. right to use
 - The bundle of sticks
 - Why does it matter?
 - Defines who can do what

The Fee Simple Bundle of Rights



Real estate ownership is, in actuality, the ownership of rights to land. The largest bundle available for private ownership is called "fee simple."

WHAT CAN GO IN THE ROW?

- Public ROW is available for all public uses consistent with:
 - The dimensions of the road
 - The type of service expected of the road
 - The location of the road
- Not limited to surface travel
 - Can include uses contemplated to be in the public interest and for the public benefit.
 - Sewers, gas, electricity, lighting, telephone, Internet, television
 - Who makes this determination
 - Courts
 - Legislature



QUICK SURVEY



- Yes
 - Gas, electric, telephone, Internet, sewer, television

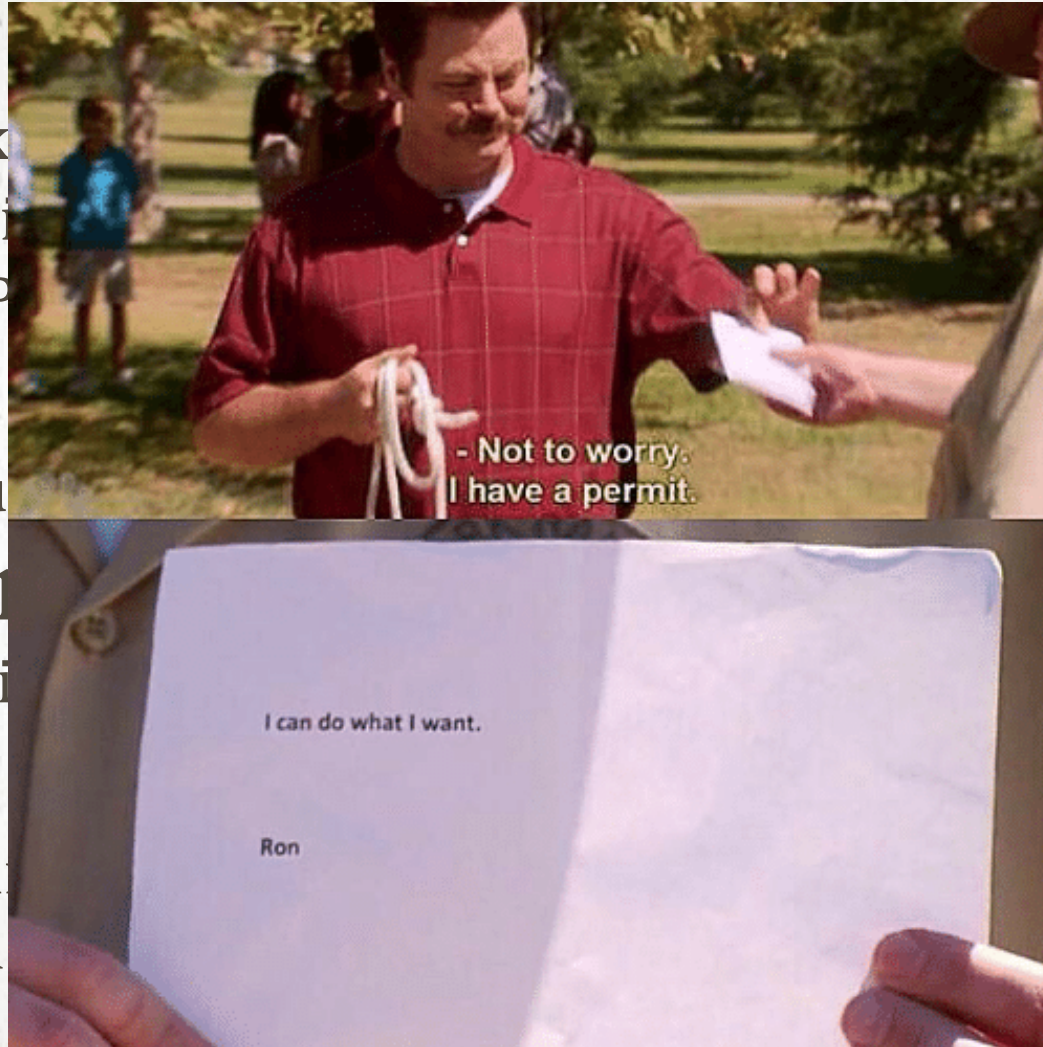


No

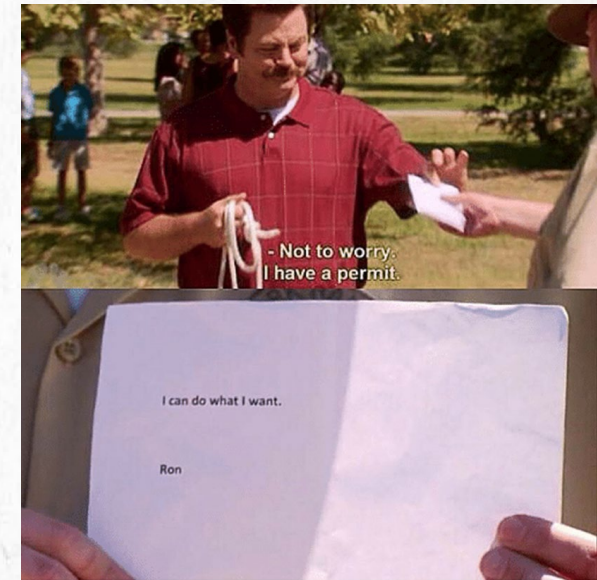
- Lumber mill
- Trolley tracks
- Improvement of ROW that solely benefitted private developer's complex

REGULATORY FRAMEWORK

- MCL 224.19b –
 - Covers all work
 - Specific and un
 - Video Service P
- MCL 460.1301,
 - Very specific ru
- MCL 247.183-.1
 - Covers everythi
- MCL 484.3101,
 - Covers telecom
 - Defined to in
 - services and
 - Does not directl



cells
s and



provide telecommunications

WHICH FRAMEWORK IS IT?

- Public Utility Electric Lines
- MCL 224.19b
 - Most freedom in fashioning requirements and recovering costs.
 - Fees sufficient to cover only the necessary and actual costs applied in a reasonable manner for issuing the permit and for review of the proposed activity, inspection and related expenses.
 - Fees for annual and emergency permits.
 - Bonds, etc.



WHICH FRAMEWORK IS IT?

- Public Utility Sewer Lines
- MCL 224.19b
 - Most freedom in fashioning requirements and recovering costs.
 - Fees sufficient to cover only the necessary and actual costs applied in a reasonable manner for issuing the permit and for review of the proposed activity, inspection and related expenses.
 - Fees for annual and emergency permits.
 - Bonds

SCOTLAND

Sewer was blocked by large Pooh

Last updated 17 Feb 2014 00:03 GMT



A Winnie the Pooh teddy bear was found dumped in a manhole in East Kilbride, South Lanarkshire

WHICH FRAMEWORK IS IT?

- Telephone lines
- MCL 224.19b
 - Telecommunication Service Provider Rules Apply
 - Fees sufficient to cover any necessary and actual costs for inspections related to work in the right-of-way
 - Permit fee capped at \$300 per permit or \$1000 per “project”
 - Increased to \$600 and \$2000 in counties with more than 250,000 residents
 - Definition of “project” is up to Road Commission
 - One bond, capped at \$20,000 or \$40,000
- MCL 484.3101
 - Municipal permit and franchise

If you used one of these:



Stay at home! You are in the high risk group.

WHICH FRAMEWORK IS IT?

- Manure Lines
- Do they pass the gateway test?
 - NO!!!
 - Only if permission of every adjacent affected landowner and does not interfere with public easement.
- If permission is obtained, then MCL 224.19b controls
 - Most freedom in fashioning requirements and recovering costs (bonds okay).
 - Fees sufficient to cover only the necessary and actual costs applied in a reasonable manner for issuing the permit and for review of the proposed activity, inspection and related expenses.
 - Fees for annual and emergency permits.



WHICH FRAMEWORK IS IT?

- Milk Transmission Lines
- Do they pass the gateway test?
 - NO!!!
 - Only if permission of every adjacent affected landowner and does not interfere with public easement.
- If permission is obtained, then MCL 224.19b applies
 - Most freedom in fashioning requirements and recovering costs (bonds okay).
 - Fees sufficient to cover only the necessary and actual costs applied in a reasonable manner for issuing the permit and for review of the proposed activity, inspection and related expenses.
 - Fees for annual and emergency permits.

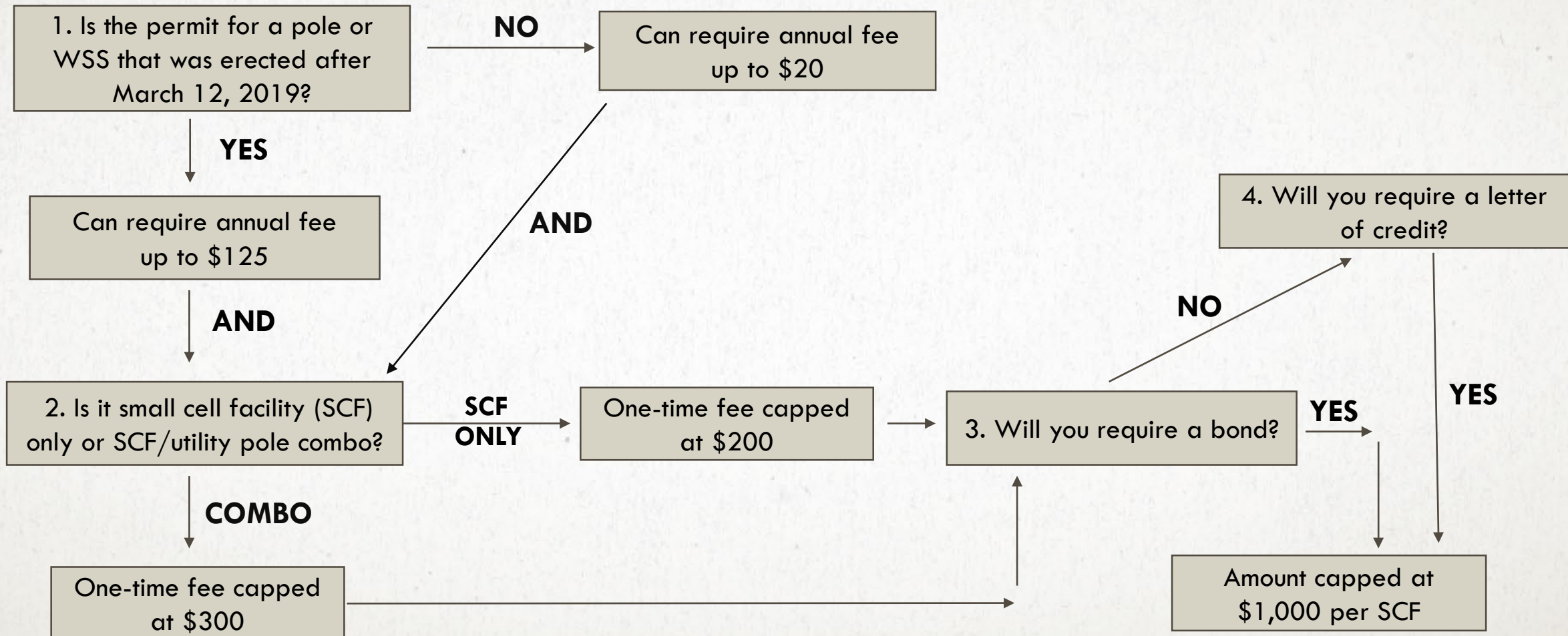


WHICH FRAMEWORK IS IT?

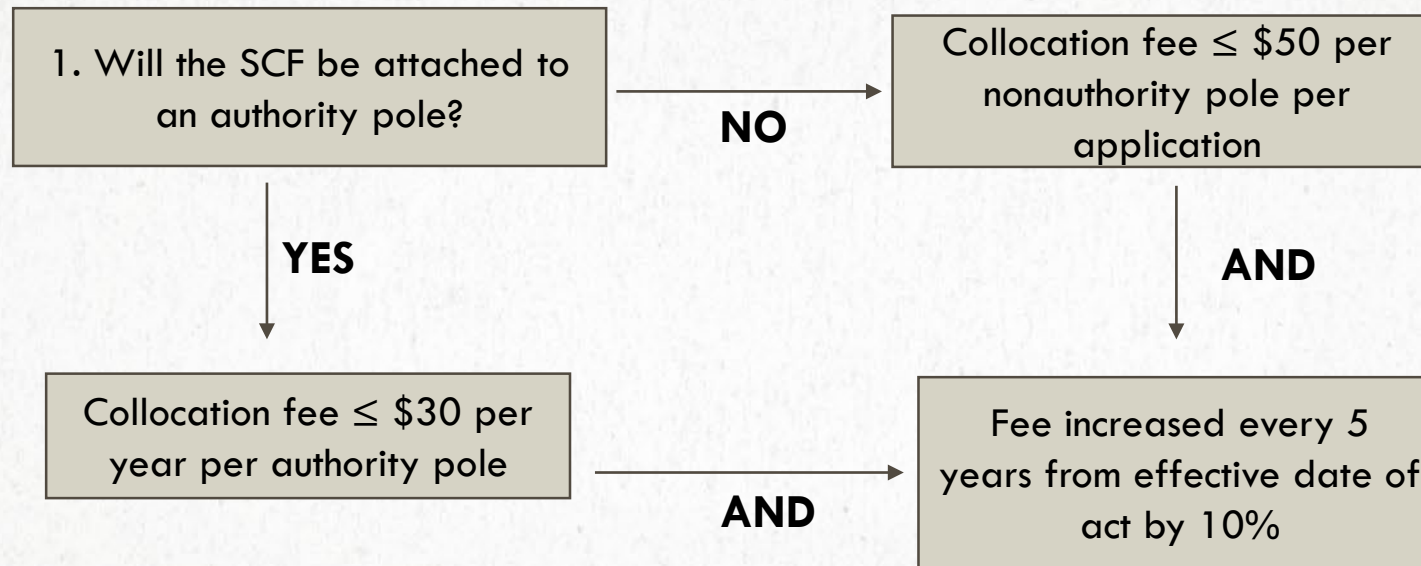
- Wireless Small Cell Facility
- MCL 460.1301, et seq. –Small Cell Permits
 - Definitions
 - Authorizes collocation, not provision of services
 - Annual fee per pole or WSS
 - Shot clock for decisions
 - One time permit fee for SCF
 - \$200 or \$300
 - Can require additional permit for work that will affect traffic patterns or obstruct vehicular or pedestrian traffic
 - Bonding –\$1000 per SCF



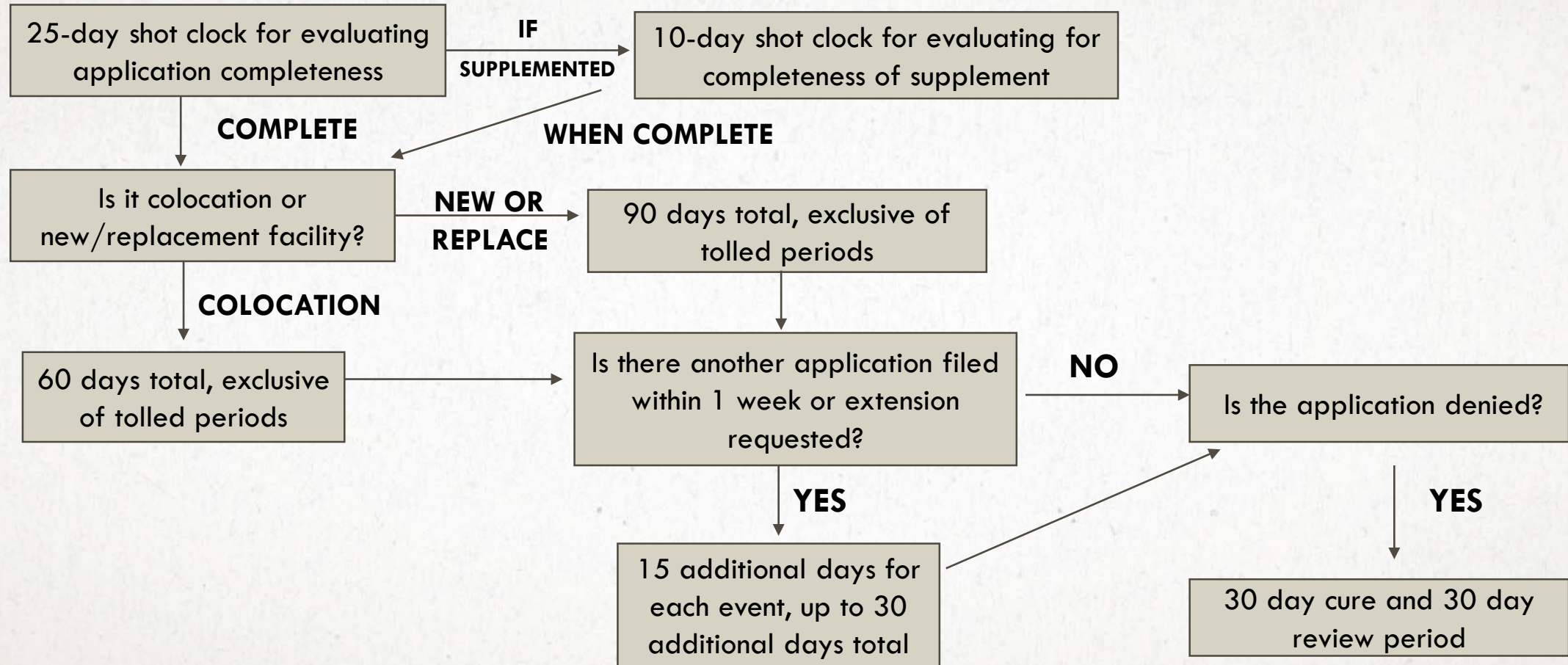
WIRELESS: POLES AND WSS FEES DECISION TREE



WIRELESS: COLOCATION ON AUTHORITY VS. NONAUTHORITY POLES



WIRELESS: TIMELINE DECISION TREE

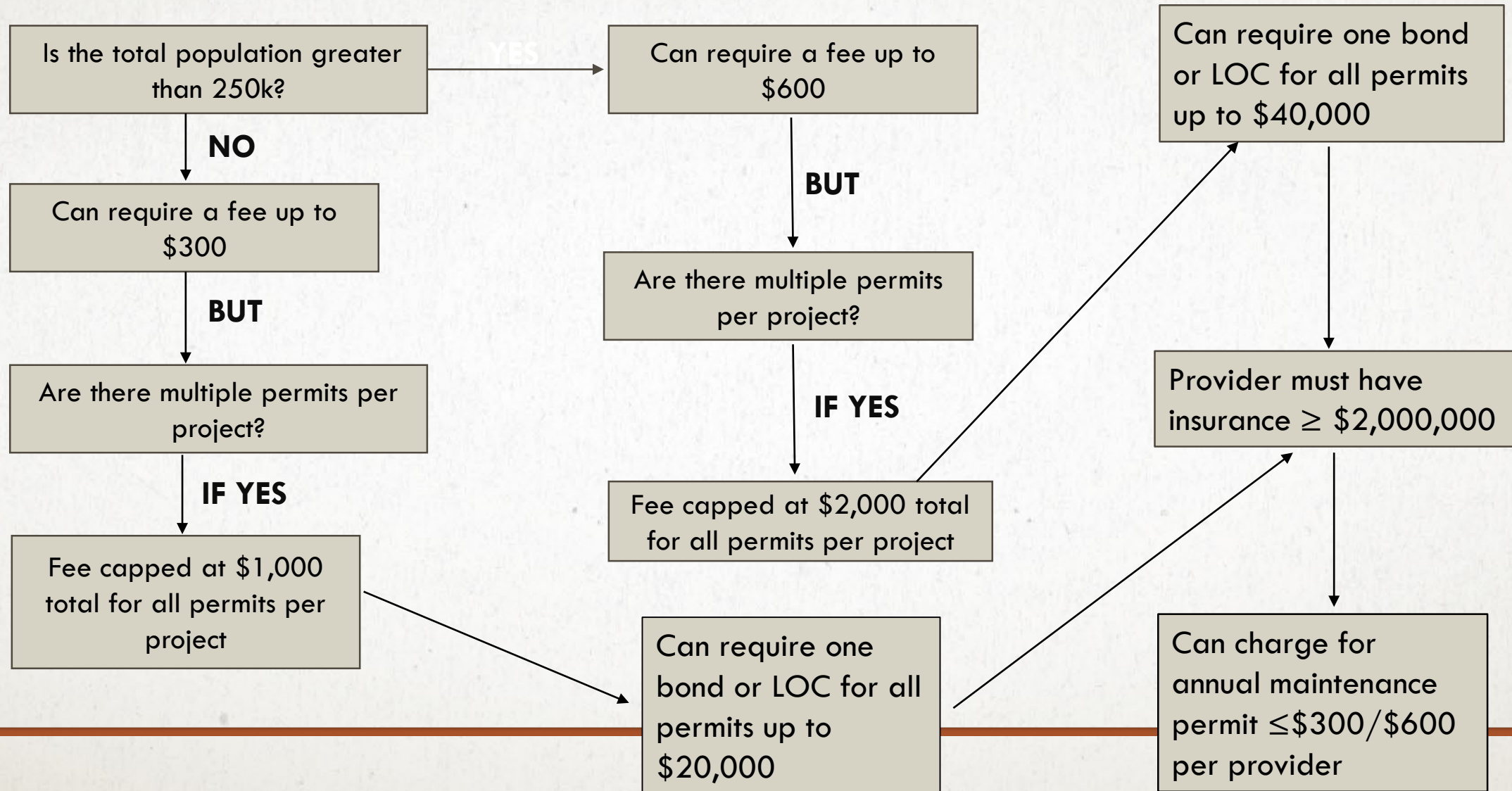


WHICH FRAMEWORK IS IT?



- Internet Lines
- MCL 224.19b
 - TSP/VSP Rules Probably Apply
 - ISP's probably have licenses under TA or UVSLFA
 - Fees sufficient to cover any necessary and actual costs for inspections related to work in the right-of-way
 - Permit fee capped at \$300 per permit or \$1000 per “project”
 - Increased to \$600 and \$2000 in counties with more than 250,000 residents
 - Definition of “project” is up to Road Commission
- MCL 484.3101
 - Municipal permit and franchise

WIRED: TSP AND VSP FEES DECISIONS TREE



MISS DIG

- MCL 460.721
- Large number of claims
- Act does a bit of dance around immunity.
 - The GTLA waives immunity as provided in the Act
 - The Act, in turn, creates a system of civil penalties
 - But it also preserves immunity defenses available in the GTLA.





LOOKING FOR MORE INFORMATION?

THANK YOU!

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