

Considerations for Solar and Wind Facilities in Right-of- Way

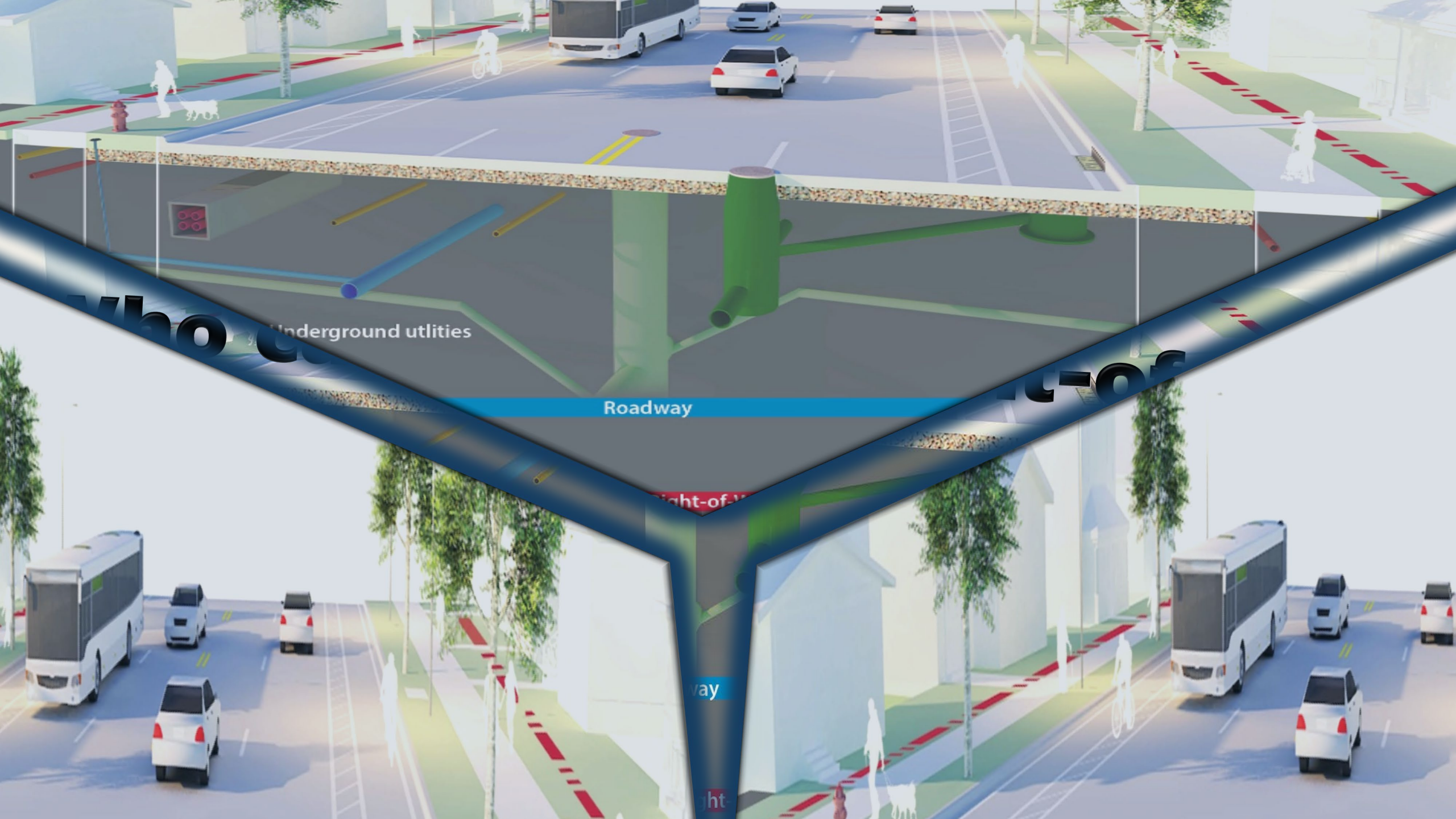


HENN LESPERANCE PLC

ATTORNEYS AT LAW

CRA Engineer's Conference 2025





Who Owns the Right-of-Way?

Underground utilities

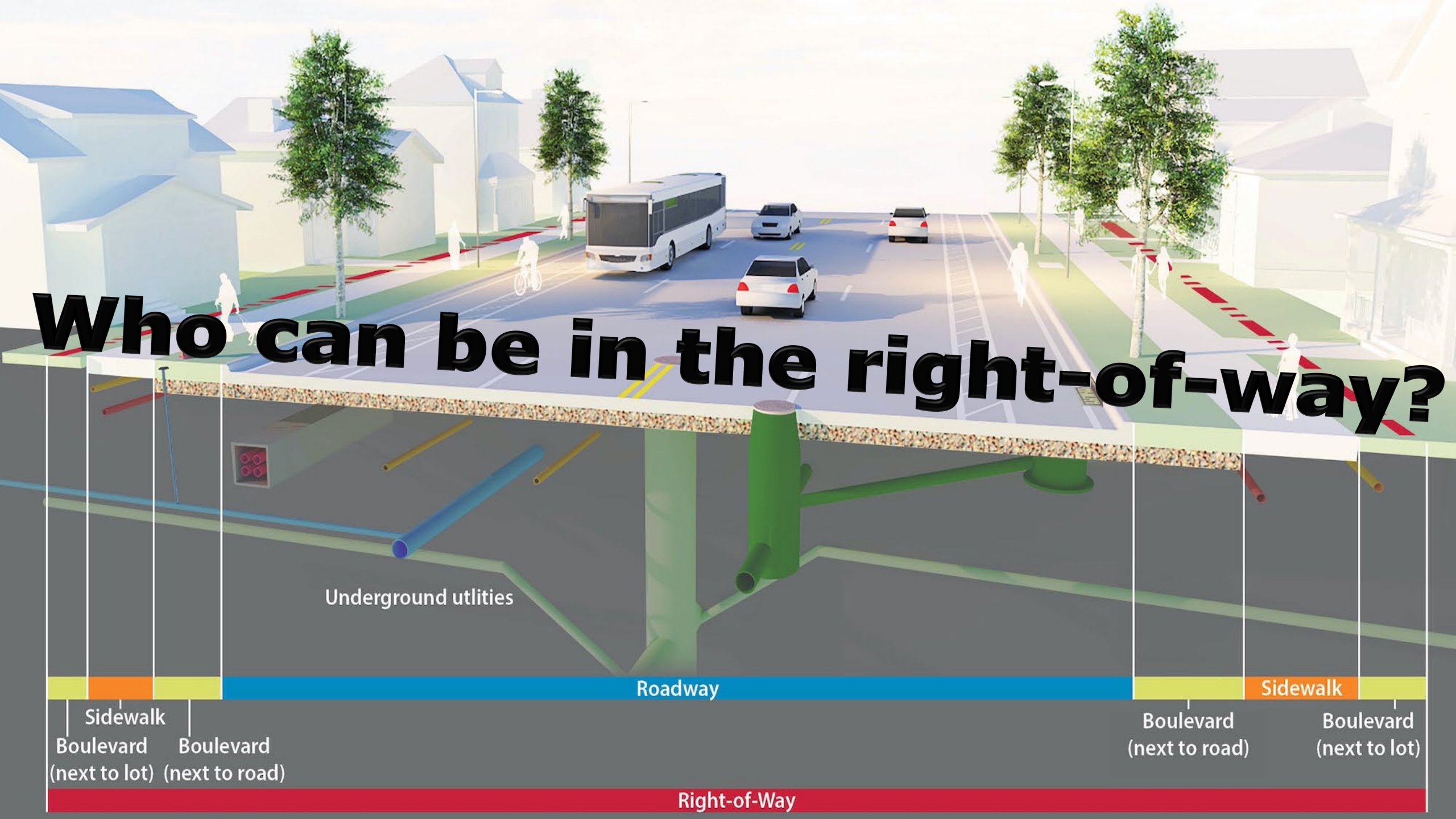
Roadway

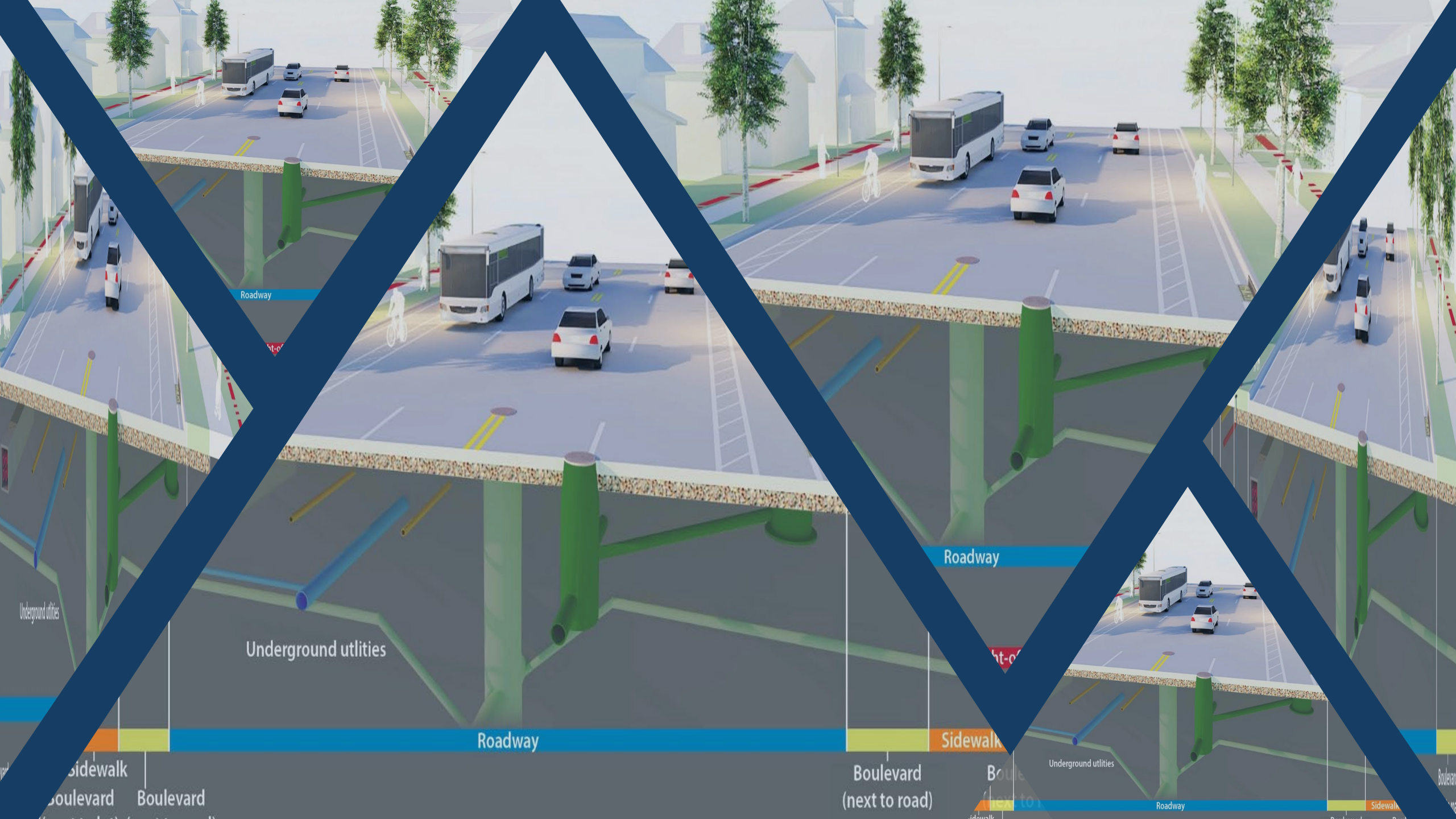
Right-of-Way

Way

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Who can be in the right-of-way?





Roadway

Underground utilities

Roadway

Roadway

Sidewalk

Boulevard
(next to road)

Underground utilities

Roadway

Sidewalk

Sidewalk

Boulevard

Boulevard

Boulevard

Boulevard

Boulevard

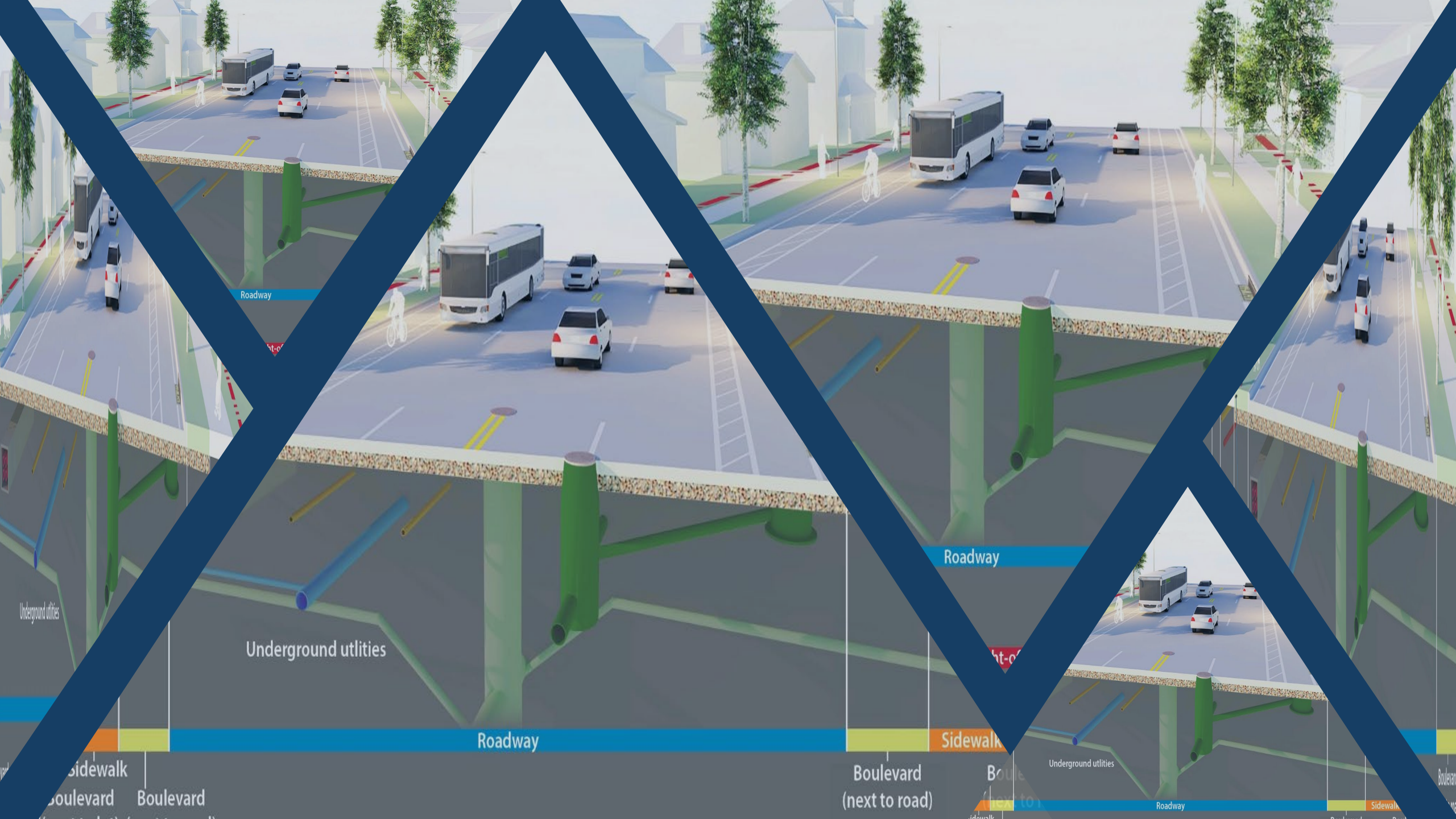
Boulevard

Public benefit test

A public highway easement may be used for public utilities that are contemplated to be in the public interest and for public benefit. *Eyde Brothers v Eaton CRC*, 427 Mich 271, 286 (1986).



**UTILITY
WORK
AHEAD**



Roadway

Underground utilities

Roadway

Roadway

Sidewalk

Boulevard
(next to road)

Underground utilities

Roadway

Sidewalk

Sidewalk

Boulevard

Boulevard

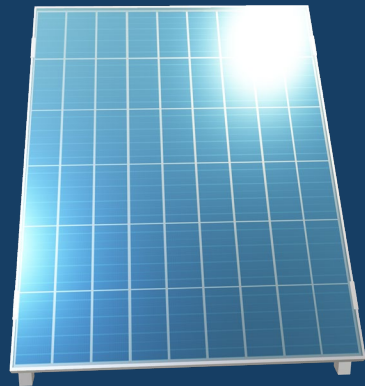
Boulevard

Boulevard

Boulevard

Boulevard

Many prospective entrants
to the ROW are not public
utilities.



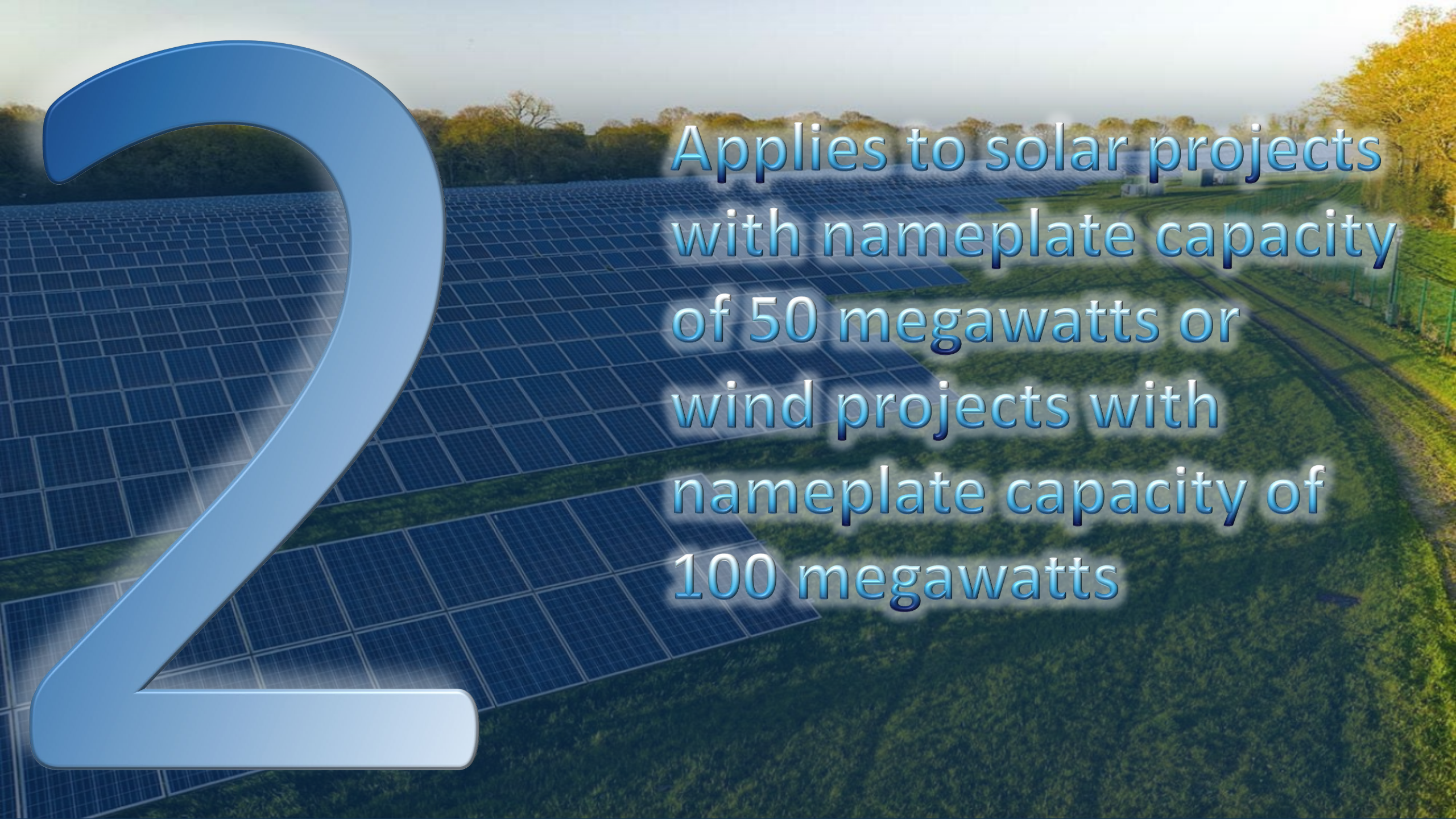


Michigan
Wind & Solar Act,
PA 233 of 2023




Took effect November
29th, 2024





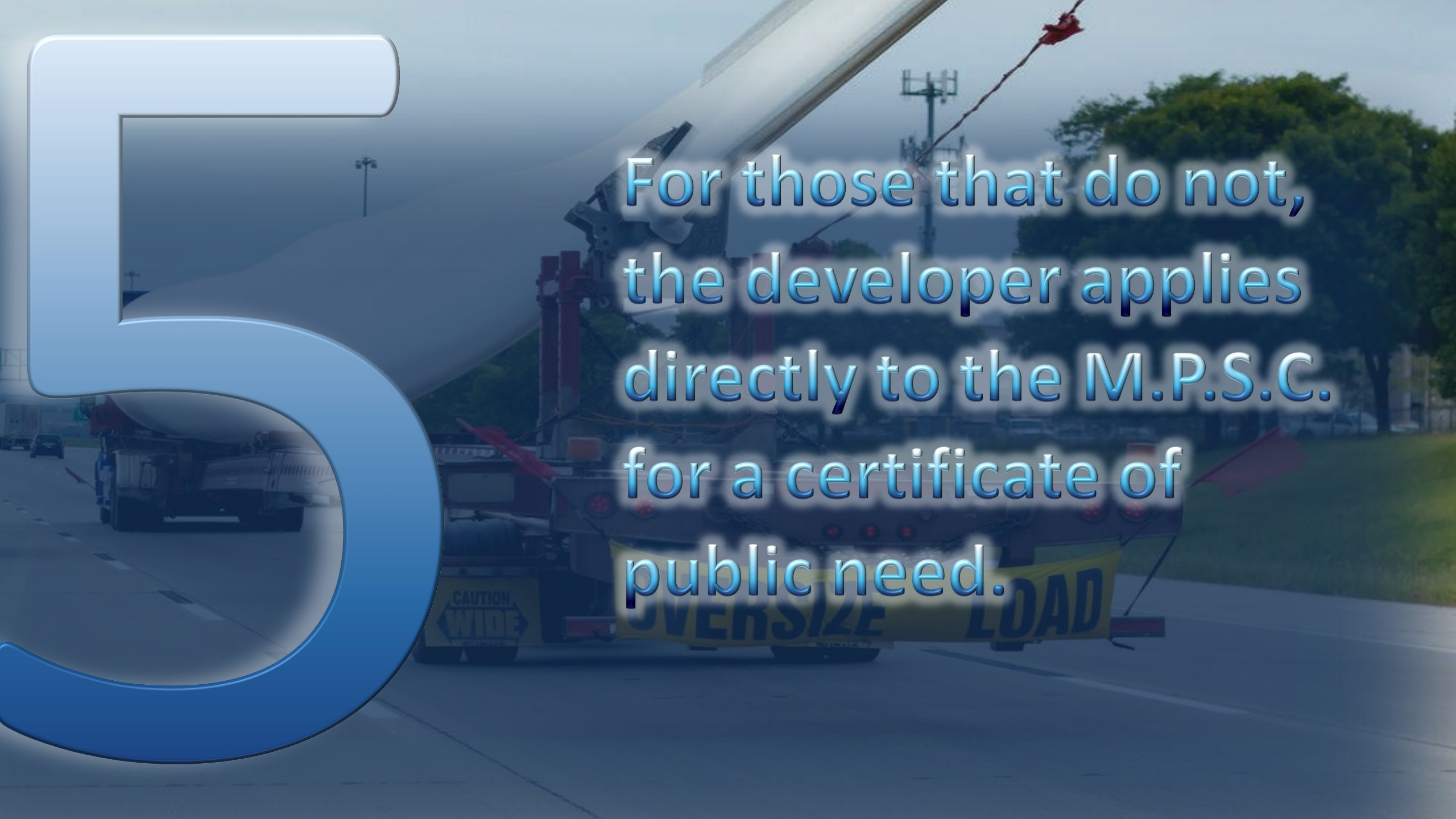
Applies to solar projects
with nameplate capacity
of 50 megawatts or
wind projects with
nameplate capacity of
100 megawatts




Generally preempts
local zoning
regulations that are
more
restrictive than the
Act.

4

For municipalities that have a “compatible renewable energy ordinance,” local control remains in place.



For those that do not,
the developer applies
directly to the M.P.S.C.
for a certificate of
public need.



**Nothing in the Act speaks to
ROW permits or highway
authorities.**

**This means that your control over
your ROW is unaffected by the
legislation.**

**Requiring MPSC approval in a certificate of
public need answers the question about the
ability of a developer to enter the ROW
without adjacent landowner consent**

**What should RC's
be thinking
about when a
developer seeks
a permit?**

Clean! 😊

Alternative energy is
awesome!!

You won't have
problems with us!

No issues,
ever!

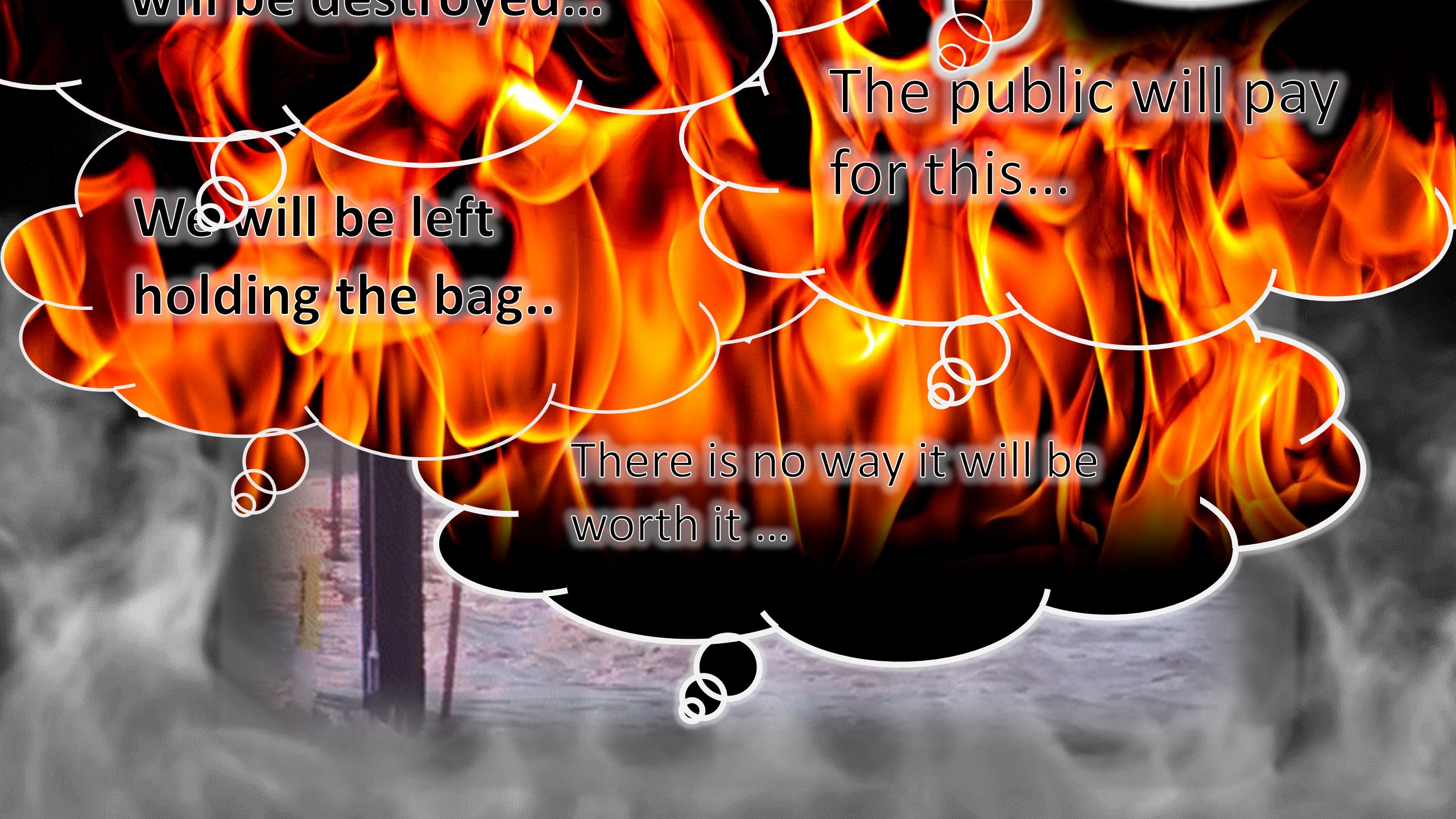


will be destroyed...

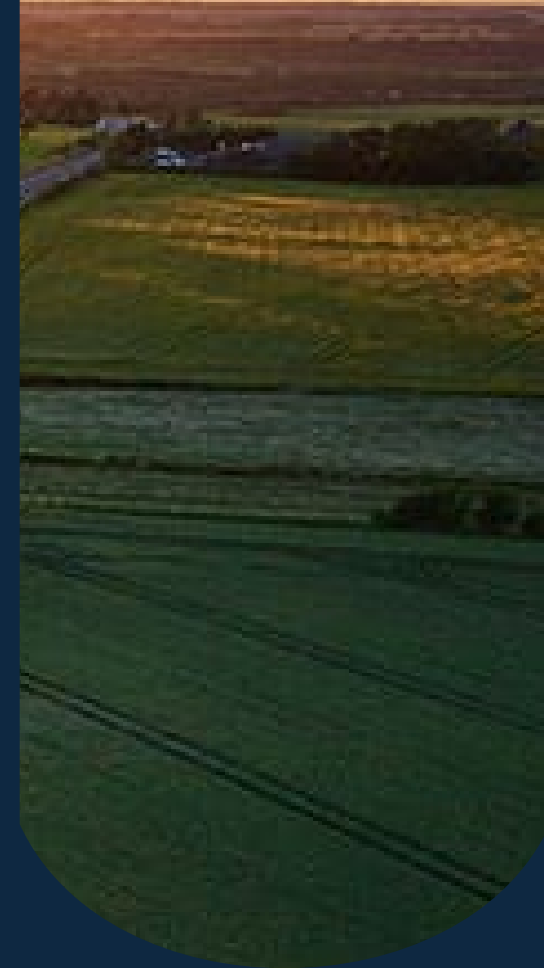
The public will pay
for this...

We will be left
holding the bag..

There is no way it will be
worth it ...



**THESE PROJECTS ARE
MASSIVE
UNDERTAKINGS THAT
SUBJECT ROADS TO
VERY INTENSE AND
HEAVY TRAFFIC.**

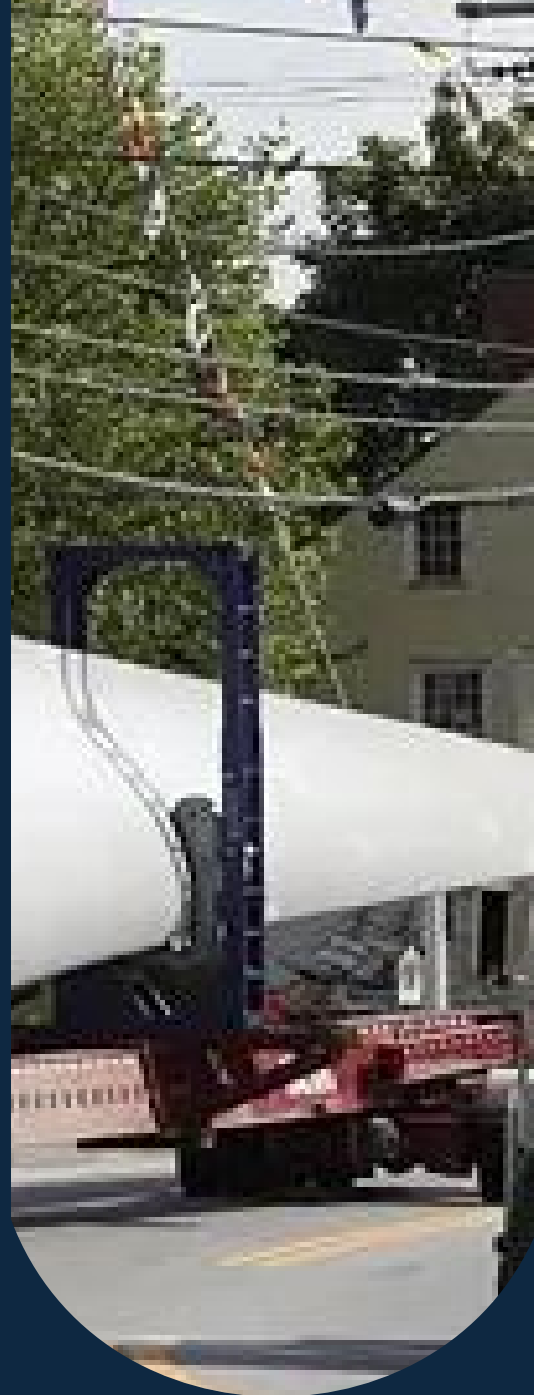


Road Use
Agreement (RUA)



Road Use Agreement (RUA)

Different formats.



Road Use Agreement (RUA)

General idea is that RC should not be left spending taxpayer money on repairing roads that are damaged by the entry of this developer to the community.





Working within right-of-way of county road

(MCL 224.19b)

PUBLIC HIGHWAYS AND PRIVATE ROADS (EXCERPT) Act 283 of 1909

224.19b Working within right-of-way of county road; permit required; exceptions; permit requirements and schedule of fees; schedule of civil fines; itemization of costs; annual and emergency permits; security; certain conditions prohibited; limitation on permit fee; performance of routine maintenance or repair work; silvicultural operations; security bond or right-of-way bond; general liability insurance; right-of-way access; voluntary agreement; violation; civil fine; definitions.

Highway treble damage statute



PUBLIC HIGHWAYS AND PRIVATE ROADS (EXCERPT) Act 283 of 1909

230.7 Injury to bridges; treble damages. Sec. 7.

A person that injures a bridge maintained at public expense, or a public road, by drawing logs or timber on the surface of the road or bridge, or by any other act, is liable in damages to 3 times the amount of the injury, to be recovered in a civil action, brought by the governmental entity with jurisdiction over the bridge or road, to be expended in the repair of roads under the jurisdiction of the governmental entity.

(MCL 230.7)

Driveway permit statute



(MCL 247.321, et sec)



Things to consider

Size of the project.
How many acres?



Things to consider

Haul routes



Things to consider

Lay down yard location



Things to consider

Pre-project

- Inspection costs
- Engineering and construction costs (e.g., preemptive highway improvement)
- Attorney costs
- Administrative costs



Things to consider

During Project

- Day to day damage that arises (e.g., culvert is crushed, ditch flattens out, etc.)
- Terms and conditions of permit



Things to consider

Post project

- Long term damage to road surface and subsurface
 - How to evaluate
 - PASER?
 - Has worked, but with limitations.
 - Something else?



Cautions



- **Can't be arbitrary**
- Means negotiations should reflect real data
- Ex
- Me to project itself



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Questions





Thank you!

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