

What is a Possessory Interest?

- A taxable interest held by a private possessor in publicly owned real property
- Limited duration, Determinable period
- Not a fee simple interest
- Government holds reversion right
- Grants the possessor “exclusivity”
- Possessor enjoys a benefit from the use
- Types of agreement that can create possessory interests:
 - Leases
 - Easements
 - Encroachments
 - Use of Public Rights-of-Way

Examples of Taxable Possessory Interests

- Parking lots on public land
- Airport food and retail concessions
- Airport rental car agencies
- Docking slips at public piers
- Marina operations
- Private walkways or roadways above city streets
- Ski resorts on state or federal land
- Pro shops at public golf courses
- Airport hangar at public airport
- Parking lot on public land

Examples of Cable and Telecom Possessory Interests

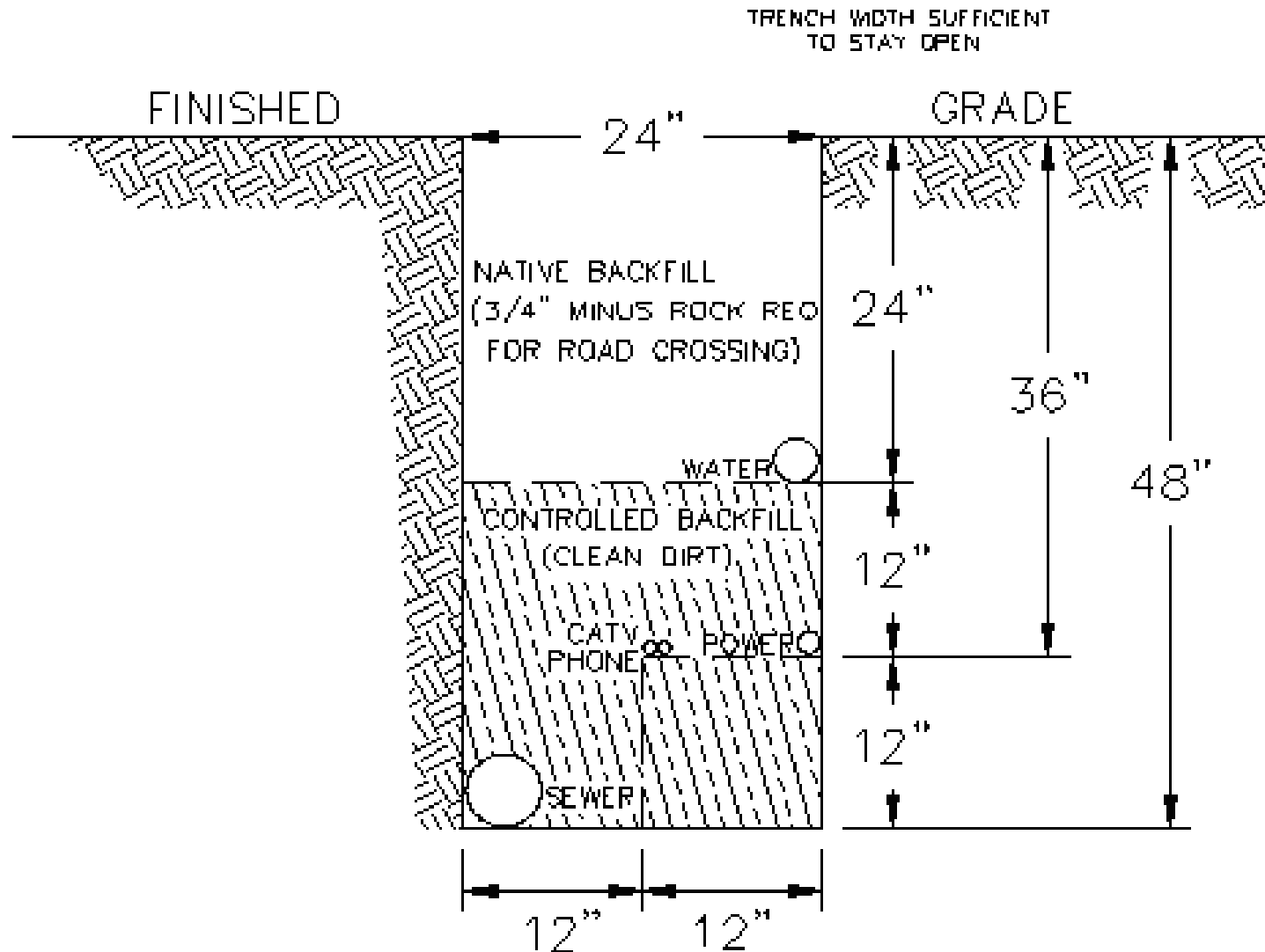
- Aerial Plant on Telephone and Electrical Poles



- Typical Underground Plant – Utility Trench



Diagram of Typical Utility Trench



Who Else is Using the Same Aerial and Underground Rights-of-Way?

- Aerial Plant (Poles)
 - Electric Company
 - Telephone/Video – ILEC and CLEC
 - Cable Competitor (Overbuilder)
 - Cable Company
 - Fiber-Optic Providers
- Underground Plant (Trench)
 - Gas Company
 - Electric Company (Electricity - High and Low Voltage)
 - Public Utilities Commission (Water)
 - Public Utilities Commission (Sewer)
 - Telephone Company
 - Public Utilities Commission and Electric Company (Street Lights)
 - Cable Television
 - Fiber-Optic Providers

Comparable Uses of Right-of-Way

- Rights-of-way of others are superior
 - Gas and Electric are more dangerous use of the right-of-way
 - Water, Sewer, Gas, and Electric take up more space in the right-of way
 - Telephone and Electric Companies own poles and towers that actually occupy surface rights
 - Gas is usually on the bottom of the trench, so accessing it requires everyone else to move

What are Others Paying for Local Rights-of-Way in California?

- Gas - Local 1.0%-2.0% of Revenue
- Electric - Local 1.0%-2.0% of Revenue
- ILEC Telephone 0.0%
- Water 2.0% of Rev. (Average)
- Charter City Public Utilities 2.0% (Average)
- Pole and Conduit Rents 0.7% of Revenue
- Encroachment Fees Nominal Fixed Fee usually less than \$1,000. Not subject to Possessory Interest Tax
- Private Right-of-Way Usually No Charge

How Do You Value a Taxable Possessory Interest in California?

- Property Tax Rule 21
- How long is term of possession?
 - Assumed to be remaining contract term
- What is the economic rent?
 - Assumed to be contract rent
- What is the appropriate discount rate?
 - Derived from industry data

How Do You Value a Cable Possessory Interest in California?

- Revenue and Taxation Code (R&T) Section 107.7
- Franchise fee is paid for two rights – nontaxable right to do business and taxable possessory interest
- Must determine economic rent for taxable possessory interest (real property) only
- Can use market derived rents of similar easements/rights-of-way to determine economic rent
- Must use stated remaining term of franchise as term of possession
- Must determine discount rate by reference to capital structure of a typical cable company

Proper Valuation of Cable Possessory Interests According to California Law

Use Income Approach (Sec. 107.7)

Determine Portion of Franchise Fee Attributable to Use of Rights-of-Way (Sec. 107.7). This Portion becomes the Economic Rent (Rule 21).

Use Stated Term of Possession (Rule 21)

Use Capitalization (Discount) Rate Appropriate to the Industry (Rule 21)