

# Impact of Utility Trenches & Policies

CEAC Infrastructure & Development Policy Committee

March 9, 2023

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## Historical Background

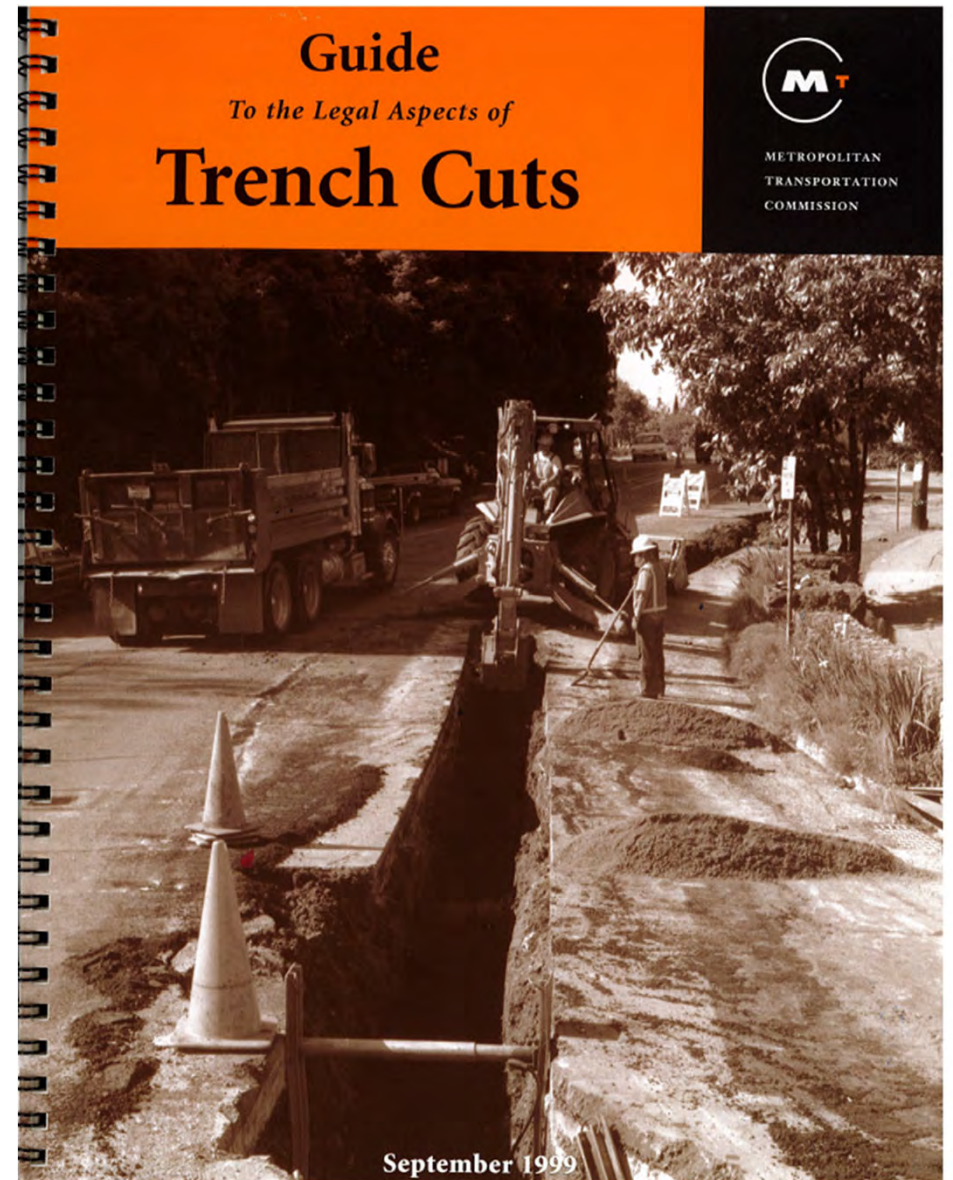
- 1980s – Multiple studies by cities and utilities to study impact of cuts
- 1990s – Statewide Trench Cut Coalition
  - CA cities who wanted to impose a utility cut fee ordinance
  - Led by Santa Ana
  - Sacramento, Los Angeles, San Francisco, Bakersfield etc passed ordinances





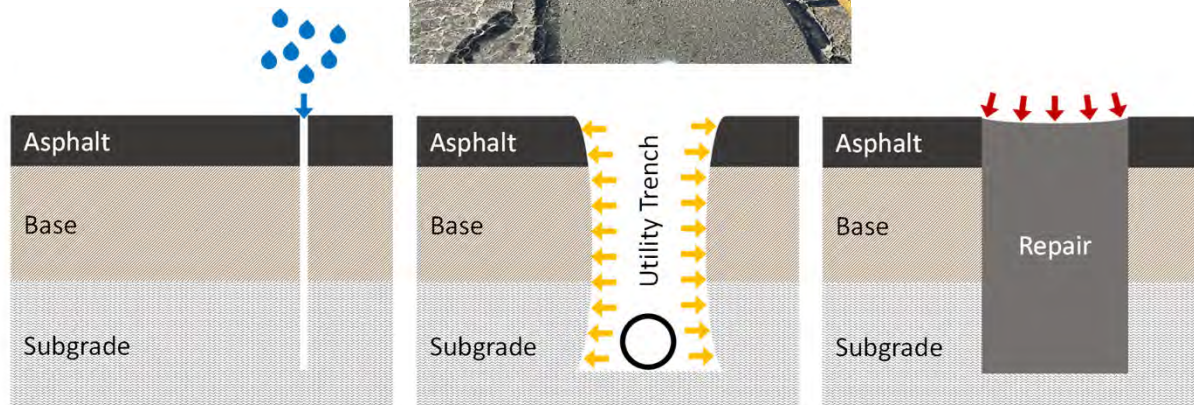
## Historical Background

- MTC developed “Guide to Legal Aspects”
- Early 2000s – Seattle, Philadelphia, Cincinnati, Nashville etc adopted ordinances



# Fundamentals Of Impact Studies

## Utility Cuts

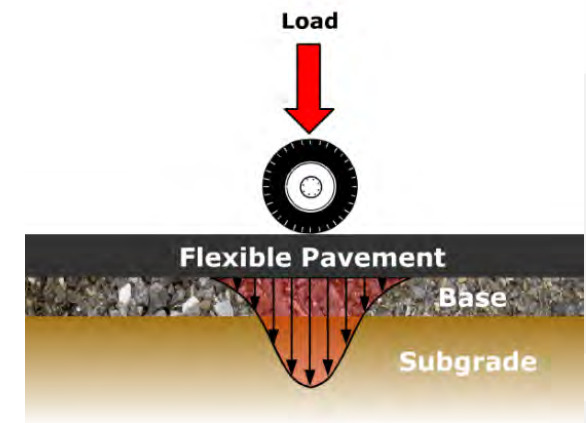


1. Increased Water Access to Pavement Structure

2. Reduced Lateral Support

3. Increased Surface Roughness

## Heavy/ Waste Vehicles



**More Pavement Damage = Higher Maintenance Cost**



# Impact Studies Answer 2 Questions

1. How do utility cuts/heavy vehicles affect pavement performance?
2. If pavement performance is negatively impacted, what is the corresponding financial impact?



↓ ↓  
Tandem Axle 24,790 lbs    Single Axle 12,210 lbs



↓ ↓  
Tandem Axle 36,850 lbs    Single Axle 18,150 lbs



# FUNDING SOURCES

## Federal

- Regional Surface Transportation Program (RSTP)
- Community Development Block Grant (CDBG)
- Surface Transportation Program (STP)
- Infrastructure Investment and Jobs Act (IIJA)

## State

- Gas Tax
- Transportation Development Act (TDA)
- State Transportation Improvement Program (STIP)
- Vehicle Registration Fees
- CalRecycle
- Traffic Congestion Relief Funds

## Local

- General Fund
- Local Transportation Funds
- Parcel Tax
- Sales Tax/Local Measures
- Impact Fees
  - Development
  - Waste Vehicle
  - Utility Cut



## ESTIMATED IMPACT FEE REVENUE

### Waste Vehicle Franchise Fees



~\$700,000/year

### Utility Cut Fees



\$100,000 - \$500,000/year

# Typical Fees

Agency	Criteria	Fee Range, \$/SF
Davis (2022) (Preliminary Fee Schedule) <i>Developed by NCE</i>	Functional Class and PCI	\$1.04 - \$1.51
Anaheim (2022) (Implementation in Progress) <i>Developed by NCE</i>	PCI	\$3.60 - \$11.60
Ukiah (2021) (Implementation in Progress) <i>Developed by NCE</i>	Functional Class, Size of Cut, Age of Pavement	\$0.50 - \$4.25
Pacific (2021)	Functional Class, Size of Cut	
<p><b><u>If you want more technical details, check out:</u></b></p> <p><b>Don't Throw Paving Dollars Out with the Trash</b></p> <p><b>Tomorrow 1:30-2:45 pm (Hiro)</b></p>		
		\$5.00 - \$11.82 (Transverse Cut and Trench Depth >4ft)
Sacramento (1997) <i>2022 Under revision by NCE</i>	Type of Cut, Pavement Age	\$1.00 - \$3.50 (Longitudinal Cut)
		\$2.00 - \$7.00 (Transverse Cut)
Santa Ana (1999)	Functional Class and Age of Pavement	\$6.21-\$13.68
Los Angeles (2018)	Functional Class	\$8.24-\$19.44



## Other Considerations

- In order to get fee passed, you must have nexus between impact and the fee
- Involve City Attorney/County Counsel from the beginning
- Must consider outreach to utilities and other stakeholders – be prepared for opposition
- What about city owned utilities?
- Be familiar with franchise agreements that currently exist
- Consider restoration standards as an option
- What are your neighbors doing?





# Microtrenching

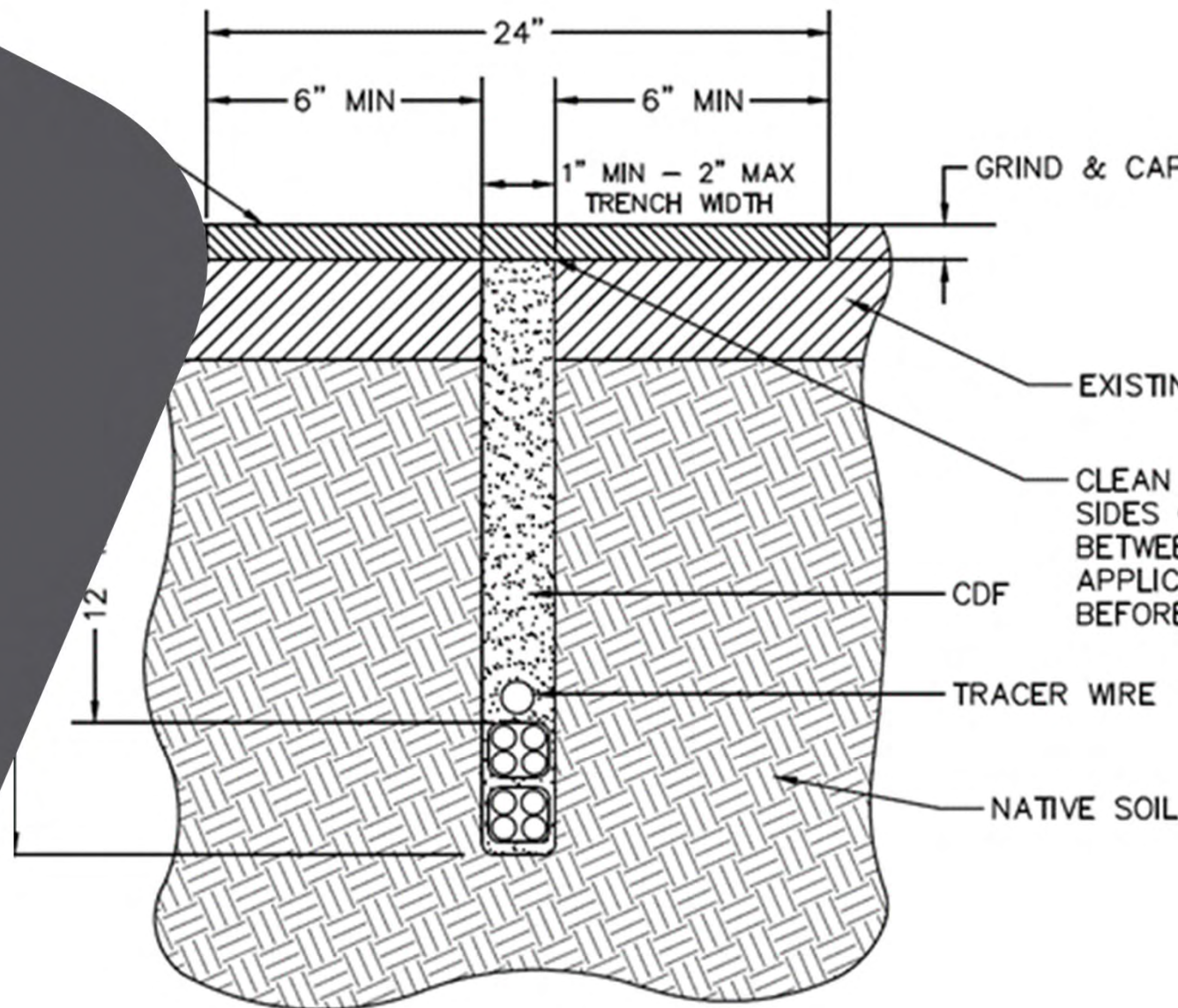
- 2021 - Broadband Deployment Acceleration Best Practices Act
- Intended to accelerate access to high-speed internet





## Microtrenching

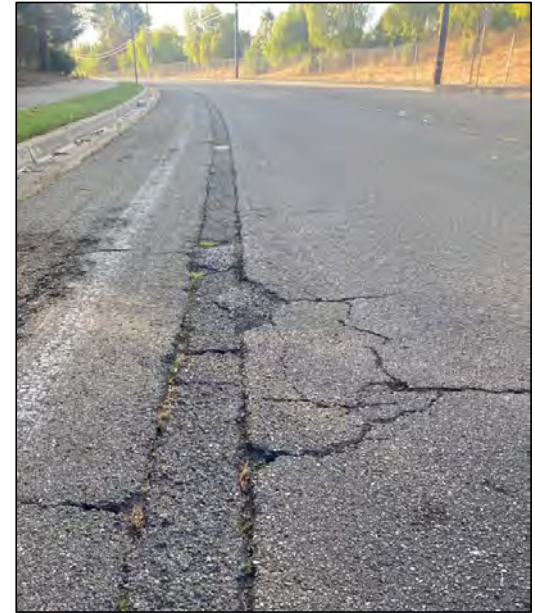
- Cities/Counties required to allow microtrenching
- Can only deny permit if “specific, adverse impact on public health or safety”
- Can require existing restoration standards
- Fees cannot exceed reasonable processing cost





# Potential Challenges

- If less than 24 inches deep – maintenance nightmare
- Public hazard if on bike lane due to dip
- Keeping the trench backfill material contained within trench
- Maintaining uniformity of trench cuts on older/fatigued pavement
- Problems with water and other utility lines accidentally cut during the trenching
- Settlement of trenches over time because of poor compaction or under traffic
- Matching the color of their trench fill material to the adjacent pavement material



# Zolly v. Oakland\*

- ❏ Consult with City Attorney & County Counsel!
- ❏ 7 exemptions to Prop 218
  - 4. *A charge imposed for entrance to and use of local government property*
- ❏ Court ruled that franchise fees are not exempt under (4) but ...
  - ❏ Leaves open that it may be under (1) *“charge imposed for a specific benefit ... and which does not exceed reasonable costs”*
- ❏ Goes back to trial court
- ❏ Likely to be more litigation?

\* I'm not an attorney

## IN THE SUPREME COURT OF CALIFORNIA

ROBERT ZOLLY et al.,  
Plaintiffs and Appellants,  
v.  
CITY OF OAKLAND  
Defendant and Respondent.

S262634

First Appellate District, Division One  
A154986

Alameda County Superior Court  
RG16821376

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August 11, 2022

Justice Liu authored the opinion of the Court, in which Chief Justice Cantil-Sakauye and Justices Kruger, Groban, and Guerrero concurred.

Justice Jenkins filed a concurring opinion, in which Justice Corrigan concurred.

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