# CURATIVE STATUTES

MAINTENANCE MAPS

By: Fred Loose

Chief Counsel

District Five

# MAINTENANCE MAPS

- Wording of Statute (F.S. 95.361)
- Basic Principles
- Variations of Facts
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- Questions

# Florida Statute 95.361

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(1) When a road, constructed by a county, a municipality, or the Department of Transportation, has been maintained or repaired continuously and uninterruptedly for 4 years by the county, municipality, or the Department of Transportation, jointly or severally, the road shall be deemed to be dedicated to the public to the extent in width that has been actually maintained for the prescribed period, whether or not the road has been formally established as a public highway. The dedication shall vest all right, title, easement, and appurtenances in and to the road in:

(a) The county, if it is a county road:

(b) The municipality, if it is a municipal street or road; or

(c) The state, if it is a road in the State Highway System or State Park System,

whether or not there is a record of a conveyance, dedication, or appropriation to the public use.

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(2) In those instances where a road has been constructed by a nongovernmental entity, or where the road was not constructed by the entity currently maintaining or repairing it, or where it cannot be determined who constructed the road, and when such road has been regularly maintained or repaired for the immediate past 7 years by a county, a municipality, or the Department of Transportation, whether jointly or severally, such road shall be deemed to be dedicated to the public to the extent of the width that actually has been maintained or repaired for the prescribed period, whether or not the road has been formally established as a public highway. This subsection shall not apply to an electric utility, as defined in s. 366.02(2). The dedication shall vest all rights, title, easement, and appurtenances in and to the road in:

(a) The county, if it is a county road;

(b) The municipality, if it is a municipal street or road; or

(c) The state, if it is a road in the State Highway System or State Park Road System,

whether or not there is a record of conveyance, dedication, or appropriation to the public use.

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(3) The filing of a map in the office of the clerk of the circuit court of the county where the road is located showing the lands and reciting on it that the road has vested in the state, a county, or a municipality in accordance with subsection (1) or subsection (2) or by any other means of acquisition, duly certified by:

(a) The secretary of the Department of Transportation, or the secretary's designee, if the road is a road in the State Highway System or State Park System;

(b) The chair and clerk of the board of county commissioners of the county, if the road is a county road; or

(c) The mayor and clerk of the municipality, if the road is a municipal road or street,

shall be prima facie evidence of ownership of the land by the state, county, or municipality as the case may be.

# Florida Statute 95.361

(4) Any person, firm, corporation, or entity having or claiming any interest in and to any of the property affected by subsection (2) shall have and is hereby allowed a period of 1 year after the effective date of this subsection, or a period of 7 years after the initial date of regular maintenance or repair of the road, whichever period is greater, to file a claim in equity or with a court of law against the particular governing authority assuming jurisdiction over such property to cause a cessation of the maintenance and occupation of the property. Such timely filed and adjudicated claim shall prevent the dedication of the road to the public pursuant to subsection (2).

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(5) This section does not apply to any facility of an electric utility which is located on property otherwise subject to this section.

# Basic Principles

# What is the nature of the title acquired under the statute?

- Easement
- Fee Simple
- Leasehold
- Other

# What is the nature of the title acquired under the statute?

- Fee Simple

# Does the Map have to be filed to obtain title?

- Yes
- No, title is obtained by the performance of the maintenance
- What’s a map and what is title?
- I have no clue whatsoever and wasn’t really paying attention

# Does the Map have to be filed to obtain title?

- No, title is obtained by the performance of the maintenance

# Why is the map filed?

- To put people on notice of the claim
- To get John out of the office on a regular basis so the rest of us can relax
- To establish a presumption of title in any litigation
- I have no clue whatsoever and wasn’t really paying attention

# Why is the map filed?

- To establish a presumption of title in any litigation

# Does it matter who built road?

- Yes, if it is a non-government entity, the period of required maintenance is different and there is a limited right to challenge
- It must be built by the entity filing the map
- Only if you plan to actually drive on it
- I have no clue whatsoever and wasn’t really paying attention

# Does it matter who built road?

- Yes, if it is a non-government entity, the period of required maintenance is different and there is a limited right to challenge

# Does it matter who performs the maintenance?

- Not as long as the period and nature of maintenance is met by any combination of the Department, a county, or a city
- The map filer must perform the maintenance
- Probably, but that really is irrelevant to the issue at hand

# Does it matter who performs the maintenance?

- Not as long as the period and nature of maintenance is met by any combination of the Department, a county, or a city

# How can a landowner defend against the statute?

- It depends on how good the lawyer is
- If the map is actually filed, the landowner must show that one of the statutory elements is missing or by using the challenge option if the road is constructed by a nongovernmental entity
- By showing no intent to donate the land
- I have no clue whatsoever and wasn’t really paying attention

# How can a landowner defend against the statute?

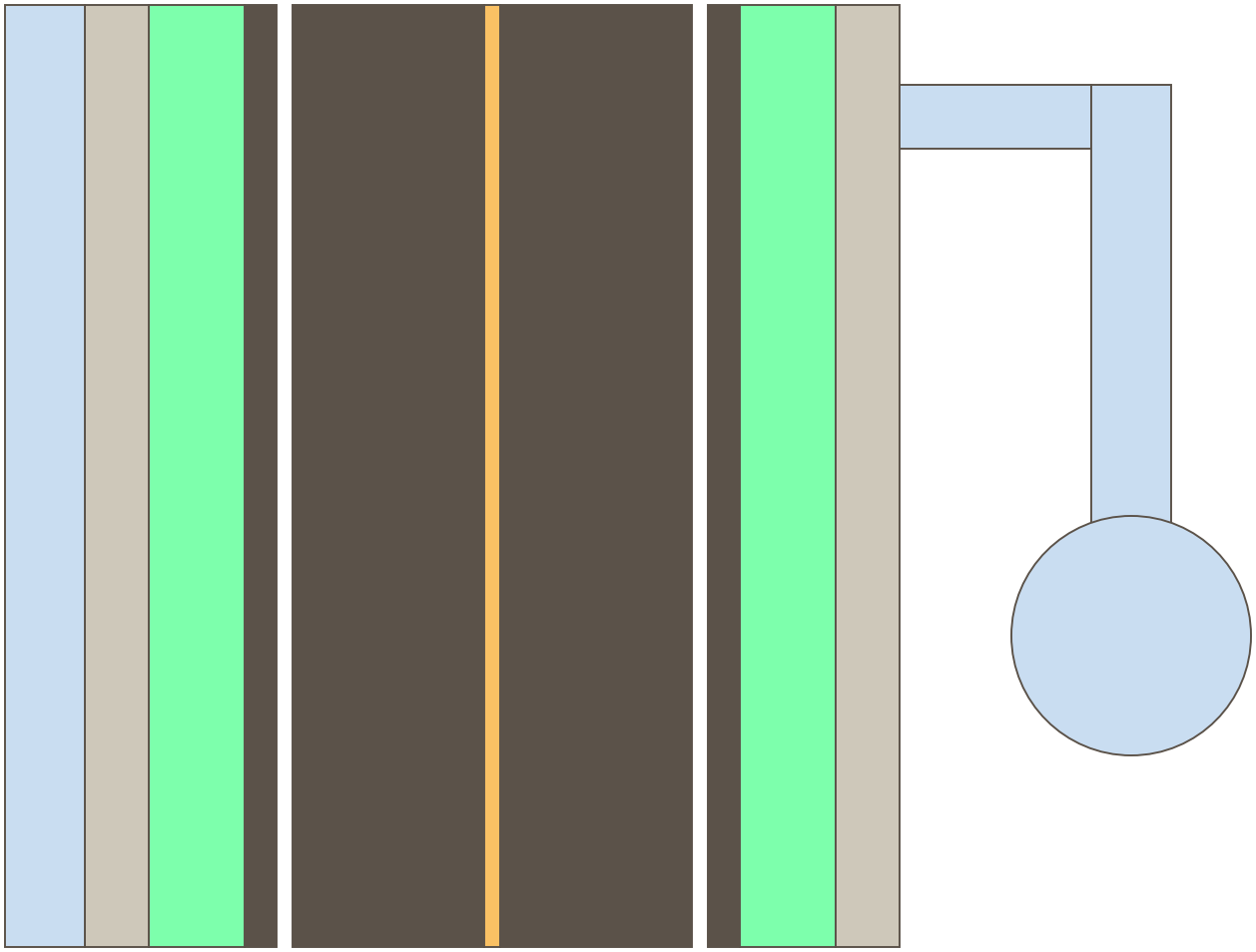
- If the map is actually filed, the landowner must show that one of the statutory elements is missing or by using the challenge option if the road is constructed by a nongovernmental entity

# What is the point of all these stupid Questions?

- I have no clue whatsoever and wasn’t really paying attention

# Variations of Facts

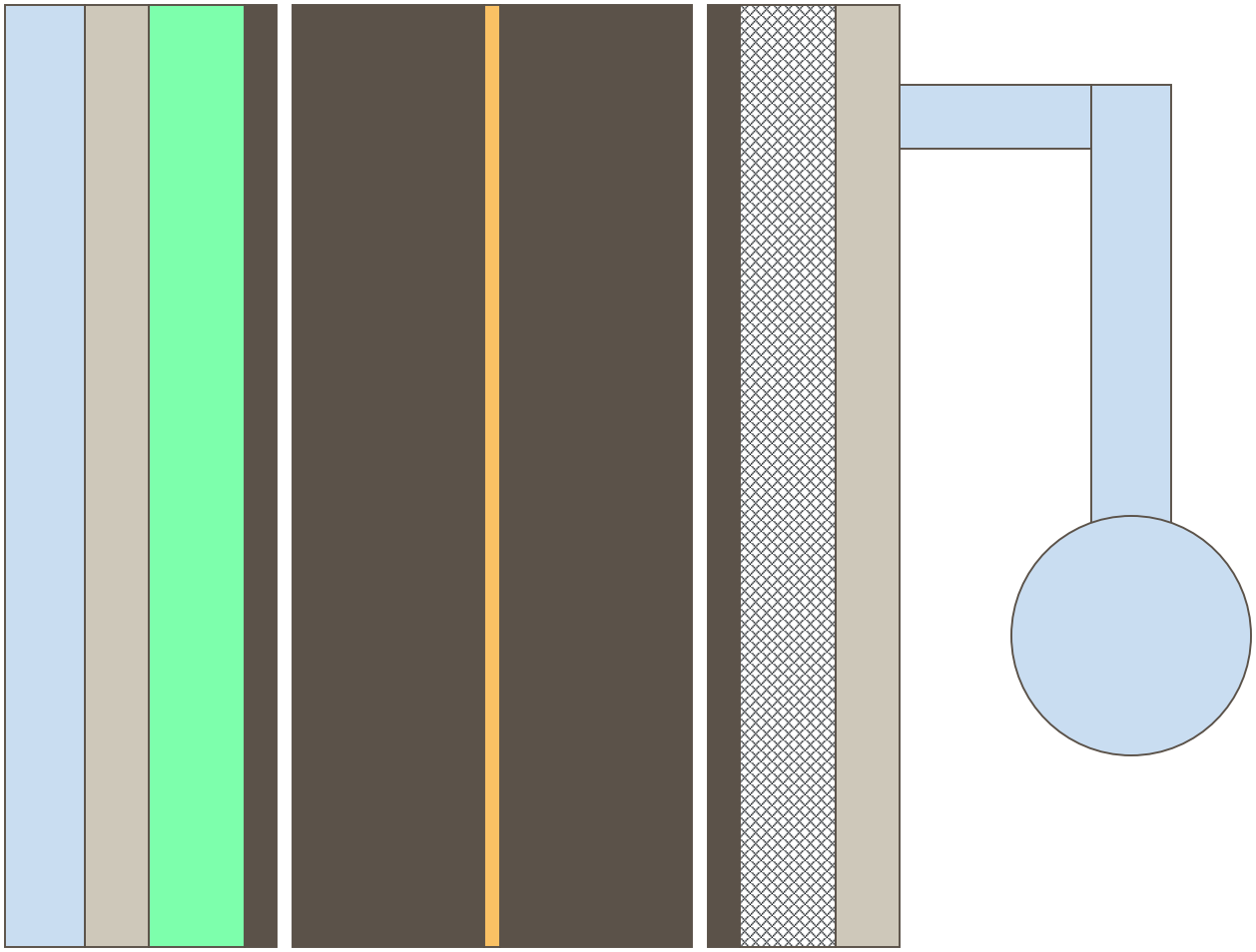
# What Features are Covered?



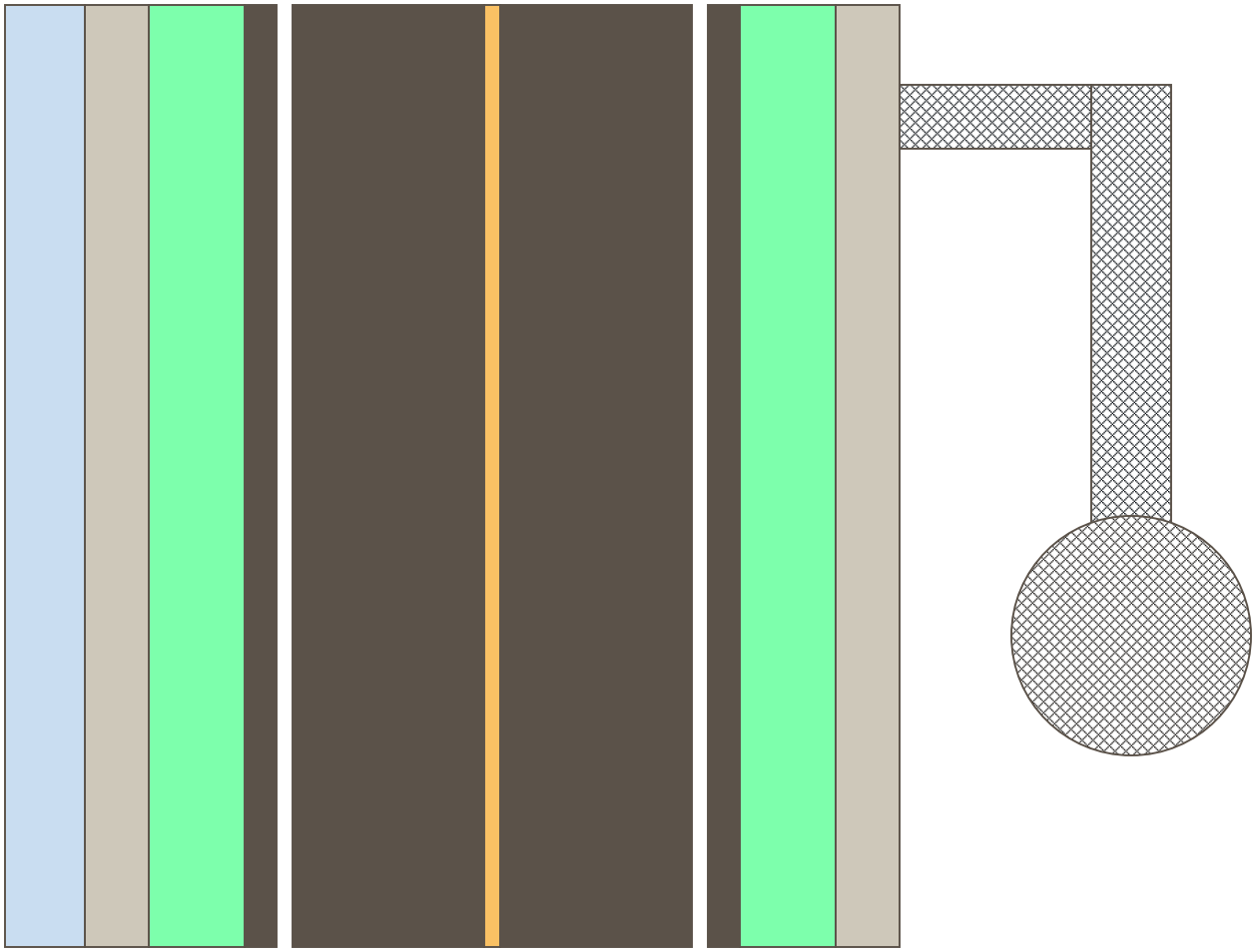
# Section 334.03

(22) “Road” means a way open to travel by the public, including, but not limited to, a street, highway, or alley. The term includes associated sidewalks, the roadbed, the right-of-way, and all culverts, drains, sluices, ditches, water storage areas, waterways, embankments, slopes, retaining walls, bridges, tunnels, and viaducts necessary for the maintenance of travel and all ferries used in connection therewith.

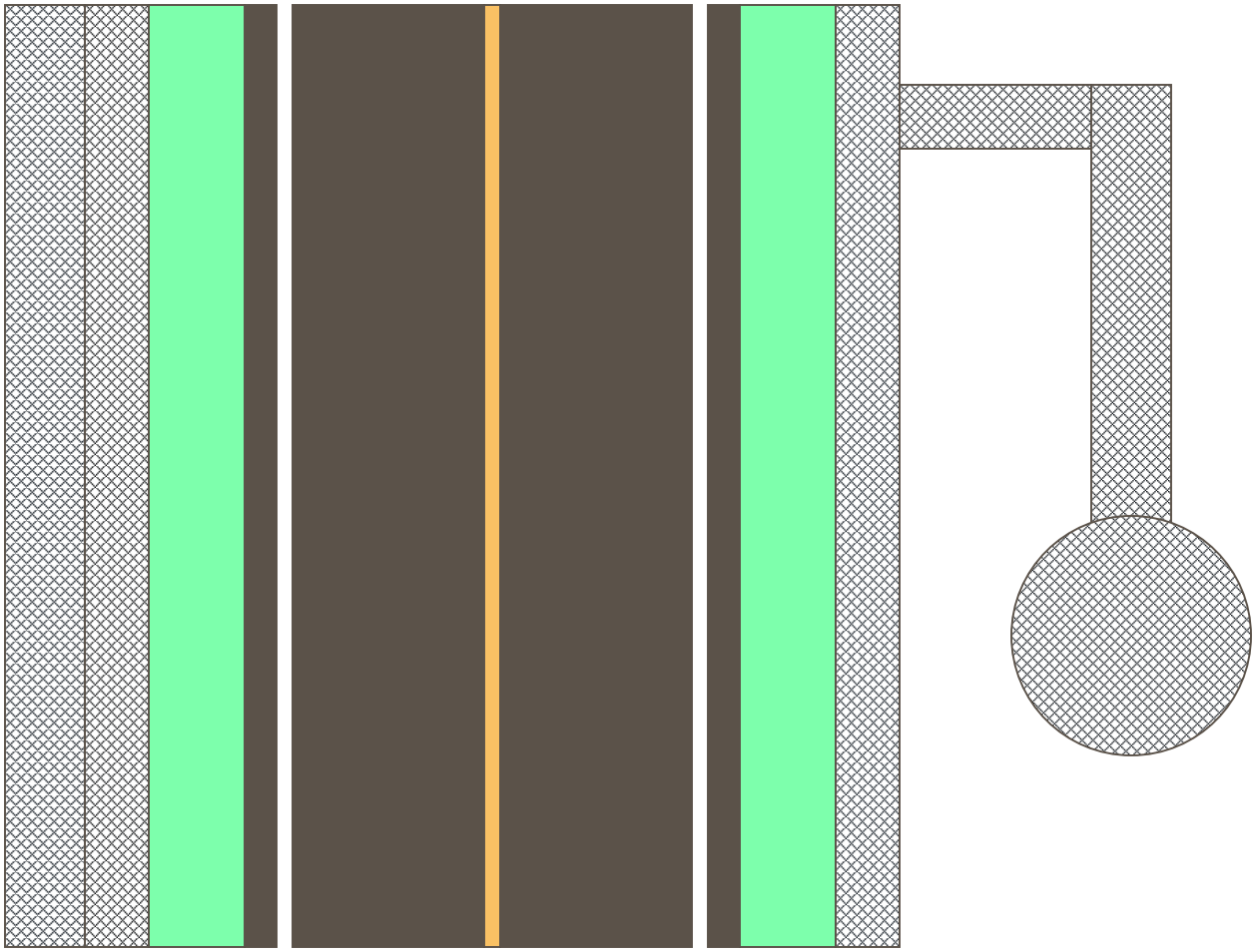
# Acquiescence of Maintenance



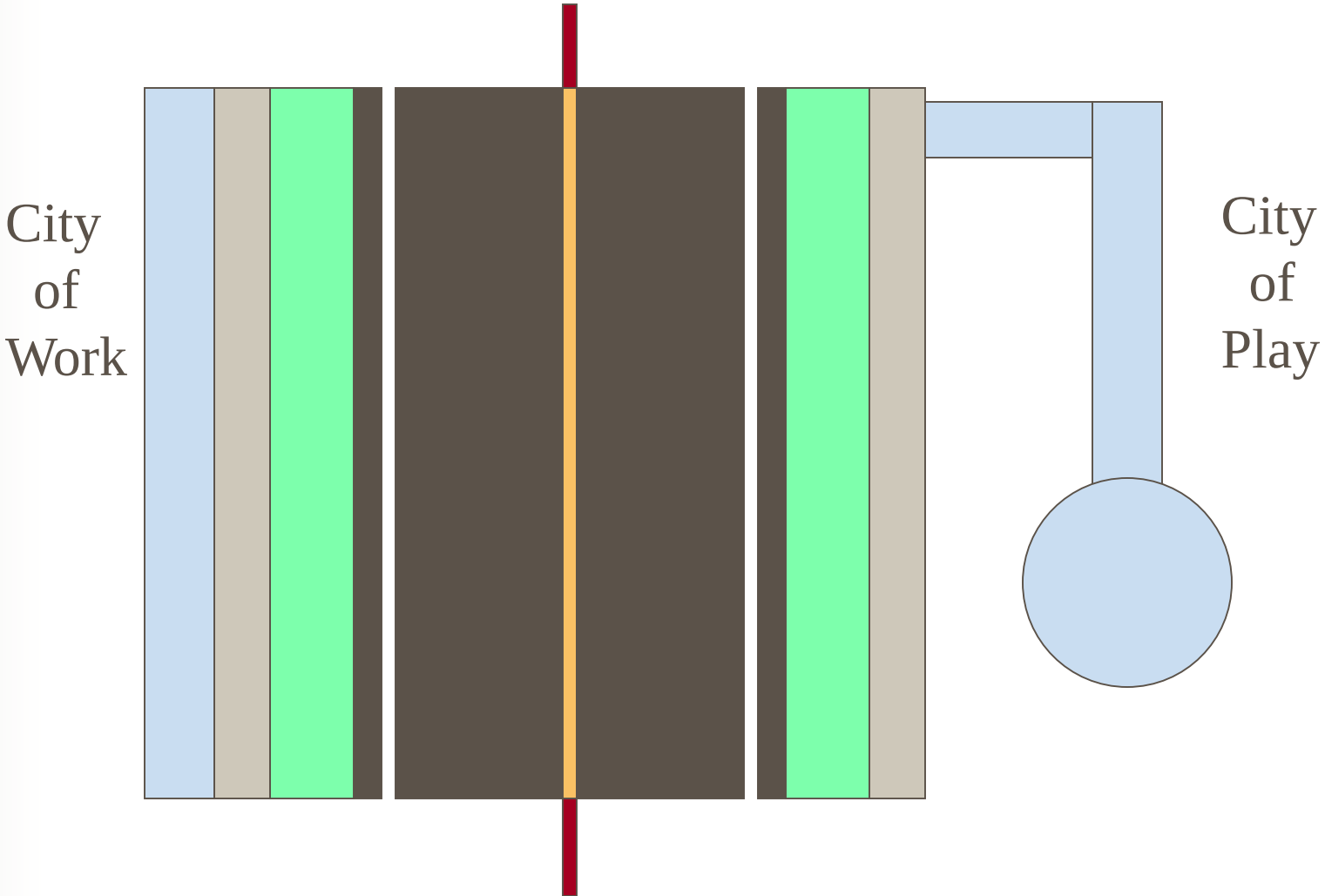
# Surrender of Maintenance



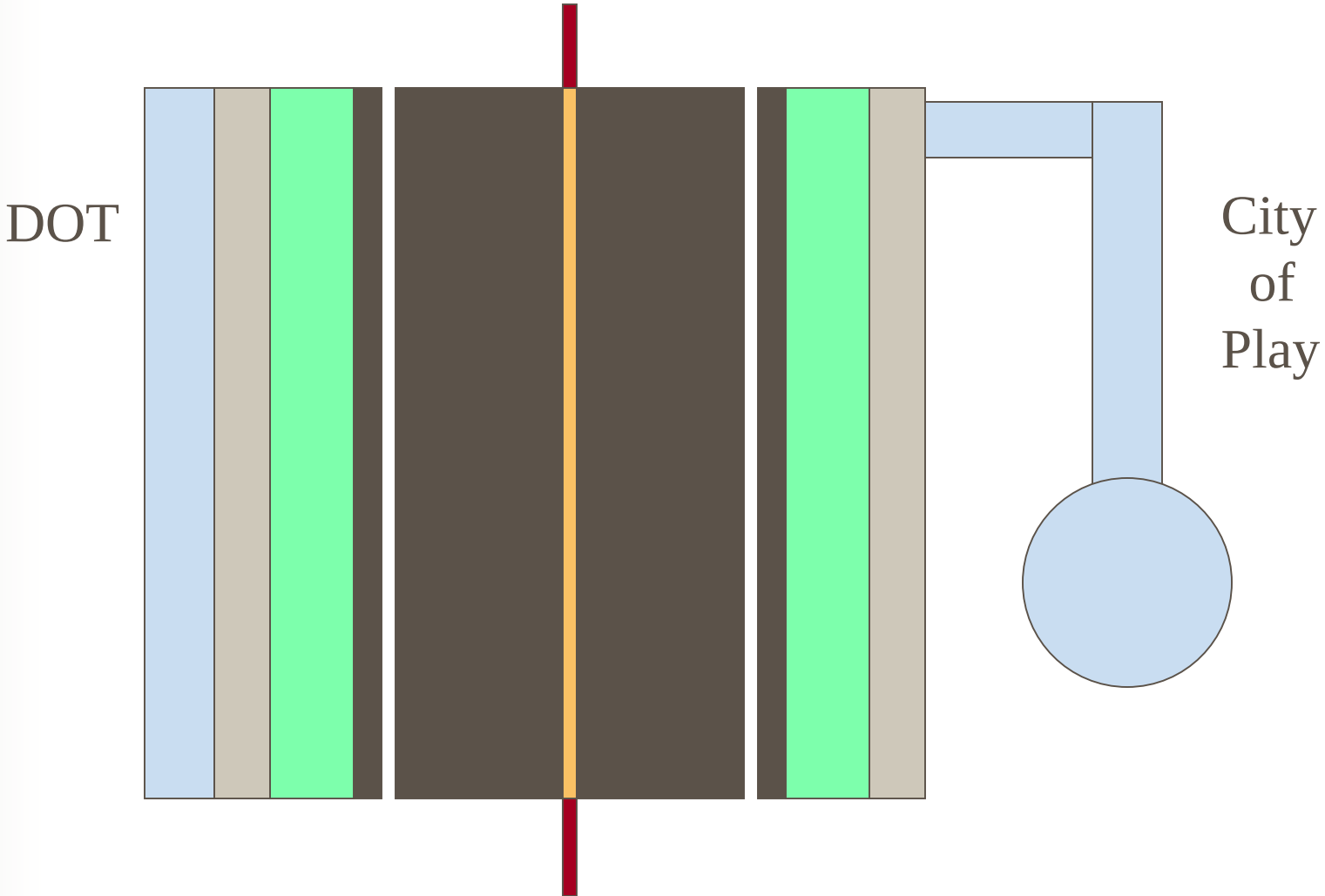
# Limited Easements



# Across City Limits



# City Transfer to DOT



What happens if little or no maintenance is performed or the maintenance is poorly performed?

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# Test

- Is maintenance “appropriate to the circumstances?”
- Does not matter whether the maintenance is “proper, frequent, thorough, or open and obvious.”

# Caveats

- “continuously and uninterrupted” v. “regularly” (section1 v. section 2)
- v. “occasional or periodic” (D2 v. D4)

# Solution

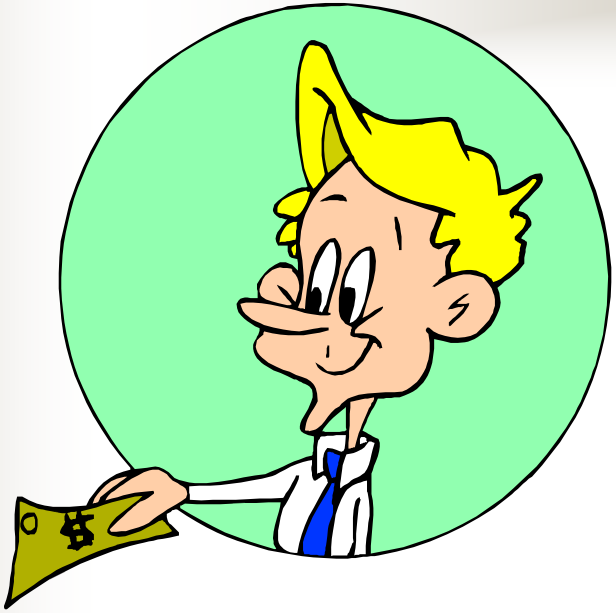
- Makes no sense to require unnecessary maintenance in order for statute to apply
- “appropriate for the circumstance” is more reasoned and best argument
- Avoids Section 1 v. Section 2 wording differential

What if the entity entitled to claim title no longer wants title because of incidents like an accident lawsuit or contamination of the property?

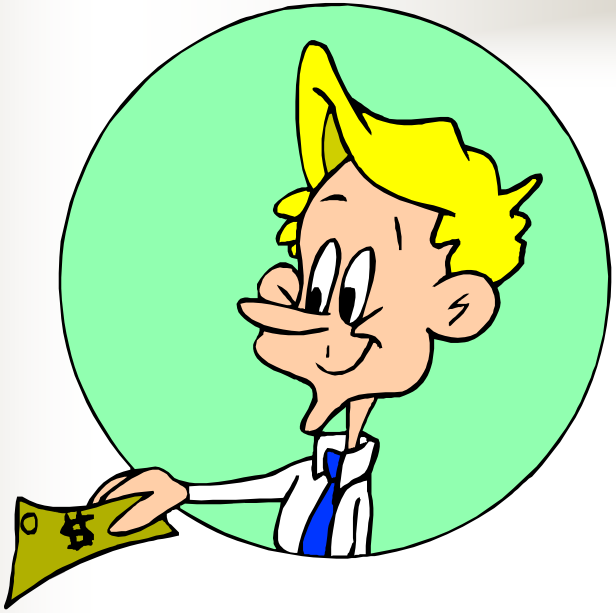
What if the entity entitled to claim title no longer wants title because of incidents like an accident lawsuit or contamination of the property?

- Once title is acquired, you have title for all purposes
- Title can only be divested by statutorily authorized processes
- “Surrender of maintenance” cannot be argued defensively

How does the maintenance map statute come into play in condemnation lawsuits?



- To support the payment of no compensation in actions filed by condemning authorities



- To support the payment of no compensation in actions filed by condemning authorities
- To defend against an inverse condemnation lawsuit filed by landowners

# Conclusion

- The statute is a way to acquire title to real property through a form of dedication
- When and how the statute applies depends on the individual facts and circumstances
- Don’t make quick judgments about the application of the statute without an adequate factual investigation

# Questions