

---

---

## I. Dedication (Statutory and Common Law)

Dedicated street rights-of-way are among the many types of existing interests that DOT might incorporate into a project, particularly in the urban areas. A dedication is an offer of land for public use by the owner and an acceptance of that offer by the public.

A statutory dedication is one made under and in conformity with the provision of a statute regulating the subject<sup>1</sup>. Generally, these rights-of-way are created by a formal platting action in which the offer to dedicate is evidenced by a “*certificate of dedication*” executed by the land owner and acceptance by the public is evidenced by a “*certificate of acceptance*” executed by an authorized official. “*When an area is subdivided and a plat of the subdivision is approved, filed, and recorded, all streets, alleys, thoroughfares, parks and other public area shown on the plat are considered to be dedicated to public use.*”<sup>2</sup>

A common law or implied dedication occurs when the offer and acceptance arise by operation of law and the conduct of the parties. Dedication is a mechanism for transfer of real property which need not comply with the Statute of Frauds. There are, however, well-defined requirements for a valid dedication. “*Dedication is the intentional appropriation of land by the owner to some public use.*”<sup>3</sup> In Alaska, there are two basic elements of common law dedication: an intent to dedicate on the part of the landowner, and an acceptance by the public<sup>4</sup>. In Alaska, the intent to offer to dedicate must be clear and unequivocal, and must be proven by the party attempting to assert the dedication.

Acceptance may occur through a formal official action or by public use consistent with the offer of dedication or by substantial reliance on the offer of dedication that would create an estoppel. Acceptance may also be implied from acts of maintenance by public authorities.<sup>5</sup> No acceptance is necessary when a public body having capacity to do so makes a formal dedication.<sup>6</sup> Federal townsite plats generally offer no words of dedication, however, the roads and alleys depicted upon them are considered to have left the jurisdiction of the federal government and are dedicated to public use.

Common law dedications often occurred in the Unorganized Borough prior to the establishment of the Department of Natural Resources as the Platting Authority.<sup>7</sup> While statutory dedications could be made in the Unorganized Borough by 1<sup>st</sup> and 2<sup>nd</sup> class cities that elected to exercise platting authority and by DNR with respect to state owned lands, formal

---

<sup>1</sup> A.S. 29.40.070 Platting Regulation “...platting requirements that may include, but are not limited to, the control of ... (4) dedication of streets, rights-of-way, public utility easements and areas considered necessary by the platting authority for other public uses.” also A.S. 40.15.030. Dedication of streets, alleys and thoroughfares. “When an area is subdivided and a plat of the subdivision is approved, filed, and recorded, all streets, alleys, thoroughfares, parks and other public areas shown on the plat are considered to be dedicated to public use.”

<sup>2</sup> A.S. 40.15.030 Dedication of streets, alleys, and thoroughfares.

<sup>3</sup> Seltenreich v. Town of Fairbanks, 102 F.Supp. 319, 323 (D. Ak. 1952)

<sup>4</sup> Swift v. Kniffen, 706 P.2d 296, 300-01 (Alaska); State v. Fairbanks Lodge No. 1392, Loyal Order of the Moose, 633 P.2d 1378, 1380 (Alaska 1981).

<sup>5</sup> Bruce & Ely, Law of Easements and Licenses in Land 4.06(3)

<sup>6</sup> State of California v. U.S., 169 F.2d 914, 921 (9th Cir. 1948)

<sup>7</sup> A.S. 40.15, Article 4 – 11 AAC 53, Article 5. Platting Authority in the Unorganized Borough.

## Highway Rights-of-Way In Alaska

acceptance of offers to dedicate for private lands were generally not available. Two scenarios were likely to exist. A private property was surveyed, platted and recorded. The plat would include a certificate of dedication executed by the owner. The acceptance of the dedication would be by public use of the rights-of-way as indicated by construction and maintenance. In the second scenario, the land owner might issue deeds without benefit of a plat or certificate of dedication. If the owner constructed access roads for the benefit of his grantees, this could represent an implied offer to dedicate.

In the early 1970's, DOT acquired right-of-way for the new Steese 4-lane project in Fairbanks. DOT incorporated what it considered to be public street rights-of-way created by the recording of a subdivision plat. The plat contained no offer to dedicate (except for sewer line easement) and there was no certificate of acceptance by the platting authority. The land owner filed an inverse condemnation case when DOT did not provide compensation for the street rights-of-way that were later incorporated into the project.<sup>8</sup> The court ruled against the State in stating that without a formal offer and acceptance there was no statutory dedication and there also was no construction or public use of the streets that could result in an implied common law dedication.

Once the State incorporates a street right-of-way validly created by dedication, the question is what ownership interest accrues to the State by constructing a road and assuming management of the facility? There are several types of rights-of-way for which DOT assumes management authority once they are included in our projects, but come without a formal conveyance by deed. These include RS-2477 trail and section line easements, federal patent reservations (Small Tracts), federal townsite streets and subdivision street dedications. In the early 1980's, a property owner adjoining the New Seward Highway right-of-way petitioned to vacation of a portion of a dedicated street right-of-way that lay within the DOT right-of-way vacated. DOT objected to the proposal due to a potential need for future projects. The Municipality of Anchorage Assembly approved the vacation over DOT's objections. The Court found that by showing the street dedication as part of the New Seward Highway right-of-way on the department's right-of-way maps, "*the State engaged in a 'formal official action' showing that it was assuming control over the land for highway purposes.*"<sup>9</sup> As land or rights in land acquired for State highway purposes can only be vacated by DOT&PF, the Municipality's vacation could only release the Municipality's interest. Note: In order to protect its interest, it is important for DOT to record its right-of-way plans within a reasonable period.

---

<sup>8</sup> State v. Fairbanks Lodge No. 1392, Loyal Order of Moose, 633, P.2d 1378, (Alaska, 1981)

<sup>9</sup> Safeway, Inc. v. State, Dept. of Transportation and Public Facilities, 34 P.3d 336 (Alaska, 2001)