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**Highway Rights of Way:
Creation, Use and Expansion**

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**Creation of Highway
Rights of Way**

- By direct acquisition:
 - Voluntary relinquishment of rights by owner
 - Condemnation
- By platting (statutory dedication):
 - Public Agency Plats
 - Assessor's plats
 - Industrial Parks

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**Creation of Highway
Rights of Way**

- By platting (statutory dedication)
 - Private Developer Plats
 - Public streets and alleys:
 - Offer of dedication to public use must exist in the recorded plat.
 - No public rights exist until 'offer' of dedication is 'accepted.'
 - Acceptance by (1) manifest act of public authorities or, (2) informally by public use

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Creation of Highway Rights of Way

- Approval of plat at time of recording is not acceptance.
- General McNitt Act resolution is not acceptance.
- Presumption of acceptance after 10 years under modern LDA
- Offer of dedication is continuing, may last 60-70 years or longer.
- Acceptance must occur before offer is withdrawn or lapses
 - Formal withdrawal
 - Acts inconsistent with the continuation of the offer
- Private streets and alleys
- Private easement rights of plat owners in streets and alleys

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Creation of Highway Rights of Way

- By implied dedication:
 - Intent by owner to offer land for highway use
 - Formal acceptance by public agency, or informal acceptance by maintenance
 - Use by the public
 - Owner's intent must be "clear and positive."
 - "Offer" may be informal and "may occur without a grant or even a written word."

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Creation of Highway Rights of Way

- By user:
 - Defined line of travel
 - Worked upon by public authorities and maintained in "reasonably passable condition;" need not be worked on over entire length of highway acquired by user.
 - Public travel and use for 10 consecutive years without interruption
 - Use by public must be open, notorious and exclusive—sufficient to give rise to a cause of action for trespass in the owner.
 - Presumptively 4 rods wide
 - Landowner must file suit within 10 years of first trespass by authorities to avoid presumption of 4 rod width.

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Expansion of Highway Rights of Way

- Expansion of existing highway rights of way generally occurs by voluntary relinquishment or condemnation.
 - Additional traffic lanes
 - Shoulder improvements
 - Bike paths and other recreational amenities, rest stops
- Plat amendments under Land Division Act may alter width, location and uses of platted streets. Generally expensive; requires circuit court action.

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Use of Highway Rights of Way

- Public highways, once created by express grant, statutory dedication, implied dedication or by user, may be used for more than vehicular and pedestrian travel.

■ **Public Utilities:**

Michigan Constitution, 1963
Art VII, Sec. 29.

No person, partnership, association or corporation, public or private, operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any county, township, city or village for wires, poles, pipes, tracks, conduits or other utility facilities, without the consent of the duly constituted authority of the county, township, city or village; or to transact local business therein without first obtaining a franchise from the township, city or village. Except as otherwise provided in this constitution the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government.

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Use of Highway Rights of Way

- **Public Utilities**
- Public Act 368 (1925 PA 368)
- (1) Except as otherwise provided under subsection (2), telegraph, telephone, power, and other public utility companies, cable television companies, and municipalities may enter upon, construct, and maintain telegraph, telephone, or power lines, pipe lines, wires, cables, poles, conduits, sewers or similar structures upon, over, across, or under any public road, bridge, street, or public place, including, longitudinally within limited access highway rights-of-way, and across or under any of the waters in this state, with all necessary erections and fixtures for that purpose. A telegraph, telephone, power, and other public utility company, cable television company, and municipality, before any of this work is commenced, shall first obtain the consent of the governing body of the city, village, or township through or along which these lines and poles are to be constructed and maintained. MCL 247.183

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Use of Highway Rights of Way

- **Access to water:**
 - Highway rights of way ending at the waters edge of a river, stream or lake are presumed to provide public access to that body of water.
 - Limited rights: launch and retrieve watercraft; swimming, fishing, one private owned public dock, temporary (non-overnight) mooring of watercraft
 - Prescriptive public recreational uses, especially at lake and stream crossings and road ends, may expand public use of highway right of way.
 - Role of local units of government

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Use of Highway Rights of Way

- Rights NOT Acquired by Public Authorities
 - Subsurface oil, gas and mineral rights. UCPA
 - Trees/growing crops

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Termination, Abandonment and Loss of Highway Rights of Way

- **Platted Streets and Alleys**
 - Withdrawal of offer of dedication prior to acceptance
 - Formal—recorded declaration of withdrawal
 - Informal—acts inconsistent with dedication, e.g. construction of building
 - Lapse of time
 - Offer is deemed to continue, but may lapse if not accepted within a reasonable period of time.
 - Facts and circumstances crucial
 - Land Division Act
 - Circuit Court action
 - Vacate streets and alleys
 - Alter location or scope of dedication

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Termination, Abandonment and Loss of Highway Rights of Way

■ County Act 51 Roads

- MCL 224.18 Notice, action by road authority, publication, Act 51 map update
 - Initiated by petition of property owners
 - Sue sponte by road authority
 - Cannot deprive property of access without payment of compensation
- Absolute Abandonment and Discontinuance
 - Road authority extinguishes public rights in the right of way
 - Township has right to acquire.
 - If Township does not acquire, title passes to adjoining property owners.

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Termination, Abandonment and Loss of Highway Rights of Way

- Relinquishment of Jurisdiction
 - Public rights transferred to jurisdiction of township
 - Remains public highway
- Platted county roads—same process
 - Platted streets not affected until LDA action to vacate

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Termination, Abandonment and Loss of Highway Rights of Way

- City and Village Streets
 - Statutory or charter process
 - Public notice and hearing
 - Vacates municipality's "public" rights in the street
 - If platted, underlying plat not affected
- Common Law Abandonment
 - Non use
 - Intent to abandon shown by "external acts" putting intent into effect
- Voluntary Release
 - Opposite of voluntary acquisition
 - Recorded release of easement or other suitable instrument



Limits on Termination of Public Rights

- Plats
 - Retain access to all lots, or reconfigure lot boundaries
 - Access to lakes and streams—retained as “public access sites”
 - Local unit of government
 - DNR
 - Nuisance remedies
 - Private easements created for public utilities
- Unplatted County Act 51 Roads
 - Access to all parcels affected maintained or provided by other roads
 - Access created by private easement
 - Utilities dealt with, as necessary; usually have private easements in place
 - Access to lakes and streams-- “public access sites”
 - Same process/priority as LDA
