

Bennett, John F (DOT)

From: Hooyer, Patricia (DOT)
Sent: Monday, October 17, 2011 4:27 PM
To: Bennett, John F (DOT); Borghesan, Dario (LAW)
Cc: Burke, Dana S (LAW)
Subject: RE: Offshore Systems-Kenai Case

Dario:

I went thru the microfiche and pulled up the recorded deeds for the parcels just along Nikishka Beach Road. I wasn't quite sure what you might need other than the final product. Going thru the fiche it looks like we started ordering title reports in 1963 (See Parcel 72), but didn't really get to far with acquisitions until 1966. These are pretty poor quality, but hopefully you can at least read the book and page # and then go and get the recorder's copy if needed. If you have more specific requests, let me know and we can pull them up from the recorders site for you. I am also attaching the mapping for this road.

We have lots of fiche, including general correspondence, the record of negotiations, title reports, etc. for each parcel, if you want to have additional backup for the case. I did not look at other acquisitions along the main road to see when you might have gotten our first deeds. If you think this is important, I will look some of them up. Just let me know.

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From: Bennett, John F (DOT)
Sent: Friday, October 14, 2011 2:42 PM
To: Borghesan, Dario (LAW); Hooyer, Patricia (DOT)
Cc: Burke, Dana S (LAW)
Subject: RE: Offshore Systems-Kenai Case

Louise, Dario's questions are really ones that you might have to answer. I was able to pull a couple of sheets of the Wildwood North plans from the DNR website to find that the early sheets were dated 1963 but I don't have a full set. Perhaps you have the full set of Wildwood ROW plans in pdf that you can forward to Dario and me. Also sheet 34, the first sheet for Nikishka Beach road indicates several private parcel acquisitions before you get to the DNR permit parcel. If you can pull the acquisition documents for these parcels to see what the acquisition dates are I think that might be helpful to Dario. Dario, I'm guessing that Louise will not find any parcels along the Nikishka Beach road portion of the project that have a 1963 acquisition date. But the Nikishka Beach road acquisitions are just a portion of the Wildwood North project and I if Louise looks at the acquisition document file for the entire project, that is where I think we will find acquisitions starting for the project in 1963. Dario, thanks for the briefs, I don't think I need the Borough's brief. Good luck with the oral arguments. I'll check them out once they are posted on the Gavel to Gavel site. JohnB

From: Borghesan, Dario (LAW)
Sent: Friday, October 14, 2011 2:19 PM
To: Hooyer, Patricia (DOT); Bennett, John F (DOT)
Cc: Burke, Dana S (LAW)
Subject: RE: Offshore Systems-Kenai Case

Thanks to both of you for your prompt replies. I have a few follow-up questions. First, I don't see a reference to 1963 on the documents for the Wildwood plan that I sent you. What documents are you referring to? Can you send me a PDF?

Second, what I really want to know is what parcels were acquired beginning in 1963 for the Nikishka Beach Road portion of the Wildwood project? Is there a map or plat depicting that? Thanks so much for your help—I really appreciate it.

John, here is the briefing: OSK's opening brief, our brief, and OSK's reply brief. I don't have the borough's brief in PDF form but if you would like it, I can have it scanned for you.

From: Hooyer, Patricia (DOT)
Sent: Thursday, October 13, 2011 3:41 PM
To: Bennett, John F (DOT); Borghesan, Dario (LAW)
Cc: Burke, Dana S (LAW)
Subject: RE: Offshore Systems-Kenai Case

John:

I think I can agree with your assessment. The ROW mapping that was prepared in the 60's shows the existing ROW in hatching and what we were proposing to acquire is unhatched with a parcel number inside that area. We did not show the entire ROW all the way to the beach, which looking back, would have helped clear up the current confusion as to where it is. But anyway, we only showed enough to cover what we were proposing to construct and needed additional r/w to do so. Looking in our Microfiche, all I was able to find was an application sent to DNR for a permit in Feb 1966 and we received the permit in August 1966 (Misc Bk 23, Pg 136, Kenai RD).

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From: Bennett, John F (DOT)
Sent: Thursday, October 13, 2011 2:01 PM
To: Borghesan, Dario (LAW)
Cc: Burke, Dana S (LAW); Hooyer, Patricia (DOT)
Subject: RE: Offshore Systems-Kenai Case

Dario, I am at the disadvantage of not having direct access to Central Region's ROW files which I think could quickly answer this question so I have copied Louise Hooyer, the ROW Engineering Supervisor there so she can either confirm my thoughts or point out where I have gone astray. I believe the existing ROW shown on the Nikishka Beach Road is the PLO and not a subsequent ROW acquired in 1963. I believe your concern is that in Beardsley's letter, he speaks to additional ROW acquired for Nikishka Beach Road in 1963 while the DNR application was submitted in February of 1966 and the permit received in August of 1966. The as-built plans for the Wildwood North project noted that they were approved on 7/12/61 and that construction started on 8/24/67, so that generally should bracket the project ROW activities although ROW could have started prior to design plan completion and approval. The Wildwood North ROW plans were initially a 29 sheet set, but the two sheets for Nikishka Beach road were added at a later date as sheets 24A and 24B and dated 9/8/65. While the ROW plan set cover (first) sheet is shown as approved on 1/12/66, sheet 2, the first sheet showing parcels to be acquired is dated 8/1/63. So I would interpret Beardsley's 1963 reference to mean that acquisitions for the Wildwood North project were initiated in 1963 and likely continued up to the point of advertising. I have seen no other evidence suggesting that a road ROW for Nikishka Beach road was acquired in 1963 prior to the DNR permit. Please let me know if there is anything else I can assist you with. Also, if possible, I would like to receive a copy of your brief and OSKs brief once they have been submitted to the court. JohnB

From: Borghesan, Dario (LAW)
Sent: Tuesday, October 11, 2011 2:51 PM
To: Bennett, John F (DOT)
Cc: Burke, Dana S (LAW)
Subject: Offshore Systems-Kenai Case

John,

I am the attorney who is handling the Alaska supreme court appeal of your agency's case against OSK. We met several months ago when you were here visiting Dana Burke (whom I've copied on this email).

I have a question I'd like your input on. As you may recall, there is a question about whether a 100' wide public easement for Nikishka Beach Road was created in territorial days by public land order. When DOTPF sought to widen a portion of Nikishka Beach Road in the late 1960s and requested a permit from DNR to do this, it produced a project map (among the documents I've attached to this email) that shows an 100' wide easement already existing within the wider right-of-way DOTPF is requesting. This existing right-of-way, like the right-of-way requested for the road expansion project, stops short of the bluff. The drawing doesn't describe the source of that existing easement, but I had assumed that the easement was supposed to represent the 100' wide easement created pursuant to public land order.

However, when I was reviewing the evidence in preparation for my argument, I came across a 1992 letter from Daniel Beardsley of DOTPF which called my assumption into question. The letter was written in the context of an application to DNR by a fish processing plant for an easement for a fish waste outfall line that began near the end of the highway portion of Nikishka Beach Road. This letter (which is the first document in the attachment) suggests that DOTPF acquired an additional right-of-way "in conjunction with the North Kenai Road project" which "ended close to the location shown for the outfall." It raises the question of whether the existing 100' right-of-way shown in the drawings for the NBR expansion project was meant to indicate the right-of-way created pursuant to public land order or the right-of-way purchased in 1963. Do you know anything about a right-of-way on or near Nikishka Beach Road purchased in 1963? Your thoughts on this issue would be much appreciated.

Best,

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