

Bennett, John F (DOT)

From: Bennett, John F (DOT)
Sent: Tuesday, March 23, 2010 2:29 PM
To: Burke, Dana S (LAW)
Subject: RE: OSK decision transcript

Dana, thanks for sending the transcripts. I suppose I shouldn't argue with success, but that's just me. The one item that annoys me is the limitation of the right of way width from the guard shack to the beach to 60 feet. Although I don't remember how much my testimony focused on the PLO's being the basis for the ROW that was conveyed to the State under the Omnibus QCD, that issue was stated in my report. So the court rules that the original beach road as indicated on the 1957 vicinity map is apparent in the aerial photos and that this is the road conveyed by the Omnibus QCD. The court cleared the way for the PLO ROW by ruling that the School reservation repeal did not defeat it, that merger didn't defeat it and that it was never abandoned or vacated by the state. It appears that they accepted the clarity of the "to the beach" call in the QCD over the ambiguity of the stated road length. But then the court never really discusses the PLO or accepts the 100' ROW width imposed by it and seems to place more weight in the DNR permitted ROW in 1966 than the original PLO ROW conveyed to the state. Oh well, a win is a win, I just wish it came out a bit more clearly.

One thing I was a bit concerned about earlier but it might not mean much was my testimony about going to the rules of construing descriptions in AS 9.25.040 if a description has conflicting or ambiguous terms. Not long after the trial, the Alaska Supreme court issued the "Estate of Smith v. Spinelli" (9.18.09) This seems to suggest that AS 9.25.040 should be used only as a last resort after the court's review of the deed results in a determination that the description is ambiguous. Maybe we would have ended up in the same place, but I'm not quite sure.

On to the next battle. JohnB

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From: Burke, Dana S (LAW)
Sent: Friday, March 19, 2010 10:55 AM
To: Feller, Ricky (DOT); Bennett, John F (DOT)
Subject: FW: OSK decision transcript

Attached is an unofficial transcript of the judge's order; because it is unofficial and not certified **it should not be quoted directly or distributed**; but I thought John especially would like to read it as it makes "new law" on the expiration of the school lands reservation/withdrawal and discusses John's testimony.

**Confidential-Attorney Client
Communication/Work Product**

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From: Bloom, Scott [mailto:SBloom@borough.kenai.ak.us]
Sent: Thursday, March 18, 2010 3:54 PM
To: Clay A. Young; Burke, Dana S (LAW)
Subject: FW: OSK decision transcript

Attached is a transcript done in-house of the hearing.

Scott Bloom
Assistant Borough Attorney
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From: Smith, Cheryl
Sent: Thursday, March 18, 2010 3:46 PM
To: Bloom, Scott
Subject: OSK decision transcript