

Bennett, John F (DOT)

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

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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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