

driving surface of 101st Avenue has consistently been from 20 to 22 feet in width, with drainage structures extending further into the ROW.

6. The evidence was convincing that 101st Avenue was regularly maintained or repaired by the County for more than seven years prior to the Exemption. The evidence was equally convincing that, during that period, the width of the road that actually has been maintained or repaired is substantially -- if not identically -- the same as the width of 101st Avenue after the road repairs under the Exemption were completed.

7. 101st Avenue was, prior to the exempt road repair work, “very wet” during rainy periods, and cars and trucks would routinely get stuck in the mud. Mr. Welch testified credibly that 101st Avenue was “a mess” even before the events that led to the work covered by the Exemption.

8. It is reasonable to conclude that the driving surface of 101st Avenue may have shifted by a matter of feet in either direction over the years prior to the exempt road repairs, which would have generally been the result of persons driving off of the driving surface to escape impassable areas, and of the imprecision inherent in grading a dirt road with a large motor grader. The evidence established that the County has maintained 101st Avenue at a location as close to the established centerline as possible, and has not intentionally moved or realigned 101st Avenue from its historic location.

9. Mr. Welch was very familiar with 101st Avenue, having used it numerous times, including during the period leading up to the events that precipitated the road repair work at issue. He testified to two surveys he performed of the area, first in 1996, and again in the vicinity of the Still property in May 2017. He testified that 101st Avenue was under County ownership and maintenance prior to his first survey in 1996.

10. Photographic evidence offered by Dr. Still showed 101st Avenue to be significantly degraded near his property for several years leading up to 2017. Turbidity of the waters passing alongside and under 101st Avenue was “a long ongoing issue with this road,” dating back to at least 2015.