

11. 101st Avenue “was in pretty poor shape” in January 2017. Cars would routinely go around wet areas on the driving surface and possibly onto Dr. Still’s property. That gave the appearance of a change in the eastern ROW. Over a period of years prior to the Exemption work, the ROW may have crept eastward as the road was graded, ditches were maintained, and residential traffic diverted around impassable areas. The shift could have been as much as 10 to 15 feet, but the evidence establishing such was neither precise nor compelling. However, even if the ROW shifted over time, the movement was not the result of intentional operation and maintenance by County staff, but was a gradual, unintentional movement over time. Such a gradual shift is common with dirt and limerock roads. Furthermore, the alignment of the travel surface was stable, and was always within the 60-foot ROW, although the stormwater structures may have gone beyond the ROW.

12. In August 2017, a series of storm events caused 101st Avenue to be flooded. Dr. Still testified that the existing road and ditches and most of the areas adjacent to his property were “destroyed” by continued public use after the August 2017 rain event. He believed there was no way to ascertain the alignment of 101st Avenue.

13. Around September 10, 2017, Hurricane Irma impacted the County, causing substantial flooding and damaging numerous dirt and limerock roads in the County, including 101st Avenue. 101st Avenue was partially damaged from flooded conditions, and rendered completely impassable at places along its path, which led motorists to drive off of the established roadway onto adjacent properties to get through. The diversion of traffic off of the road surface was due to the personal decisions of the public using the road, and was not the result of any direction, operation, or maintenance by County staff.