

14 After Hurricane Irma, Governor Scott issued emergency orders that allowed local governments to undertake necessary repairs to roadways. The County issued similar emergency orders.¹

15. In November 2017, Mr. Welch performed a survey to establish the alignment of the road. 101st Avenue was partially repaired consistent with the survey and pursuant to the emergency orders, with the work beginning in December 2017.

16. As the work to repair 101st Avenue was proceeding, Dr. Still asserted that the ROW encroached onto his property. He and Mr. Welch walked the property line, noted that the ROW appeared to extend across a fence installed on the west side of 101st Avenue, and staked the disputed area. Though the County believed it was working within its ROW, it decided, more as a matter of convenience to avoid the time and expense of litigation, to purchase the disputed area. Thereafter, on January 5, 2018, the County purchased 1.78 acres of property from Dr. Still, which was incorporated into the County ROW.² The purchase of the property, and establishment of the undisputed ROW, was completed well before the December 23, 2019, filing of the Petition.

17. The travel surface of the road remained within the prescriptive and historical ROW. The “footprint” of 101st Avenue was the same before and after the road repair work. Dr. Still admitted that the road had not “physically moved.” However, he believes that the County’s use of the

¹ Since the Exemption work was largely (and lawfully) performed under the emergency orders, the County’s Exemption application was filed after the repair work had begun on 101st Avenue, and is considered an after-the-fact application. The application for the Exemption was originally filed pursuant to rules 62-330.051(4)(b) and (e). The County thereafter withdrew its request for an exemption pursuant to rule 62-330.051(4)(b), and limited its Exemption to rule 62-330.051(4)(e), which establishes the standards at issue in this proceeding. The District’s December 10, 2019, proposed agency action granted the Exemption for resurfacing the entirety of the length of 101st Avenue.

² The evidence was not sufficient to establish that the ROW actually encroached onto Dr. Still’s property. It is equally plausible that the fence encroached into the 101st Avenue ROW. Nonetheless, the issue was -- or should have been -- resolved when the County agreed to pay Dr. Still to extinguish any plausible claim to the property in dispute.