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Favorable Court Ruling Upholds Critical Highway Rights, Restores Public Access to Nikishka Beach in Kenai

Story by Rick Feller

Kenai Superior Court Judge Anna Moran issued the court's long-awaited decision March 11, 2010 in the State v Offshore Systems Kenai (OSK) litigation.

Judge Moran's decision strongly upheld the right of way and public access interests that the state was compelled to protect.

The case arose from OSK's unilateral decision to block public access via Nikishka Beach Road to Nikishka Beach in North Kenai.

In 2007, OSK, a Cook Inlet dock owner and oilfield services supplier, erected a gate and manned it with an armed security guard ahead of the westerly terminus of Nikishka Beach Access Road at Nikishka Beach. This action blocked public access

to the beach from the state-owned and maintained road.

Following months of failed negotiations between DOT&PF and OSK, the state sued, alleging violation of state highway and public access rights. The case went to a two week (bench) trial last summer.

With the decision, the court made detailed findings of fact and conclusions of law - all in the state's favor.

Judge Moran ruled that the state road goes all the way to the beach by virtue of a number of legal instruments, and that the public also enjoys prescriptive easements to the beach on both sides of OSK's dock. The court immediately issued

an injunction ordering OSK to open its gate and allow unfettered public access to the beach.

Dana Burke, the state's lead attorney on the case, described the decision as an important win for the state and the people of North Kenai.

"I am very happy with the ruling, although we need to be cautious about its effect until it is published," said Burke. "The decision was thorough, and factually and legally sound. It was a pleasure to represent the state, and by extension, the people of North Kenai who have had a great interest in the outcome."

The case was supported through the Central Region Director's Office and Right of Way Section.

The Kenai Peninsula Borough joined in the case with the state.

John Bennett, Northern Region Right of Way Chief, provided critical support while preparing for the case. He also served as the state's expert witness during the trial.

Bennett's testimony was mentioned during the judge's oral delivery of the decision and proved a big influence on the decision itself.

The aerial photo at right shows the disputed area blocked by OSK for public access via Nikishka Beach Road to Nikishka Beach in North Kenai. (Photo courtesy of the Kenai Peninsula Borough)

