



## NEWS

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### Beach access case goes to court

By Mike Nesper | *Peninsula Clarion*

For the second consecutive summer, it seems Nikiski residents' public beach access via Nikishka Beach Road will remain blocked.

At the end of 2007, Offshore Systems Kenai erected a security checkpoint past the platted road, restricting public access to the beach. A lawsuit has since been filed. The two parties involved, OSK and the state of Alaska, presented oral arguments to Kenai Superior Court Judge Anna M. Moran on Friday at the Kenai Superior Courthouse.

"The state statutes have nothing to do with whether there was a right-of-way under federal law," said Ron Baird, representing OSK. "The patent simply does not call out the easement for (Nikishka) Beach Road.

"As a matter of law, those easements needed to be called out," Baird said.

OSK's land was once owned by the federal government. It was later selected by the borough, prior to being acquired by OSK. However, according to the title search, previous rights of way and easements still attach to the property.

Baird argued that when the borough transferred the land to OSK, it didn't preserve the easements.

"There's no reservation of public right-of-way in the lease," he said.

"It's always gone to the beach and it's always been a beach access road," said Assistant Attorney General Dana Burke, representing the state of Alaska. He said multiple people have testified to the road extending to the beach and the road was marked down to the beach in the past.

In a report to the Borough Assembly in January of last year, Land Management Officer Marcus Mueller said a state-owned 100-foot-wide right-of-way to the beach borders Nikishka Beach Road and extends beyond the platted portion to the shore of Cook Inlet. It is under the jurisdiction of the Alaska Department of Transportation and Public Facilities. Meanwhile, a 50-foot-wide easement along the mean high water line provides contiguous access along the shore pursuant to state code.

The borough, however, has no jurisdiction in the matter. According to the borough, any resolution that might lead to resuming full access will have to be worked out by OSK, DOT, the Department of Homeland Security and the U.S. Coast Guard.

The assembly appropriated \$60,000 of general funds at the March 24 meeting to hire outside legal counsel to assist the borough in the case.

The assembly got involved in the case in August 2008 when it authorized the administration to intervene because the issue involved borough residents.

"If the Nikishka Beach Road didn't go to the beach, then it's a road to nowhere," said Clay Young, representing the borough. "(OSK) knew the fact there was a public right-of-way down to the beach. Failure to plat ... has no impact on the existing Nikishka Beach Road."

Young said until OSK restricted the public, there had always been open, acknowledged access to the beach. "OSK unreasonably stopped that in 2007," he said.

"If the state thought they had a right-of-way they would have required a permit," Baird said, referring to a large construction project OSK conducted on the land during the 1980s.

"We're not trying to take away the improvements OSK made, we're trying to get back to the status quo before they put their gate up," Burke said.

Burke said the history of public use is important in this case.



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"It's real people, real lives," he said.

Prior to late 2007, public access was never a problem. In fact, OSK provided a pathway so people on the beach could easily get from one side of the dock to the other. Since then, OSK said even people on the beach could present a problem.

OSK blocked access in order to comply with provisions of the Marine Transportation Security Act of 2002.

Judge Moran pushed the May 18 trial date back to the week of July 27, saying it was unrealistic to be ready for trial in three weeks due to the complexity of the issue. Trial call will be July 17 at 8:30 a.m.

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#### READER COMMENTS

Posted by: [jessnjeff](#) at Apr. 19, 2009 at 11:10:22 am

Is this a separate issue from the access at Rig Tenders Dock, or is this the same one covered in this article?

Posted by: [blackmorej](#) at Apr. 19, 2009 at 2:25:44 pm

maybe the money spent to fight this ought to be spent on finding/making a new beach access?

Posted by: [JusticeNOTJustUs](#) at Apr. 19, 2009 at 3:39:05 pm

If the Borough put a gate on the road and blocked OSK's access, perhaps OSK's move to block the public access wouldn't be quite so objectionable.

If the Borough built the road, then it should be used by ALL Borough residents. All this "homeland security" control and rules should be repealed. Perhaps Alaska would be better off telling the federal government to mind their own business (they do not own the beach or the land). Our federal government is way out of control and we need to elect politicians who will stand up for our state's rights and the rights of American citizens.

We no longer live in a nation that respects the rights of its citizens.

Posted by: [kenairverbandit](#) at Apr. 20, 2009 at 6:24:09 am

The man upstairs owns the beach and I havent seen a sign telling anybody not to use it....has anyone else????

Posted by: [nancyk](#) at Apr. 20, 2009 at 9:12:20 am

Amen JusticeNotJustUs...I don't like the fact that I have an easement in front of my house either, but I can't legally block my neighbors dog from taking full advantage of the improvements I made there. If I put up a fence, the authorities would most certainly make me take it down...Those people in Nikiski have the right to have access to their beach without the taxpayers putting out more taxpayers money to build another road...Get over it OSK...

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