

Offshore Systems-Kenai v. State, Dept. of Transportation & Public Facilities,
282 P.2d 348 (July 27, 2012)

Offshore Systems - Kenai (Offshore) operates a commercial dock facility on Cook Inlet in the Kenai Peninsula Borough (Borough). Nikishka Beach Road traverses Offshore's property. The public has used this road to access the beach since the 1950's. In 2007 Offshore installed a gate blocking the road. The State and Borough sought an injunction against Offshore, alleging a public right-of-way or prescriptive easement exists over Nikishka Beach Road. Offshore counterclaimed for a declaratory judgment quieting title to its property.

The superior court concluded that Nikishka Beach Road was a public highway under the 1959 federal deed conveying the road to the State, the 1980 patent conveying the surrounding property from the State to the Borough reserved a separate public easement located over the road, and the public had established a prescriptive easement over the road for access to the beach. The Supreme Court finds the 1980 Patent sufficient and does not address the alternate rulings.

In 1980 the State conveyed the section within which the property is located to the Borough by Patent. The patent stated that the property was subject to a 50-foot wide public easement for access to and along the shoreline of Cook Inlet to be identified by the Borough. The Borough never located or platted the easement. In 1990 the Borough sold the subject property to Offshore by quitclaim deed. The deed did not specifically mention the Nikishka Beach Road or a public access easement, but contained a general reservation clause stating the conveyance was subject to "[r]ights and reservations of record and any easements...of record or ascertainable by physical inspection."

The Supreme Court considers the Patent and finds that it is not ambiguous, holding that nothing in its language suggest that the existence of the easement is conditioned upon the Borough's duty to identify and plat its location. Nor is the failure to specify an exact location fatal since the superior court has the authority to specify the exact location of an otherwise valid easement where the parties have not done so themselves.