

STATE OF MAINE
YORK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-09-111

ROBERT F. ALMEDER and VIRGINIA)
S. ALMEDER, et al.,)
)
Plaintiffs)

v.)

TOWN OF KENNEBUNKPORT and)
ALL PERSONS WHO ARE)
UNASCERTAINED,)
)
TMF Intervenor)

ANSWER, DEFENSES AND COUNTERCLAIMS OF
TMF INTERVENORS¹

(Title to Real Estate is Involved)

NOW COME, 15 Belvidere Avenue Kennebunkport, Maine Inc.; 131 Kings Highway LLC; John and Neal Melley as Trustees for the 5 Sunset Lane Realty Trust; Sharon Alexander; William and Mary Ammann; Joanne and Donald Anderson as Trustees for the Anderson Family Trust; Thomas Anuszewski; Kate and Mark Badertscher; David and Claudia Bantz; Dominique Barsalou and Michel Lalande; Stanley and Barbara Barwise; Batson's River Cottages, LLC; Kathleen Bauer Burke as Trustee for the Mary I. Bauer Revocable Trust; BelAir Condominium Association; Peter and Kathleen Bennett; Russell and Cheryl Benson; Jon Weber as Trustee for the Sylvia B. Block Trust and Joseph Block Testamentary Trust; Anne, Virginia and Peter Boginski as Trustees for The Peter and Virginia Boginski Family Trust; Peter and Margaret Bradshaw; Nicholas and Margaret Brill; Frederick and Denise Buckley; John and Mary Anne Calcutt; Peter and Jean Ciarametaro; Dorcas Cofer and S.J. Cohen; Herbert and Judith Cohen; Judith Rice Colby; Robert Convery; Richard and Stephenie Cook; Gregory and Christopher

¹ The list of intervenors represented by Taylor, McCormack & Frame, LLC by this filing will, for ease of reading, be labeled "TMF Intervenor".

Cooper; Marge Anderson as Trustee for The Joseph M. Cunniff Trust; Richard and Arthur Curtis as Trustees for The Curtis Realty Trust; John and Sonia Dalton; Gail Danckert; Richard and Sandra Day; Eleanor Dell; Kathleen DeMarre-Pappas; Susan and Richard Denekamp; C. Faith Detchon; Salvatore DiPillo and Marion Slater; Robert and Lorraine Dolbeare as Trustees for the Lorraine A. Dolbeare Trust; Brendan, Marion and Lauren Donovan; Paul and Denise Doran; Gregory Doyle; William and Patricia Dugan; Christine Ekchian; William and Therese Evans; Jan Fitzpatrick; Stuart and Eleanor Flavin; Martha and Edward Forbes; Kathleen and William Frieswick; Ann and Thomas Galligan, III; Robert and Jane Garvey; Robert Gerace as Trustee for The Gerace Family Realty Trust; Babak and Anne Ghayour; Judith and Richard Gilman; Mary and Francis J. Glavin, Jr. as Trustees for the Glavin-York Realty Trust; Robert and Cathy Gordon; Gordon Family Home Place LLC; L.F. Griswold, Stephen L. Griswold and Rosanne Cook; Sharon Ann Eon Harris and John Michie Harris; Ronald and Patricia Hayes; Lois Heaphy; Joan Hertz and Alan Gordon; Robert and Alice Heaton as Trustees for The Robert C. Heaton Trust; Patrick Hill; Harold and Bonnie Himmelman; Paul Hogan and Geralyn Fitzgerald; Jean and David Holden; Arthur and Janet Johnston; Judy Jose-Roddy; Joan T. and William A. Junker, Jr.; Maria and William Junker, III; Carol and Stan Jurga; Ann Kelly; Richard and Sharon Kelly; Killybegs, LLC; The King's Highway Goose Rocks Beach Condominium Association; Margaret Kirby; Richard and Kathleen Koffs; Carol and John Kraeuter; Mary Kudasoski as Trustee for the Mary C. Kudasoski Trust and Lisa and Wayne Taylor; Mary Kudasoski, Lisa Taylor and Jane Kudasoski; Ernestine LaFave and Roderick MacDonald; Ann LaFortune; Gordon and Jeannie Lewis as Trustees for The Lewis Family Realty Trust; Al and Audrey Loika as Trustees for The Loika Family Trust; Jeffrey and Catherine Lunde as Trustees for the Jeffrey S. Lunde Family Trust and the Catherine J. Lunde Family Trust; William and Joan Luthern; Graham W.

MacDonald; Graham and Holly MacDonald as Trustees for the MacDonald Children's Trust; Roderick D. MacDonald; J. Alexander MacMartin, Jr. and Arlene A. Laurenitis; Houchidar C. Maneche, M.D. as Trustee of the Houchidar C. Maneche Revocable Trust; Maritime Cottages Owners Association; Michael and Dawn Maron; Andrea Martin; Thelma S. Mather as Trustee for The Thelma Mather Trust; Deborah and Nicholas Maucieri; Ann and Nicholas Maucieri, Sr.; David and Barbara Mazeika; Douglas McCrae; John and Joan McEvoy; Kevin and Tracy McGovern; Alfred T. McHugh; Agnes McNamee and Deidre Bath as Trustees for The McNamee Family Trust; Terry and Caroline Merrill; Sally M. Milewski as Trustee for the Milewski Family Trust; Eileen Miller; Jeanne and Roger Miller; John and Mary Ann Morrissey; Jill Crawford Muhrer, Bruce Crawford, Robin Crawford Sakovics and Steven Crawford; Robert and Ann Murphy; Thomas and Sue Ellen Muse; Ray and Ellen Nichols; Howard J. Nixon, Betsey S. Nixon, and Monica Piombino as Trustees of The Howard J. Nixon Family Irrevocable Trust; Norwood Condominium Association; James and Sandra Nutter; Edward O'Neill, Jr.; Christopher and Mary Owen; Stephen H. Painter, III and Ann K. Corbey; Wilma Pappalardo as Trustee of the Wilma A. Pappalardo Revocable Trust; Charles and Lynda Parrott; Robert Pearce; Gregory and Sandra Pelletier; Pickard Union, LLC; Kathy Powers and Herbert and Ann Young as Trustees for the Powers/Young Maine Real Estate Trust; Chris Queen as Trustee for the Grace Queen Trust; Patrick J. and Gail A. Regan as Trustees of the Regan Family Realty Trust; Pamela Reynolds; Gary Roth and Roberta Capuano as Executor for the Estate of Sue Ann Roth; Winston and Christine Ryan as Trustees for the Winston C. Ryan Revocable Trust and the Christine B. Ryan Revocable Trust; Sand Dollar Condominium Association; Sand Castles at GRB, LLC; Carl and Delores Schmalz; Carolyn and Anthony Scibelli; Jane Shanahan; Rebecca B. Shepard as Trustee of the Rebecca B. Shepard Revocable Trust; Patricia Skeirik; Robert Benjamin

Czekanski and Pamela Nugent Czekanski as Trustees of the Skyline Drive Realty Trust; Ann Smith; M. Carroll Smith; Mark W. Smith; Peter and Nancy Smith; Marvin and Faye Snider; Steven and Thomas Snyder and Theo Glickman; George D. Sorenson, M.D. as Trustee for the George D. Sorenson Revocable Trust; Edward and Helen Sousa; Frederick and Charlene Stafford; David and Kathy Stievater; Janet Surrect as Trustee for The Janet M. Surrect Trust; Betty Tacy; Pierre-Andre Themens and Johanne Pérusse; Treetops, LLC; Roger Tricco as Trustee for the Tricco 1998 Family Trust; William and Maureen Van Benthuysen; Kathleen, Daniel and George Vorce as Trustees for the Mariana M. Vorce Family Realty Trust; William Steele, Jr. as Trustee for The Westport Trust; Tom and Pam Weyl; Frederick White; Jeannette White as Trustee for The Jeanette L. White Qualified Personal Residence Trust; Audrey Whitehead; Charles and Kristine Whittemore as Trustees for the Whittemore Living Trust dated April 11, 2006; David W. and Vikki A. Wiewel; Suzanne M. Wilson; Barbara and Henry Wostbrock; John Zimmerman and Bette Schofield; and Leslie and Susanne Ziskis², by and through their undersigned counsel, and hereby answer Plaintiffs' Complaint, as follows:

1. TMF Intervenors are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1 of Plaintiffs' Complaint and, therefore, deny the same.

2. TMF Intervenors deny the allegations contained in Paragraph 2 of Plaintiffs' Complaint and are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 2(a) of Plaintiffs' Complaint and, therefore, deny the same.

3. TMF Intervenors deny the allegations contained in Paragraph 3 of Plaintiffs' Complaint.

² The above intervenors, as previously noted, shall be referred to as "TMF Intervenors".

4. TMF Intervenor deny the allegations contained in Paragraph 4 of Plaintiffs' Complaint.

5. through 27. TMF Intervenor are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraphs 5 through 27 of Plaintiffs' Complaint and, therefore, deny the same.

28. TMF Intervenor admit the allegations contained in Paragraph 28 of Plaintiffs' Complaint.

29. Paragraph 29 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 29 of Plaintiffs' Complaint includes factual allegations, they are denied.

FACTUAL ALLEGATIONS

30. TMF Intervenor admit that Goose Rocks Beach in Kennebunkport, Maine, is approximately two miles long, but deny any remaining allegations contained in Paragraph 30 of Plaintiffs' Complaint.

31. TMF Intervenor admit that portions of Goose Rocks Beach in Kennebunkport, Maine, are subject to the ebb and flow of tides of the Atlantic Ocean, but deny any remaining allegations contained in Paragraph 31 of Plaintiffs' Complaint.

32. TMF Intervenor deny the allegations contained in Paragraph 32 of Plaintiffs' Complaint.

33. TMF Intervenor deny the allegations contained in Paragraph 33 of Plaintiffs' Complaint.

34. TMF Intervenor deny the allegations contained in Paragraph 34 of Plaintiffs' Complaint.

35. TMF Intervenors deny the allegations contained in Paragraph 35 of Plaintiffs' Complaint.

36. Paragraph 36 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 36 of Plaintiffs' Complaint includes factual allegations, they are denied.

37. The 2009 Comprehensive Plan described in Paragraph 37 of Plaintiffs' Complaint speaks for itself. TMF Intervenors deny any remaining allegations contained in Paragraph 37 of Plaintiffs' Complaint.

38. TMF Intervenors admit that the Town of Kennebunkport, or the Kennebunkport Conservation Trust, owns certain lots adjacent to Goose Rocks Beach in Kennebunkport, Maine, but deny any remaining allegations contained in Paragraph 38 of Plaintiffs' Complaint.

39. TMF Intervenors deny the allegations contained in Paragraph 39 of Plaintiffs' Complaint.

40. Paragraph 40 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 40 of Plaintiffs' Complaint includes factual allegations, they are denied.

41. Paragraphs 41, 41(a), 41(b), 41(c) and 41(d) of Plaintiffs' Complaint contain legal conclusions not requiring a responsive pleading. To the extent that Paragraphs 41, 41(a), 41(b), 41(c) and 41(d) of Plaintiffs' Complaint include factual allegations, they are denied. The letter dated October 31, 2008, and referenced as Exhibit 24 in Paragraph 41(e) of Plaintiffs' Complaint speaks for itself. TMF Intervenors deny any remaining allegations contained in Paragraph 41(e) of Plaintiffs' Complaint.

42. Paragraph 42 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 42 of Plaintiffs' Complaint includes factual allegations, they are denied.

43. Paragraph 43 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 43 of Plaintiffs' Complaint includes factual allegations, they are denied.

44. Paragraph 44 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 44 of Plaintiffs' Complaint includes factual allegations, they are denied.

COUNT I
DECLARATORY JUDGMENT

45. TMF Intervenors repeat and reallege their responses to Paragraphs 1 through 44 above as if set forth in full herein.

46. Paragraph 46 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 46 of Plaintiffs' Complaint includes factual allegations, they are denied.

WHEREFORE, TMF Intervenors demand judgment in their favor against Plaintiffs on Count I of Plaintiffs' Complaint, together with interest, costs and attorney's fees, and judgment for such other relief as is appropriate.

COUNT II
QUIET TITLE

47. TMF Intervenors repeat and realleges their responses to Paragraphs 1 through 46 above as if set forth in full herein.

48. Paragraph 48 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 48 of Plaintiffs' Complaint includes factual allegations, they are denied.

49. Paragraph 49 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 49 of Plaintiffs' Complaint includes factual allegations, they are denied.

50. TMF Intervenors deny the allegations contained in Paragraph 50 of Plaintiffs' Complaint.

51. Paragraph 51 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 51 of Plaintiffs' Complaint includes factual allegations, they are denied.

52. TMF Intervenors admit that they claim a right of the public to use Goose Rocks Beach for recreational purposes by custom, prescription or otherwise, but deny any remaining allegations contained in Paragraph 52 of Plaintiffs' Complaint.

53. Paragraph 53 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 53 of Plaintiffs' Complaint includes factual allegations, they are denied.

54. TMF Intervenors deny the allegations contained in Paragraph 54 of Plaintiffs' Complaint.

55. Paragraph 55 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 55 of Plaintiffs' Complaint includes factual allegations, they are denied.

WHEREFORE, TMF Intervenors demand judgment in their favor against Plaintiffs on Count II of Plaintiffs' Complaint, together with interest, costs and attorney's fees, and judgment for such other relief as is appropriate.

DEFENSES

1. Plaintiffs' Complaint, in whole or in part, fails to state a claim upon which relief may be granted.
2. Some, or all, of Plaintiffs have no right, title or interest in the property in dispute, specifically the intertidal zone and the high dry sand between the intertidal zone and certain properties abutting Goose Rocks Beach in Kennebunkport, Maine, including, but not limited to, Plaintiffs' properties ("Goose Rocks Beach") and, therefore, lack standing.
3. Plaintiffs' Complaint, in whole or in part, is barred by the applicable statutes of limitations, including, without limitation, 14 M.R.S.A. §§ 801, *et seq.*
4. Plaintiffs' Complaint, in whole or in part, is barred by the doctrine of waiver.
5. Plaintiffs' Complaint, in whole or in part, is barred by the doctrine of estoppel.
6. Plaintiffs' Complaint, in whole or in part, is barred by the doctrine of laches.
7. Plaintiffs' claims are barred to the extent that the public trust doctrine includes the right of the public to use Goose Rocks Beach for recreational purposes including, but not limited to, swimming, sunbathing, walking, running, playing, kite flying, sandcastle building, sailing, windsurfing, kayaking, canoeing and other recreational activities, otherwise generally using the beach in an unfettered manner for recreational and amusement purposes.
8. Plaintiffs' claims are barred because TMF Intervenors have acquired title to Goose Rocks Beach by adverse possession, dedication and acceptance, or otherwise.

9. Plaintiffs' claims are barred because TMF Intervenor have acquired an easement in Goose Rocks Beach by prescription, custom and/or use, or otherwise.

10. Plaintiffs' claims are barred because TMF Intervenor have an implied easement relating to Goose Rocks Beach.

11. Plaintiffs' claims are barred because Plaintiffs and/or their predecessors in title have acquiesced in the use of Goose Rocks Beach by TMF Intervenor.

12. Plaintiffs, or their predecessors in title, abandoned any and all right, title and interest in Goose Rocks Beach by virtue of their actions and inactions.

13. Plaintiffs are estopped from claiming title to Goose Rocks Beach by virtue of their actions and inaction, and/or the actions and inaction of their predecessors in title.

14. Plaintiffs' claims are barred by the doctrines of res judicata and collateral estoppel.

15. Plaintiff has not provided adequate notice to TMF Intervenor, pursuant to 14 M.R.S.A. §6653 and §5963.

COUNTERCLAIM

FACTS

1. 15 Belvidere Avenue Kennebunkport, Maine Inc. is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 15 Belvidere Avenue.
2. 131 Kings Highway LLC is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 131 Kings Highway.

3. 5 Sunset Lane Realty Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 5 Sunset Lane.
4. Sharon Alexander are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 6 Crescent Avenue.
5. William and Mary Ammann are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located 5 Cleaves Avenue.
6. The Anderson Family Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 37 Dyke Road, Unit 8 and 22 Dyke Road.
7. Thomas Anuszewski is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 186 Kings Highway.
8. Kate and Mark Badertscher are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 21 Norwood Lane.
9. David and Claudia Bantz are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 9 Skyline Drive.

10. Dominique Barsalou and Michel Lalande are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 293 Kings Highway.
11. Stanley and Barbara Barwise are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 6 Sea Lane.
12. Batson's River Cottages, LLC is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 18 Norwood Lane.
13. The Mary I. Bauer Revocable Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 7 Marshview Drive.
14. BelAir Condominium Association is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 9A and 9B BelAir Avenue.
15. Peter and Kathleen Bennett are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 8 Kings Lane.
16. Cheryl and Russell Benson are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 10 Norwood Lane.
17. The Sylvia Block Trust and Joseph Block Testamentary Trust are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 280 Kings Highway.

18. The Peter and Virginia Boginski Family Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 311 Kings Highway.
19. Peter and Margaret Bradshaw are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 23 Kings Lane.
20. Nicholas and Margaret Brill are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 3 Glazier Lane.
21. Frederick and Denise Buckley are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 9 Abbey Road.
22. John and Mary Anne Calcutt are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 27 Kings Lane.
23. Peter and Jean Ciarametaro are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 42 Wildwood Avenue.
24. Dorcas Cofer and S. J. Cohen are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 3 Hayward Avenue.

25. Herbert and Judith Cohen are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 106 Kings Highway.
26. Judith Rice Colby is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 126 Kings Highway.
27. Robert Convery is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 1 Skyline Drive.
28. Richard and Stephenie Cook are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 232 Kings Highway.
29. Gregory and Christopher Cooper are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 184 Kings Highway.
30. The Joseph M. Cunniff Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 37 Wildwood Road.
31. The Curtis Realty Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 7 Belvidere Avenue.

32. John and Sonia Dalton are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 7 New Biddeford Road.
33. Gail Danckert is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 1 Norwood Lane.
34. Richard and Sandra Day are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 28 Winter Harbor Road.
35. Eleanor Dell is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 9 New Biddeford Road.
36. Kathleen DeMarre-Pappas is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 3 Belleglade Avenue.
37. Richard and Susan Denekamp are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 282 Kings Highway.
38. C. Faith Detchon is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at R 122 Kings Highway.

39. Salvatore DiPillo and Marion Slater are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 23 Norwood Lane.
40. The Lorraine A. Dolbeare Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 10 Belvidere Avenue.
41. Brendan, Marion and Lauren Donovan are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 238 Kings Highway and 6 Bel Air Avenue.
42. Paul and Denise Doran are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 8 Edgewood Avenue.
43. Gregory Doyle is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 62 Wildes District Road.
44. William and Patricia Dugan are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 14 Whittemore Lane.
45. Christine Ekchian is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 9 Belvidere Avenue.

46. William and Therese Evans are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 26 Prescott Drive.
47. Jan Fitzpatrick is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 13 Sand Point Road.
48. Stuart and Eleanor Flavin are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine , specifically located at 19 Norwood Lane.
49. Martha and Edward Forbes are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 300 Kings Highway.
50. Kathleen and William Frieswick are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 16 Edgewood Avenue.
51. Ann and Thomas Galligan, III are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 8 Hayward Avenue.
52. Robert and Jane Garvey are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 150 Kings Highway.

53. The Gerace Family Realty Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 5 Skyline Drive.
54. Babak and Anne Ghayour are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 6 Henchey Way.
55. Judith and Richard Gilman are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 41 Wildwood Avenue.
56. The Glavin-York Realty Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 11 Community House Road and 15 Sand Point Road.
57. Robert and Cathy Gordon are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 8 Cottage Avenue.
58. Gordon Family Home Place, LLC is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 286 Kings Highway.
59. L.F. Griswold, Stephen L. Griswold and Rosanne Cook are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 26 New Biddeford Road.

60. Sharon Ann Eon Harris and John Michie Harris are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 13 Wildwood Avenue and 13A Wildwood Avenue.
61. Ronald and Patricia Hayes are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 49 Winter Harbor Road.
62. Lois Heaphy is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 104 Kings Highway.
63. Joan Hertz and Alan Gordon are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 12 Wildwood Avenue.
64. The Robert C. Heaton Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 10 Community House Road.
65. Patrick Hill is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 23 Skyline Drive.
66. Harold and Bonnie Himmelman are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 12 Dorrance Road.

67. Paul Hogan and GERALYN Fitzgerald are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 324 Kings Highway.
68. David and Jean Holden are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 47 Wildwood Extension and 4 Dorrance Road.
69. Arthur and Janet Johnston are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 4 New Biddeford Road.
70. Judy Jose-Roddy is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 122 Kings Highway.
71. Joan T. and William A. Junker, Jr. are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 305 Kings Highway.
72. Maria and William Junker III are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 114 Kings Highway.
73. Carol and Stan Jurga are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 8 Dorrance Road.
74. Ann Kelly is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 272 Mills Road, Unit 2F.

75. Richard and Sharon Kelly are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 12 Skyline Drive.
76. Killybegs, LLC is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 168 Kings Highway.
77. The King's Highway Goose Rocks Beach Condominium Association is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 224, 226 and 228 Kings Highway.
78. Margaret Kirby is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 5 Kings Lane.
79. Richard and Kathleen Koffs are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 182 Kings Highway.
80. John and Carol Kraeuter are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 148 Kings Highway.
81. The Mary C. Kударoski Trust and Lisa and Wayne Taylor are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 110 Kings Highway.

82. Mary Kударосki, Lisa Taylor and Jane Kударосki are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 7 Sunset Lane.
83. Ernestine LaFave and Roderick MacDonald are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 3 New Biddeford Road.
84. Ann LaFortune is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 35 Dyke Road.
85. The Lewis Family Realty Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 4 Jeffreys Way.
86. The Loika Family Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 44 Wildwood Avenue.
87. The Jeffrey S. Lunde Family Trust and the Catherine J. Lunde Family Trust are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 228 Kings Highway.
88. William and Joan Luthern are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 12-14 Norwood Lane.

89. Graham W. MacDonald is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 7 Bartlett Street.
90. The MacDonald Children's Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 10 Crescent Avenue and 12 Crescent Avenue.
91. Roderick D. MacDonald is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 20 Prescott Drive.
92. J. Alexander MacMartin, Jr. and Arlene A. Laurenitis are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 10 Whittemore Lane.
93. The Houchidar C. Maneche Revocable Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 17 Beaver Pond Road.
94. Maritime Cottages Owners Association is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 146 Kings Highway.
95. Michael and Dawn Maron are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 16 Norwood Lane.

96. Andrea Martin is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 2 Dorrance Road.
97. The Thelma Mather Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 284 Kings Highway.
98. Deborah and Nicholas Maucieri are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 7 Prescott Drive.
99. Ann and Nicholas Maucieri, Sr. are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 5 Prescott Drive.
100. David and Barbara Mazeika are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 162 Kings Highway.
101. Douglas McCrae is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 8 Broadway.
102. John and Joan McEvoy are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 7 Edgewood Avenue.
103. Tracy and Kevin McGovern are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 13 Norwood Lane.

104. Alfred T. McHugh is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 240 Goose Rocks Road.
105. The McNamee Family Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 64 Winter Harbor Road.
106. Terry and Caroline Merrill are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 11 Dorrance Road.
107. The Milewski Family Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 17 Norwood Lane.
108. Eileen Miller is the are owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 4 Henchey Way.
109. Jeanne and Roger Miller are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 116 Kings Highway.
110. John and Mary Ann Morrissey are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 28 New Biddeford Road.

111. Jill Crawford Muhrer, Bruce Crawford, Robin Crawford Sakovics, and Steven Crawford are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 306 Kings Highway.
112. Ann and Robert Murphy are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 6 Dorrance Road.
113. Thomas and Sue Ellen Muse are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 4 Crescent Avenue.
114. Ray and Ellen Nichols are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 5 Norwood Lane.
115. The Howard J. Nixon Family Irrevocable Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 112 Kings Highway.
116. Norwood Condominium Association is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 15 Norwood Lane.
117. James and Sandra Nutter are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 29 Dyke Road.

118. Edward O'Neill, Jr. is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 5 Hayward Avenue.
119. Christopher and Mary Owen are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 37 Kings Lane.
120. Stephen H. Painter, III and Ann K. Corbey are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 6 Wildwood Avenue.
121. The Wilma A. Pappalardo Revocable Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 16 Prescott Drive.
122. Charles and Lynda Parrott are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 6 Kings Lane.
123. Robert Pearce is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 15 Wildwood Avenue.
124. Gregory and Sandra Pelletier are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 33 Kings Lane.

125. Pickard Union, LLC is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 142 Kings Highway.
126. The Powers/Young Maine Real Estate Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 308 Kings Highway.
127. The Grace Queen Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 12 Belvidere Avenue.
128. The Regan Family Realty Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 5 Wildwood Avenue.
129. Pamela Reynolds is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 8 New Biddeford Road.
130. Gary Roth and The Estate of Sue Ann Roth are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 3 Dorrance Road.
131. The Winston C. Ryan Revocable Trust and the Christine B. Ryan Revocable Trust are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 296 Kings Highway.

132. Sand Dollar Condominium Association is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 5 Dyke Road.
133. Sand Castles at GRB, LLC is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 187 Kings Highway.
134. Carl and Delores Schmalz are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 230 Kings Highway.
135. Anthony and Caroline Scibelli are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 3 Marshview Circle.
136. Jane Shanahan is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 2 Bellglade Avenue.
137. The Rebecca B. Shepard Revocable Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 11 Kings Lane.
138. Patricia Skeirik is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 118 Kings Highway.

139. The Skyline Drive Realty Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 22 Skyline Drive.
140. Ann Smith is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 9 Bartlett Avenue.
141. M. Carroll Smith is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 272 Mills Road.
142. Mark W. Smith is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 6 Clark Road.
143. Peter and Nancy Smith are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 8 Marshview Drive.
144. Marvin and Faye Snider are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 1 Marshview Circle.
145. Steven Snyder, Theo Glickman, and Thomas Snyder are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 5 Dorrance Road.
146. George D. Sorenson Revocable Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 18 Wildwood Avenue.

147. Edward and Helen Sousa are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 4 Community House Way.
148. Frederick and Charlene Stafford are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 244 Kings Highway.
149. David and Kathy Stievater are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 4 Skyline Drive.
150. The Janet M. Surrect Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 108 Kings Highway.
151. Betty Tacy is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 15 New Biddeford Road.
152. Pierre-André Themens and Johanne Pérusse are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 299 Kings Highway.
153. Treetops, LLC is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 13 New Biddeford Road.
154. The Tricco 1998 Family Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 2 Kings Lane.

155. William and Maureen Van Benthuisen are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 23 Winter Harbor Road.
156. The Mariana M. Vorce Family Realty Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 10 Bellevue Avenue.
157. The Westport Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 278 Kings Highway.
158. Tom and Pam Weyl are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 288 Kings Highway.
159. Frederick White is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 4 Hayward Avenue.
160. The Jeanette L. White Qualified Personal Residence Trust is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 301 Kings Highway.
161. Audrey Whitehead is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 2 New Biddeford Road.

162. The Whittemore Living Trust dated April 11, 2006 is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 120 Kings Highway.
163. David W. and Vikki A. Wiewel are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 13A New Biddeford Road.
164. Suzanne M. Wilson is the owner of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 236 Kings Highway.
165. Henry and Barbara Wostbrock are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 218 Kings Highway.
166. John Zimmerman and Bette Schofield are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 41 Dyke Road.
167. Leslie and Susanne Ziskis are owners of real property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine, specifically located at 298 Kings Highway.³

³ The list of TMF Intervenor has grown exponentially as clients and potential clients have received information about the litigation via word of mouth. This phenomenon gives lie to Plaintiff's argument that its Notice to "all persons who are unascertained" was adequate. Indeed, as this Pleading was being drafted, others have sought to join the TMF Intervenor Group, and there will likely be more should the Deadline to Intervene be extended.

COUNT I
(FEE SIMPLE)

1. On information and belief, Plaintiffs claim to hold fee simple title in a certain portion of Goose Rocks Beach, as more particularly described in Plaintiffs' Complaint, including both the intertidal zone and the high dry sand between the intertidal zone and certain properties abutting the beach including, but not limited to, Plaintiffs' property ("Goose Rocks Beach"), subject only to the right of the public to fish, fowl and navigate thereon as established by the Colonial Ordinance of 1647.

2. Fee simple title to Goose Rocks Beach has resided in Defendant Town of Kennebunkport, and/or the public, continuously for over 100 years.

3. Fee simple title to Goose Rocks Beach rests in the Town of Kennebunkport, and/or the public, by virtue of royal grants of certain English monarchs confirmed in 1663 by the decree of King Charles II and later re-confirmed by William III and Mary II as joint sovereigns by virtue of the issuance of a new charter in favor of the Town of Kennebunkport, or other such royal grants or land grants in favor of the Town of Kennebunkport.

4. No evidence exists suggesting that the Town of Kennebunkport, and/or the public, at any time conveyed any portion of its interests to Goose Rocks Beach to Plaintiffs or to any other party.

5. Plaintiffs' source of title originates after the aforementioned land grants and colonial grants and, therefore, has no legal basis over the original land grants and/or royal grants to the Town of Kennebunkport, and/or the public.

6. Plaintiffs' source of title is invalid relative to the source of title of the Town of Kennebunkport, and/or the public.

7. Plaintiffs have no current interest in Goose Rocks Beach.

8. TMF Intervenors, the Town of Kennebunkport, and/or the public, have acquired fee simple title to Goose Rocks Beach either by deed, by adverse possession, by prescription, by estoppel, or by implication.

WHEREFORE, TMF Intervenors respectfully request that this Court find and declare, pursuant to 14 M.R.S.A. §§ 5951, *et seq.*, and 14 M.R.S.A. §§ 6651, *et seq.*, that fee simple title in Goose Rocks Beach rests in the TMF Intervenors, the Town of Kennebunkport, and/or the public, and further order the following:

- a. That Plaintiffs refrain from taking any action which would prohibit the unfettered use and possession of Goose Rocks Beach by the TMF Intervenors, the Town of Kennebunkport, and/or the public, for any and all purposes consistent with fee simple title by deed, by adverse possession, or by acquiescence;
- b. That Defendant Town of Kennebunkport record an attested copy of the Order declaring title in the Town of Kennebunkport and the public in the York County Registry of Deeds;
- c. That TMF Intervenors have acquired a prescriptive easement for the recreational use of both the intertidal and dry sand areas of Goose Rocks Beach for themselves, their guests, and their successors and assigns.
- d. That costs and attorney's fees be awarded to TMF Intervenors; and
- e. Such other further relief as this Court deems reasonable and just.

COUNT II
(ADVERSE POSSESSION)

9. TMF Intervenors repeat and reallege the assertions set forth in Paragraphs 1 through 8 above as if restated herein in their entirety.

10. TMF Intervenor's have acquired title to Goose Rocks Beach by adverse possession and prescription.

11. TMF Intervenor's have possessed Goose Rocks Beach openly, notoriously, adversely and exclusively under claim of right for over 100 years and a period in excess of 20 years.

12. This open, notorious use included, but it not limited to, swimming, walking, picnicking, fishing, clamming, barbecuing, campfires, sunbathing, reading, horseback riding, boating etc., on both dry and wet sand.

13. Neither Plaintiff's, nor their predecessors in title, have stated any claim of title to Goose Rocks Beach or prevented access or proscribed use despite the open and notorious possession of Goose Rocks Beach by the TMF Intervenor's for over 100 years.

WHEREFORE, TMF Intervenor's respectfully request this Court to find, pursuant to 14 M.R.S.A. §§ 801, *et seq.*, 14 M.R.S.A. §§ 5951, *et seq.*, and 14 M.R.S.A. §§ 6651, *et seq.*, as well as Maine common law, that the TMF Intervenor's have acquired title to Goose Rocks Beach by adverse possession and order the following:

- a. That Plaintiff's refrain from taking any action which would prohibit the unfettered use and possession of Goose Rocks Beach by the TMF Intervenor's for any and all purposes consistent with fee simple title by adverse possession;
- b. That Defendant Town of Kennebunkport record an attested copy of the Order declaring title in the Town of Kennebunkport and the public in the York County Registry of Deeds;
- c. That costs and attorney's fees be awarded to TMF Intervenor's; and
- d. Such other further relief as this Court deems reasonable and just.

COUNT III
(EASEMENT BY ESTOPPEL)

14. TMF Intervenor repeat and reallege the assertions set forth in Paragraphs 1 through 13 above as if restated herein in their entirety.

15. TMF Intervenor have established possession to Goose Rocks Beach through their use of Goose Rocks Beach for an extended period of time and without protest.

16. Plaintiffs are estopped from claiming ownership and excluding TMF Intervenor, who relied on that historic use as a basis for their purchase of property on or near, and their continued interest in, Goose Rocks Beach.

WHEREFORE, TMF Intervenor respectfully request this Court to find that, pursuant to 14 M.R.S.A. §§ 5951, *et seq.*, and 14 M.R.S.A. §§ 6651, *et seq.*, the TMF Intervenor have acquired title to Goose Rocks Beach by estoppel and order the following:

- a. That Plaintiffs refrain from taking any action which would prohibit the unfettered use and possession of Goose Rocks Beach by the TMF Intervenor in accordance with their rights acquired by acquiescence;
- b. That Defendant Town of Kennebunkport record an attested copy of the Order declaring title in the Town of Kennebunkport and the public in the York County Registry of Deeds;
- c. That costs and attorney's fees be awarded to TMF Intervenor; and
- d. Such other further relief as this Court deems reasonable and just.

COUNT IV
(PRESCRIPTION)

17. TMF Intervenor repeat and reallege the assertions set forth in Paragraphs 1 through 16 as if restated herein in their entirety.

18. TMF Intervenor has acquired prescriptive rights in Goose Rocks Beach by virtue of 20 years of continuous, open and notorious use of Goose Rocks Beach under a claim or right adverse to the Plaintiff, and with Plaintiffs' knowledge and acquiescence, for fishing, fowling, navigation, and for unfettered general recreational and amusement purposes subject only to the equivalent rights of others in the same premises.

19. Neither Plaintiffs, nor Plaintiffs' predecessors in title, have ever stated any claim to Goose Rocks Beach which would stop the running of the TMF Intervenor's continuous adverse use of the premises, nor have Plaintiffs attempted to proscribe access or use, or given permission, and Plaintiffs have not provided public notice under 14 M.R.S.A. § 812.

20. The scope of the prescriptive easement obtained by the public and by TMF Intervenor is both appurtenant and in gross and includes the right of the general public to use the beach for any general recreational purposes including, but not limited to, swimming, sunbathing, walking, running, playing, kite flying, sandcastle building, sailing, windsurfing, kayaking, canoeing and other recreational activities, or otherwise generally using the beach in an unfettered manner for recreational and amusement purposes, subject only to the equivalent rights of other members of the public in the same premises.

WHEREFORE, TMF Intervenor respectfully request that this Court find that TMF Intervenor has continuously for 20 years openly and notoriously used Goose Rocks Beach for fishing, fowling, navigation and general recreational and amusement purposes as aforesaid and, pursuant to 14 M.R.S.A. §§ 801, *et seq.*, 14 M.R.S.A. §§ 5951, *et seq.*, and 14 M.R.S.A. §§ 6651, *et seq.*, as well as Maine common law, further find and declare that TMF Intervenor holds an easement by prescription on and over Goose Rocks Beach for said purposes. TMF Intervenor further request this Court to order the following:

- a. That Plaintiffs refrain from taking any action which would prohibit the unfettered use and possession of Goose Rocks Beach by the TMF Intervenors in accordance with their rights acquired by prescription;
- b. That Defendant Town of Kennebunkport record an attested copy of the Order declaring title in the Town of Kennebunkport and the public in the York County Registry of Deeds;
- c. That costs and attorney's fees be awarded to TMF Intervenors; and
- d. Such other further relief as this Court deems reasonable and just.

COUNT V
(EASEMENT BY IMPLICATION)

21. TMF Intervenors repeat and reallege the assertions set forth in Paragraphs 1 through 20 as if stated herein in their entirety.

22. Plaintiffs' predecessors in title are the common grantors of lots in the vicinity of Goose Rocks Beach and Goose Rocks Beach itself.

23. The circumstances at the time of the conveyance of the lots located adjacent to, and in the vicinity of, Goose Rocks Beach imply the intent of Plaintiffs' predecessors in title to subject the remaining land, including Goose Rocks Beach, to an easement in favor of the TMF Intervenors.

24. Indeed, some or all of TMF Intervenors have, within their deeds, right of ways to Goose Rocks Beach.

25. The use of Goose Rocks Beach prior to the conveyance of lots also establishes an implied easement, or quasi-easement, in favor of TMF Intervenors.

26. By virtue of their actions and deeded right of ways taken in connection with marketing of the lots located adjacent to, and in the vicinity of, Goose Rocks Beach, Plaintiffs

and their predecessors in title manifested an intent to continue the implied easement or quasi-easement.

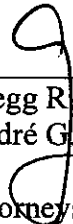
27. The scope of the implied easement or quasi-easement includes the unfettered use of the Beach for all purposes including fishing, fowling, navigation, and all recreational and amusement purposes including, but not limited to, swimming, sunbathing, walking, running, playing, kite flying, sandcastle building, sailing, windsurfing, kayaking, canoeing and other recreational activities, or otherwise generally using the beach in an unfettered manner for recreational and amusement purposes, subject only to the equivalent rights of others on the same premises.

WHEREFORE, TMF Intervenors respectfully request that this Court find that, pursuant to 14 M.R.S.A. §§ 5951, *et seq.*, and 14 M.R.S.A. §§ 6651, *et seq.*, Goose Rocks Beach is subject to an implied easement permitting the unfettered use of the Beach by the owners of the lots in the vicinity of Goose Rocks Beach and by the public, and pursuant to Maine law, order the following:

- a. That Plaintiffs refrain from taking any action which would prohibit the TMF Intervenors from the unfettered use of Goose Rocks Beach in accordance with their implied easement rights;
- b. That Defendant Town of Kennebunkport record an attested copy of this Order in the York County Registry of Deeds;
- c. That costs and attorney's fees be awarded to TMF Intervenors; and
- d. Such other further relief as this Court deems reasonable and just.

DATED:

June 4, 2010


Gregg R. Frame, Esq., Bar # 9291
André G. Duchette, Esq., Bar # 9872

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