

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,

Defendants

**ANSWER, DEFENSES AND
COUNTERCLAIMS OF
TOWN OF KENNEBUNKPORT**

Defendant Town of Kennebunkport, by and through its undersigned attorney, hereby answers the Plaintiffs' Complaint as follows:

PARTIES

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Complaint, and therefore denies the same.
2. Defendant denies the allegations set forth in Paragraph 2 of the Complaint and is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2(a) of the Complaint, and therefore denies the same.
3. Defendant denies the allegations set forth in Paragraph 3 of the Complaint.
4. Defendant denies the allegations set forth in Paragraph 4 of the Complaint.
5. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 5 of the Complaint, and therefore denies

the same. The deed referenced as Exhibit 1 in Paragraph 5(a) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 5(a) of the Complaint.

6. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 6 of the Complaint, and therefore denies the same. The deed referenced as Exhibit 2 in Paragraph 6(a) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 6(a) of the Complaint.

7. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 7 of the Complaint, and therefore denies the same. The deed referenced as Exhibit 3 in Paragraph 7(a) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 7(a) of the Complaint.

8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 8 of the Complaint, and therefore denies the same. The deed referenced as Exhibit 4 in Paragraph 8(a) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 8(a) of the Complaint.

9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 9 of the Complaint, and therefore denies the same. The deed referenced as Exhibit 5 in Paragraph 9(a) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 9(a) of the Complaint.

10. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 10 of the Complaint, and therefore denies the same. The deed referenced as Exhibit 6 in Paragraph 10(a) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 10(a) of the Complaint.

11. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 11 of the Complaint, and therefore denies the same. The deed referenced as Exhibit 7 in Paragraph 11(a) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 11(a) of the Complaint.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 12 of the Complaint, and therefore denies the same. The deed referenced as Exhibit 8 in Paragraph 12(a) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 12(a) of the Complaint.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 13 of the Complaint, and therefore denies the same. The deed referenced as Exhibit 9 in Paragraph 13(a) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 13(a) of the Complaint.

14. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 14 of the Complaint, and therefore denies the same. The deed referenced as Exhibit 10 in Paragraph 14(a) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 14(a) of the Complaint.

15. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 15 of the Complaint, and therefore denies the same. The deed referenced as Exhibit 11 in Paragraph 15(a) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 15(a) of the Complaint.

16. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 16 of the Complaint, and therefore denies

the same. The deed referenced as Exhibit 12 in Paragraph 16(a) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 16(a) of the Complaint.

17. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 17 of the Complaint, and therefore denies the same. The deed referenced as Exhibit 13 in Paragraph 17(a) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 17(a) of the Complaint.

18. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 18 of the Complaint, and therefore denies the same. The deed referenced as Exhibit 14 in Paragraph 18(a) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 18(a) of the Complaint.

19. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 19 of the Complaint, and therefore denies the same. The deed referenced as Exhibit 15 in Paragraph 19(a) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 19(a) of the Complaint.

20. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 20 of the Complaint, and therefore denies the same. The deed referenced as Exhibit 16 in Paragraph 20(a) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 20(a) of the Complaint.

21. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 21 of the Complaint, and therefore denies the same. The deed referenced as Exhibit 17 in Paragraph 21(a) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 21(a) of the Complaint.

22. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 22 of the Complaint, and therefore denies the same. The deed referenced as Exhibit 18 in Paragraph 22(a) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 22(a) of the Complaint.

23. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 23 of the Complaint, and therefore denies the same. The deed referenced as Exhibit 19 in Paragraph 23(a) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 23(a) of the Complaint.

24. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 24 of the Complaint, and therefore denies the same. The deed referenced as Exhibit 20 in Paragraph 24(a) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 24(a) of the Complaint.

25. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 25 of the Complaint, and therefore denies the same. The deed referenced as Exhibit 21 in Paragraph 25(a) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 25(a) of the Complaint.

26. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 26 of the Complaint, and therefore denies the same. The deed referenced as Exhibit 22 in Paragraph 26(a) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 26(a) of the Complaint.

27. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 27 of the Complaint, and therefore denies

the same. The deed referenced as Exhibit 23 in Paragraph 27(a) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 27(a) of the Complaint.

28. Defendant admits the allegations set forth in Paragraph 28 of the Complaint.

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

FACTUAL ALLEGATIONS

30. Defendant admits that Goose Rocks Beach in Kennebunkport, Maine is approximately two miles long but denies any remaining allegations set forth in Paragraph 30 of the Complaint.

31. Defendant admits that portions of Goose Rocks Beach in Kennebunkport, Maine are subject to the ebb and flow of tides of the Atlantic Ocean but denies any remaining allegations set forth in Paragraph 31 of the Complaint.

32. Defendant denies the allegations set forth in Paragraph 32 of the Complaint.

33. Defendant denies the allegations set forth in Paragraph 33 of the Complaint.

34. Defendant denies the allegations set forth in Paragraph 34 of the Complaint.

35. Defendant denies the allegations set forth in Paragraph 35 of the Complaint.

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

37. The 2009 Comprehensive Plan described in Paragraph 37 of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 37 of the Complaint.

38. Defendant admits that it, or the Kennebunkport Conservation trust, owns certain lots adjacent to Goose Rocks Beach in Kennebunkport, Maine but denies any remaining allegations set forth in Paragraph 38 of the Complaint.

39. Defendant denies the allegations set forth in Paragraph 39 of the Complaint.

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

41. Paragraphs 41, 41(a), 41(b), 41(c) and 41(d) of the 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 the Complaint include factual allegations, they are denied. The letter dated October 31, 2008 and referenced as Exhibit 24 in Paragraph 41(e) of the Complaint speaks for itself. Defendant denies any remaining allegations in Paragraph 41(e) of the Complaint.

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

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

44. Defendant denies the allegations set forth in Paragraph 44 of the Complaint.

COUNT I
DECLARATORY JUDGMENT

45. Defendant repeats and realleges its responses to Paragraphs 1 through 44 above as if set forth in full herein.

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

WHEREFORE, Defendant demands judgment in its favor against Plaintiffs on Count I of the Complaint, together with interest, costs and attorney's fees, and judgment for such other relief as is appropriate.

COUNT II
QUIET TITLE

47. Defendant repeats and realleges its responses to Paragraphs 1 through 46 above as if set forth in full herein.

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

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

50. Defendant denies the allegations set forth in Paragraph 50 of the Complaint.

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

52. Defendant admits that it claims a right of the public to use Goose Rocks Beach for recreational purposes by custom, prescription or otherwise but denies any remaining allegations set forth in Paragraph 52 of the Complaint.

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

54. Defendant denies the allegations set forth in Paragraph 54 of the Complaint.

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

WHEREFORE, Defendant demands judgment in its favor against Plaintiffs on Count II of the 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 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.

8. Plaintiffs' claims are barred because Defendant, or the public, has acquired title to Goose Rocks Beach by adverse possession, dedication and acceptance, or otherwise.

9. Plaintiffs' claims are barred because Defendant, or the public, has acquired an easement in Goose Rocks Beach by prescription, custom and/or use, or otherwise.

10. Plaintiffs' claims are barred because Defendant, or the public, has an implied or quasi 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 Defendant and the public.

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. Plaintiffs' claims are barred by lack of consideration or the failure of consideration

16. Plaintiffs, and/or their predecessors in title, have failed to pay property taxes on all or any portion of Goose Rocks Beach.

COUNTERCLAIM

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' properties ("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. Defendants, and/or the public, have acquired fee simple title to Goose Rocks Beach either by deed, by adverse possession, or by acquiescence.

WHEREFORE, Defendants 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 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 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 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 Defendant; and
- d. Such and other further relief as this Court deems reasonable and just.

COUNT II (ADVERSE POSSESSION)

9. Defendant repeats and realleges the assertions set forth in Paragraphs 1 through 8 as if restated herein in their entirety.

10. Defendant, and/or the public, has acquired title to Goose Rocks Beach by adverse possession.

11. Defendant, and/or the public, has 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. Neither Plaintiffs, nor their predecessors in title, have stated any claim of title against Goose Rocks Beach despite the open and notorious possession of Goose Rocks Beach by the Town of Kennebunkport, and/or the public, for over 100 years.

13. Plaintiffs have failed to pay real property taxes on Goose Rocks Beach at any time.

WHEREFORE, Defendant 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 Town of Kennebunkport, and/or the public, has acquired title to Goose Rocks Beach by adverse possession 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 Town of Kennebunkport, and/or the public, for any and all purposes consistent with fee simple title by adverse possession;
- b. That Defendant 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 Defendant; and
- d. Such and other further relief as this Court deems reasonable and just.

COUNT III (ACQUIESCENCE)

14. Defendant repeats and realleges the assertions set forth in Paragraphs 1 through 13 as if restated herein in their entirety.

15. Defendant, and/or the public, has established possession to Goose Rocks Beach to a clearly marked visible line.

16. Defendant, and/or the public, gave actual or constructive notice of the same to Plaintiffs.

17. Plaintiffs' actions and inactions imply their recognition and acquiescence in the possession of Goose Rocks Beach by Defendant, and/or the public.

18. Plaintiffs' acquiescence has existed for a sufficiently long period of time to permit establishment of title in the Town of Kennebunkport, and/or the public, by acquiescence.

WHEREFORE, Defendant respectfully requests 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 Town of Kennebunkport, and/or the public, has acquired title to Goose Rocks Beach by acquiescence 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 Town of Kennebunkport, and/or the public, in accordance with their rights acquired by acquiescence;
- b. That Defendant 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 Defendant; and
- d. Such and other further relief as this Court deems reasonable and just.

COUNT IV (PRESCRIPTION)

19. Defendant repeats and realleges the assertions set forth in Paragraphs 1 through 18 as if restated herein in their entirety.

20. Defendant, and/or the public, has acquired prescriptive rights in Goose Rocks Beach by virtue of 20 years of continuous, open and notorious use, of Goose Rocks Beach

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.

21. Neither Plaintiffs, nor Plaintiffs' predecessors in title, has ever stated any claim to Goose Rocks Beach which would stop the running of the Town's and the public's continuous adverse use of the premises.

22. The scope of the prescriptive easement obtained by the public and by Defendants 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, Defendant respectfully requests that this Court find that Defendant, and/or and the public, 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 Defendants, and/or the public, hold an easement by prescription on and over Goose Rocks Beach for said purposes. Defendant further requests 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 Town of Kennebunkport, and/or the public, in accordance with their rights acquired by prescription;

- b. That Defendant 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 Defendant; and
- d. Such and other further relief as this Court deems reasonable and just.

COUNT V (DEDICATION AND ACCEPTANCE)

23. Defendant repeats and realleges the assertions set forth in Paragraphs 1 through 22 as if restated herein in their entirety.

24. Plaintiffs, and their predecessors in title, have dedicated Goose Rocks Beach to exclusive public use through the recording of certain plans for the sale of lots by Goose Rocks Beach, and by the actions and inactions of Plaintiffs and their predecessors in title for over 100 years.

25. Defendant, and/or the public, accepted the dedication of Goose Rocks Beach by virtue of their actions since then, including the maintenance of the beach, the construction and reconstruction of the sea wall and access ways, the harvesting of seaweed and kelp, the use of the beach for fishing, fowling, navigation, and unfettered array of 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.

26. Neither Plaintiffs, nor their predecessors in title, took any action inconsistent with the dedication to public use.

27. The creation of certain subdivision plans and the sale of lots referenced in such plans created certain public and private rights which continue to exist today.

28. The public and private rights so created gives the public and owners of lots in the vicinity of Goose Rocks Beach, which were sold with reference to such plans, the unfettered right to use Goose Rocks Beach for any and all purposes consistent with the rights of others to use Goose Rocks Beach.

29. The public rights include the right to fish, fowl, navigate, and to use Goose Rocks Beach in an unfettered manner for 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, in a manner consistent with the private rights of others.

WHEREFORE, Defendant respectfully requests 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 has been dedicated to public use and has been accepted for such use by the Town of Kennebunkport, and/or the public, and pursuant to Maine law, 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 Town of Kennebunkport, and/or the public, in accordance with their rights acquired by dedication and acceptance;
- b. That Defendant 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 Defendant; and
- e. Such and other further relief as this Court deems reasonable and just.

COUNT VI (CUSTOM)

30. Defendant repeats and realleges the assertions set forth in Paragraphs 1 through 29 as if restated herein in their entirety.

31. Defendant, and/or the public, has acquired rights in Goose Rocks Beach by custom by virtue of the use of the beach by the Town of Kennebunkport, and/or the public, for so long as the memory of man runneth not to the contrary.

32. The use of the beach by the Town of Kennebunkport, and/or the public, has been peaceable and free from dispute.

33. The public rights include the right to fish, fowl, navigate, and to use Goose Rocks Beach in an unfettered manner for 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, in a manner consistent with the private rights of others.

WHEREFORE, Defendant respectfully requests that this Court find that, pursuant to 14 M.R.S.A. §§ 5951 *et seq.* and 14 M.R.S.A. §§ 6651 *et seq.*, Defendant, and/or and the public, has acquired rights in Goose Rocks Beach by custom for fishing, fowling, navigation and general recreational and amusement purposes as aforesaid and further declare that Defendants, and/or the public, hold an easement by custom on and over Goose Rocks Beach for said purposes.

Defendant further requests 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 Town of Kennebunkport, and/or the public, in accordance with their rights acquired by custom;

- b. That Defendant 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 Defendant; and
- d. Such and other further relief as this Court deems reasonable and just.

COUNT VII (EASEMENT)

34. Defendant repeats and realleges the assertions set forth in Paragraphs 1 through 33 as if restated herein in their entirety.

35. Defendant, for themselves and the public, assert the existence of an easement over Goose Rocks Beach for purposes of unfettered public recreation and amusement 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, as well as for fishing, fowling, and navigation, subject only to the equivalent rights of others on the same premises.

36. Defendant, and/or the public, has acquired such an easement on and over Goose Rocks Beach for purposes of unfettered public recreation and amusement, as well as for fishing, fowling, and navigation, by virtue of more than 20 years of open, notorious, adverse and exclusive use of Goose Rocks Beach under a claim of right.

37. Defendant, and/or the public, has acquired such an easement on and over Goose Rocks Beach for purposes of unfettered public recreation and amusement, as well as for fishing, fowling, and navigation, by virtue of the express and implied dedication of the Beach to public use, by and through the recording of certain plans for the sale of lots by Goose Rocks Beach, and by the actions and inactions of Plaintiffs and their predecessors in title.

38. Defendant, and/or the public, has acquired such an easement on and over Goose Rocks Beach for purposes of unfettered public recreation and amusement, as well as for fishing, fowling, and navigation, by virtue of an implied easement or quasi easement created by recording of certain plans for the sale of lots by Goose Rocks Beach and by the sale of lots with reference to such plans.

39. Defendant, and/or the public, has acquired such an easement on and over Goose Rocks Beach for purposes of unfettered public recreation and amusement, as well as for fishing, fowling, and navigation, by virtue of the public trust doctrine.

WHEREFORE, Defendant respectfully requests that this Court find and declare that, pursuant to 14 M.R.S.A. §§ 5951 *et seq.* and 14 M.R.S.A. §§ 6651 *et seq.*, Defendant, and/or the public, has an easement on and over Goose Rocks Beach for unfettered public recreation and amusement as aforesaid and for fishing, fowling, and navigation subject only to the equivalent rights of others on the same premises. Defendant further requests that this Court 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 Town of Kennebunkport, and/or the public, in accordance with their easement rights;
- b. That Defendant 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 Defendant; and
- d. Such and other further relief as this Court deems reasonable and just.

COUNT VIII (IMPLIED/QUASI EASEMENT)

40. Defendant repeats and realleges the assertions set forth in Paragraphs 1 through 39 as if restated herein in their entirety.

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

42. 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 Town and/or the public.

43. The use of Goose Rocks Beach prior to the conveyance of lots also establishes an implied easement, or quasi-easement, in favor of Defendant, and/or the public.

44. By virtue of their actions 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.

45. 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, Defendant respectfully requests 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 or quasi-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 Town of Kennebunkport or the public from the unfettered use of Goose Rocks Beach in accordance with their implied easement rights;
- b. The Defendant records an attested copy of this Order in the York County Registry of Deeds;
- c. That costs and attorney's fees be awarded to Defendant; and
- d. Such and other further relief as this Court deems reasonable and just.

COUNT IX (OFFSET TAXES)

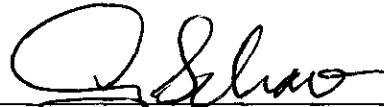
46. Defendant repeats and realleges the assertions set forth in Paragraphs 1 through 45 as if restated herein in their entirety.

47. Neither Plaintiffs, nor Plaintiffs' predecessors in title, have paid real property taxes to the Town of Kennebunkport at any time since purportedly acquiring ownership thereof.

48. Plaintiffs' failure to pay property taxes constitutes an intent to abandon the property to the Town of Kennebunkport and the public.

WHEREFORE, Defendant respectfully request that this Court declare that, pursuant to 14 M.R.S.A. §§ 5951 *et seq.* and 14 M.R.S.A. §§ 6651 *et seq.*, title to Goose Rocks Beach to reside in the Town of Kennebunkport, and/or the public, and, alternatively, in the event title is determined to reside in Plaintiffs, order that Plaintiffs pay back property taxes on Goose Rocks Beach and order such other and further relief as this Court deems reasonable and just.

Dated: November 19, 2009



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