

STATE OF MAINE
YORK, SS

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-09-11

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

PLAINTIFFS

V.

TOWN OF KENNEBUNKPORT and
ALL PERSONS WHO ARE
UNASCERTAINED,

DEFENDANTS

**SURFRIDER FOUNDATION'S MOTION
FOR LEAVE TO INTERVENE AS
DEFENDANT AND INCORPORATED
MEMORANDUM OF LAW IN SUPPORT
THEREOF**

NOW COMES The Surfrider Foundation, by and through the undersigned, and moves for leave to intervene pursuant to M.R.Civ.P. 24 in this matter for the reasons set forth below. Defendant Town of Kennebunkport does not object to this motion, and Attorney Thaxter has been contacted and also has no objection on behalf of the Plaintiffs.

1. This litigation involves the scope and nature of the public's rights to use Goose Rocks Beach in the Town of Kennebunkport, Maine. Plaintiffs claim that the public is limited to engage in only fishing, fowling and navigating in the intertidal area on Goose Rocks Beach. In particular, Plaintiffs seek to bar the general public from engaging in common walking, sitting, sunbathing and surfing on Goose Rocks Beach.

2. The Surfrider Foundation is a non-profit foundation, with its main office in the State of California, and with a local chapter, the Northern New England Chapter located in Portland, Maine, with the protection of public beach access as a main goal of the foundation. In addition The Surfrider Foundation is dedicated to protecting and preserving our world's oceans, waves and beaches through conservation, activism, research and education.

3. The Maine Rules of Civil Procedure, Rule 24, allows intervention by anyone, when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

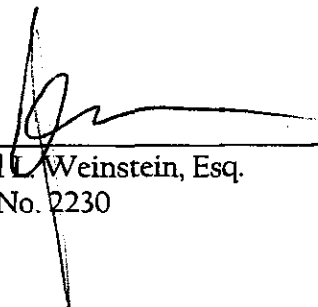
4. In this matter, the Surfrider Foundation has many members who actively use the intertidal lands in dispute for activities other than the strictly defined "fishing, fowling and navigation", to wit, surfing, windsurfing, kite-surfing, among other activities, and the resultant decisions and impacts of this case could potentially affect all other areas that are used for surfing and similar recreation throughout the entire State of Maine.

5. Although The Surfrider Foundation understands that the State of Maine has a similar position that the interpretation of the Colonial Ordinance should be more broadly defined, if not abandoned in its entirety, and that the public should have beach access, The Surfrider Foundation believes that its position and the position of its members is distinctly different from that of the State of Maine and that it should be allowed to intervene to protect the interests of those members, and non-members alike who participate in these sports, and to protect beach access generally.

6. The Surfrider Foundation believes that it can provide valuable information to the Court and the parties concerning these state and national issues that would assist the Court and the parties in this dispute.

WHEREFORE, Surfrider Foundation respectfully requests that it be afforded intervenor status in this matter, without objection.

Dated this 22 day of January 2010.



Neal L. Weinstein, Esq.
Bar No. 2230

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CERTIFICATE OF SERVICE

I hereby certify that on this day a true copy of the above document was served upon the attorney of record for each party by U.S. Mail pursuant to M.R.C.P.



Neal L. Weinstein, Esq.

NOTICE

Pursuant to Rule 7(b) (1) of the Maine Rules of Civil Procedure, opposition to this motion, in accordance with Rule 7 (c), must be filed not later than 21 days after the filing of this motion unless another time is provided by these Rules or set by the Court. Failure to file timely opposition will be deemed a waiver of all objections to the motion, which may be granted without further notice or hearing.

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**ORDER ON
SURFRIDER FOUNDATION'S MOTION
FOR LEAVE TO INTERVENE AS
DEFENDANT**

Upon Surfrider Foundation's Motion to Intervene and for good cause shown it is hereby ORDERED the motion is granted.

Date: _____

JUSTICE, SUPERIOR COURT