

## TOWN DOCUMENTS OWNERSHIP OF GOOSE ROCKS BEACH FROM 1684

A significant development in the Goose Rocks Beach lawsuit took place in March. The Town filed a motion for summary judgment, based on evidence compiled that the Town currently owns the beach and, in fact, has owned the beach continuously and without interruption since 1684. The Town's research demonstrates that the deeds held by the plaintiffs in the suit can be traced back to one of three original out-conveyances from the Town in the 1700s, and that the Town retained ownership of the beach between the sea bank (or seawall) and the low water mark while conveying out the upland (landward of the seabank (or seawall) in these three out-conveyances.

Twenty-four beach front property owners initiated a lawsuit against the Town and "all unascertained persons" in October, 2009. The lawsuit asserts that the beach is privately owned except for the small area of the beach located between Belleview Avenue and Edgewood Avenue, and it seeks to enshrine the right of property owners to prevent public use of the rest of the beach for general recreational use, including sunbathing, picnicking, kite flying, sandcastle building, dog walking and running and walking along the beach for recreational purposes. The Town responded to this lawsuit on behalf of the citizens of Kennebunkport and the general public, countering that the public is entitled to use the beach along its entire 2 mile length for general recreational purposes. Subsequently, over 200 individual property owners have also entered the lawsuit to protect their right to access and use Goose Rocks Beach for general recreational purposes.

The Town's record of ownership began when the colonial authorities in Massachusetts voted in 1681 to grant to the Town of Cape Porpus the land that now comprises all of Cape Porpoise and most of Kennebunkport. Subsequently, in 1684, a deed was provided to the officers of the Town of Cape Porpus on behalf of its inhabitants. During this same time period, there was conflict between the settlers of Cape Porpus and the Native Americans that drove away the settlers, who were not to return in numbers until approximately 1720. Following the return of the settlers, the Town officers began to tend to the business of the Town, including disposition of property in the area of Goose Rocks Beach.

The Town made three distinct conveyances of property along the two mile stretch of Goose Rocks Beach beginning in 1720. The initial conveyance, to Captain John Downing, was 200 acres comprising some 660 feet east of what is now Norwood Lane. The seaward boundary in the conveyance was described as upland beginning at a marsh .

According to town records, seven years later the Town was seeking to clarify ownership interests. To that end, the Town in 1727 conveyed out a 600 acre parcel to John Jeffreys that stretched from near the current location of the sewer pump station easterly to Sand Point. The boundary along the beach was characterized in the 1727 conveyance as the sea shore. Jeffreys died several years later, and in 1734 his estate was divided between three family members into three 200 acre sections. In each of these three parcels, which

together comprise the original 600 acre parcel conveyed by the Town to John Jefferys in 1727, the seaward boundary is defined as the seawall.

The third and final out conveyance from the Town to John Emmons occurred in 1777. It consisted of 15 acres beginning near the far western end of what is today Kings Highway. The seaward boundary of this conveyance is described as the seawall. The Town subsequently determined that another 20 acres to the west of what is now Norwood Lane had also been conveyed to John Emmons, and the first deed that specifically describes this property states that the seaward boundary of the property is the seawall.

It is clear from Town records during this period that the Town had a significant interest in retaining public ownership of the beach property. The beach served both as a means of protecting the economically valuable upland marsh property along the Batson River and Little River, and the beach was also historically used as a means of transport for people and livestock. In each of the three conveyances, the Town relinquished the upland property and retained the beach. While many of the plaintiffs' current deeds claim ownership of portions of the beach between the seawall and low water mark, one cannot own what was never given in the first place.

The memorandum of law filed in support of the Town's Motion for Summary Judgment and related documents can be accessed on line at [www.preserveGooseRocksBeach.org](http://www.preserveGooseRocksBeach.org), by clicking on the Litigation button and scrolling town to the March 24 motion for summary judgment.