

STATE OF MAINE  
YORK, ss.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO.

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  
STATE OF MAINE**

Defendant State of Maine, 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 is without knowledge or information sufficient to form a belief as to  
the truth of the allegations set forth in Paragraph 2 of the Complaint, and therefore denies the  
same.

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

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

5-27. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 5-27 of the Complaint, and therefore denies the same.

28. Defendant admits 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 is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 30 of the Complaint, and therefore denies the same.

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 is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 31 of the Complaint, and therefore denies the same.

32. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 32 of the Complaint, and therefore denies the same.

33. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 33 of the Complaint that Plaintiffs are vested with title in fee simple absolute to the Intertidal Property, and therefore denies the same.

Defendant denies the remaining allegations of Paragraph 33.

34. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 34 of the Complaint, and therefore denies the same.

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

36. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 36 of the Complaint, and therefore denies the same.

37. The 2009 Comprehensive Plan described in Paragraph 37 of the Complaint speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 37 of the Complaint, and therefore denies the same.

38. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 38 of the Complaint, and therefore denies the same.

39. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 39 of the Complaint, and therefore denies the same.

40. Regarding Paragraph 40, Defendant denies that sunbathing, picnicking and placement of boats on the intertidal area are unlawful uses. Defendant is without knowledge or

information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 39 of the Complaint, and therefore denies the same.

41. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 41 of the Complaint, and therefore denies the same.

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, Defendant is without knowledge or information sufficient to form a belief as to the truth of them, and therefore denies the same.

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, Defendant is without knowledge or information sufficient to form a belief as to the truth of them, and therefore denies the same.

44. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 44 of the Complaint, and therefore denies the same.

**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, Defendant is without knowledge or information sufficient to form a belief as to the truth of them, and therefore denies the same.

WHEREFORE, Defendant denies that Plaintiffs are entitled to the relief requested, and demand 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, Defendant is without knowledge or information sufficient to form a belief as to the truth of them, and therefore denies the same.

49. Paragraph 49 of the Complaint contains legal conclusions not requiring a responsive pleading.

50. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 50 of the Complaint, and therefore denies the same.

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, Defendant is without knowledge or information sufficient to form a belief as to the truth of them, and therefore denies the same.

52. Defendant admits that the Town claims a right of the public to use Goose Rocks Beach for recreational purposes by custom, prescription or otherwise. To the extent that

Paragraph 52 of the Complaint includes factual allegations, Defendant is without knowledge or information sufficient to form a belief as to the truth of them, and therefore denies the same.

53. Paragraph 53 of the Complaint contains legal conclusions not requiring a responsive pleading.

54. Paragraph 54 of the Complaint is a claim, to which a response is unnecessary. To the extent facts are alleged, Defendant is without knowledge or information sufficient to form a belief as to the truth of the claim, and therefore denies the same.

55. Paragraph 54 of the Complaint is a claim, to which a response is unnecessary. To the extent a response is required, Defendant denies Plaintiffs are entitled to the relief requested

WHEREFORE, Defendant denies that Plaintiffs are entitled to the relief requested, and demand 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. Plaintiffs' claims are barred because the public and individual members of the public have public trust rights which include the rights to use the intertidal zone of Goose Rocks Beach for recreational purposes related and unrelated to fishing, fowling and navigation.

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

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

5. 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.

6. 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.

7. 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.

8. Plaintiffs' Complaint, in whole or in part, is barred by the doctrine of waiver.

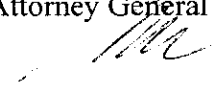
9. Plaintiffs' Complaint, in whole or in part, is barred by the doctrine of estoppel.

10. Plaintiffs' Complaint, in whole or in part, is barred by the doctrine of laches.

Dated: December 30, 2009

Respectfully submitted,

JANET T. MILLS  
Attorney General

  
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