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October 4, 2012

VIA FEDERAL EXPRESS

Dianne Hill, Clerk
York County Superior Court
45 Kennebunk Road
P.O. Box 160
Alfred, ME 04002-0160

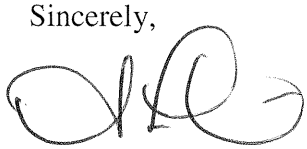
RE: Almeder, et al v. Town of Kennebunkport, et al
Docket No. RE-09-111

Dear Ms. Hill:

On behalf of Attorney Willing, I have enclosed the Town of Kennebunkport's Post-Trial Brief for filing in regards to the above-referenced matter.

Thank you for your assistance with this matter. Please do not hesitate to contact me with any questions or concerns.

Sincerely,



Ann LeVasseur
Legal Assistant

/al

Enclosure

cc: Justice Brennan
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Larry Mead, Town Manager

STATE OF MAINE
YORK, ss.

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

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

Plaintiffs

v.

TOWN OF KENNEBUNKPORT, TMF DEFENDANTS, STATE OF MAINE, et al.,

Defendants

DEFENDANT TOWN OF KENNEBUNKPORT'S POST-TRIAL BRIEF

Defendant Town of Kennebunkport (the "Town") hereby files its post-trial brief as requested by the Court at oral argument on September 25, 2012. The Town is addressing the issues on which the Court requested additional information, specifically whether: (1) Maine law somehow recognizes a "presumption of implied consent" as Plaintiffs have suggested; and (2) the evidence and testimony at trial demonstrated by a preponderance of the evidence that members of the public have openly and continuously used all of Goose Rocks Beach, including the non-contiguous portions of the beach adjacent to each Plaintiff and Party-in-interest, for recreational purposes for the prescriptive period. In addition, the Town briefly addresses its custom counterclaim, which Justice Broderick recognized in *Bell v. Town of Wells*, 1987 Me. Super. LEXIS 256 ** 37-38 (Me. Sup. Ct., York Cty, Sept. 14, 1987) is a viable claim in York County, and therefore requests that the Court issue findings of fact on the custom claim. Finally, the Town addresses whether the Town's comprehensive plans and related evidence somehow negate the longstanding prescriptive use of Goose Rocks Beach by the public.

I. The Town is Entitled to Judgment on Both of its Counterclaims – Prescriptive Easement and Custom

Currently before the Court are the Town's counterclaims for prescriptive easement (Count IV) and custom (Count VI). Maine law is clear that, because there has been more than twenty years of silence by beachfront owners and their predecessors in title when the public has been recreating all over Goose Rocks Beach for over a century, Plaintiffs in this case are time-barred from claiming that there is no public right to recreate on the beach. *Eaton v. Town of Wells*, 2000 ME 176, ¶¶ 32-40, 760 A.2d 232, 244-46; *Lyons v. Baptist Sch. of Christian Training*, 2002 ME 137, ¶ 28, 804 A.2d 364, 373. As the evidence at trial clearly demonstrated, the public has openly and continuously used all of Goose Rocks Beach as if there was a public right to do so since at least the mid-eighteen-hundreds without permission from Plaintiffs or Parties-in-Interest, or their predecessors in title. Accordingly, the statute of limitations has long since run, and the Town is entitled to judgment on its prescriptive easement counterclaim.

In addition, the York County Superior Court has specifically recognized that the public may acquire an easement by local custom. *Bell v. Town of Wells*, 1987 Me. Super. LEXIS 256 ** 37-38 (Me. Sup. Ct., York Cty, Sept. 14, 1987) (Brodrick, J.). The Law Court did "not find it necessary to decide whether the [York County Superior Court] was correct in holding that under the common law of Maine the public may acquire by local custom an easement over privately owned land," *Bell v. Town of Wells*, 557 A.2d 168, 179 (Me. 1989), and so the recognition of an easement by local custom remains the law in York County.

In contrast to a prescriptive easement claim, an easement by local custom does not require any finding of adversity, and the customary use can begin as a permissive use so long as the use is reasonable and free from dispute. *Bell v. Town of Wells*, 1987 Me. Super. LEXIS 256 ** 37-38 (Sept. 14, 1987) *citing State ex. rel. Thornton v. Hay,* 254 Ore. 584, 462 P.2d 671 (Ore.

1969) (paraphrasing 1 Blackstone, Commentaries *75-*78); *See also McGarvey*, 2011 ME 97, ¶ 57, 28 A.3d at 636 (Saufley, J. concurring) ("as have the jurists before us, we would continue to strike a reasonable balance between private ownership of the intertidal lands and the public's use of those lands"). Here, the evidence at trial demonstrated that the public has been using all of Goose Rocks Beach in a reasonable manner, and free from dispute (until recently), for "so long as the memory of man runneth not to the contrary." *Id.* at 37-38. The Town is, therefore, entitled to judgment on its custom counterclaim, and requests that the Court make findings regarding each element of its custom counterclaim. *Cf Eaton v. Town of Wells*, RE-97-203, at *13-14 (Me. Sup. Ct., York Cty, October 20, 1999) (Kravchuck, J.) ("If the doctrine [of custom] were a viable one in the State of Maine, this case presents the facts appropriate to its adoption.").

II. Maine Law Does Not Recognize A Presumption of "Implied Permission"

Contrary to Plaintiffs' arguments in this case, Maine law does not recognize a presumption of implied permission as evidenced by Plaintiffs' "consent by silence" to the longstanding recreational use of Goose Rocks Beach by members of the public. Rather, Plaintiffs' "consent by silence" demonstrates their "knowledge and acquiescence" to the recreational use of Goose Rocks Beach by members of the public and, therefore, helps to demonstrate the Town has met the third element of a public prescriptive easement.

The elements of a public prescriptive easement claim are well established in Maine: "(1) continuous use for at least twenty years; (2) under a claim of right adverse to the owner; (3) with the owner's knowledge and acquiescence, or with a use so open, notorious, visible, and uninterrupted that knowledge and acquiescence will be presumed." *Androkites v. White*, 2010 ME 133, ¶ 14, 10 A.3d 677, 681.[1] In most prescriptive easement cases, the second element

[1] The *Eaton* and *Lyons* cases enumerate these same requirements as five and six distinct elements as opposed to three, however the *Androkites* enumeration (also used in *Stickney*) is slightly clearer (simply combining the elements

"under a claim of right adverse to the owner" may be satisfied by a presumption of adversity that arises upon proof of the first and third elements. *Id.* ¶ 17.

Pursuant to the *Eaton* and *Lyons* decisions, a presumption of permissive use may negate the presumption of adversity in certain circumstances. *Eaton*, 2000 ME 176, ¶ 32, 760 A.2d at 244 (the presumption of permissive use arises for use of "wild and uncultivated lands"); *Lyons*, 2002 ME 137, ¶ 19, 804 A.2d at 372 (the presumption of permissive use arises for "public recreational uses of unposted open fields or woodlands and the ways through them"). Contrary to the arguments of Plaintiffs in this case, the "presumption of permissive use" is not the same thing as "implied permission," nor does the presumption of permissive use increase the burden of proof of adversity beyond proof by a preponderance of the evidence. *Lyons*, 2002 ME 137, ¶ 25, 804 A.2d at 372 (the presumption of permissive use merely "leaves with the [claimant] the burden of proving adversity through a claim of right hostile to the owner's interest, without benefit of any presumption of adversity arising from long term public recreational uses of the land."); *Eaton*, 2000 ME 176, ¶ 40, 760 A.2d at 246 ("the court did not err in finding that the Town proved every element of a prescriptive easement" by a preponderance of the evidence, including that recreational beach use had been under a claim of right adverse to the owner).

In the case of *Flaherty v. Muther*, Justice Crowley specifically determined that "the *Bell I*, *Bell II*, and *Eaton*, decisions displace any general rule regarding beaches as wild uncultivated lands and presumptions therein." *Flaherty*, CUMSC-CV-2008-98, at *25 n.16, (Crowley, J., Maine Super. Ct., Cum Cty., July 30, 2009). If so, the longstanding use of Goose Rocks Beach by members of the public is not subject to a presumption of permissive use as outlined in *Lyons*.

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of "(1) continuous use" and "(2) for at least twenty years," and recognizing that element "(5) a use so open, notorious, visible, and uninterrupted that knowledge and acquiescence will be presumed" is merely an alternate way to prove element "(4) with the owner's knowledge and acquiescence"). *Compare Id. with Lyons*, 2002 ME 137, ¶ 15, 804 A.2d at 369 and *Eaton*, 2000 ME 176, ¶ 32, 760 A.2d at 244. There is no dispute that the Town also must prove the use "by people who are not separable from the public generally."

Whether or not the presumption applies, however, the result in the present case is the same (just as it was in *Eaton*). In *Lyons*, the Law Court articulated a three part test for adversity (the third element of a prescriptive easement) requiring a showing that the use was: "(1) without the express or implied permission of the owner; (2) with the intent to displace or limit the owner's rights to the land; and (3) undertaken in a manner that provided the owners with "adequate notice ... that the owner's property rights are in jeopardy." *Lyons*, 2002 ME 137, ¶ 26, 804 A.2d at 372. The Law Court subsequently held in *Androkites* that the Maine Legislature had overruled a portion of Maine's common law, thereby eliminating the need to prove the second *Lyons* element–the intent to displace or limit the owner's rights to the land. *Androkites*, 2010 ME 133, ¶ 16 n. 7, 10 A.3d at 682 n. 7 ("the prescriptive user's state of mind is no longer relevant in prescriptive easement claims.") *citing Dombkowski,* 2006 ME 24, ¶¶ 23 n. 6 and 24, 893 A.2d at 605 ("the intent requirement [i.e., that the claimant have the specific intent to claim the land of another] for adverse possession claims is eliminated" by act of the Legislature) (alterations in original). Thus, we are now left with only the first and third elements of the *Lyons* test, which focus on the objective nature of the use, not the subjective understanding of any party.

In proving the elements of a public prescriptive easement, proof of consent by silence is not proof of "implied permission" as Plaintiffs suggest in arguing that the Town has failed to prove that the public's longstanding use of Goose Rocks Beach is "under a claim of right adverse to the owner." Under Maine law, consent by silence is acquiescence, the third element of the public prescriptive easement claim, not implied permission.[2] *Stickney*, 2001 ME 69, ¶ 23, 770

[2] Because evidence of "consent by silence" affirmatively demonstrates the third element of a public prescriptive easement, specifically "knowledge and acquiescence," such "consent by silence" cannot at the same time constitute "implied permission" so as to disprove the second element of a public prescriptive easement of a "claim of right adverse to the owner." *Stickney*, 2001 ME 69, ¶ 23, 770 A.2d at 602; *Lyons*, 2002 ME 137, ¶ 26, 804 A.2d at 372.

A.2d at 602 ("Acquiescence is 'consent by silence.'"); *see also Androkites*, 2010 ME 133, ¶ 15 n. 6, 10 A.3d at 681 n. 6; *Dartnell v. Bidwell,* 115 Me. 227, 230, 98 A. 743, 745 (1916).

"Implied permission" is necessarily more than consent by silence and must be implied by direct or circumstantial evidence of some writing, statement, familial or fiduciary relationship between the parties that, while not sufficient to constitute express permission, could be interpreted to constitute implied permission. *See, e.g., Wood v. Bell*, 2006 ME 98, ¶¶ 14-16, 902 A.2d 843, 849 (A writing discussing future sale of the property but not expressly granting permission of occupancy can support a judicial finding of implied permission of occupancy up until the point of the writing, but does not mandate a jury finding of implied permission thereafter); *Northland Realty, LLC v. Crawford*, 2008 ME 92, ¶¶ 18-20, 953 A.2d 359, 365 (neighborliness and discussions of a right of first refusal insufficient to create "implied permission" of occupancy); *S.D. Warren Co. v. Vernon*, 1997 ME 161, ¶¶ 10-11, 697 A.2d 1280, 1283 (employment relationship between property owner and prescriptive user insufficient to create "implied permission" of use); *See also Reitsma v. Pascoag Reservoir & Dam, LLC,* 774 A.2d 826, 832 (R.I. 2001) ("no inference of permission from the lake owner could be drawn from the mere fact that it allowed the use to continue" where the use was public access of a state-built boat ramp on the lake owner's property); *Garrett v. Gray*, 266 A.2d 21 (Md. 1970) ("Mere failure to protest is not permission but acquiescence. . . . Acquiescence is the inactive status of quiescence or unqualified submission to the hostile claim of another, and is not to be confused with permission" in the context of a public prescriptive easement). Nor can "implied permission" be created by the post-hoc testimony of Plaintiffs in this case of what was subjectively in their mind during the period that they were acquiescing to the public use of Goose Rocks Beach. *See e.g., Mavromoustakos v. Padussis*, 112 Md. App. 59, 71-72 (1996)

("Evidence of permissive use, however, cannot come from the owner's testimony on the stand regarding what he or she thought of the use at the time. ... [Otherwise, s]ilence would never be properly interpreted as 'acquiescence' because the servient owner would always testify that he or she thought the use permissive at the time. This is certainly the wrong result.").

As articulated in both *Eaton* and *Lyons*, a Town can meet its burden of proving the second element of adverse use under a claim of right, as the Town of Wells did in *Eaton*, when the evidence objectively shows "a broad range of recreational purposes, ranging from strolling to sunbathing, picnicking, and swimming and all other recreational beachfront activities both on the dry sand and the intertidal zone ... no evidence that the public ever sought or obtained permission to use the beach for said purposes, [that] the public has treated the beach as its own for recreational purposes ... [and that the Town performed] beach maintenance, such as lifeguard stations, cleaning the beach, policing the beach, and protecting the piper plover population." *Eaton*, 2000 ME 176, ¶ 34, 760 A.2d at 244-45; *see also Lyons*, 2002 ME 137, ¶ 28, 804 A.2d at 373. Like the Town of Wells in *Eaton*, the Town here has carried its burden of proof by a preponderance of the evidence in this case, notwithstanding any presumptions that would otherwise apply in the absence of such evidence.[3]

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[3] For example, the undisputed evidence introduced at trial demonstrated a long history at Goose Rocks Beach of a broad range of public recreational uses from strolling to sunbathing, picnicking, and swimming and many others on the dry sand and the intertidal zone. The evidence also showed that the public did not seek or obtain permission to use the beach for said purposes, and the beachfront owners did not object to the reasonable recreational use of Goose Rocks Beach by the public. In recent years, a few (but not all) of the Plaintiffs have occasionally objected to some isolated misuse of Goose Rocks Beach by a few unidentifiable persons, but they have generally not objected to the reasonable use of the beach by the public.

The evidence introduced at trial also showed a long history of the Town's enforcement of laws and regulations on Goose Rocks Beach, such as the dog leash law and horseback riding ordinance, as well as over a half century of Town maintenance, control and improvement of the beach as described in the Town's Findings of Facts and Conclusions of Law, including lifeguards and beach officers patrolling the beach, rubbish removal and periodic beach clean-up, and the installation and maintenance of improvements intended specifically to accommodate the use of Goose Rocks Beach by the public, such as portable toilets, public parking spaces and public access ways. There was also evidence of large public gatherings on the beach by groups unrelated to the beachfront owners, including but not limited to Town–sponsored bus service "to many youth throughout Kennebunkport, Cape Porpoise and

III. The Town is Entitled to Judgment on its Counterclaims as to Each Plaintiff (and Party-in-Interest)

Although the Town has the burden of demonstrating by a preponderance of the evidence that the elements of a public prescriptive easement claim have been met with regard to each Plaintiff (and Party-in-Interest), *see Androkites*, 2010 ME 133, ¶ 14, 10 A.3d at 681, it may do so with direct and circumstantial evidence, as well as reasonable inferences that can be drawn therefrom, so long as it more likely than not that an operative fact is true. *See Eaton*, 2000 ME 176, ¶¶ 32-42, 760 A.2d at 244-46 (upholding findings regarding over a century of use on non-contiguous parcels based on evidence similar to that presented in this case). Thus, the Town must demonstrate continuous public use of the beach in front of each Plaintiff's property for a period in excess of twenty years. The Town is not required to place members of the public on the beach next to the property of each Plaintiff (and party-in-interest) for each day of each year during that same twenty year period. Instead, the Court must consider all of the evidence introduced at trial, including the testimony and evidence showing recreational use of Goose Rocks Beach by the public for over a century occurred up and down the beach, from river to river irrespective of property lines, and including the wet and dry sand.

The Court must also consider the various businesses and places of public accommodation that have been located at Goose Rocks Beach over time to serve members of the public, including the historic brochures and advertisements introduced by the Town promoting the entire "2-mile stretch" of Goose Rocks Beach as a popular tourist destination. In light of this evidence, the Court must determine if: (1) it is more likely than not, as the Town urges, that there were members of the public using the beach adjacent to each Plaintiff, or their predecessor in title, for

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Goose Rocks, [including] a staff of eight college students" for public use, weddings and similar gatherings that took place on the beach without permission, and swimming lessons, cookouts and softball games on the beach that included members of the public.

the prescriptive period; or (2) it is more likely than not, as Plaintiffs urge, that the beach adjacent to each Plaintiff's property was an island of non-use on a beach that most witnesses at trial agree has been used by members of the public from river to river for general recreational purposes for over a hundred years.

In making this determination, "[t]he test of a public use is not the frequency of the use, or the number using the [beach], but its use by people who are not separable from the public generally." *Eaton*, 2000 ME 176, ¶ 32, 760 A.2d at 244. "'Continuous' possession and use requires only the kind and degree of occupancy (i.e., use and enjoyment) that an average owner would make of the property." *Stickney*, 2001 ME 69, ¶ 18, 770 A.2d at 601).

In proving that public recreational use of Goose Rocks Beach was adverse under a claim of right, the Town is not required to prove that life guard stands or life buoy stations were erected on the beach in front of each Plaintiff's parcel. *Eaton*, 2000 ME 176, ¶ 34, 760 A.2d 232, 245 ("the court did distinguish between the upland portions of the Eatons' property and the intertidal portions and did recognize the 2200 feet as made up of separate noncontiguous parcels, but found acquiescence of a broad range of recreational purposes "both on the dry sand and in the intertidal zone" and all along the beach from the Mile Road to the jetty"). The *Eaton* court did not require that life guard stands and trash cans be erected on each non-contiguous parcel, and neither should this Court. The evidence in this case demonstrated that there was a lifeguard stand or life buoy stations for over twenty years all along Goose Rocks Beach from river to river, and in the vicinity of each Plaintiff's property, on portions of the beach that the Plaintiffs now claim were private, and not open to the public at the time. Lifeguards and beach patrol officers patrolled the beach in front of each Plaintiff's property, and the Town imposed regulations on the beach in front of each Plaintiff's property for a period of well over twenty years.

As discussed above, and in the Town's Findings of Fact and Conclusions of Law, the direct and circumstantial evidence in this case, and reasonable inferences to be drawn therefrom, make it more likely than not that recreational use by people inseparable from the public occurred continuously for at least twenty years under a claim of right adverse to Plaintiffs and Parties-in-Interest, and their predecessors in title. *Eaton*, 2000 ME 176, ¶ 32, 760 A.2d at 244. Such recreational use by members of the public was with the knowledge and acquiescence of Plaintiffs and Parties-in-Interest, and their predecessors in title, or the public use was so open, notorious, visible, and uninterrupted that their knowledge and acquiescence will be presumed. *Id.*

Finally, it should also be noted that beachfront owners, including Plaintiffs and Parties-in-Interest (and their renters, guests and family members) and back lot owners at Goose Rocks Beach, all of whom admitted at trial to recreating without permission on the beach adjacent to property that they do not own, used the portions of the beach in which they do not claim any ownership interest as members of the public. *Eaton*, 2000 ME 176, ¶ 32, 760 A.2d at 244 (With "the exception of the owners of the few oceanfront lots having ownership to the Atlantic Ocean, all of the users of Wells Beach, including the lot owners on the east and west side of Atlantic Avenue, were public users") (emphasis added). Moreover, some Plaintiffs and Parties-in-Interest, including Jule Gerrish, were specifically aware that the public had limited rights pursuant to the Colonial Ordinance to "fish, fowl and navigate" even as they and members of the public used all of Goose Rocks Beach for general recreational purposes (and not just for fishing, fowling and navigating). Thus, the testimony of Plaintiffs and Parties-in-Interest at trial in this case universally supports the Town's public prescriptive easement claim and assertion that the public has used all of Goose Rocks Beach for over a century, from river to river irrespective of property lines, and including the wet and dry sand.

IV. The Town's Comprehensive Plan is Not Relevant to the Court's Decision on the Public Prescriptive Easement Claim

An organized governmental entity, such as the Town, has standing to assert a prescriptive easement on behalf of the public, but it is the public-at-large, through public use, that acquires the prescriptive easement rather than the Town. *Town of Manchester v. Augusta Country Club*, 477 A.2d 1124, 1128-29 and n. 6, (Me. 1984); *see also Lyons*, 2002 ME 137, ¶ 22 n. 5, 804 A.2d at 371, n. 5. "The doctrine that the public-at-large is capable of acquiring a non-possessory interest in land has long been accepted in Maine." *Town of Manchester*, 477 A.2d at 1128. Thus, it is the actions of the public-at-large through its use of Goose Rocks Beach, along with the actions of the Town regulating, controlling and maintaining the beach in support of, and for the benefit of, the public which establishes the elements of a public prescriptive easement. Isolated and unapproved statements by Town officials, or inconsistent statements in a Town document such as a comprehensive plan published long after any public prescriptive easement at Goose Rocks Beach would have ripened, does not, and cannot, negate or undo the legal consequences of the public's recreational use of the beach for over a century.

In *Eaton*, the Law Court held that when a "Town's actions represented an acknowledgement that the [upland owners] are the owners of the beach, those actions did not mean that the public or the Town were asking permission to use the beach for recreational or maintenance purposes," and such actions did not negate the Town's claim of right regarding "the use for recreational purposes and the use for maintaining the beach in terms of placing lifeguard stands, trash bins, etc." *Eaton*, 2000 ME 176, ¶ 40, 760 A.2d at 246. Here, the Plaintiffs attempt to distinguish the holding in *Eaton* by arguing that the Law Court has "eliminated any distinction in 'adversity' between prescriptive easement and adverse possession cases." Plaintiffs Post Trial Brief as to Town at 12 and n.4. Plaintiffs seem to misunderstand the issue, however, for even if

the nature of "adversity" in the two claims (adverse possession and prescription) is the same, the nature of the "claim of right" is distinct (*ownership* is a necessary part of an adverse possession claim in contrast to *use* for a prescriptive easement).

The references in the Town's comprehensive plans and other records to portions of the Goose Rocks Beach being "private" or "privately owned" do not negate the public's claim of right regarding "the use for recreational purposes and the use for maintaining the beach in terms of placing lifeguard stands, trash bins, etc." at Goose Rocks Beach. *Eaton*, 2000 ME 176, ¶ 40, 760 A.2d at 246. In fact, the public prescriptive easement necessarily presumes that portions of Goose Rocks Beach are privately owned.

Moreover, a comprehensive plan is not a legislative document and cannot "control the allowable uses of land [or] set the standards by which those uses are permitted" nor can it create or destroy rights or obligations of private citizens or members of the public (including Goose Rocks Beach users). *Nestle Waters N. Am., Inc. v. Town of Fryeburg*, 2009 ME 30, ¶¶ 22-24, 967 A.2d 702, 710. A comprehensive plan merely imposes an obligation on the Town to enact a regulatory ordinance scheme that is in "basic harmony" with the comprehensive plan as a whole. *Id.* Thus, statements in the comprehensive plan cannot serve as an act by the public evincing a clear intention to abandon public rights in the beach,[4] nor can such statements provide beachfront owners notice regarding "the allowable uses of land" or "the standards by which those uses are permitted" as Plaintiffs argue here.[5] Finally, the comprehensive plan cannot serve as notice of anything to anyone who did not actually read the comprehensive plan.[6]

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[4] To prove abandonment of a public prescriptive easement, a party must prove by clear and convincing evidence "a history of nonuse coupled with an act or omission evincing a clear intention to abandon." *Stickney*, 2001 ME 69, ¶¶ 50-52, 770 A.2d at 609. There is clearly no "history of nonuse" of Goose Rocks Beach by the public that could support a finding of abandonment of a public prescriptive easement.

[5] The statements in the comprehensive plan read as a whole are ambiguous at best with regard to what it indicates regarding use of any privately owned portions of the beach. The plans indicate that walking is a public right

Dated: October 5, 2012

Melissa A. Hewey, Bar No. 3587
Amy K. Tchao, Bar No. 7768
Brian D. Willing, Bar No. 9112
David M. Kallin, Bar No. 4558

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anywhere on the beach and it also contained statements about "instructing bathers … to stay below the high water mark" indicating a right for bathers to use even the private portions of the beach for bathing activities such as sunbathing. *See* Plaintiff's exhibit 2 at 27.

[6] Most of the Plaintiffs acknowledged that they had not even read the Town's Comprehensive Plan before bringing the lawsuit against the Town.