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Via Email

Michael W. Pardue
Town Manager
Town of Wells
208 Sanford Road
Wells, ME 04090

RE: Signage at Moody Beach Rights of Way

Dear Mr. Pardue:

I write in support of the effort to amend the language on the signs informing the public of their rights to use Moody Beach. The current signs mislead the public into believing they have no rights to use the intertidal land on Moody Beach outside the public rights of way. In fact, the public has broad rights to use the beach. So, the signs imply a member of the public will be criminally punished for engaging in perfectly legal activity.

This firm is counsel to a group of Maine citizens who have filed a lawsuit that seeks, in part, to overturn the Maine Supreme Judicial Court decisions in *Bell v. Town of Wells*. We hope our success in the current case will re-define and clarify the public's rights to use the intertidal land not just in Wells, but across the more than 2,000 miles of the Maine coast. While we hope to eventually change the court's interpretation of the law, the focus of this letter is meant to address the law as it is currently understood and applied by the courts today.

The signs in question include the phrase "Private Beach on Either Side of the Public Way." This is a completely misleading statement. Any reasonable lay person would equate "Private Beach" with "Private Property" and conclude they have no rights to use the beach outside the public right of way for any reason.

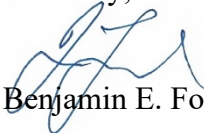
In fact, there is no such thing as a "Private Beach" in the State of Maine. Since 1641 the public has had the right to use the land between the mean high water and mean low water, for at least fishing, fowling, and navigation. While the parties in our case dispute the scope of that public trust and the specific meaning of those terms, nobody disputes that the public has a right to be present on, and to use the intertidal land for numerous purposes.

Over the centuries, the Maine Courts have found a wide range of activities to fall within scope of the public trust. These uses include mooring boats, cutting ice, skating, digging for worms, and scuba diving. Even in the present litigation, the parties are not disputing that movement-based activities would also fall within the public trust. These activities include walking, running, skim boarding, surfing, even building sand castles. The current signs suggest none of these activities are lawful, when in fact, they are.

It is one thing for individual owners to put up misleading “no trespassing” and “no loitering” signs, but it is another thing for a government to do the same. The former implies some form of civil confrontation if a person does not comply, while the latter implies criminal consequences for disobedience. Government entities are accorded wide latitude when they choose to speak on a topic. But that scrutiny is narrowed when the government uses coercive language by suggesting that a penalty will immediately follow.

For these reasons, the Town of Wells should immediately remove any sign declaring Moody Beach to be a private beach and replace those signs with ones that accurately define the public’s rights to use intertidal land. If the town cannot succinctly define those rights, then the town should remove the signs altogether.

Sincerely,



Benjamin E. Ford

CC: Leah B. Rachin, Esq.