STATE OF VERMONT

SUPERIOR COURT CIVIL DIVISION

GRAND ISLE UNIT Docket No. \_\_\_\_\_\_\_\_\_\_\_

Town of Alburgh, a Vermont )

Municipality )

)

*Plaintiff,* )

v. )

)

Edward Murphy and Maureen )

Murphy, and John Morrissette )

and Maureen Morrisette, the Estate )

of Mary V. Mooney, Maura )

Kelley-Pizzigno, Eilis Mooney and )

Caleb Couture )

)

*Defendants* )

**MOTION FOR PRELIMINARY INJUNCTION**

**NOW COMES**, Plaintiff the Town of Alburgh (“Plaintiff”), by and through the undersigned counsel, MSK Attorneys, and hereby moves pursuant to Rule 65 of the Vermont Rules of Civil Procedure for a Preliminary Injunction to prohibit Defendants, Edward Murphy and Maureen Murphy, John Morrissette and Maureen Morrisette, the Estate of Mary V. Mooney, Maura Kelley-Pizzigno, Eilis Mooney and Caleb Couture (“Defendants”) from disrupting the status quo by restricting, excluding, or otherwise interfering with the Plaintiff, residents of the Town of Alburgh and the general public’s right to access, occupy, and use “Center Bay Beach” identified by the Town of Alburgh as Parcel ID: CB038 and SPAN 009-003-10311 (the “Property”).

**Factual Background.**

As alleged in the Plaintiff’s Complaint, in or around 1871, and continually since, the Plaintiff has occupied and used the Property as a public beach for the benefit of the residents of the Town of Alburgh and the general public. In 2021, Defendant began interfering with the residents of the Town of Alburgh’s access to the Property by harassing, and accosting members of the public who access the Property. On May 3, 2024, Defendant Murphy contacted the Plaintiff demanding removal of the concrete blocks placed by the Plaintiff to demarcate the Property’s boundary. Exhibit 1. On May 8, 2024, Defendant’s counsel, Thomas C. Nuovo, Esq. wrote to Counsel for the Plaintiffs, and stated that Defendants will seek to have anyone who enters the Property charged with Criminal Trespass and will pursue a criminal action against the Plaintiff in addition to bringing a suit under 42 U.S. Code § 1983. Exhibit 2. Plaintiff seeks a Preliminary Injunction to prevent Defendants from prohibiting access to the Property, or otherwise interfering with the Plaintiff and the residents of Alburgh’s right to occupy and enjoy the Property.

A Preliminary Injunction is required in light of the fact that Defendants have acted to exclude the public from accessing the Property and are threatening criminal trespass action against any member of the public who accesses the Property.

It appears that the likely outcome of the Plaintiff’s complaint is that the status quo, as it has been for over 100 years, is maintained. Any interference with the status quo by the Defendants will only result in frustration, and confusion for the residents of the Town and the County Sherriff who would be called upon to resolve disputes as to access and occupancy.

**Legal Standard**

An injunction is an equitable remedy, entitlement to is based on a balancing of the likely effect on each party if the requested relief is granted or denied. The party moving for injunctive relief bears the burden of demonstrating that a balancing of the relevant factors calls for imposition of a preliminary injunction. See *Taylor v. Town of Cabot*, 2017 VT 92, ¶ 19, 205 Vt. 586. Those factors are “(1) the threat of irreparable harm to the movant; (2) the potential harm to the other parties; (3) the likelihood of success on the merits; and (4) the public interest.” *Id*.

**Argument**

1. **Plaintiff Is Entitled to a Preliminary Injunction to Avoid the Irreparable Harm.**

Consideration of the first factor associated with a preliminary injunction weighs heavily in favor of Plaintiff. To establish irreparable harm, “a party seeking a preliminary injunction must show that ‘there is a continuing harm which cannot be adequately redressed by final relief on the merits' and for which ‘money damages cannot provide adequate compensation.’” *Chase v. State*, No. 211-4-06 WNCV, (Vt.Super. July 18, 2006) (citing *Kamerling v. Massanari*, 295 F.3d 206, 214 (2nd Cir. 2002) (citations omitted)). Moreover, the harm “must be shown to be actual and imminent, not remote or speculative.” *Id*.

Defendant’s occupancy of the Property to the exclusion of Plaintiff would cause irreparable harm not compensable by money damages. The right of occupancy and use of real property is unique. As in nearly all jurisdictions, Vermont courts recognize land to be “classically unique.” *Jasmin v. Alberico*, 135 Vt. 287, 289 (Vt. 1977); *see also* Restatement (Second) of Contracts § 360 Cmt. e (1981) (“A specific tract of land has long been regarded as unique and impossible of duplication by the use of any amount of money.”); 25 Williston on Contracts § 67:65 (4th ed.) (“any piece of land is presumed to be unique, and . . . monetary damages will typically be an inadequate remedy”). “Irreparable harm” is an injury for which a monetary award cannot compensate. *See Fund For Animals v. Babbitt*, 2 F.Supp.2d 562, 566 (D. Vt. 1996) (citing *Tom Doherty Associates, Inc. d/b/a Tor Brooks v. Saban Entertainment, Inc.*, 60 F.3d 27, 37 (2d Cir. 1995)). “The deprivation of an interest in real property constitutes irreparable harm[.]” *Tioronda, LLC v. New York*, 386 F.Supp.2d 342, 350 (S.D.N.Y. 2005) (citing *Carpenter Technology Corp. v. City of Bridgeport*, 180 F.3d 93, 97 (2d Cir. 1999)); *see also United Church of the Medical Center v. Medical Center Commission*, 689 F.2d 693, 701 (7th Cir. 1982) (“It is settled beyond the need for citation . . . that a given piece of property is considered to be unique, and its loss is always an irreparable injury.”); *O'Hagan v. United States*, 86 F.3d 776, 783 (8th Cir. 1996) (holding that loss of interest in real property is irreparable harm because real property is unique and monetary damages are not adequate compensation for loss); *Bean v. Independent American Sav. Ass'n*, 838 F.2d 739, 743 (5th Cir. 1988) (holding that party who stood to lose interests in real property had proven irreparable harm because real property is presumed unique); *Sportsman’s Wildlife Defense Fund v. U.S. Dep’t of the Interior*, 949 F.Supp. 1510, 1523 (D. Colo. 1996) (“Under well[- ]established real property principles, any given piece of property is considered unique. Indeed, in the context of a preliminary injunction request, loss of real property is *per se* irreparable injury.”) (emphasis in original) (internal citations omitted).

Since in or around 1871, and continually since, the Plaintiff has occupied and used the Property as a public beach for the benefit of the residents of the Town of Alburgh and the general public. Plaintiff is merely seeking to preserve the status quo by keeping the Property open to the residents of the Town of Alburgh and the general public, as it has been for the last 100 years. Defendant’s threat of trespass and criminal action seeks to deny that occupancy and use. Accordingly, Defendant’s attempt to deny Plaintiff’s right to access and occupy the Property is causing Plaintiff irreparable harm.

1. **Likelihood of Success on the Merits**

Plaintiff is likely to succeed on the merits of its claims. Plaintiff has claimed legal title to the Property since at least 1871 and recorded a survey in 1999, which is an assertion of title depicting the Property as owned by the Town which survey has gone unchallenged. In the alternative, since 1999 when Plaintiff recorded the survey evidencing its claim of title, Plaintiff has used the Property openly, notoriously, hostilely, and adversely to the interests of the Defendants continuously for more than 15 years. Any determination to the contrary as to ownership of the Property must be made by order of this Court.

# The Effect of a Preliminary Injunction on the Defendants Is Negligible.

Allowing Plaintiff to continue to use the Property will have a positive impact on the public or the public’s interest. See *Yang v. Kosinski*, 960 F.3d 119, 135-36 (2d Cir. 2021) (quoting *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008)); *SEC v. Citigroup Global Mkts. Inc*., 673 F.3d 158, 163 n.1 (2d Cir. 2012). The public has enjoyed access to the Property for over 100 years. On the contrary, allowing Defendant to threaten criminal trespass and prohibit access by the Plaintiff and public to the Property is inherently detrimental to the public and the public’s interest.

Maintaining the status quo by prohibiting Defendant from restricting access to the Property until the resolution of this action will have little or no impact on the Defendants. The public has had access to the Property before any Defendant’s acquired their respective properties and that access has continued despite Defendant’s threats. Accordingly, maintaining the status quo by prohibiting the Defendant’s from restricting access to the Property will serve the public and the public’s interest.

WHEREFORE, for these reasons Plaintiff requests an immediate Preliminary Injunction prohibiting the Defendant from restricting, excluding, or otherwise interfering with the Plaintiff, residents of the Town of Alburgh and the general public’s access, occupancy, and use of the Property. A draft order is attached.

DATED at Burlington, Vermont this 17th day of May 2024.

Respectfully submitted,

MSK Attorneys

*/s/ Liam Murphy*

Liam L. Murphy, Esq.  
 275 College Street, PO Box 4485  
 Burlington, VT 05406-4485  
 Phone: 802-861-7000  
 Email: [lmurphy@mskvt.com](mailto:lmurphy@mskvt.com)

*Attorneys for Defendant*

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*Defendants* )

**ORDER FOR PRELIMINARY INJUNCTION**

Upon consideration of Plaintiff’s Motion for Preliminary Injunction, it is hereby ORDERED that Plaintiff’s Motion is GRANTED. The terms of the Preliminary Injunction are set forth below.

Until further consideration and order to this court, the Defendant shall not restrict, exclude, or otherwise interfere with the Plaintiff, residents of the Town of Alburgh and the general public’s access, occupancy, and use of “Center Bay Beach” identified by the Town of Alburgh as Parcel ID: CB038 and SPAN 009-003-10311.

**SO ORDERED** by the Court this \_\_\_\_\_ day of\_\_\_\_\_\_, 2024, at \_\_\_\_\_\_\_\_\_\_\_ o’clock.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Superior Court Judge