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JANE L. MAZURKA  
CLERK OF COURT

IN THE COURT OF COMMON PLEAS  
LAKE COUNTY, OHIO

STATE OF OHIO EX REL.	)	CASE NO. 04CV001080
ROBERT MERRILL, TRUSTEE, et al.,	)	
	)	JUDGE EUGENE A. LUCCI
Plaintiffs-Relators,	)	
	)	
vs.	)	
	)	
STATE OF OHIO, DEPARTMENT OF	)	
NATURAL RESOURCES, et al.,	)	
	)	
Defendants-Respondents.	)	

STATE OF OHIO EX REL.	)	CASE NO. 04CV001081
HOMER S. TAFT, et al.,	)	
	)	JUDGE EUGENE A. LUCCI
Plaintiffs-Relators,	)	
	)	
vs.	)	
	)	
STATE OF OHIO, DEPARTMENT OF	)	
NATURAL RESOURCES, et al.,	)	
	)	
Defendants-Respondents.	)	

**NOTICE OF JOINT STIPULATION TO CLASS CERTIFICATION  
ON COUNT ONE OF THE FIRST AMENDED COMPLAINT  
IN CASE NO. 04-CV-001080**

The parties in State ex rel. Merrill et al. v. State of Ohio, Department of Natural Resources, et al., Case No. 04-CV-001080 (hereinafter "Merrill") by and through their respective counsel, hereby notify the Court that they mutually stipulate and agree to class certification on "Count I - Declaratory Judgment" of the First Amended Complaint in Merrill as follows:

### **Class Definition**

<sup>ff</sup>All persons, as defined in R.C. 1506.01(D), excepting the State of Ohio and any state agency as defined in R.C. 1.60, who are owners of littoral property\* bordering Lake Erie (including Sandusky Bay and other estuaries previously determined to be a part of Lake Erie under Ohio law) within the territorial boundaries of the State of Ohio” (hereinafter “the Class”). To the extent that governmental entities are included in the class, they are included solely in their proprietary capacity as property owners and not for any purpose or capacity implicating their governmental authority or jurisdiction.

**1. Rule 23(A)(1)**

The parties hereby stipulate that the class is so numerous that joinder of all members is impracticable. The parties agree that the shore of Lake Erie in the State of Ohio extends approximately 312 miles, that eight counties in the State of Ohio abut the shore of Lake Erie (Ashtabula, Lake, Cuyahoga, Lorain, Erie, Sandusky, Ottawa, and Lucas), and that approximately 14,000 parcels of littoral property abut Ohio’s Lake Erie shore. Owners of littoral parcels of land may be ascertained from available property records.

**2. Rule 23(A)(2)**

The parties hereby stipulate that the following questions of law are common to the class:

- (1) What constitutes the furthest landward boundary of the “territory” as that term appears in R.C. 1506.10 and 1506.11, including, but not limited to, interpretation of the terms “southerly shore” in R.C. 1506.10, “waters of Lake Erie” in R.C. 1506.10, “lands presently underlying the waters of Lake Erie” in R.C. 1506.11, “lands formerly underlying the waters of Lake Erie and now artificially filled” in R.C. 1506.11, and “natural shoreline” in RC. 1506.10 and 1506.11.

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\* The parties hereby agree that “upland property” is defined as real property bordering a body of water and that, in Ohio, “littoral property” is defined as upland property that borders an ocean, sea, lake, or a bay of any of these water bodies, as opposed to “riparian property” which is defined as upland property that borders a river, stream, or other such watercourse.

- (2) If the furthest landward boundary of the “territory” is declared to be the natural location of the ordinary high water mark as a matter of law, may that line be located at the present time using the elevation of 573.4 feet IGLD (1985), and does the State of Ohio hold title to all such “territory” as proprietor in trust for the people of the State.
- (3) What are the respective rights and responsibilities of the class members, the State of Ohio, and the people of the State in the “territory.”

**3. Rule 23(A)(3)**

The parties hereby stipulate that the claims or defenses of the named Plaintiffs in Merrill are typical of the claims or defenses of the class. Each of the named Plaintiffs in Merrill is either a member of the class or, with respect to Named Plaintiff Ohio Lakefront Group, Inc., a non-profit corporation representing its members who are members of the class. All of the named Plaintiffs in Merrill seek a declaratory judgment that resolves the questions of law common to the class. All members of the class have the same interests in a declaratory judgment that resolves the questions of law common to the class.

**4. Rule 23(A)(4)**

The parties hereby stipulate that the named Plaintiffs in Merrill will fairly and adequately protect the interests of the proposed class. No named Plaintiff in Merrill seeks rights that will prejudice any other member of the class. The named Plaintiffs in Merrill collectively are committed to the vigorous prosecution of this class action litigation. Class counsel - Calfee, Halter & Griswold LLP - consists of over 170 lawyers who are members in good standing of the bar of the State of Ohio and have the experience and financial ability to protect the interests of the class.

**5. Rule 23(B)(2)**

The parties hereby stipulate that the allegations contained within the First Amended Complaint and Counterclaim in Merrill have demonstrated that actual and justiciable

controversies exist, thereby making appropriate declaratory relief with respect to both the State and to the proposed class as a whole.

**Conclusion**

The parties hereby notify the Court of their stipulation to class certification in Merrill, that this stipulation to class certification supersedes any prior stipulations of fact or law pertaining to class certification issues filed with the Court, and that the class certification hearing in Merrill, scheduled for June 9, 2006 at 9:00 a.m., is no longer necessary and may be cancelled.

Accordingly, the parties respectfully request that the Court certify "Count I - Declaratory Judgment" of the First Amended Complaint in Merrill as a class action upon the common questions of law stipulated to herein, and that the Court issue an Order bifurcating "Count II - Mandamus/Inverse Takings Compensation" and "Count III - (In the Alternative) Mandamus/Inverse Takings Compensation" of the First Amended Complaint in Merrill pending final resolution of Count I.

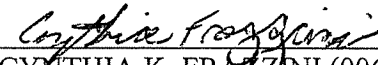
The parties further request, with the consent of counsel in Taft, that the consolidated case of State ex rel. Taft et al. v. State of Ohio, Department of Natural Resources, et al., Case No. 04-CV-001081 ("Taft"), be stayed pending final resolution of the class action in Merrill.

Respectfully submitted,

  
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Counsel for Defendants/Respondents

**CERTIFICATE OF SERVICE**

A copy of the foregoing Notice of Joint Stipulation to Class Certification on Count One of the First Amended Complaint in Case No. 04-CV-001080 was served, via regular U.S. mail, upon the following, this 8<sup>th</sup> day of June, 2006:

*↑  
and e-mail*

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One of the Attorneys for Plaintiffs/Relators