

**IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO**

OHIO STATE OF EX REL/ROBERT)	CASE NO. 04CV001080
MERRILL/TRUSTEE, et al.)	
)	JUDGE EUGENE A. LUCCI
Plaintiffs)	
)	<u>AMENDED</u>
vs.)	<u>ORDER FOR NOTIFICATION</u>
)	<u>OF POTENTIAL MEMBERS</u>
OHIO STATE OF DEPARTMENT OF)	<u>OF CLASS ACTION</u>
NATURAL RESOURCES, et al.)	
)	
Defendants)	

{¶1} The court certified the class action on Count One of the First Amended Complaint in this case on June 9, 2006. The court has considered the various proposals by the parties on the procedure or method of notification of the potential class members, and hereby determines the notice, procedure and method set forth below.

{¶2} The Notice is attached as Exhibit “A.” Exhibit “B” is a “camera ready” version in 8 point font size.

{¶3} The Notice shall be published in newspapers of general circulation (as set forth below) in counties that abut the shore of Lake Erie in Ohio, together with the *The Columbus Dispatch*, *The Cincinnati Enquirer*, *The Akron Beacon Journal*, and *The Youngstown Vindicator*. Class counsel is ordered to have this Notice published, initially at counsel’s expense, in at least 8 point font size in its entirety once each week for three consecutive weeks on the same day of each week in the “news” section, rather than in the “classified” section, of each of the following newspapers:

- The Toledo Blade*, 541 Superior Street, Toledo, OH 43660;
- The News Herald* (Ottawa County), P.O. Box 550, Port Clinton, OH 43452;
- The Sandusky Register*, 314 W. Market Street, Sandusky, OH 44870;
- The Chronicle Telegram*, 225 E. Avenue, Elyria, OH 44036;
- The Plain Dealer*, 1801 Superior Avenue, Cleveland, OH 44114;
- The News-Herald* (Lake County), 7085 Mentor Avenue., Willoughby, OH 44094;
- The Star Beacon*, P.O. Box 2100, Ashtabula, OH 44005;
- The Columbus Dispatch*, 34 S. 3rd Street, Columbus, OH 43215;
- The Cincinnati Enquirer*, 312 Elm Street, Cincinnati, OH 45202;
- The Akron Beacon Journal*, 44 E. Exchange Street, Akron, OH 44309; and
- The Vindicator*, 107 Vindicator Square, P.O. Box 780, Youngstown, OH 44501.

{¶4} The first publication of this Notice must occur not later than December 23, 2006. At the conclusion of the three weeks of publication in each of the foregoing newspapers, class counsel shall file proof of publication with the Lake County Clerk of Courts in Case No. 04CV001080.

{¶5} In addition, the Notice will be sent by the court to, and until February 9, 2007, it shall be displayed conspicuously in, the Clerk of Courts' Office and the County Recorder's Office in every county that abuts the shore of Lake Erie in Ohio: Lucas County, Sandusky County, Ottawa County, Erie County, Lorain County, Cuyahoga County, Lake County, and Ashtabula County.

{¶6} The court hereby establishes February 9, 2007, as the last day for any class member or potential class member to signify that they consider the class representation unfair and/or inadequate.

{¶7} Although the court recognizes that all of the approximately 14,000 members of the class can be identified, the court finds that such identification and the provision of individual notices to these class members to be an unreasonable effort and expense. The court finds that the Notice attached to this order and the procedure and method for notification established by this order is the best practicable notice under the circumstances, and that such notice is reasonably calculated to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

{¶8} The court reserves the discretion to award or apportion the cost of class notification among the parties.

IT IS SO ORDERED.

EUGENE A. LUCCI, JUDGE

c: James F. Lang, Esq. and Michael Mulcahy, Esq.
Attorneys for Plaintiffs/Relators in Case No. 04CV001080
Homer S. Taft, Esq. and L. Scot Duncan, Esq.
Intervening Plaintiffs in Case No. 04CV0001080
Relators Pro Se in Case No. 04CV001081
Cynthia K Frazzini, Esq., John P. Bartley, Esq. and Karol C. Fox, Esq.
Assistant Attorneys General, for Defendants/Respondents in Case Nos.
04CV001080 and 04CV001081
Neil S. Kagan, Esq.
Attorney for Intervenor National Wildlife Federation
Peter A. Precario, Esq.
Attorney for Intervenor Ohio Environmental Council

LEGAL NOTICE

LAKE SHORE PROPERTY OWNERS' CLASS ACTION

NOTICE IS HEREBY GIVEN regarding a class action that was certified on June 9, 2006, by Judge Eugene A. Lucci of the Court of Common Pleas for Lake County, Ohio, in the case of *State of Ohio ex rel., Robert Merrill, Trustee, et al., versus State of Ohio, Department of Natural Resources, et al.*, Case No. 04CV001080. The docket for this case may be accessed via the Internet at:

<http://www.lakecountyohio.org/clerk2/> or <https://phoenix.lakecountyohio.gov/pa/>.

Please take note of the following information:

1. The Court has certified the following group of persons as a class for purposes of pursuing a declaratory judgment action:

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.

2. The class is represented by several individuals and one corporation who own littoral property bordering Lake Erie as well as by the Ohio Lakefront Group, Inc., a non-profit corporation representing its members who are members of the class.

3. This class action asks the Court to declare the following as a matter of law:

- (a) What constitutes the furthest landward boundary of the "territory" as that term appears in Ohio Revised Code Sections 1506.10 and 1506.11, including, but not limited to, interpretation of the terms "southerly shore," "waters of Lake Erie," "lands presently underlying the waters of Lake Erie," "lands formerly underlying the waters of Lake Erie and now artificially filled" and "natural shoreline?"

- (b) 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?

- (c) What are the respective rights and responsibilities of the class members, the State of Ohio, and the people of the State in the "territory?"

4. A judgment in this action, whether favorable or not to the above described class, will be binding on all class members pursuant to Rule 23(C)(3) of the Ohio Rules of Civil Procedure.

5. The Court has approved Calfee, Halter & Griswold LLP, 1400 McDonald Investment Center, 800 Superior Avenue, Cleveland, Ohio 44114, as counsel for the above-described class in this action. Communications regarding this action from class members or potential class members should be directed to:

Ohio Lake Erie Class Action
c/o Jennifer Sybyl
CALFEE, HALTER & GRISWOLD LLP
1400 McDonald Investment Center
800 Superior Avenue
Cleveland, Ohio 44114
(216) 622-8200.

6. The court hereby establishes **February 9, 2007**, as the last day for any class member or potential class member to signify that they consider the class representation unfair and/or inadequate.

7. The court's address is 47 N. Park Place, Painesville, Ohio 44077.

Judge Eugene A. Lucci
Lake County Court of Common Pleas

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