

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

STATE ex rel. ROBERT MERRILL, TRUSTEE, <i>et al.</i> ,)	CASE NO. 04CV001080
)	
Plaintiffs-Relators,)	JUDGE EUGENE A. LUCCI
)	
And)	
)	
HOMER S. TAFT, <i>et al.</i> ,)	
)	
Intervening Plaintiffs and Plaintiffs-Relators,)	
)	
vs.)	
)	
STATE OF OHIO, DEPARTMENT OF NATURAL RESOURCES, <i>et al.</i> ,)	
)	
Defendants-Respondents and Counterclaimants)	
)	
And)	
)	
NATIONAL WILDLIFE FEDERATION, <i>et al.</i> ,)	
)	
Intervening Defendants and Counterclaimants)	

**INTERVENING PLAINTIFFS' BRIEF RESPECTING FURTHER CLASS CERTIFICATION
QUESTIONS PURSUANT TO ORDER**

The Court has requested parties to respond to six questions it has posed regarding class certification. Intervening Plaintiffs reply to those questions as follows:

- 1. Does a certified class exist and is it maintained at this stage of the proceedings as to Count One of the First Amended Complaint?**

The original certification was to the rights and liabilities of the parties on the Claims on Count 1, as outlined and agreed in three questions. The relief sought by all parties is directly related to the certified questions. The certification remains in effect for the relief requested.

2. If it no longer exists or is no longer maintained, when did it cease to exist or be maintained?

Not applicable pursuant to 1 above.

3. If it still exists and is maintained, when will it cease to exist or be maintained?

When the court determines the issues presented by the parties on count 1, including fees. That resolution requires this court to give sufficient definition and enforcement of the “natural shoreline” to clear the besmirched titles of the class and allow law enforcement officers to determine if someone is trespassing. In addition, this court must define ground rules for restoring avulsive losses.

4. Regardless of the answers to the foregoing, will a certified class be sought to be maintained as to Counts Two and/or Three of the First Amended Complaint?

Intervening Plaintiffs believe it may be possible to issue a writ of mandamus requiring the State of Ohio to comply with the provisions of Chapter 163 of the Ohio Rev. Code either without or after a class certification. The answer would be much clearer if the State stipulated that there was no intention to effect a permanent taking (Count Three), or this Court determines that the Supreme Court held that the State was without power to do so under current law absent commencing appropriation proceedings . In any event, the court will be left de minimus with the mandamus request on Count II. Rev. Code Chapter 163 places the full burden of identifying, appraising and bringing action against individual owners of property upon the State of Ohio, and this Court should enforce that burden on the State at all points in these proceedings. The State’s regulatory and/or physical taking contrary to law is what gave rise to these claims, and the remedy is proscribed by statute.

5. If a class is sought as to Counts Two and/or Three of the First Amended Complaint, how will it be certified, potential members notified, maintained, and/or members subclassified, and the issues common to the class and individual to the members adjudicated?

On Count III, the class would be every non public landowner along the shores of Lake Erie.

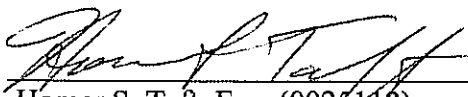
On Count II, it would be the same, but it is possible there might be subclasses for those compelled to enter into wrongful leases, those unable to receive permits or leases or who lost property because of the State's improper regulation, those who suffered slander of title (reformation of deeds) and/or diminution of value of their property when sold, and those who suffered trespass and a generalized cloud on their title.

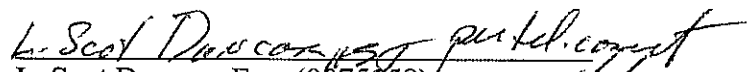
However, Intervening plaintiffs believe the true answer, which this Court should enforce, is to place that full burden on the wrongful party, the State of Ohio, by ordering the State to commence temporary regulatory taking actions against each non-public lakefront owner whose property was affected during the timeframe of the State's unlawful actions, placing the burden on the State of Ohio to identify, notify and present appraisals to such owners pursuant to statute.

6. When and how, procedurally, will this occur?

The process of class certification relative to Counts II and III, if necessary, should commence in September to promptly grant relief to the wronged Plaintiffs. That process may resolve more easily if the Court determined the remaining issues on Count I before proceeding to Counts II and III.

Respectfully submitted,


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CERTIFICATE OF SERVICE

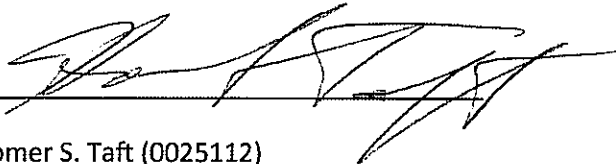
I certify that a copy of Intervening Plaintiffs' Brief Respecting Further Class Certification Questions was served by electronic means August 2, 2012 to the following counsel for all parties at the email addresses appearing after their respective names:

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