

Merrill Class Action Settlement

Frequently Asked Questions

On May 27, 2016, the State of Ohio (the “State”) and the Ohio Department of Natural Resources (“ODNR”), along with the Plaintiffs in the case of *State ex rel. Robert Merrill, Trustee, et al. v. State of Ohio Department of Natural Resources, et al.*, Case No. 04CV001080 (in the Lake County Court of Common Pleas before the Hon. Judge Eugene Lucci), submitted a proposed class action settlement to the Court for its approval. Below are answers to some frequently asked questions about the proposed settlement.

1. What is the lawsuit about?

The lawsuit was filed in 2004 on behalf of the owners of property bordering Lake Erie in the State of Ohio. The lawsuit is about the landward extent of the State’s public trust ownership of Lake Erie and whether or not those property owners are entitled to compensation from the State as a result of its claim of public trust ownership up to the Ordinary High Water Mark (“OHWM”) of Lake Erie.

On September 14, 2011, in *State ex rel. Merrill v. Ohio Dept. of Natural Resources*, 2011-Ohio-4612, the Ohio Supreme Court held that the landward extent of the State’s title in trust to Lake Erie is not the OHWM but, instead, that the “territory of Lake Erie held in trust by the State of Ohio for the people of the State extends to the natural shoreline, which is the line at which the water usually stands when free from disturbing causes.”

2. Why is this a class action?

In a class action, one or more people, called “Class Representatives” sue on behalf of other people who may have similar claims. In 2006, The Court decided that the case should be a class action for purposes of deciding the question of the landward boundary of the State’s public trust ownership of Lake Erie. In 2012, the Court further decided that the case should be a class action for purposes of deciding whether ODNR’s claim of public trust ownership to OHWM took private property in violation of the Ohio Constitution and U.S. Constitution. Landowners who are included in the “Settlement Class” will be bound by the Settlement if it receives final approval from the Court.

3. Am I a member of the “Settlement Class”?

You are a member of the Settlement Class if you have owned or co-owned 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. Also, if you were a lessee under a submerged lands lease with ODNR between May 28, 1998 and May 20, 2015, that used OHWM as the boundary of the State’s public trust ownership and not the natural shoreline, you may be a member of the Settlement Class.

4. Why is there a settlement?

The Plaintiffs and the Defendants have engaged in litigation and fact discovery for many years. The Plaintiffs and the Defendants agreed to settle the claims in the lawsuit to avoid the costs, risks, and

further delays that would be associated with proceeding to trial. The State and ODNR deny any wrongdoing or legal liability for the claims asserted in the lawsuit. The Parties have agreed to the Settlement because it eliminates the risk of an adverse outcome at trial for either party, and at the same time, provides the opportunity for payment to members of the Settlement Class and the resolution and an end of this lawsuit.

5. What does the settlement provide?

The Stipulation of Settlement (“Stipulation”), available from the Claims Administrator (contact information below), describes the proposed settlement. Generally, the proposed settlement provides for:

- (a) the payment of valid claims for compensation submitted by members of the Settlement Class;
- (b) the refund of submerged lands lease rental payments made between May 28, 1998 and May 20, 2015, for any leased lands located between OHWM and the natural shoreline; and
- (c) the repayment of the Class Representatives’ attorney fees incurred to define the boundary of the State’s public trust ownership of Lake Erie and obtain a refund of submerged lands lease payments.

The proposed settlement also resolves and ends this case and prevents members of the Settlement Class from suing the Defendants in the future over claims that are the same as, similar to, or related to the claims in the lawsuit. In turn, the Defendants are prevented from suing members of the Settlement Class in the future over claims that are the same as, similar to, or related to the claims in the lawsuit, including Defendants’ claims of public trust ownership landward of the natural shoreline.

6. When and where will the Court decide whether to approve the settlement?

The Court will hold a Settlement Hearing at 10:00 a.m. on October 14, 2016 at the Court of Common Pleas for Lake County, Ohio, 47 North Park Place, Painesville, Ohio 44077. At this hearing, the Court will consider whether the proposed settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the proposed settlement. We do not know how long these decisions will take.

7. Is my submerged lands lease still valid?

Yes. Those portions of your submerged lands lease that are located lakeward of the natural shoreline are still valid. Submerged lands leaseholders are still obligated to honor all conditions and terms in their current submerged lands lease agreement. Most leases issued after the 2007 decision use the natural shoreline as the boundary of the territory. If you want to modify your existing submerged lands lease please contact the Office of Coastal Management at (419) 626-7980.

8. Is a lease still required to install dock or other structure/fill in Lake Erie?

Yes. A submerged lands lease is required for structures and fills that extend lakeward of the natural shoreline.

9. How does this impact my current application for a submerged lands lease?

Not at all. Your application will be processed in the same way regardless of the proposed settlement and regardless of whether the proposed settlement is ultimately approved by the Court. Leases issued after the 2007 decision use the natural shoreline as the boundary of Lake Erie which is typically located by the applicant’s registered surveyor.

10. As a result of the pending Merrill litigation, I haven't paid rent on my lease for several years, how do I know the rental amount due at this time?

You may contact the ODNR Office of Coastal Management at (419) 626-7980 to request the rental amount due under your lease at this time.

11. Where is the general public allowed to walk along Lake Erie?

The general public is allowed to walk on public property. That includes public beaches and parks along Lake Erie, and the lands of Lake Erie itself.

ODNR has undertaken many efforts to identify and promote public access to Lake Erie. It has provided funding to support property acquisition for coastal conservation and environmental protection such as the Lake Erie Bluffs in Lake County, Lakefront Park in Huron, Erie County, Middle Bass Island East Point Preserve in Ottawa County and Honey Point on North Bass Island in Ottawa County. ODNR's Office of Coastal Management also publishes a Lake Erie Public Access Guide available by request and online at coastal.ohiodnr.gov/gocoast.

As for the Lake itself, the Ohio Supreme Court has defined the boundary line of the State's title to Lake Erie, and ODNR's corresponding authority to lease the Lake bed for structures and fills. The Court has declared that the boundary is "the natural shoreline, which is the line at which the water usually stands when free from disturbing causes." Where that line actually is along the shore may be difficult to determine. Members of the public should always respect the private property rights of adjacent lakefront property owners when recreating on Lake Erie.

Any questions regarding the settlement should be directed to:

Merrill v. ODNR Claims Administrator
c/o Class Action Administration, Inc.
P.O. Box 6878
Broomfield, CO 80021
1-855-326-1927
LakeErieSettlement.com

You may examine all documents filed in this case Monday – Friday, during regular business hours:

Office of the Clerk
Lake County, Ohio Court of Common Pleas
47 North Park Place
Painesville, Ohio 44077