

**IN THE SUPREME COURT OF OHIO**

**STATE OF OHIO, ex rel. :**  
**ROBERT MERRILL, Trustee, et al., :**

**Plaintiffs-Appellees, :**

**v. :**

**STATE OF OHIO, DEPARTMENT :**  
**OF NATURAL RESOURCES, et al., :**

**Defendants – Appellants. :**

**Case No. 2009-1806**

**On Appeal from the**  
**Lake County Court of Appeals**  
**Eleventh Appellate District**

**Court of Appeals Case Nos.**  
**2008-L-007, 2008-L-008**  
**Consolidated**

**REPLY BRIEF (THIRD BRIEF)**  
**OF THE OHIO DEPARTMENT OF NATURAL RESOURCES**  
**AND SEAN LOGAN, DIRECTOR OF NATURAL RESOURCES**

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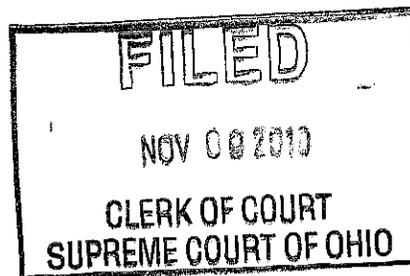
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## **Reply in Support of Proposition of Law No. 2**

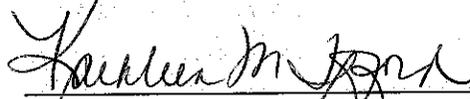
### **THE ARTIFICIAL FILLING IN OF SUBMERGED LANDS OF LAKE ERIE DOES NOT ALTER THE BOUNDARY OF THE PUBLIC TRUST AND THE STATE OF OHIO RETAINS TITLE TO SUCH LANDS.**

Appellants Ohio Department of Natural Resources and Sean Logan, Director of Natural Resources (collectively "ODNR") presented this proposition of law in their opening merit brief because the Court of Appeal's opinion appeared to erroneously conclude at paragraph 127 that artificially filling in submerged lands removes the lands from the public trust territory. ODNR acknowledged that the opinion was not entirely clear and was internally inconsistent on this point. The issue is of sufficient importance to ODNR's ability to effectively carry out its statutory duties, however, that ODNR thought it necessary and appropriate to ask this Court to conclusively clarify this issue and reaffirm it prior precedents on the effect of artificial fill.

It is now clear from the briefs filed by the appellees that there is no dispute among the parties as to the effect of artificial fill. The State of Ohio, ODNR and the plaintiffs-appellees agree that the artificial filling in of land submerged under the waters of Lake Erie does not remove the land from the public trust territory. ODNR asks that the Court affirmatively confirm that the parties' understanding of this point of law is correct, so that the opinion below is never cited for a contrary or inconsistent rule of law.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of this Merit Brief was served upon the following counsel by electronic delivery or regular U.S. Mail postage pre-paid, on November 9, 2010:

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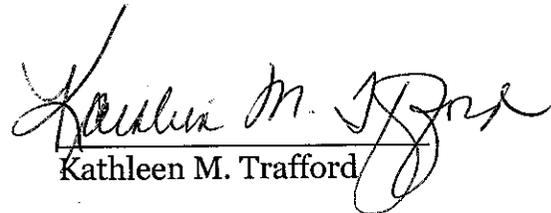
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