IN THE SUPREME COURT
STATE OF FLORIDA

Case Number: **SC06-1449**
Lower Tribunal Case No.: 1D05-4086

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, and THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND,

Petitioners,

v.

SAVE OUR BEACHES, INC. and STOP THE BEACH RENOURISHMENT, INC., WALTON COUNTY AND THE CITY OF DESTIN,

Respondents.

FLORIDA ASSOCIATION OF CONVENTION & VISITORS BUREAUS, INC.'S AMICUS BRIEF FILED IN SUPPORT OF THE PETITIONERS' INITIAL BRIEF

ON APPEAL FROM THE FIRST DISTRICT COURT OF APPEAL
TALLAHASSEE, FLORIDA

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STATEMENT OF IDENTITY OF AMICUS CURIAE AND INTEREST IN THE CASE

The Florida Association of Convention & Visitors Bureaus, Inc. (the "Association"), is an Association organized in 1996 to provide a single unifying voice for all of Florida's convention and visitors bureaus, providing insight and direction in an increasingly competitive tourism market place. The Association provides cooperative action to enhance and encourage the growth of Florida's convention and visitors industry through promoting tourism industry education, enhancing professionalism, facilitating the cooperative exchange of information between Florida convention and visitors bureaus, developing awareness of legislative issues and unifying the state's convention and visitors bureaus industry through public relations.

The Association has approximately fifty-three (53) members, including the Beaches of South Walton Tourist Development Council, and forty-two (42) affiliates statewide. The individual convention and visitors bureaus that are members of the Association have the primary mission of marketing cities, towns, counties, or regions, to potential visitors. Further, they provide local visitor/meeting planning services, and act as a catalyst and/or builder in ensuring the development of appropriate attractions, facilities/services, and infrastructure needed to provide destination experiences. The Association has an interest in the outcome of this case, not only with respect to the beaches of Walton County and

the City of Destin as premier tourist destinations, but with respect to the potential adverse impact that this case could have on all of Florida's beaches and Florida's tourism.

In enacting the Florida Beach and Shore Preservation Act, the Florida Legislature declared the public purpose to be:

> Because beach erosion is a serious menace to the economy and general welfare of the people of this state and has advanced to emergency proportions, it is hereby declared to be a necessary governmental responsibility to properly manage and protect Florida beaches fronting on the Atlantic Ocean, Gulf of Mexico, and Straits of Florida from erosion and that the Legislature make provision for beach restoration and nourishment projects, including inlet management projects that cost-effectively provide beach-quality material for adjacent critically eroded beaches. The Legislature declares that such beach restoration and nourishment projects, as approved pursuant to s. 161.161, are in the public interest; . . . .

§ 161.088, Fla. Stat. (Emphasis added.)

Florida's beaches are one of the main tourist attractions in Florida. See Sallas v. State, 124 So. 27 (Fla. 1929) (stating that it is common knowledge that "thousands" flock to our beaches for the purpose of bathing and recreation). Florida's economy is dependent on tourism dollars coming into this state. See U.S. v. Underwood, 344 F. Supp. 486, 488 (M.D. Fla. 1972) (taking judicial notice of the fact that "tourism is one of the largest commercial interests and revenue sources for the State of Florida"); see also State v. City of Miami Beach, 234 So. 2d 103, 105 (Fla. 1970) (taking judicial notice of the fact that Florida's tourist

industry "is one of its greatest assets").

SUMMARY OF THE ARGUMENT

In this Amicus Brief, the Association will address the state's police power to regulate constitutionally protected rights, including riparian rights, for the general welfare of the public and the economy. Laws enacted in the proper exercise of police power that are reasonably necessary for the preservation of public health, safety, and morals do not constitute a taking of private property. Here, the Legislature has specifically declared that:

> Because beach erosion is a serious menace to the economy and general welfare of the people of this state and has advanced to emergency proportions, it is hereby declared to be a necessary governmental responsibility to properly management and protect Florida beaches . . . .

§161.088, Fla. Stat. Thus, the enactment of the Beach and Shore Preservation Act, specifically the beach restoration provisions, falls squarely within the police power of the state to regulate private property rights for the good of the whole and the protection of Florida's beaches, as well as, the tourism industry. Sections 161.191 and 161.201, Florida Statutes, do not effect an unconstitutional taking of riparian rights, facially or as-applied. Rather, Sections 161.191 and 161.201, Florida Statutes, are proper exercises of police power and are constitutional.

ARGUMENT

This case presents a question of first impression and a question of great public importance to the State of Florida, its economy and the health, safety and welfare of its citizens. The First District Court of Appeal ("District Court") held that Sections 161.191 and 161.201, Florida Statutes, effect an unconstitutional taking of certain riparian rights. Although the ultimate holding of the District Court is couched in terms of finding that the Final Order must be reversed because evidence of sufficient upland interest must be provided pursuant to the Department of Environmental Protection's Rule 18-21, Florida Administrative Code, in order to obtain a permit for beach restoration under Section 161.041, Florida Statutes, the District Court's opinion is premised upon finding that riparian rights are infringed upon (i.e., by being eliminated or taken) by Sections 161.191 and 161.201, Florida Statutes, and thus, the District Court effectively determined such statutes facially unconstitutional. The District Court stated:

> The erosion control line was established by the Board of Trustees on the high water mark. That became the fixed new boundary of the property. See §161.191(1), Fla. Stat. (2005) (stating in relevant part that "[u]pon the filing of a copy of the board of trustees' resolution and recording of the survey showing the location of the erosion control line . . . title to all lands seaward of the erosion control line shall be deemed to be vested in the state by right of its sovereignty, and title to all lands landward of such line shall be vested in the riparian upland owners"). As in *Madeira Beach*, the freezing of the erosion control line renders the ordinary high water mark useless as a boundary line, which is contrary to the property owners' boundaries. Although STBR's members' deeds are not in the record, there is

> unrebutted testimony that their property boundaries extend to the high water mark.
>
> * * *
>
> The parties agree that this project will cause the high water mark to move seaward and ordinarily this would result in the upland landowners gaining property by accretion. However, section 161.191(2) states that "the common law shall no longer operate to increase or decrease the proportions of any upland property lying landward of such line, either by accretion or erosion. . . ." Therefore, the Department's final order, approving the permits and authorization for the project, will deprive STBR's members of their riparian accretion rights. [Emphasis added.]

See Save Our Beaches, Inc., et al. v. Florida Department of Environmental Protection, et al., ___ So. 2d ___ 2006 WL 1112700 (Fla. 1st DCA 2006), 31 Fla. Law Weekly D1173 at WL 9 and 10. Although the District Court held that the Department's Final Order deprives upland property owners of their riparian right to future accretion, the Court admitted that it is Section 161.191, Florida Statutes, which operates to eliminate such right. The impact of the District Court's decision will not only affect the parties to the instant case, but has the potential to adversely impact both existing and future beach restoration projects, around the State of Florida.

It is well established that the state has the power to regulate private interests for the good of the public under its police power. "Police power" is defined as an exercise of the sovereign right of the state to enact laws for the protection of the lives, health, morals, comfort, and general welfare of the people, including anything that is reasonable, necessary, and appropriate to secure the peace, order,

protection, safety, good health, comfort, quiet, morals, welfare, prosperity, convenience, and best interest of the public. Burnsed v. Seaboard Coastline R. Co., 290 So. 2d 13 (Fla. 1974); Snively Groves v. Mayo, 184 So. 839 (Fla. 1938); Hobby v. State, 761 So. 2d 1234 (Fla. 2d DCA 2000); City of Miami, 104 So. 2d 62 (Fla. 3d DCA 1958); McInerney v. Ervin, 46 So. 2d 458 (Fla. 1950); Rabin v. Conner, 174 So. 2d 721 (Fla. 1965). In the instant case, the Legislature, through Sections 161.088 *et seq*, Florida Statutes, is regulating private interests for the health, safety, and welfare of all the citizens in Florida and the health of Florida's beaches.

In order for the state "[t]o exercise police power to the detriment of an individual or class, it must first be clear that the purpose to be served is not merely desirable but one which will so benefit the public as to justify interference with or destruction of private rights." See In re Forfeiture of 1969 Piper Navajo, Model PA-31-310, S/N-31-395, U.S. Registration N-1717G, 592 So. 2d 233, 236 (Fla. 1992). The protection of Florida's important economic and natural assets has been determined to be within police power of the sovereign. For instance, in C.V. Floyd Co. v. Florida Citrus Commission, 175 So. 248 (Fla. 1937), the Court said:

> [t]he protection of a large industry constituting one of the great sources of the state's wealth and therefore directly or indirectly affecting the welfare of so great a portion of the population of the state is affected to such an extent by public interest to be within the police power of the sovereign. (citing Johnson v. State ex rel. Maxcy, 128 So. 853, 857 (Fla. 1930).

In so holding, the Court said:

> This court takes judicial notice of the fact that the citrus industry of Florida is one of its greatest assets. Its promotion and protection is one of the greatest value to the state, and its advancement redounds greatly to the general welfare of the commonwealth. (citing Maxcy, Inc. v. Mayo, 139 So. 121, 128 (Fla. 1930).

Similarly, this Court in State v. City of Miami Beach, 234 So. 2d 103, 105 (Fla. 1970), in acknowledging that the protection of tourism as an important state asset is within the state's police power, stated:

> We take judicial notice of the fact that the Tourist industry of Florida, likewise is one of its greatest assets. We also recognize that the tourist industry is an important part of the industry of the larger metropolitan areas of this state.

See also Duval v. Thomas, 114 So. 2d 791, 795 (Fla. 1959) (holding "Florida is advertised as a playground, a retreat from the hurryscurry of the modern world and from the rigors of the northern climes. Fishing and swimming are prominent if not principal items of entertainment the stranger expects to find here."); United States v. Underwood, 344 F. Supp. 486, 488 (M.D. Fla. 1972) (stating "[t]ourist travel to Florida from other states and foreign nations for the purpose of enjoying the weather and beauty of Florida"); City of Daytona Beach v. Tona Rama, Inc., 294 So. 2d 73, 75 (Fla. 1974), citing White v. Hughes, 190 So. 446 (Fla. 1939) ("We recognize the propriety of protecting the public interest in, and the right to utilization of, the beaches and oceans of the State of Florida. No part of Florida is more exclusively hers, nor more properly utilized by her people than her beaches.

And the right of the public of access to, and enjoyment of, Florida's oceans and beaches has long been recognized by this Court."); Sallas v. State, 124 So. 27, 28 (Fla. 1929) (holding "[b]athing and recreation constitute the primary use of most of our beaches. It is common knowledge that during the summer season mean, women, and children by the thousands flock to Atlantic and Jacksonville Beaches for this purpose."). "Beach related tourism has a $41.6 billion annual impact on our state's economy." See The Anthony James Catanese Center for Urban & Environmental Solutions at Florida Atlantic University, Department of Environmental Protection Bureau of Beaches and Wetland Resources, *Economics of Florida's Beaches: The Impact of Beach Restoration*, appendix 1, p.1(2003).

This Court has also acknowledged that aesthetics alone is a legitimate justification for the exercise of police power. City of Lake Wales v. Lamar Advertising Association, 414 So. 2d 1030 (Fla. 1982); see also City of Miami Beach v. Ocean & Inland Co., 3 So. 2d 364, 367 (Fla. 1941) (holding a zoning ordinance in a beach community restricting the use of an area two blocks wide along the seashore to hotels and apartment houses the court was not a deprivation of property without due process and stating, "[i]t is difficult to see how the success of Miami Beach could continue if its aesthetic appeal were ignored because the beauty of the community is a distinct lure to the winter traveler."). Therefore, if the protection of the aesthetic nature of a beach community can support the

exercise of police power which impairs the use of private property, the protection and management of one of Florida's most prized natural resources—its beaches, on which one of Florida's greatest assets—tourism, relies, is certainly within the state's police power. See also Schrader v. Florida Keys Aqueduct Authority, 840 So. 2d 1050, 1056 (Fla. 2003) (upholding the constitutionality of a statute regulating the treatment of the wastewater in the Florida Keys for the protection of a natural resource [nearshore waters of Florida Keys], in part, because of its direct relationship with and statewide importance to the tourism industry.). Florida's beaches are essential to Florida's tourism, and thus, to Florida's economy.

Therefore, in looking at the constitutionality of the Beach and Shore Preservation Act, and in particular, Sections 161.191 and 191.201, Florida Statutes, which relate to the establishment and imposition of the Erosion Control Line, this Court must determine that the Legislature's regulation is for a valid public purpose, i.e., to protect its assets, including both its natural assets and its economic assets, such as tourism under its police power as well as under its constitutional obligations set forth in §7, Article II, Florida Constitution ("It shall be the policy of the State to conserve and protect its natural resources and scenic beauty. . . ."); see also Town of Indialantic v. McNulty, 400 So. 2d 1227, 1231 (Fla. 5th DCA 1981) ("There can no longer be any question that the 'police power' may be exercised to protect and preserve the environment.").

In Section 161.088, Florida Statutes, with respect to the beach restoration program, the Legislature has stated:

> Because beach erosion is a serious menace to the economy and general welfare of the people of this state and has advanced to emergency proportions, it is hereby declared to be a necessary governmental responsibility to properly manage and protect Florida beaches fronting on the Atlantic Ocean, Gulf of Mexico, and Straits of Florida from erosion and that the Legislature make provision for beach restoration and nourishment projects, including inlet management projects that cost-effectively provide beach-quality material for adjacent critically eroded beaches. The Legislature declares that such beach restoration and nourishment projects, as approved pursuant to 161.161, are in the public interest; . . . (Emphasis supplied.)

The term "menace" is defined as "[a] threat." Black's Law Dictionary, 889 (5th ed. 1979). Beach erosion has, therefore, been determined by the Legislature to be a threat to both the economy and the general welfare of the public, and the legislatively prescribed method to combat or abate this threat is through beach renourishment and beach restoration. § 161.088, et seq., Fla. Stat.

It is well established that all property rights, especially those of beachfront property owners, are held subject to the fair exercise of the power inherent in the state to promote the general welfare of the people through regulations that are reasonably necessary to secure health, safety, good order, and general welfare, and the enforcement of uncompensated obedience to a regulation established under this power for the public health or safety is not an unconstitutional taking of property without just compensation or without due process of law. Golden v. McCarty, 337

So. 2d 388 (Fla. 1976). Laws enacted in the proper exercise of the police power that are reasonably necessary for the preservation of the public health, safety, and morals do not constitute a "taking of private property" within the meaning of the constitutional requirements. Connelly v. Pension Ben. Guar. Corp., 475 U.S. 211, 106 S. Ct. 1018, 89 L. Ed. 2d 166 (1986); Garvin v. Baker, 59 So. 2d 360 (Fla. 1952); Pasternack v. Bennett, 190 So. 56 (Fla. 1939); Pompano Horse Club v. State, 111 So. 801 (Fla. 1927); Tampa Northern R. Co. v. City of Tampa, 107 So. 364 (Fla. 1926); Graham v. Estuary Property, Inc., 399 So. 2d 1374 (Fla. 1981).

Further, the courts have held that the very existence of the state, as well as the security of the social order, the life and health of the citizens, the comfort of the existence of a thickly populated community, the enjoyment of private and social life, and the beneficial use of property, are dependent upon the police power of the state. American Federation of Labor v. Watson, 60 F. Supp. 1010 (S.D. Fla. 1945), *judgment rev'd on other grounds*, 327 U.S. 582, 66 S. Ct. 761, 90 L. Ed. 873 (1946). The police power not only rests on the general welfare of the people, but the theory is that the welfare of the people is the supreme law expressed in the maxim "*salu populi suprema lex est*." All private rights enjoyed by individuals as members of the public are subject to the paramount right of the state to modify them to conserve the public welfare under this maxim. City of Plantation v. Utilities Operating Co., 156 So. 2d 842 (Fla. 1963); Florida Power Corp. v.

Pinellas Utility Bd., 40 So. 2d 350 (Fla. 1949); Miami Bridge Co. v. Railroad Comm'n, 155 Fla. 366, 20 So. 2d 356 (Fla. 1944); McInerney v. Ervin, supra.

When the interest of the individual and interest of the public conflict, that of the individual must give way. L. Maxcy, Inc. v. Mayo, 139 So. 121 (1931). Under the American system of laws and government, everyone is required to use and enjoy his or her right as not to injure others in their rights or to violate any law in force for the preservation of the general welfare. McInerney v. Ervin, supra; State ex rel. Hosack v. Yocum, 186 So. 448 (Fla. 1939).

The Legislature has the broad discretion in determining necessary measures for the protection of the public health, safety, and welfare, in any manner not inconsistent with or repugnant to the provisions of the state or federal constitutions. State v. Yu, 400 So. 2d 762 (Fla. 1981); Snively Groves v. Mayo, supra; Raines v. State, 805 So. 2d 999 (Fla. 4th DCA 2001). Reasonableness is the sole test for the exercise of the police power. Publix Cleaners v. Florida Dry Cleaning and Laundry Bd., 32 F. Supp. 31 (S.D. Fla. 1940); Snively Groves v. Mayo, supra. Legislation reasonably related to matters appertaining to the public welfare is permitted. Palm Beach Mobile Homes, Inc. v. Strong, 300 So. 2d 881 (Fla. 1974); Dade County, By and through Bd. of County Com'rs v. Pepper, 168 So. 2d 198 (Fla. 3d DCA 1964).

Individual rights may be interfered with or impaired in the exercise of the

police power only in a manner and to the extent reasonably necessary to conserve the public good. Florida Citrus Commission v. Golden Gift, Inc., 91 So. 2d 657 (Fla. 1956). Reasonable restrictions upon the use of property in the interest of public health, welfare, morals, and safety are valid exercises of the state's police power. Little Munyon Island, Inc. v. Dept. of Environmental Regulation, 492 So. 2d 735 (Fla. 1st DCA 1986); State Dept. of Environmental Regulation v. Oyster Bay Estates, Inc., 384 So. 2d 891 (Fla. 1st DCA 1980).

The police power may only be used against those individual rights that are reasonably related to the accomplishment of the desired end that will serve the public interest. Interference with or sacrifice of the private rights must be essential, to the reasonable accomplishment of the desired goal. If there is a choice of ways in which the government can reasonably attain a valid goal necessary to the public interest, it must elect that course that will infringe the least on the rights of the individual. In re Forfeiture of 1969 Piper Navajo, Model PA-31-310, S/N-31-395, US Registration N-1717G, 592 So. 2d 233 (Fla. 1992).

In the instant case, the Legislature has determined that the Beach Renourishment Project is in the public interest and the preferred method of addressing and abating beach erosion. It should also be noted that the Respondent, Stop the Beach Renourishment, Inc., has not challenged the fact that the instant Beach Restoration Project is intended to address a critically eroded beach or that

the Beach Restoration Project is permitted and authorized pursuant to Chapter 161, Florida Statutes. There is, therefore, no dispute, that the Project meets the criteria set forth in Section 161.088, Florida Statutes, and is in the public interest.

Sections 161.191 and 161.201, Florida Statutes, which the District Court stated effectuate an unconstitutional taking of the right to future accretion and the right to have STBR's members' properties touch the water, are the part of the Beach and Shore Preservation Act, and are implemented by the Board of Trustees of the Internal Improvement Trust Fund in establishing an erosion control line ("ECL") to establish a boundary between state-owned lands and upland properties, prior to the issuance of a permit to the local authorities for the actual restoration project. Since the State of Florida is funding the restoration project, in part, and because it is authorizing the local authorities to fill state-owned sovereign submerged lands, i.e., land held in trust by the Board of Trustees of the Internal Improvement Fund for the benefit of the public, the Legislature has sought to establish a line of ownership between the upland properties and its sovereign lands. Although authorizing the filling of sovereign lands waterward of the ECL, and waterward of the upland properties, the Legislature, through Sections 161.191 and 161.201, Florida Statutes, sought to minimize the impact to upland riparian owners as follows:

> Any upland owner or lessee who by operation of ss. 161.141-161.211 ceases to be a holder of title to the mean high-water line shall,

> nonetheless, continue to be entitled to all common-law riparian rights except as otherwise provided in s. 161.191(2), including but not limited to rights of ingress, egress, view, boating, bathing, and fishing. In addition the state shall not allow any structure to be erected upon lands created, either naturally or artificially, seaward of any erosion control line fixed in accordance with the provisions of ss. 161.141-161.211, except such structures required for the prevention of erosion. Neither shall such use be permitted by the state as may be injurious to the person, business, or property of the upland owner or lessee; and the several municipalities, counties and special districts are authorized and directed to enforce this provision through the exercise of their respective police powers.

See §161.201, Fla. Stat. Thus, the Legislature has affirmed all common law littoral rights in the upland owners, with the exception of the common law right to the increase or decrease in the upland property resulting from natural or artificial accretion or erosion which, by virtue of the filling of the sovereign lands landward of the ECL, would no longer exist. In Section 161.211, Florida Statutes, the Legislature provides for the cancellation of the ECL (and thus the impact of the ECL on upland properties) in the event the beach restoration is not commenced within a two year period, is halted in excess of a six month period, or the local authorities do not maintain the restored beach. Finally, Section 161.212, Florida Statutes, provides a judicial remedy to seek compensation and other relief for persons substantially affected by a permit or license issued under Chapter 161, Florida Statutes, such as the Joint Coastal Permit issued in the instant case to Walton County and the City of Destin pursuant to Section 161.041, Florida Statutes. Thus, the Legislature has attempted to minimize the impact restoration

would have on littoral rights of upland properties, by eliminating only the speculative right to future accretion, and guaranteeing that all other common law rights remain, despite the fact that there will be state-owned lands intervening between such properties and the ocean, by virtue of the artificial avulsive event[1] accomplished through the restoration project, and permitting persons to seek compensation for any damages suffered as a result of a restoration project. Further, should the government not maintain the renourished beach, the ECL can be cancelled, placing all upland properties in the same position prior to the restoration project.

Although it seems that the First District's decision is based on an interpretation of the face of the Act, since the First District did not specify which constitutional test was applied, if any, if the Court were to properly apply the regulatory takings analysis for an as-applied takings claim, the proper analysis is as follows.[2] When the government's interference with private property rights arises from some public program adjusting the benefits and burdens of economic life to

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[1] The establishment of the ECL and subsequent fill of sovereign submerged land along the ECL is analogous to the avulsive event. See Bentz v. McDaniel, 872 So. 2d 978, 980 (Fla. 5th DCA 2004) (recognizing that dredge and fill projects are avulsive events); City of Long Branch v. Liu, 833 A.2d 106, 109-10 (N.J.Super.L., 2003) ("the new sand comprising the extended dry sand beach was taken from lands constituting part of the public trust belonging to the people of the State."). The land created by the restoration project, the avulsive event, would remain titled on the state until such time as the land eroded landward of the ECL, and the state would benefit from any accretion during this period.

[2] The record is devoid of any facts that would aid the court in this analysis.

promote the common good, and in reviewing an as-applied takings claim, the court must engage in an "ad hoc, factual inquiry" to make a determination. The economic impact of the regulation, especially the degree of interference with investment-backed expectations, as well as the character of the governmental action, are factors the court must look to in determining whether or not compensation is constitutionally due for a government restriction of property. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S., 419, 426, 102 S. Ct. 3164, 3171 (1982). The Courts make a distinction between government action which destroys all of one's property rights and government action which does not, finding the former a taking in all cases. Id., at 435-37; Keystone Bitominous Coal Association v. DeBenedictis, 480 U.S. 470, 497 (1987) (affirming its ruling in Andrus v. Allard, 444 U.S. 51 (1979), that "where an owner possesses a full 'bundle' of property rights, the destruction of one 'strand' of the bundle is not a taking because the aggregate must be viewed in its entirety."). The courts have repeatedly upheld regulations which destroy or adversely affect individual real property rights. Connelly v. Pension Benefit Guaranty Corporation, 475 U.S. 211, 106 S. Ct. 1018, 89 L. Ed. 2d 166 (1986); Penn Central Transportation Co. v. New York City, 438 U.S. 104, 125, 98 S. Ct. 2646, 2659 (1978); Eastlake v. Forest City Enterprises, Inc., 426 U.S. 668, 675 n. 8, 96 S. Ct. 2358, 2362, n. 8, 49 L. Ed. 2d 132 (1976); McNulty v. Town of Indialantic, 727 F. Supp. 604, 606 (M.D. Fla.

1989) (discussing Beach and Shore Preservation Act); Florida Game and Fresh Water Fish Commission v. Flotilla, 636 So. 2d 761 (Fla. 2d DCA 1994).[3]

Florida's courts also recognize that riparian rights may be regulated. See Central Florida Investments, Inc. v. Orange County Code Enforcement Bd., 790 So. 2d 593, 597 (Fla. 5th DCA 2001) ("While riparian rights exist in Florida as a matter of constitutional right and property law, even constitutional rights may be regulated."). In fact, Florida's courts have recognized that not all riparian rights are sacrosanct. In certain instances, riparian rights are required to give way for the good of the public. For example, in Krieter v. Chiles, 595 So. 2d 111 (Fla. 3d DCA 1992), the Third District Court of Appeal held that: "Although the riparian right of ingress and egress is an appurtenance to the ownership of private upland property . . . it is a qualified right which must give way to the rights of the state's people." In Krieter, the Third District Court disagreed with the appellant that the state's denial of a consent to construct a dock constituted a taking. The Third District Court held:

> The Trustees have the authority to preclude the construction of private docks when it is in the public interest to do so. This case is not a

[3] Florida Courts have upheld the state's exercise of police power to regulate other constitutionally protected rights, such as the right to access courts. See Kluger v. White, 281 So. 2d 1 (Fla. 1973); Univ. of Miami v. Echarte, 618 So. 2d 189, 190 (Fla. 1993); Lasky v. State Farm Ins. Co., 296 So. 2d 9 (Fla. 1974); Chapman v. Dillon, 415 So. 2d 12 (Fla. 1982); Acton v. Fort Lauderdale Hosp., 440 So. 2d 1282 (Fla. 1983); Martinez v. Scanlan, 582 So. 2d 1167 (Fla. 1991); Sasso v. Ram Property Management, 452 So. 2d 932, 934 (Fla. 1984).

> question of an expanding state marine park that encroaches upon the rights of a riparian owner. The appellant's riparian rights were subject to the state's ownership of the sovereign submerged lands long before Pennekamp Park was expanded to the shores of Key Largo.

Id. at 112-13.

The instant case is no different than the above cases where the Public Trust Doctrine was applied to negate certain riparian rights. The Public Trust Doctrine states, in pertinent part:

> The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. . . .

See §11, Art. X, Fla. Const. Section 7(a), Article II of the Florida Constitution states: "It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. . . ." In the instant case, in granting the permit and authorization to use state lands, the state is filling its own land by right of its sovereignty for the benefit of not only the riparian owners along the beach, but the public at large. See §766.088, Fla. Stat.; §11, Art. X, Fla. Const.; Wallace Corporation v. City of Miami Beach, 793 So. 2d 1134 (Fla. 1st DCA 2001) (construing Section 161.201, Florida Statutes).

CONCLUSION

WHEREFORE, the Florida Association of Convention & Visitors Bureaus, Inc., respectfully requests that this Court hold the Beach and Shore Preservation Act is constitutional, especially Sections 161.191 and 161.201, Florida Statutes.

Respectfully submitted this 26th day of October, 2006.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent to the following parties via U.S. Mail this 26th day of October, 2006:

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Kenneth J. Plante, Esquire

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that this AMICUS CURIAE BRIEF was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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Kenneth J. Plante, Esquire

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