IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR ST. JOHNS COUNTY, FLORIDA.

CASE NO.: CA04-89
DIVISION: 55

SURFRIDER FOUNDATION – SOUTH FLORIDA, INC.; THE SURFRIDER FOUNDATION (FLORIDA FIRST COAST CHAPTER); and SCOTT SHINE, an individual and as chairman of THE SURFRIDER FOUNDATION – FLORIDA FIRST COAST CHAPTER,

Plaintiffs,

vs.

ST. JOHNS COUNTY, by and through its BOARD OF COUNTY COMMISSIONERS, and CHERYL HAYES,

Defendants.
_____/

FINAL JUDGMENT

THIS CAUSE was tried before the Court on November 22-23, 2005. At trial, the Plaintiffs, Surfrider Foundation – South Florida, Inc., the Surfrider Foundation (Florida First Coast Chapter), and Scott Shine, were represented by counsel, Deborah J. Andrews, Esquire and James J. Woodruff, II, Esq. Defendant St. Johns County, was represented by counsel, Laura Lee Barrows, Esquire and Wayne Flowers, Esq. At the trial the Court heard and considered the testimony of witnesses, received into evidence documentary and photographic exhibits, heard and considered the argument of counsel, and being otherwise fully advised in the premises the Court finds as follows:

PROCEDURAL HISTORY

The Plaintiffs filed a second amended complaint in this case, to which Defendant St. Johns County responded with a motion to dismiss. In this Court's Order on St. Johns County's Motion to Dismiss the Second Amended Complaint, three counts were allowed to go forward – at least in part – while eight other counts were dismissed with prejudice. The Court dismissed Count I, which asked the Court to hold that the County's vacation of a right of way on which cars had previously parked violated those sections of the St. Johns County Code (the 'Code') which protect the public's right to beach access. The Court dismissed Count III which asked the Court to find that an ordinance which prohibited parking along the vacated right of way deprived the Plaintiffs of access to the beach. Count IV set out an equal protection claim which differentiated between residents and non-residents, and was dismissed because the Plaintiffs' claims could not be supported under rational basis scrutiny. The Court dismissed Count V because the Plaintiffs would not be able to demonstrate that the parking restriction was arbitrary and capricious, or that it was unconstitutionally vague. Count VI, making similar claims regarding the vacation of the right of way was dismissed for the same reason as Count V. The Court dismissed Count VIII because it was based on an inapplicable statute and because a pre-requisite for bringing such a claim had not been met. Count IX, for a mandatory injunction was dismissed because the Plaintiffs' pleadings failed to demonstrate an entitlement to such relief. Finally, the Court dismissed Count XI, relating to free speech, because the Plaintiffs had again failed to set out sufficient allegations which would entitle them to relief.

In Count II the Plaintiffs assert that Defendant St. Johns County has permitted several beach access points to become obstructed, and assert that obstruction of access points is prohibited by St. Johns County's Code, sections 8-27, 8-28, and 8-29. The Court found that these allegations specifically addressed the Plaintiffs' rights to access the beach rather than merely park near the beach, and thus allowed the Count to go forward on the sole issue of the obstruction of beach access points. The Court

struck those allegations in this Count which addressed the County's removal of public parking spaces.

In Count VII the Plaintiff asserts that by allowing a private entity to destroy public parking spaces, the County acted arbitrarily and capriciously, and that further, the removal constituted a denial of due process to the Plaintiffs because they were never afforded notice or an opportunity to be heard on the issue. The Court found that to the extent that the County allowed individuals to remove parking spaces outside of the area which it vacated, and within the area still owned by the County, the Plaintiffs stated a sufficient cause of action in regards to the issue of notice.

The last claim which was allowed to go forward by the Court was Count X, which sought declaratory and injunctive relief under the public trust doctrine. The Court struck those portions of the Count which addressed the County's vacation of the right of way or the restriction on parking. The remaining issue in this Count is that of the public trust doctrine's applicability to the obstruction of beach access points.

The Court notes that the Plaintiff has filed a Motion for Rehearing or Reconsideration of St. Johns County's Motion to Dismiss the Second Amended Complaint which asks the Court to reconsider its dismissal of Count V of the second amended complaint. That Motion will be separately addressed by the Court in an order entered simultaneously with the instant Order.

STANDING

Generally, a litigant must demonstrate that it has a sufficient interest in the outcome of the litigation to warrant the court's consideration of its position. Keehn v. Joseph C. Mackey & Co., 420 So.2d 398 (Fla. 4th DCA 1982). Accordingly, to have standing a party must show a sufficient stake in an otherwise judiciable controversy to obtain judicial resolution of that controversy. Robert C. Malt & Co. v. Carpet World Distributors, Inc., 861 So.2d 1285 (Fla. 4th DCA 2004). The party's interest cannot be conjectural or merely hypothetical, and the claim should be brought by or on behalf of the real party in interest. Nedeau v. Gallagher, 851 So.2d 214 (Fla. 1st DCA 2003).

An association has standing to sue on behalf of its members if 1.) its members would have standing to sue in their own right; 2.) the interests it seeks to protect are germane to the organization's purpose; and 3.) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. O'Connel v. Fla. Dep't of Cmty Affairs, 874 So.2d 673 (Fla. 4th DCA 2004). Because an unincorporated association has no legal existence, such an association must sue or be sued in the names of the individuals comprising it rather than in its firm name. Associacion de Perjudicados por Inversiones Efectuadas en U.S.A. v. Citibank, 770 So.2d 1267 (Fla. 3rd DCA 2000).

This suit was initiated by three separate Plaintiffs, and the Defendants assert that none of the Plaintiffs have demonstrated that they have standing to sue. Each Plaintiff's standing will be addressed individually by the Court.

At the trial the Court heard from Jeb Branham, a past treasurer and vice-chair of Surfrider Foundation. He states that Surfrider Foundation, Inc. is incorporated in California. He stated that in 1991 a filing was made in Florida to permit that organization to do business in Florida as Surfrider Foundation – South Florida, Inc., and that such filing created a Florida non-profit corporation. He testified that after a review of documents and after conversations with officials within Surfrider Foundation, Inc. he came to the conclusion that Surfrider Foundation, Inc. and Surfrider Foundation – South Florida, Inc. are the same entity. He stated that each organization has the same officers and directors, that they have the same employer ID numbers, and that they have the same tax ID number. He further stated that no person is specifically a member of Surfrider Foundation (First Coast Chapter), but rather, that each person is a member of Surfrider Foundation, Inc. He stated that the chapters are groups of people that are authorized to take certain actions on behalf of the corporation, but that the chapter is not a separate legal entity. (T.T. 59-70).

The Court further heard testimony from a number of witnesses that they were members of Surfrider Foundation, Inc., heard that 60 members of the organization reside in St. Johns County, and heard that 30 members live in Ponte Vedra Beach

(T.T. 92; 59; 72; 82; 89; 136). These witnesses testified that they use the beach on a regular basis, and that they use the beach for purposes of surfing, swimming, sunning, surf fishing, and for conducting events (T.T. 73; 82; 91; 137). The Court heard testimony that the bylaws of the Surfrider Foundation, Inc. state that its purpose is to safeguard and enhance the quality of all surfriding environments and the public's access to the beach, to educate the public, to preserve surfriding cites for use by future generations, and to provide opportunities for local activism in relation to the aforementioned goals. (T.T. 90-91).

As to Surfrider Foundation – South Florida, Inc., the Court is sufficiently certain that the local corporation and the foreign corporation are in fact one and the same. To determine whether or not that entity has standing to sue, the Court must first determine whether or not its individual members would have standing to sue. The Court heard testimony that a number of the individual members of the corporation are in close geographically proximity to the area in question (i.e., in Ponte Vedra), or have in the past lived in that area. The Court heard further testimony that the members use the beach on a frequent basis for a number of different activities. While not dispositive, the interest of these individuals is certainly greater than a member of the community at large because these individuals have demonstrated a consistent interest in the beaches in question, live or have lived near the area at issue, and do in fact use the beaches on a regular basis. Further, the issues at stake in the suit – accessibility of the beaches and removal of parking spaces on the County's property by private individuals – are certainly issues which lend themselves to a judicial determination by this Court. Accordingly, the Court holds that the individual members of Surfrider Foundation, Inc. do have standing to bring this suit. Thus, Surfrider Foundation, Inc. has satisfied the first prong of the associational standing test. The second prong of the test is also satisfied in that one of the stated interests of the organization is access to beaches – an issue which is directly implicated in this case. Finally, there does not appear to be any reason why any individual member of the organization is a required party for the initiation of the suit

or the receipt of relief. In fact, any relief which could be granted would benefit all of the members of the organization. Accordingly, the Court holds that Surfrider Foundation, Inc. has standing to bring the instant suit.

As to The Surfrider Foundation (Florida First Coast Chapter), it does not appear that this body may sue on its own behalf. The testimony adduced at trial indicates that the local chapter of the organization did not have any corporate identity, and thus could not sue or be sued as an organization. In that respect the local chapter appears to be an unincorporated organization which clearly does not have standing in Florida.

As to Scott Shine, the Court has already determined that the members of Surfrider Foundation, Inc. have standing to sue individually. Scott Shine testified that he is a member of the organization, and accordingly, he has standing to bring the instant suit.

COUNT II OF SECOND AMENDED COMPLAINT

The Plaintiffs contend that the obstruction of several beach access points which the County acquired by way of dedication is prohibited by sections 8-27, 8-28, and 8-29 of the St. Johns County Code.

Section 8-27 of the St. Johns County Code states that:

> The intent of this article is to determine as a legislative fact binding on county government that since time immemorial, the public has enjoyed access to the beach and has made recreational use of the beach that such use has been ancient, reasonable, without interruption, and free from dispute and that because of this customary access and use, the public has the right of access to the beach and a right to use the beach for recreation and other customary purposes. The intent is to mandate that county government define, protect, and enforce the public's customary rights of beach access and use. It is not the intent of this article to affect in any way the title of the owner of land adjacent to the Atlantic Ocean, nor to impair the right of any such owner to contest the existence of the customary right of the public to access and use any particular area of privately-owned beach, nor to reduce or limit any rights of public access or use that may exist or arise other than as customary rights. It is therefore declared and affirmed to be the public policy of this county, that the public, individually and collectively, subject to the provision of this article,

shall have the right of personal ingress and egress to and from the beach and the right to make recreational and other customary uses of the beach. The office of the county attorney shall be authorized to take all steps legally necessary to protect and defend the public right of access and use declared by this article.

Section 8-28 of the St. Johns County Code reads:

Neither the County nor any municipality shall vacate any approach to the beach or allow the same to be used for private purposes not otherwise preserved to a property owner as a matter of law.

Section 8-29 of the St. Johns County Code reads:

Except as provided for in this article, it shall be prohibited for any person to create, erect, or construct any structure, barrier, or restraint either vegetative or man made that will interfere with or obstruct the right of the public, individually and collectively, to enter or leave the beach by way of any approach or to use lawfully any part of the beach for recreation and other customary purposes.

At trial the Court heard the testimony of George Hamilton, who was called by the Plaintiffs. He stated that he has a degree in plant science horticulture with continuing education in that field, that he is familiar with the native vegetation of the area and with the non-native vegetation that is typically planted in the area, and that he has visited the access points in question. (T.T. 22-26). He testified as to what types of vegetation exist in each of the access points, and opined on whether the vegetation was native or non-native to the area.

The Court also heard the testimony of Scott Shine, who testified that he has visited the access points in question and that he made visual observations thereof, that he has studied aerial photographs of the accesses, and that he has viewed property appraiser's maps, plat maps and other County documents that describe them. (T.T. 136-138). He stated that some of the access points have signs indicating their location and that some do not. (T.T. 138). He testified that he has been prevented

from entering the beach at certain access points due to obstructions. (T.T. 143). He stated that since about 2002 the obstructions to the beach access points have remained substantially unchanged. (T.T. 148).

In addition, the Court heard from David Williams, the Beach Operations Chief for St. Johns County, who stated that he is familiar with the status of the beach access points in question. (T.T. 240-244). He testified that he first became aware of the beach access points in 1997 when he was drafting the beach code for the County, and that he studied them subsequent to that time in the process of developing a beach access inventory for the County. (T.T. 244). He stated that the distance between the first and last access point in the instant case is nine tenths of a mile, amounting to 14 accesses in that distance. (T.T. 246). He stated that some of the access points had signs and that some did not. (T.T. 249-250). He stated that section 2.03 of the County's beach code prohibited property owners from placing obstructions in the access points, and that the code did not differentiate between vegetative obstructions and non-vegetative obstructions. (T.T. 251-254). He stated that the Beach Management Plan indicates that a number of the access points have "landscape encroachments" within them. (T.T. 354-357). He testified further that the County has made plans to remove from the access points any items which were placed there by the property owners, and has sent letters to the owners requesting that they remove such items by March of 2006. (T.T. 304-305; 358-359). He testified further that the County planned to remove other obstructions, but did not set out a timetable whereby other obstructions would be removed. (T.T. 358) He stated that if the property owners do not comply within the allotted time, the County will remove the obstructions. (T.T. 358-359). He also testified that the County employed two beach maintenance personnel, owned equipment to maintain landscaping, and that the plan to remove the obstructions was not dependant on the receipt of any funding. (T.T. 361-363).

Finally, the Court heard the testimony of Francis J. McElroy, the St. Johns County Fire Prevention Chief Fire Martial. He testified that it appeared that fire

hydrants existed within two of the easements. He stated that because the hydrants appeared to be older, it was unlikely that they were equipped with an isolation valve, and that accordingly it would be necessary to shut off water to a large area for a number of hours in order to relocate the hydrants. The Court stated at trial that it did not consider the hydrants to be obstructions to the use of the easements, and that it would not order the hydrants to be moved. No further discussion of this topic is warranted.

The Court notes that after a review of the testamentary and documentary evidence submitted at trial it is clear that all of the access points in question are encroached upon to some extent. While the encroachments onto some access points rise to the level of obstructing any meaningful access to the beach, the encroachments on others clearly do not. To the extent that the Plaintiff's claims are based on the County Code's guarantee of access to the beach, any relief to which they are entitled would be limited to those access points which are so obstructed as to prevent beach access. The Plaintiffs at trial stated that access points four, eight, and eleven are clear of obstructions.

As to access point one, as portrayed in Joint Exhibit 5, from the testimony presented at trial the Court finds that Burford holly, ligustrum hedge, and agapanthus vegetation exists in the access point, and that such vegetation is non-native and constitutes a landscape encroachment. (T.T. 34; 355). The Court finds that while this access point is partially obstructed, access to the beach is not prevented by such obstructions at this time.

As to access point two, as portrayed in Joint Exhibit 5, from the testimony presented at trial the Court finds that gallardia, a pittosporum hedge, and oleander vegetation exist in the access point, and that such vegetation is non-native and constitutes a landscape encroachment. (T.T. 37-39; 355). The Court finds that while this access point is partially obstructed, access to the beach is not prevented by such obstructions at this time.

As to access point three, as portrayed in Joint Exhibit 5, from the testimony presented at trial the Court finds that canna lily, elaeagnus, and ligustrum vegetation exist in the access point, and that such vegetation is non-native and constitutes a landscape encroachment. (T.T. 40; 355). The Court finds that the various encroachments onto the easement at this access point obstruct access to the beach.

As to access point four, as portrayed in Joint Exhibit 5, from the testimony presented at trial the Court finds that no non-native vegetation exists in the access point, and that the access point is free from obstructions and encroachments (T.T. 40). The Court finds that while this access point is partially obstructed, access to the beach is not prevented by such obstructions at this time.

As to access point five, as portrayed in Joint Exhibit 5, from the testimony presented at trial the Court finds that yeddo hawthorne and pittosporum vegetation exist in the access point, and that such vegetation is non-native. (T.T. 41-42). The Court finds that the various encroachments onto the easement at this access point obstruct access to the beach.

As to access point six, as portrayed in Joint Exhibit 5, from the testimony presented at trial the Court finds that parsenide juniper and pittosporum vegetation exist in the access point, and that such vegetation is non-native and constitutes a landscape encroachment. (T.T. 42; 355). The Court finds that the various encroachments onto the easement at this access point obstruct access to the beach.

As to access point seven, as portrayed in Joint Exhibit 5, from the testimony presented at trial the Court finds that ligustrum vegetation exist in the access point, and that such vegetation is non-native and constitutes a landscape encroachment. (T.T. 44; 355). The Court finds that while this access point is partially obstructed, access to the beach is not prevented by such obstructions at this time.

As to access point eight, as portrayed in Joint Exhibit 5, from the testimony presented at trial the Court finds that pittosporum and ligustrum vegetation exist in the access point, and that such vegetation is non-native. (T.T. 45-46). The Court

finds that while this access point is partially obstructed, access to the beach is not prevented by such obstructions at this time.

As to access point nine, as portrayed in Joint Exhibit 5, from the testimony presented at trial the Court finds that ligustrum and pittosporum vegetation exist in the access point, and that such vegetation is non-native. (T.T. 46). The Court finds that the various encroachments onto the easement at this access point obstruct access to the beach.

As to access point ten, as portrayed in Joint Exhibit 5, from the testimony presented at trial the Court finds that no non-native vegetation exists in the access point, but that a wall does protrude into the easement. (T.T. 46). The Court finds that while this access point is partially obstructed, access to the beach is not prevented by such obstructions at this time.

As to access point eleven, as portrayed in Joint Exhibit 5, from the testimony presented at trial the Court finds that ligustrum, palm, and majestic beauty vegetation exist in the access point, and that such vegetation is non-native. (T.T. 47). The Court finds that while this access point is partially obstructed, access to the beach is not prevented by such obstructions at this time.

As to access point twelve, as portrayed in Joint Exhibit 5, from the testimony presented at trial the Court finds that hibiscus, clacagnus, and yeddo hawthorne vegetation exist in the access point, and that such vegetation is non-native and constitutes a landscape encroachment. (T.T. 47-48; 355). The Court finds that while this access point is partially obstructed, access to the beach is not prevented by such obstructions at this time.

As to access point thirteen, as portrayed in Joint Exhibit 5, from the testimony presented at trial the Court finds that liriope, rose, and pittosporum vegetation exist in the access point, and that such vegetation is non-native and constitutes a landscape encroachment. (T.T. 48; 355). The Court finds that the various encroachments onto the easement at this access point obstruct access to the beach.

As to access point fourteen, as portrayed in Joint Exhibit 5, from the testimony presented at trial the Court finds that no non-native vegetation exists in the access point, but that a metal fence does protrude into the easement. (T.T. 50). The Court finds that while this access point is partially obstructed, access to the beach is not prevented by such obstructions at this time.

The testimony presented at trial indicates that structural and vegetative items exist within the County's easements, that presumably past and present property owners adjacent to the access points in question have placed the items there, and that these items have partially or totally obstructed the beach access points. In some cases the obstructions have risen to the level of preventing access to the beach, and in some cases the obstructions do not yet obstruct access to the beach. The blocking of such access points by is not consistent with sections 8-27 and 8-28 of the County's Code, which are designed to ensure the public's right of access to the beach, and accordingly the Court will act to ensure compliance with the Code. The Court, however, is not unmindful of the fact that before the filing of the instant action and throughout the pendency of the suit the County has taken demonstrable and substantial steps to develop and implement plans to ensure that its citizens are able to access the beaches of the County. In addition, the Court notes that the Code does not contain any provision which would justify an order of this Court requiring that the County remove natural, native vegetation – even if such act is consistent with the County's plan (no evidence was presented at trial which indicated that any private party did place native vegetation within the access points).

Defendant St. Johns County has asserted that it is protected by sovereign immunity because the decision as to where and when to clear beach access points is a planning level decision. The Plaintiffs argue that such a decision is operational in nature, and thus, is not subject to such immunity. The Court notes that the planning/operational function dichotomy which is set out in Commercial Carrier Corp. v. Indian River County, 371 So.2d 1010 (Fla. 1979), specifically addresses the legislature's waiver of sovereign immunity as to tortious acts, as codified in Florida Statute 768.28. In the instant case, no tortious conduct has been alleged. Regardless,

even if the standard argued by the parties were to be applied by the Court, the action at issue is clearly operational in nature.

At the trial, the Court heard testimony that the County has already decided to clear the access points of obstructions, that a timetable has been established for the clearing of such access points, and that the clearing of the access points is not contingent upon receipt of funding. Thus, the decision as to whether to clear the access points and when to clear the access points has already been made. The only task that remains is to physically clear the access points, or to ensure that the local property owners do so. Accordingly, the policy decisions with regards to this issue have already been made by the County, and the County has already decided on a course of action with regards to implementation of that policy. The remaining acts which may be taken simply relate to the actual implementation of the course of action which the County has already decided upon. At least to the extent that the County has planned to clear the access points and has agreed upon a timetable, then, such acts are operational in nature.

The issue of this Court's authority to require that the County enforce its ordinances was raised in this case. In an effort to gain that result, the Plaintiffs seek from the Court the remedy of mandamus. Mandamus is a common law remedy that may be used to enforce an established legal right by compelling a public officer to perform some duty which is required by law. Caruso v. Baumle, 776 So.2d 371 (Fla. 5th DCA 2001). The remedy may be used to compel the performance of a ministerial duty imposed by law, but discretionary authority may not be the subject of mandamus. Holland v. Wainwright, 499 So.2d 21 (Fla. 1st DCA 1986). In order to be entitled to mandamus relief, the public officer must have an indisputable legal duty to perform the requested action. Huffman v. State, 813 So.2d 10 (Fla. 2000). Finally, mandamus may be invoked to compel proper enforcement by public officials of local ordinances. Rebholz v. Floyd, 327 So.2d 806 (Fla. 2nd DCA 1976).

Section 8-27 of the Code clearly establishes the public's right to access the beach ("the public has the right of access to the beach"), and the public's right to

ingress and egress from the beach ("the public...shall have the right of personal ingress and egress to and from the beach"). In furtherance of these rights the Code – in Section 8-29 – prohibits the erection of vegetative or manmade structures which obstruct the public's right of access to the beach. Further, in Section 8-27 the Code "mandates[s] that county government define, protect, and enforce the public's customary rights of beach access," and authorizes the county attorney to take those steps which are necessary to protect and defend beach access. Thus, the Code specifically announces the public's right to unobstructed beach access, prohibits a particular act which violates such right, and specifically requires the County to protect the right of access. The Defendant's assertion that enforcement of the ordinances is discretionary, and thusly not capable of being addressed by mandamus, is unavailing. Section 8-27 *mandates* that the County enforce the public's right to beach access, thus rendering enforcement non-discretionary. In consideration of the foregoing, it is clear that the requirements for the issuance of a writ of mandamus have been satisfied.

Although the County must enforce its ordinances in relation to beach access, the Code does not set out how the County is to do so. To the extent that the manner of enforcement has not been specified, then, some discretion is retained by the County, and the Court is not in a position to impose a specific plan with regards to opening of beach access points on the County. As has previously been stated, however, the County has already decided to enforce the Code, to enforce it in a particular manner, and to enforce it by a particular date. To the extent that such decisions have already been made, then, the Court shall enter an order compelling the County to enforce those sections of its Code which relate to beach access, and requiring the County to employ the manner of enforcement which it has previously decided upon. No provision, of this Final Judgment, however, should be construed as a prohibition against the County's ability to landscape or improve the access points in question. The Court notes that the County has demonstrated its determination to provide meaningful access to its beaches, and the Court believes and trusts that the County will continue to review these and other access points within its territorial

boundaries and will continue to implement beach access plans and follow through with those plans in order to preclude similar litigation of this type.

COUNT VII OF SECOND AMENDED COMPLAINT

The issue which remains in Count VII, and which was addressed at trial, concerns a number of parking spaces in front of the Ponte Vedra Inn and Club which were removed and replaced with turnabouts and landscaping. The Plaintiff asserts that a number of these spaces were not within the area which was vacated by the County, but rather, were within the County's right of way. The County asserts that the removal of the spaces occurred subsequent to the passage of Ordinance 2003-05 which prohibited parking along Ponte Vedra Boulevard.

At trial the Court heard the testimony of Scott Shine, a Plaintiff in the case. He testified that he has reviewed property appraiser's maps and aerial photographs of the area, and that he has conducted measurements of the roadway and the right of way. (T.T. 191-193). He stated that the parking spaces in question were at least partially in the County's right of way. (T.T. 191-194). He further testified that the notice regarding the September 11, 2000 hearing before the Ponte Vedra Zoning and Adjustment Board made no mention of the removal of parking spaces in front of the Ponte Vedra Inn and Club. (T.T. 155). The final outcome of that hearing was a denial of the Ponte Vedra Inn and Club's request to remove the parking spaces. He stated that he had used the parking spaces in question before for the purpose of accessing the beach, and that he could no longer do so. (T.T. 149; 152). He stated that the spaces no longer exist, and that in their place landscaping, grass, and short-term parking turnabouts exist. (T.T. 151). He testified that on numerous occasions he had witnessed vehicles parked in the turnabout without any persons inside of the vehicle. (T.T. 152; 177-178). He testified that he had parked his car in a turnabout and asked if he could leave it, and that he was told that it would be towed. (T.T. 179).

The Court took judicial notice of Ordinance 2003-5. The County has argued that this Ordinance prohibits parking on the County's right of way along Ponte Vedra Boulevard, and that the ordinance was passed before the parking spaces were

removed. While evidence was presented at trial that the September 11, 2000 hearing before the Ponte Vedra Zoning and Adjustment Board was not properly noticed, no evidence was presented to indicate that Ordinance 2003-5 was not properly noticed. Accordingly, the due process challenge to this Ordinance must fail. The Court notes that Ordinance 2003-5 does not specifically address the removal of parking spaces along Ponte Vedra Boulevard. Rather, it serves to prohibit persons from parking within the County's right of way except in specified circumstances. Thus, even if the parking spaces had not been removed, the Plaintiffs would not be permitted to utilize the spaces for beach access.

The County, as part of its executive authority, may determine that curbs, sidewalks, and landscaping are appropriate along its right of way, and the fact that parking spaces may have been reduced may be reduced is an executive decision. The Court notes that the County has apparently decided that in the section of road in question curbs, sidewalks, and landscaping are appropriate. This Court is not in a position, nor should it be, to review that determination. To the extent that the Plaintiffs attack the fact that the County permitted the landscaping, sidewalks, and curbs to be placed within its right of way, then, such argument is without merit. However, to the extent that the County did permit any private entity to erect constructions within its right of way, the County is still responsible for policing its right of way, and the constructions on the County's property may not be utilized by a private entity to the exclusion of members of the public.

The Court heard testimony at trial that the Ponte Vedra Inn and Club has installed paved turnabouts and landscaping in place of the removed parking. The Court heard testimony that the turnabouts have been used on numerous occasions by individuals other than the Plaintiffs for parking and loading/unloading, and that the Plaintiffs have not been permitted to utilize the turnabouts for parking. The Court also heard testimony that the Ponte Vedra Inn and Club has posted no parking signs within the turnabouts that are emblazoned with their logo, and that the Club has

informed at least one of the Plaintiffs that he would be towed if he parked in the turnabout.

To the extent that the turnabouts exist within the County's right of way it is clear that the Ponte Vedra Inn and Club has no authority to regulate the conduct of persons within those turnabouts. In this regard, only the County may post no parking signs on its own property, and only the County may enforce the restrictions which it has enacted to regulate such property. Further, it is clear that no member of the public may be excluded from utilizing those turnabouts which exist on the County's property for any legal and permissible use.

COUNT X OF SECOND AMENDED COMPLAINT

In Count X the Plaintiffs seek declaratory and injunctive relief under the public trust doctrine. The Plaintiffs argue that the public trust doctrine is applicable to the entirety of the beach, including the dry sand areas. The Defendant asserts that only areas between the mean high water mark and low tide are covered by the doctrine, and that the easements and obstructions in question are not contained within these areas.

The public trust doctrine has been incorporated into Florida's jurisprudence from the English common law, and embodied in Article X, Sec. 11 of the Florida Constitution which reads in pertinent part that: "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." See also, Board of Trustees of the Internal Improvement Trust Fund v. Levy, 656 So.2d 1359, 1361 (Fla. 1st DCA 1995). The Florida Supreme Court has further recognized the doctrine, stating "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." City of Daytona Beach v. Tona-Rama, Inc., 294 So.2d 73, 75 (Fla. 1974). Thus, the

public trust doctrine protects the public's right to access Florida's beaches and to use Florida's beaches.

The language of the Florida constitution suggests that the doctrine's applicability is limited to "beaches below mean high water lines." Case law has determined that private title to beach property may only extend to the high water mark, Adams v. Elliot, 128 Fla. 79 (Fla. 1937), and that the beach between the high and low water marks is the property of the state, held in trust for all the people of the State, White v. Hughes, 139 So.2d 190 (Fla. 1939).

Because of the unique facts and circumstances of the instant case, the Court need not consider the question of whether the public trust doctrine is applicable. Even assuming that the doctrine does apply to the fourteen beach access points in question, the testimony at trial clearly indicated that the Plaintiffs claim that only six of the access points were obstructed to the point of prohibiting access to the beach. (T.T. 160). Further, the County has already developed plans to clear the obstructed access points and to build dune walkways over six of the access points. Although the public trust doctrine does not indicate how courts are to protect the rights of access to and use of beaches, it is clear in this case that the public is currently able to access the beach and to utilize it freely, and that the County has voluntarily implemented plans to increase access in the future. Accordingly, because the public trust doctrine would not entitle the Plaintiffs to relief even if it were applicable in the instant circumstances, there is no need for the Court to determine whether or not it actually does apply. Suffice it to say that whatever the public trust doctrine requires, such requirements have been amply satisfied in this case.

Therefore, it is:

ORDERED AND ADJUDGED that:

1.) As to Count II of the Second Amended Complaint, judgment is entered in favor of the Plaintiffs to the limited extent set forth in this Final Judgment, and accordingly, consistent with the County's Code, the County shall prevent private landowners

adjacent to the access points from placing obstructions (either vegetative or structural) within the access points, and within six months of the date of this Order shall implement its plans to remove or cause to be removed any artificial structure or vegetation existing on the access points which constitutes an obstruction to beach access.

2.) As to Count V, the Court retains jurisdiction to consider the Plaintiffs' motion in relation to that count, and to enter a final determination on the issue.

3.) As to Count VII of the Second Amended Complaint, judgment is entered in favor of the Defendants.

4.) As to Count X of the Second Amended Complaint, judgment is entered in favor of the Defendants.

5.) The Court retains jurisdiction for purposes of enforcing, modifying, or clarifying this Final Judgment, and for any such other purposes as may be lawful.

DONE AND ORDERED in Chambers, in St. Johns County, St. Augustine, Florida, this 2 day of March, 2006.

/s/ J. MICHAEL TRAYNOR

J. MICHAEL TRAYNOR
Circuit Court Judge

Copies to:

Sidney F. Ansbacher, Esquire
Upchurch, Bailey and Upchurch, P.A.
Post Office Drawer 3007
St. Augustine, FL 32085-3007

Deborah J. Andrews, Esquire
11 North Roscoe Blvd.
Ponte Vedra Beach, FL 32082

Laura Barrow, Esquire
St. Johns County Attorney's Office
4020 Lewis Speedway
St. Augustine, FL 32084

Charles Crist, Esquire
Attorney General
Office of Attorney General, PL-01
Tallahassee, FL 32399

Mark M. Arnold, Esquire
Rogers, Towers
1301 Riverplace Blvd., Suite 1500
Jacksonville, FL 32207

Wayne E. Flowers, Esquire
9428 Baymeadows Road, Suite 625
Jacksonville, FL 32256-7969

David M. Dunlap, Esquire
1837 Henricks Avenue
Jacksonville, FL 32202

John P. Clifford
420 Ponte Vedra Blvd.
Ponte Vedra Beach, FL 32082

Timothy Ellis, Esquire
233 E. Bay Street, Suite 804
Jacksonville, FL 32202